Economic Crime
Law and Legal Practice
in the context of Nepal

Inaugural dissertation for getting a doctoral degree
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Chemnitz University of Technology, Germany

Presented by
Dharma Raj Bhusal
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2009
Dedication

This dissertation is dedicated to my 90 years old
Mother and Father

Mother: Radhika Bhusal
Father: Lila Ballab Bhusal

And also to Courageous Law experts, Crime investigation
department of Nepal Police, Friends and colleagues
Declaration

I declare that this dissertation is my own work and that it also has not been submitted previously to any University for any degree.

Dharma Raj Bhusal
Jan. 7, 2009

Erklärung


Jan. 7, 2009

(D. R. Bhusal)
ACKNOWLEDGEMENTS

LORD PASHUPATINATH, KAL BHAIRAV, MANAKAMANA MAI, Lord Buddha etc. without whom nothing is possible.

Except this my sincere appreciation and gratitude to:

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<tbody>
<tr>
<td>ACA</td>
<td>Anti corruption Act</td>
</tr>
<tr>
<td>AG</td>
<td>Auditor General</td>
</tr>
<tr>
<td>AGO</td>
<td>Attorney General Office</td>
</tr>
<tr>
<td>AGR</td>
<td>Attorney General</td>
</tr>
<tr>
<td>AIG</td>
<td>Assistant Inspector General of Nepal Police</td>
</tr>
<tr>
<td>AMLPA</td>
<td>Asset (Money) Laundering Prevention Act</td>
</tr>
<tr>
<td>CA</td>
<td>Constituent Assembly</td>
</tr>
<tr>
<td>CDO</td>
<td>Chief District Officer</td>
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<tr>
<td>CIAA</td>
<td>Commission for the Investigation of Abuse of Authority</td>
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<tr>
<td>CIAAAA</td>
<td>Commission for the Investigation of Abuse of Authority Act</td>
</tr>
<tr>
<td>CID</td>
<td>Crime Investigation Department of Nepal Police</td>
</tr>
<tr>
<td>DDC</td>
<td>District Development Committee</td>
</tr>
<tr>
<td>DIGP</td>
<td>Deputy Inspector General of Police</td>
</tr>
<tr>
<td>DPO</td>
<td>District police office</td>
</tr>
<tr>
<td>DRI</td>
<td>Department of Revenue Investigation</td>
</tr>
<tr>
<td>DRT</td>
<td>Debt Recovery Tribunal</td>
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<tr>
<td>EC</td>
<td>Economic Crime</td>
</tr>
<tr>
<td>EDA</td>
<td>Excise Duties Act</td>
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<tr>
<td>FA</td>
<td>Forest Act</td>
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<tr>
<td>FEA</td>
<td>Foreign Employment Act</td>
</tr>
<tr>
<td>FIR</td>
<td>First Information Report</td>
</tr>
<tr>
<td>HBL</td>
<td>Himalayan Bank Limited</td>
</tr>
<tr>
<td>HTTCA</td>
<td>Human Trafficking and Transportation Control Act</td>
</tr>
<tr>
<td>IC</td>
<td>Interim Constitution</td>
</tr>
<tr>
<td>ICC</td>
<td>Investigation and Crime Control</td>
</tr>
<tr>
<td>IGP</td>
<td>Inspector General of Nepal Police</td>
</tr>
<tr>
<td>INGO</td>
<td>International Non Governmental Organization</td>
</tr>
<tr>
<td>ITA</td>
<td>Income tax act</td>
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<tr>
<td>JC</td>
<td>Judicial Council</td>
</tr>
<tr>
<td>JCCC</td>
<td>Judiciary and Crime Control</td>
</tr>
<tr>
<td>LADM</td>
<td>Local Administration</td>
</tr>
<tr>
<td>MA</td>
<td>Muluki Ain</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>NADB</td>
<td>Nepal Agricultural Development Bank</td>
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<tr>
<td>NBL</td>
<td>Bank Nepal Bank Limited</td>
</tr>
<tr>
<td>NCC</td>
<td>National Co-ordination Committee for Drug Abuse Control</td>
</tr>
<tr>
<td>NDCA</td>
<td>Narcotics Drugs (Control) Act</td>
</tr>
<tr>
<td>NDCLEU</td>
<td>Narcotic Drugs Control and Law Enforcement Unit</td>
</tr>
<tr>
<td>NDCLEU</td>
<td>National Drug Control Law Enforcement Unit</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Governmental Organization</td>
</tr>
<tr>
<td>NIDC</td>
<td>Nepal Industrial Development Corporation</td>
</tr>
<tr>
<td>NKP</td>
<td>Nepal Kanun Patrika</td>
</tr>
<tr>
<td>NRB</td>
<td>Nepal Rastra Bank</td>
</tr>
<tr>
<td>NVC</td>
<td>National Vigilance Centre</td>
</tr>
<tr>
<td>OAG</td>
<td>Office of the Auditor General</td>
</tr>
<tr>
<td>OCC</td>
<td>Observation and Crime Control</td>
</tr>
<tr>
<td>PACHR</td>
<td>Public Account Committee of the House of Representatives</td>
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<tr>
<td>POCA</td>
<td>Prevention of Corruption Act</td>
</tr>
<tr>
<td>RBB</td>
<td>Nepal Rastriya Banijya</td>
</tr>
<tr>
<td>RBB</td>
<td>Rastriya Banijya Bank</td>
</tr>
<tr>
<td>RCCC</td>
<td>Royal Commission for Corruption Control</td>
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<tr>
<td>RIA</td>
<td>Revenue Investigation Authority</td>
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<tr>
<td>RID</td>
<td>Revenue Investigation Department</td>
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<tr>
<td>RPO</td>
<td>Regional Police Office</td>
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<tr>
<td>RPUO</td>
<td>Regional Police Unit Office</td>
</tr>
<tr>
<td>SPD</td>
<td>Special Police Department</td>
</tr>
<tr>
<td>TI</td>
<td>Transparency International</td>
</tr>
<tr>
<td>TIA</td>
<td>Tribhuvan International Airport</td>
</tr>
<tr>
<td>TOR</td>
<td>Tax or Revenue</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
<tr>
<td>VAT</td>
<td>The Value Added Tax</td>
</tr>
<tr>
<td>VDC</td>
<td>Village Development Committee</td>
</tr>
</tbody>
</table>
1. Objectives and Methods of the dissertation

1.1 Objectives or Goals of the research

It seems evident that governmental and non governmental organizations are effected by economic crimes in the economy world wide. Economic crime (EC) is the monetary loss which is caused by criminal behavior and leads to financial damages to other persons or to the national economy.

The specific objectives or goals of this research about attitudes are to show how the Nepali laws are defining concerning Economic Crime and what types of strategies are used to control those crimes, whether these are capable to control the crimes or not, and if not what types of mechanisms can be developed to control these actions. And based upon this research it should also be able to understand how these crimes are hampering or effecting single persons and the development of the nation and the national economy as well.

To make an appropriate assessment, the following questions will thus be considered:

1. Are there any special bodies or organizations established to control these types of crimes?
2. How did the relevant agencies execute their work of fighting to control these crimes?
3. Are existing laws sufficient to control this situation, what types of problems are being faced by the agencies to work in this field and how is the legal practice concerning this issue?
4. What has been the impact of relevant agencies on economic crime or corruption reduction?
5. What lessons can ICAA and other related agencies draw from the discussion in formulating and implementing effective anti-corruption and anti-economic crime strategies?

In making the assessment, capacity (of a person or body) shall be understood as “the ability to perform appropriate tasks effectively, efficiently and sustainable”.¹

The goal of this research is to find out those areas where the existing mechanisms fail or the existing laws do not work properly to minimise the economic crime. So, the reasons

¹ Hilderbrand, M.E. / Grindle, M.S. (1997), p. 34.
will be found out whether the difficulty is caused by deficits of the existing laws or due to an insufficient practice in the course of executing these laws.

A mechanism will have to be developed as an outcome of this research which should help to minimise the economic crime in the selected sectors and enable the working agencies to better control the different kinds of economic crime.

1.2 Research Methodology

This dissertation is a mixture of empirical research (data analysis), description (comparison) and systematically evaluation of the relevant laws and legal practice. It is not only based on desk research. Data and information used were obtained from electronic sources, annual reports, newspapers and other published and unpublished official documents. Further on, it should be noted that the researcher was an employee of Crime Investigation of Nepal police and thus could draw upon his own experience if appropriate.

For this analysis, the Crime investigation department of Nepal Police, different types of banks, courts, and the Commission for the investigation of abuse of authority (CIAA) were selected as areas of research. Selection was based on complaints reported by Nepali people. Relevant data were taken from the courts, from records from the police crime investigation department and the attorney general’s local branches and from CIAA, which is only one of the corruption control offices in Nepal for all types of EC.

Studies of institutions responsible to minimise economic crimes have been carried out in detail. First of all, the existing laws and legal practice situation was reviewed more closely. After that, the performance of the agencies concerned was studied and looked at nearly to find out whether they have met their responsibility well or not.

Indicators were set up to help to show the degree of the economic crimes in those selected areas. Primary data were collected for the information of the indicators. Specially, the interview and questionnaire method was applied in this study. The reliability of the primary data was checked. So, a field visit plan was proposed for about six months in Nepal. There, the concerned authorities were visited and requested for the relevant data.

At this research period, there were visited several times the Crime Investigation department of Nepal police, the office of the Attorney General, Courts, CIAA, Revenue
investigation office, the central bank of Nepal and other banks, too. At that period for details of information concerning the relevant topics, visits were made to judges, officers and the concerning staff of related offices and information was taken there. With the officers and related persons, there were face-to-face discussions on prominent matters, for example;

1. What types of problems are they facing to deal with these cases?
2. Whether the laws are sufficient to deal with and to control these cases?
3. What could be done better in future to control this phenomenon?

To clear this matter further, the questionnaire explained below was provided to them and they were requested to deliver all relevant data. The reliability of these data has been checked at the time of data collection.
2. **Introduction: Nepal at a glance**

Nepal is a highly heterogeneous country, in terms of geography, ethnicity, language and culture. Situated in the lap of the Himalayas, Nepal is located between the latitude 26°22’ to 30°27’ North and longitude 80°4’ to 88°12’ east, and elevation ranges from 90 to 8848 meters. The territory of Nepal encompasses 147181 sq km; its geographical diversity with high mountains valleys and plain lands lies between China and India. The average length being 885 km east to west, the average breadth is 193 km from north to south. The country is bordering at the two most populous countries in the world, India in the East, South, and West, and China in the North. Nepal is a landlocked country and home place of natural beauty with traces of artefacts. Geographically, the country is divided in three regions; Mountain, Hill and Terai accommodating 7, 44 and 49 % of the population respectively. The Northern range (Himalayas, Mount Everest range) is covered with snow over the year where the highest peak of the world, the Mount Everest, stands. The middle range (Hill) is captured by gorgeous mountains, high peaks, hills, valleys and lakes. Southern range (Terai) is the plain of alluvial soil and consists of dense forest area, national parks, wildlife reserves and conservation areas. Nepal is landlocked sharing borders with India and China and is made up of districts divided into different development regions. The Himalayas cover the northern third of the country from east to west, bordering China. To their south lays a long east-west stretch of lower mountains whose southern flank level into the Terrain, a fertile, sub-tropical plain spanning the border with India. These contours have played a major role in helping to determine the geographical, social and economical diversity that characterizes the Nepal. Based on the area of districts, these regions constitute 35, 42 and 23% of the total land area. There are 5 development regions and 75 administrative districts. Districts are further divided into smaller units, called Village Development committee (VDC) and Municipality.

Nepal has been a multiethnic, multilingual, democratic, independent, indivisible, sovereign Constitutional Monarchical Kingdom until 29 may 2008 and it became a Federal Democratic Republic from 29 may 2008 after the Constituent Assembly (CA) overwhelmingly voted for the abolition of the country’s 240-year-old monarchy. The constitution of Nepal, 1990 and the Interim Constitution 2007 have guaranteed rule of law, human rights, and other fundamental rights of the people. The size of population is
about 29,519,114 (July 2008 est.)\textsuperscript{2}, among them 30.9 (2004) percent are compelled to stay under the line of poverty.

**Figure 1** Map of Nepal

In Nepal the caste-based structure is an interesting mosaic of some 60 ethnic groups each with its distinctive culture, language, lifestyle and civilization. It is Nepal's identity as a multi caste/ethnic, multi religious and multi cultural country. Within this diversity lies a horrendous diversity in terms of participation in socio-political decision-making. My study on involvement of political leaders/cadres in decision-making structures of their respective parties shows an inverse relationship between the population size and their representation. For example, the Brahmins, one of the most privileged groups in the caste hierarchy, constitute less than 13 percent of the total population. But they occupy more than 36 percent of persons in the decision-making structures.

Table: Distribution of top 10 populations and political participation in Nepal

<table>
<thead>
<tr>
<th>Rank</th>
<th>Population</th>
<th>Political participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chhetri</td>
<td>15.8</td>
</tr>
<tr>
<td>2</td>
<td>Brahmin Hill</td>
<td>12.7</td>
</tr>
<tr>
<td>3</td>
<td>Magar</td>
<td>7.1</td>
</tr>
<tr>
<td>4</td>
<td>Tharu</td>
<td>6.8</td>
</tr>
<tr>
<td>5</td>
<td>Tamang</td>
<td>5.6</td>
</tr>
<tr>
<td>6</td>
<td>Newar</td>
<td>5.5</td>
</tr>
<tr>
<td>7</td>
<td>Muslim</td>
<td>4.3</td>
</tr>
<tr>
<td>8</td>
<td>Kami</td>
<td>3.9</td>
</tr>
<tr>
<td>9</td>
<td>Yadav</td>
<td>3.9</td>
</tr>
<tr>
<td>10</td>
<td>Rai</td>
<td>2.8</td>
</tr>
</tbody>
</table>

Note: political participation means participation in their central committees of the political parties in Nepal.

The Nepalese economy is predominantly agriculture based, about more than eighty percent of employment as well as forty percent of gross national product are based on it.

---

The process of planned economic development has commenced in Nepal since 1956 with the inception of the First Five-year Plan (1956-1961).

After the restoration of the Constitutional monarchy and parliamentary democracy in 1990, the development approaches have fostered the establishment of a market-oriented, open and liberalized economy. Eights and ninth periodic plans have been implemented so far. Some progress has been made towards laying socio-economic infrastructure, which has supplemented national development over a little more than four decades; the accelerating social changes have recently stained the nature of Nepalese lifestyle. As a result, new social problems have emerged quite significantly.¹

Nepal has become a Federal Democratic Republic from 29 May 2008. Now the political parties are trying to shape a new government and a modern political system of Nepal. During a second sitting of the Constitutional Assembly (CA), a separate bill was passed to amend the Interim Constitution⁵ and make new arrangements for a president as head of state. By addition of part 4 (A) in the Interim Constitution, it now says that the second meeting of the CA will provide for a president as head of state. The president will be supreme commander in chief of the army and will perform other duties as determined by the constitution. S/he will mobilize the army upon the cabinet’s recommendation. The president will remain in office until the CA’s promulgation of a new constitution. S/he will remain as patron of the constitution and will also abide by the rules of the constitution. The president can impose emergency rule upon recommendation of the cabinet. Two thirds of CA members can remove him/her from office through impeachment.

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3. Economic Crime

3.1 General introduction on issues of Economic Crime

Economic Crime (EC) is a modern problem concerning the present society and its economy all over the world but especially in developing countries. The recent technological innovations, e.g. Computer technology and new information technology, have changed the conditions and possibilities concerning economic crime. Many typical examples of economic crime are not even possible to imagine during earlier periods of history. Such offences as value-added tax (VAT) related fraud, insider trading and illegal cartels are created by modern legislation. VAT related fraud is the on other hand not a new phenomenon. It represents a certain variety of fraud in the cheating against the public revenue system. EC also includes very different forms of unlawful activities, such as illegal trades, tax evasion and fraud against customers and against other companies. As long as taxes, customs duties and similar levies have existed, the economic incentives to evade such levies have also been present. Laws against insider trade and cartels can in a similar way be seen as a part of a long history of restrictions regulating the behaviour of different market agents. It is also obvious that the history of EC must be studied as a history of changing institutions, changing legislation, changing control systems and changing ethical norms.

According to Ehrlich, “to conduct an EC must need criminal behaviour which has been developed by economists”. It is commonly assumed that people somehow calculate or estimate what actions - some of which are illegal - produce the highest welfare or utility. Maximization of utilities implies balancing benefits against costs, where both benefits and costs may include wealth equivalents of various physical and physical elements associated with different actions. When choosing among possible actions, an individual is assumed to consider the risk of punishment as a kind of cost in addition to other costs (and benefits) associated with illegal activity. Thus the theory of general deterrence is regarded to be but a special case of the general theory of rational behaviour under uncertainty.

Economic Crime is a field characterized by rapid changes. It is also a field with many unclear, conflicting and changeable norms. These circumstances make it even more

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important to study the changes and continuities of economic crime in a long historical perspective. The economy rapidly becomes more international. Different national systems of legislations control and norms meet maybe even through their clash. Attempts are made to create common international regulations. This makes it all the more important to understand the origins and the characteristics of the different national systems. The historical approach\(^9\) will also promote a discussion concerning concepts, definitions and explanations, which otherwise may be taken more or less for granted in the present context.

Actually, EC has not attracted much attention in the history of crime. Only a few historical studies actually pay significant attention to EC. An attempt to develop a historical definition of EC was made by Maria Agren and Kenneth Johansson in a contribution to the 22nd Nordic History Congress in Oslo 1994. They base their definition on an older meaning of the word ‘economy’. Using Otto Brunner’s discussion on ‘das ganze Haus’, they connect an early modern meaning of economy with the basic ideas about housekeeping, the house and its particular notion of order.\(^10\)

EC is usually not treated as a specific category in historical studies. Violation against tax, custom or trade regulations are often included in other categories as ‘crimes against the authorities’, ‘violations against the state regulations’, or ‘property crimes’.\(^11\)

EC is simply identified as violations against economic regulations and the category is composed of several different types of violations. Most of them concern different trade regulations, which may include acts as different as cheating customers (by forgery, by using false measures and weights, by selling goods already bargained for and so on), non payments of customs and toll duties, violations of a ban on export and different types of unlawful trading (such as trading in the rural areas against town privileges, unlawful retail trading and violations against market regulations).\(^12\)

If we like to discuss Economic Crime in the context of Nepal, it is a new topic in the economic life of Nepalese people. Especially we can not get any clear definition concerning this topic in Nepal. Even the laws of Nepal are also not clear for it, but “Economic crime” in the country has yet to be identified and investigated in detail despite

the fact that money laundering, tax evasion, trafficking and others issues that are threatening a lot of other Asian countries have also spread their antennae into Nepal (cf. below at 3.3 ).

There are some illegal activities or businesses in Nepal. The law books of Nepal are not describing such activities as “economic crimes” but these activities are punishable. Now, I like to mention here those activities and businesses which are Economic Crimes, taking place in particular through international trafficking of narcotic drugs, psychotropic substances or arms and ammunition, smuggling of human beings, prostitution, tax evasion and avoidance, cheating, money laundering and over drafting. Corruption is also a major factor for Economic Crime, which has lead to generate huge amounts of capital for its initiators and organizers. Such activities or businesses are encouraged by corrupted officials. Although the exact figures for money of criminal origin are unknown in Nepal, they apparently have reached very high levels, as the propensity of it is high that has been invested in economic, social and political areas.

In my experience, criminal groups are found to be active in Nepal because of the lack of clear rules and regulations. This problem is aggravated by the porous border of Nepal with India together with easy access for the criminals while misusing the facilities of liberal visa policy.

The profits derived from their illegal activities are either integrated into the legal economy or are used in corrupt and criminal ways to enhance such activities. In this situation it would be most probable that powerful trafficking groups and their financial assistants might come to get significant influence in the country. However, it seems also true that no government would accept any income that could be derived from criminal activities.

Corruption is the major phenomenon to increase the number of economic crime. Especially, political corruption affects every aspect of human development – democratic process, economic efficiency, social equity and sustainability of all efforts for development. Even though the corrupted politicians are handling the whole bureaucracy and using the bureaucrats for their favour to commit for the corruption.

Concerning the development of EC, a number of German historians have studied the gangs of smugglers and robbers in 18th and 19th century Germany. According to Carsten Kuether, it was very difficult for the judicial system to deal with these gangs. Many of them developed a specific subculture with a secret language and their own ethical

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standards and a wide net of informal contacts. The robbers often identified themselves in contrast to both the ‘rulers’ and the ‘honest’ people. Kuether argues that it was not until after the Napoleonic wars that the judicial system became more effective. The reason was that the possibilities of taking advantage of the lack of territorial unity in Germany were by then reduced. So in Germany, there was no clear definition concerning EC in the 18th and 19th century but such type of activities were taking place. At that time, smuggling was evidently extensive in other parts of Europe as well. It has been estimated that almost one-third of the tea consumed in England during the eighteenth century was smuggled into that country. The reality was very different from the stories often told about the smugglers. The typical smuggler was not the romantic type often described in literature, which defended the poor and fought against the authorities. Those who got caught were often children or pregnant women, but the smuggling itself was often a big, well-organized business run by wealthy merchants. The goods, however, were usually transported by professional gangs while the merchant stayed in the background. According to Julius Ruff, the nobility was also represented among those organizing smuggling in France. It means, such types of EC activities were everywhere in Europe, and the criminals were misusing children and pregnant women for these activities.

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14 Kuether, Carsten (1976), pp. 121 - 144, 148 - 149.
3.2 Definitions of Economic Crime

3.2.1 General Definition

Crime is a “shadow of civilization”. So its size and shape depend upon the form of society and the development of the system. Corruption, kidnapping, hijacking, drug and human trafficking have become more serious crimes to tackle with. The methods used to commit crime are new in the sense that they partake of modern knowledge and technique. The reasons given for the increase in economic crime include unemployment, economic backwardness, overpopulation, illiteracy, awareness of the society concerning crime and inadequate equipment of the police force and other investigation agencies.

From the very beginning, financial crimes were regarded as the most heinous crimes. The great king Prithivi Narayan Shah “1723” (founder of the modern Nepal)\textsuperscript{18} who unified the Kingdom declared that “the bribe takers and bribe givers are the greatest enemies of the nation and they deserve the death penalty”.\textsuperscript{19} “It shall not be a sin to forfeit their properties and/or take their lives.”\textsuperscript{20}

Economic crime including money laundering today is a part of the major transnational organized crime. It is really difficult to give an exact definition of economic crime. A person is acquiring easy money in his life in different ways which do not respect the socially accepted norms. When activities are outside of the accepted social norms, the law tries to prevent them, and then the activities are illegal and ultimately a crime. There are various motivating factors for a person to commit a crime. Those factors may be classified in various ways. A financial criminal not only attempts to accumulate money from illegal sources but its activity is also threatening the economic order and creates a hurdle for national development.

In Nepal there are no definitions within the national laws, rules and regulation about “what is the economic crime”, but EC is especially related to corruption and is generally referring to the economic field. It will hamper the whole economic activities of the nations whether they are banking sectors or others. So, economic crimes have been adversely affecting national development.

\textsuperscript{18} Manandhar, Triratna, jt. auth (1996), 22, pp. 102 - 120; Baidya, Tulsi Ram (1972) 43, pp. 86 - 113.

\textsuperscript{19} Acharya, Baburam, 1967-69 [2024-26 v. s.] 4 Vols, pp. 120 -123.

\textsuperscript{20} http://www.ciaa.gov.np (9 July 2008).
Economic crimes are also contributing to the degradation of social norms. This crime causes further chaos and disorder in society by creating wider gaps between the hard money earners and easy money earners. If because of this situation the society has been deciding such types of activities are not good for it then the government will make rules and regulations concerning these activities so that the law of the nation declares these activities to be crimes and they should be punished.

“In the context of Nepal the nature of the crime is changing, and new types of crimes are emerging. This development has invited the opportunity for corruption and fraud relating to finance, banking transactions, foreign currency speculation, real estate transactions, illegal trade practices, procurement of goods, and the construction of development projects. As a result, trends have emerged contributing to new social problems, including economic crimes like the growth of commercial and banking activities and emerging new technologies in various fields of telecommunications, financial institutions, international air ticketing, and revenue administration. More computers were widely utilized and the new problem of computer crime emerged. These crimes were new to the investigation agencies and there were no countermeasures developed to combat them. In addition, various economic and computer crimes are costly to society. Priority to the detection and combating of such crimes is seen as essential to the criminal justice system of Nepal. International cooperation and technical support was viewed as being highly beneficial to a developing country like Nepal.”

“Even though legislation dealing with economic crimes has been enacted in Nepal, it is inadequate to cope with the complexity of the problems that have arisen by the globalization of economic activities, facilitated by modern technology. There is a need to update and revamp most of the legislation. In addition, there are areas where no law exists, such as the case for money laundering. Separate legislation targeted in the fight against money laundering is necessary. Also, the ratio of convictions for economic crime is not satisfactory. Various economic crimes in Nepal are corruption, fraud, tax evasion, counterfeiting, trafficking of human beings, drug trafficking, and money laundering.”

3.2.2 Some other definitions concerning Economic Crime

"Economic crime is a criminalized act or omission which is committed in the framework of, or using a corporation or other organization. The act or omission is committed with the aim of attaining unlawful direct or indirect benefit. A criminalized, systematic act or omission that is similar to entrepreneurship and has the aim of considerable benefit is also defined as economic crime."^{23}

The fourth biennial Global Economic Crime Survey from Investigations and Forensic Services^{24} does not only contain a definition concerning the EC but it also describes various types inside the EC like fraud, asset misappropriation, accounting fraud, corruption and bribery, money laundering and intellectual property (IP) infringement. We can find a similar definition concerning the EC in the PricewaterhouseCoopers Global Economic Crime Survey 2005: According to this survey,^{25}

- Economic Crime or Fraud is a generic term used to denote wrongful or criminal activities to or in an organization, intended to result in the gain of money or benefits for the perpetrator(s).
- Asset Misappropriation (incl. embezzlement) means the theft of company assets (including monetary assets/cash or supplies and equipment) by company directors, other persons in fiduciary positions or by an employee for their own benefit.
- False Pretences (incl. confidence game) refer to the intentional action of a perpetrator to deceive those persons in fiduciary positions in order to make a personal or financial gain.
- Financial Misrepresentation will be found if company accounts are altered or presented in such a way that they do not reflect the true value or financial activities of the company.
- Corruption and Bribery (incl. racketeering and extortion) means the unlawful use of an official position to gain an advantage in contravention of duty. This can involve the promise of an economic benefit or other favor, the use of intimidation or blackmail. It can also refer to the acceptance of such inducements.

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^{24} www.pwc.com/crimesurvey (Global economic crime survey 2007), (21 July 2008).
• Insider Trading (only relevant on behalf of listed companies) relates to trading of securities by a person inside a company based on non-public information.
• Money Laundering actions are intending to legitimize the proceeds of crime by disguising their true origin.
• Counterfeiting (incl. product piracy and industrial espionage) includes the illegal copying and/or distribution of fake goods in breach of patent or copyright, and the creation of false currency notes and coins with the intention of passing them off as genuine. It also includes the illegal acquisition of trade secrets or company information.

Economic crime is an “offence which causes or risks causing substantial loss”.26 “By Economic Crime is meant crime committed to gain profit within an otherwise legal business. The crime may damage private citizens, business and/or the public sector. The definition thus includes tax evasion as well as various forms of fraud and embezzlement in otherwise legal corporations.”27 “In the classical sense, an offence is committed by a rational individual who decides whether or not to commit the crime based on the probability and severity of punishment. However, in the context of corporations or organizations, the crime results from different possible actors committing or preventing offences.”28 “A possible meaning of business crime is that business is the object of the underlying criminal behavior. In principle, one might think that business crime is not different from other types of crime from the viewpoint of the classical model.”29

According to Appelgren and Sjogren, “EC is to be understood as illegal acts committed within business in order to gain economic advantages”. It is often identified by a number of specific examples such as tax crimes, offences against account regulations, offences against creditors, bribes, frauds, embezzlement and so on. They further say that EC can be committed not only against the state, but also against other business and against individuals. In a more abstract way, these crimes can also be interpreted as crimes against the economic order, distorting or even destroying the regular mechanisms of the economy and the market.30

30 Appelgren, Leif/Sjogren, Hans (2001), p. 11
Edwin H. Sutherland has introduced the term “White color crime” in 1949. According to him, it refers to crimes committed in connection with professional life by persons highly respected in society.\(^{31}\)

“Occupational crime is a wider concept than white-collar crime as it doesn’t require the offender’s high social status. Corporate crime differs from white-collar crime. This crime is committed for the benefit of the company, whether it is committed by an employee or by the owner of the company or by the company itself as a legal entity”.\(^{32}\)

“Organized crime is a part of EC, this organized crime concept is usually associated with drugs traffic, illegal trading in arms, smuggling, procuring, illegal gambling and similar offences. But these crimes cannot, like EC, be described as illegal acts within regular business. It is rather the business itself that is illegal and usually a distinction is made between EC and organized crime. But sometimes organized crime is defined as specific types of EC. Organized crime is always related to economic activities. Italian Criminologist Vincenzo Ruggiero argued that it is not possible to make a strict definition and that it would even be misleading, theoretically and empirically.”\(^{33}\)

It is not always easy to distinguish EC from other kinds of criminal behavior. But all definitions more or less explicitly presuppose economic reasons behind the unlawful acts and the connection with a business, or at least an occupation.\(^{34}\)

EC as a historical phenomenon is a wide definition referring to any offences committed within trade and businesses in order to gain economic advantages. But even such a definition can be complicated to apply as it is not always easy in history to identify trades and businesses.\(^{35}\)

“A number of crimes can not necessarily be labeled as EC but still touch upon that specific field of criminality. Among such crimes are smuggling, poaching, and fish poaching. Embezzlement, cheating and different forms of fraudulent proceedings against customers may also be mentioned here. The same can be said about specific aspects of the so-called ‘informal’ economy and the black market”.\(^{36}\)

\(^{31}\) Sutherland, Edwin H. (1949), New York: Dryden press.
\(^{35}\) Lindstroem Dag (2004), in Sjoergren, Hans / Skogh, Goeran, p. 129
3.3 Types of Economic Crime and working agencies

There are seven various main types of economic crime which will be explained or detailed below:

1. Corruption
2. Fraud
3. Tax Evasion
4. Counterfeiting
5. Trafficking of Human Beings
6. Drugs Trafficking
7. Money Laundering.

3.3.1 Corruption

Corruption is an international issue purported to be hindering socio-economic development of most developing and developed countries. According to Peter Linebaugh, bribery, corruption, fraud, embezzlement and so on is really nothing more than the normal elements of business activities. But, in reality, it is a cancerous disease affecting specially most of the developing countries like Nepal. Thus, to control and abolish corruption the national governments, as well as bilateral and multilateral aid agencies have designed various strategies like the National Integrity System, the Economic Theory of Corruption, the Governance Model, the Political Will Conceptual Framework and the Anti-Corruption Agency “The Commission for Investigation of Abuse of Authority” (CIAA) models with a view of fighting corruption. Corruption has been regarded as a heinous crime in Nepal since the very beginning. But the problem of corruption is still a major one. Various counter corruption measures are being implemented in the country. In 1990 a Constitutional Commission (Commission for Investigation of Abuse of Authority) has been established to investigate and prosecute corruption and misuse of authority, and this has been mentioned in the Interim Constitution of Nepal 2007 (cf. below at 4.2.1.1 and 4.2.2). Besides this commission, the government has empowered the local authorities too to control corruption. The Commission independently discharges the functions of Investigation and prosecution of corruption cases filed by public officials.

37 Linebaugh, Peter (1991), pp. 159 - 162.
If we try to find out the causes of corruption in a country like Nepal we can point to the augmentation of the population, a degradation on religious and moral value; the aspirations on reaching a higher living standard of the people that lead to the increase of corruption in modern society rather more than in the primeval age; consequently people became hungry on money and power to fulfill all these desires. So we can conclude that there are several causes being responsible for existing corruption in Nepal which can be described as follows:

- Lack of political commitment and political protection to corruptive behavior as political ideology and support.
- Low salary and allowances to civil officials that are inadequate to meet their basic needs.
- Insufficient legal provisions not defining corrupt activities properly. For example, laws relating to anti-money laundering and competition are yet to be enforced.
- Delayed decisions by courts in the case of corruption that cannot send a clear message to the public that the corrupt person could be punished.
- Lack of transparency in managerial and development activities. Secrecy may pave the way for corruption.
- Politicians, managers as well as civil workers have rarely a feeling of public accountability. Lack of accountability helps to misuse power and that increases corruption.
- Weak civil society and lack of public pressure against corruption is another cause that corruption exists in Nepal.
- Weak monitoring system and discretionary power have played a prominent role to maintain and further corruption.

In addition to the constitutional status of the Commission - according to the law or constitution of Nepal CIAA is a constitutional body - the anti-corruption law was revamped in 2002 by a statute which was called The Prevention of Corruption Act 2002, to make the Commission better capable of tackling the problem. This act has criminalized various activities where there is illegal benefit taken by a public official in exercising his authority (cf. below, at chapter 4.2.4). In the same way the Government has been committed to expedite corruption cases and it was felt that it would be difficult to cope with the problem within the existing legal framework. Thus a special judicial tribunal has been established under the authority of the Special Court Act, 2002.
3.3.2 Fraud

In this case the injured party is misrepresented by the criminal intention of the culprit to get illegal financial benefit. In Nepal Muluki Ain (General Law) it was defined as a crime from the very beginning (cf. below, at chapter 4.2.6) so we can say this is a very old traditional economic crime. From the government side this type of cases will be handled by the crime Investigation department of Nepal police and these officials will investigate and with the help of Attorney general Office they will submit the documents and the culprit to the District court. Under ordinary Nepalese law a person who commits fraud is punished by imprisonment for up to five years and to a fine equal to the amount gained from the fraudulent act. Except from these activities, fraud in connection with foreign employment and bank fraud are also common. Fraud committed in the name of paramedical membership is also common here. Some employment agencies, or individuals, defraud their customers by charging them a fee in return for foreign employment that never materializes or for employment with wages that are lower than promised.

The Foreign Employment Act, 1998 prescribes punishment for such fraudulent activities. In such cases the perpetrator will be punished by a fine of at least fifty thousand Rupees but not exceeding Rupees two hundred thousand and a term of imprisonment of at least one year but not exceeding five years. And the victimized person is reimbursed the expenses which were made in connection with the foreign employment. These types of cases will be handled by the labor court.

3.3.3 Tax Evasion

The state has power to tax all transactions within its own territory and non-citizens living within its borders are also subject to tax. Payment of tax imposed by the prevailing law and according to the procedure prescribed by the same is one of the fundamental duties of a citizen. There may be a difference in the interpretation of the relevant law between the taxpayer and the tax authorities. In such a situation the dispute will be solved by the judicial interpretation of the case. In case of high liability found by the judiciary from the mistake of a taxpayer, there is only monetary compensation to be paid to the state revenue. If, however, a person intentionally uses different methods for tax evasion the consequences are serious as that behavior causes adverse effects on the economy because the state may not be in a position to implement its intended activities due to an unexpected shortfall of revenue.
Tax evasion and tolls seem to have been the most important areas for economic crime. But there is no systematic historical research on these matters. The ways in which tax, tax evasion, toll and customs systems are modeled are of decisive importance for the possibilities and the incentives to escape these particular levies.\textsuperscript{39} In UK, there is a legal distinction between tax evasion and tax avoidance. Tax evasion is illegal. It involves deliberately breaking the law in order to reduce the amount of tax paid. It can involve acts of omission (for example failing to report certain assets to the tax authorities) or commission (e.g. falsely reporting personal expenses as business expenses). Tax avoidance is not illegal. It involves “every attempt by legal means to reduce tax liability which would otherwise be incurred by taking advantage of some provision or lack of provision in the law. It presupposes the existence of alternatives. One of which would result in less tax than the other”.\textsuperscript{40}

Similarly, tax evasion prompts money laundering. Tax evaders will often employ money-laundering procedures to bring the “black” money back in to the system. Thus the taxing statutes impose stringent measures on tax evasion and the person who violates the relevant rules is subject to criminal liability. In Nepal the most important taxing statutes are the Income Tax Act, 2002, the Excise Duties Act, 2002, and the Value Added Tax Act, 1993. These acts have made stringent provisions to prevent or repress tax evasion. Such types of cases will be handled by the Department of Revenue Investigation Authority. Its officials will investigate the cases and if they have found mistakes then they will charge the culprit and will file the case in the Appeal court with the help of the representative of Attorney General Office, i.e. they will act as a plaintiff.

3.3.4 Counterfeiting

The Nepalese law has addressed this problem from its early period and it has criminalized illegal minting of government coins. But coins are evidently not counterfeited in Nepal, although it has been reported that there is counterfeiting of Nepali banknotes. Foreign currencies like the Indian Rupee and US dollar are counterfeited as well. A person engaged in counterfeiting of banknotes or coins shall be punished by a term of imprisonment of up to ten years and will be fined to an equal amount of the forged notes or coins. The chapter on Counterfeiting in the Muluki Ain (General Law) defines the details of this crime and prescribes punishment for it (If a person engaged in

\textsuperscript{39} Lindstroem Dag (2004), in Sjoegren, Hans/Skogh, Goeran, p. 137.
counterfeiting of banknotes or coins he/she shall be punished by a term of imprisonment of ten years and fine of an equal amount of the forged notes or coins, and there will be a seizure of excisable commodities connected with the offence as well as other materials and documents helpful in proving the offence, cf. below at 4.2.6). This provision is very sparingly used because there are few occurrences of this type of offence. And till now, it has not posed a serious danger. Another type of counterfeiting defined by the law is counterfeiting of government stamps. These types of cases will be investigated by Crime investigation Department of Nepal police and the case file will be submitted through the help of Attorney General Office to District court.

3.3.5 Trafficking In Human Beings

Trafficking in human beings is the most heinous insult to human civilization. In any civilized society this act is highly condemned. In the actual era of globalization the movement of human beings within as well as beyond national borders has increased rapidly, basically in search of better economic opportunities. The increased mobility of individuals has facilitated the trafficking of women and children who are people being more vulnerable than adult men. Although there is in-country trafficking of women and children in the country, Nepal is regarded as a source country while India and Arab countries are receiving countries in the course of trafficking. Because of the open border with India, there are no verified data on the exact number of people trafficked. The traffickers will use the word “employment” and will be eager to traffic the victims. That means the people are told they would get a good employment abroad in order to persuade them to go with the criminals/agents. The victims don’t know they are being trafficked until he/she reaches the destination because the agent pretends that they are going to arrange lawful employment with better pay. In such circumstances it is very difficult to rescue the victim from Nepal without the help and co-operation of the host country. The easy method is to arrange a marriage so the agent wins the affection of the victim first then proposes to marry her but gets married with the victim secretly without fulfilment of legal formalities and customary proceedings. After marriage he takes his wife out of the home country and sells her when the situation is appropriate. Means like false marriages, sham love affairs, and promises of better jobs abroad are common ways of luring women and girls away from their homes.41 Traffickers often falsely

40 Royal commission on Taxation, 1966, p. 538.
41 Nagarajan, Rema, Hindustan Times, January 27, 2002, No Red Lights on This Road to Hell.
promise parents that their daughters will be taken to work in factories, and some parents unwittingly marry their daughters off to traffickers. The girls often end up being sexually exploited, however.\textsuperscript{42} Girls who migrate from rural areas to urban areas, whether they are sent by their families or do so voluntarily, become very vulnerable to trafficking because they are without a support network of family and friends in their new environment.\textsuperscript{43}

It is also suspected that Nepalese children are illegally forced to work in Indian circus industries. They are deprived from their guardians and taken to the circus operators. They are not allowed to see their parents and are denied basic needs while working in harsh conditions.

The legal framework against trafficking is very stringent in Nepal. A chapter of Muluki Ain (General Law) is devoted to the fight against the trafficking of human beings. It provides for a punishment of imprisonment for a term of twenty years for the sale of a person and of ten years imprisonment for attempted sale. The Human Trafficking and Transportation (Control) Act (2064 BS.) 2007 has been enacted recently to tackle the problem of trafficking (cf. below, at 4.12.11).

If we like to know the exact forms of trafficking in Nepal there may a great part of it be related to prostitution.\textsuperscript{44} An estimated 200,000 Nepalese women and girls work in Indian brothels, in cities such as Mumbai, Pune, New Delhi, and Kolkata.\textsuperscript{45} According to one estimate of data, 20 percent (40,000) of trafficked Nepalese women working in the Indian sex trade are younger than 16 years of age.\textsuperscript{46} Trafficking crosses many caste and ethnic groups in Nepal, but the most at-risk populations are members of the hill ethnic groups and lower castes.

In a 2001 International Labour Organization (ILO) assessment, 25 percent of the trafficked Nepalese girls surveyed were below 14 years of age when they were trafficked, and more than half were below 16. Most of the girls’ parents had given silent consent or were somehow involved in their trafficking. The owners of the brothels where

\textsuperscript{42} Armentrout, Debra, Digital Freedom Network, November 15, 2002, Child Trafficking Continues to Threaten Young Women in India.
\textsuperscript{44} Constable, Pamela, Washington Post, April 24, 2001.
\textsuperscript{45} Sanjaya Dhakal, Oneworld.net, January 8, 2004., Nepal's Victims of Trafficking Shy away from Justice.
the girls worked usually kept between 90 and 95 percent of the girls’ earnings; and the girls had to service an average of 14 clients a day.\textsuperscript{47}

An estimated 1.7 million children work in Nepal\textsuperscript{48} and thousands are trafficked internally and internationally for purposes of child labour.\textsuperscript{49} Thousands of Nepalese children are trafficked to India each year to work in carpet factories in Bhadoi (Mirjapur), in the circus, and in the domestic service industry. Boys also work on potato farms and road construction projects, or they are forced to beg.\textsuperscript{50}

Tourism has long been a driving economic force in Nepal, yet child sex tourism has not yet surfaced as a major problem in Nepal, nor is it highly visible. However, the general sentiment is that it could become prevalent in the near future. Interviews with at-risk children revealed that tourists do solicit sex from them, mostly in the tourist areas of Kathmandu and Pokhara. The average child victim of sex tourism is between 8 and 14 years of age and comes out of a poor family or is without a family at all. Boys are reportedly favoured over girls. The average perpetrator is between 35 and 50 years of age, is usually a male from Europe or Australia, and is either working or backpacking in Nepal.\textsuperscript{51}

The important feature in fighting trafficking or sex tourism is the shifting of the onus of proof from the prosecution side to the accused person. When a person is accused of trafficking another person or a person is found taking a woman outside the country that person has to prove that he is innocent. The Human Trafficking and Transportation Control Act (HTTCA) has recognized the international nature of trafficking of human beings and thus given it extra-territorial effect. The other characteristic of the Act is that when a victim claims that someone has sold her, her statement will have to be registered immediately and authenticated by the District Court. The Act has made stringent provisions for punishment too. A person who sells an individual is punished by imprisonment for a term of ten to twenty years. A person who takes an individual outside the Kingdom for the purpose of sale is subject to imprisonment for a term of five to ten

years. One who forcefully engages a woman in prostitution is punished by imprisonment for a term of ten to fifteen years. An accomplice or someone who merely attempted trafficking in human beings is punished by imprisonment for a term of up to five years.

The victims or his/her family will first report to the local police station. After that the police will forward the case to the related police office to investigate the facts more closely and will then submit the documents with proof in the court.

To control this problem in South Asia, the South Asian Association for Regional Corporation (SAARC) attended, including high-level government delegates, children, and representatives of Non Governmental Organization (NGOs) and media and international organizations. The SAARC forum founded in 1985, aims to promote cultural ties and economic and social development among its member states (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka). Except SAARC, in this field the United Children’s Fund (UNICEF), Save the Children UK, Save the Children US, Save the Children Norway, ILO and United Nations human rights commissions are working to control human trafficking in Nepal. The ILO International Program on the Elimination of Child Labour launched in 2001 a 2-year effort to eliminate child trafficking.

3.3.6 Drug Trafficking

Drug Trafficking is not a new problem. Only the gravity of the problem has been felt more deeply in recent times due to many factors, particularly in the case of drug trafficking with an international link and illicit production. In one way the drug addiction has caused degradation of a new generation and in another way the fatal disease HIV-AIDS has been transferred from one drug abuser to another through the sharing of needles.

The evil effects of narcotic drugs in Nepal have a direct link to the “hippies”. These people came to Nepal as tourists in the 1970s and Nepal’s young generation came into contact with them and learned the habit of drug addiction. The Narcotic Drugs (Control) Act, 2033 was enacted at last for the purpose of fighting drug abuse and trafficking. The adverse effects of drug addiction first created and then widened the market of such drugs. To better supply the internal market, international smugglers became active and

Nepal, among other countries, was seriously concerned to curb such activities. To control these activities in Nepal has also changed its penal policy through the amendments of that Act.

The Narcotic Drugs (Control) Act, 2033 (1976) is the fundamental law against the trafficking and misuse of narcotic drugs. The Intoxicating Substance Act, 1917 had been in effect earlier already but it was not directly related to narcotic drugs. The new addition of the narcotic drugs control act 2033 has extra-territorial effect and stringent provisions of punishment (cf. also below, at 4.2.12). The scheme of penalties under the Act is presented in the following table. So the table shows how the penalties system is running in Nepal if someone commits this crime.
### Scheme of Penalties under the Narcotic Drugs (Control) Act

<table>
<thead>
<tr>
<th>Nature of Narcotic Drug</th>
<th>Penal section</th>
<th>Prohibited Act</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana</td>
<td>14(1)(a)</td>
<td>Consumption of marijuana</td>
<td>Imprisonment up to 1 month or fine up to 2 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(b)</td>
<td>Farming of Marijuana up to 25 plants</td>
<td>Imprisonment up to 3 months and fine up to 3 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(c)</td>
<td>Farming of Marijuana more than 25 plants</td>
<td>Imprisonment up to 3 years and fine up to 25 thousand rupees but not less than 5 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(d)</td>
<td>Production, preparation, Sale and purchase, import-export and storage of marijuana up to 50 grams</td>
<td>Imprisonment up to 3 months and fine up to 3 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(d)(1)</td>
<td>Production, preparation, Sale and purchase, import-export and storage of marijuana 50 grams to 5000 grams</td>
<td>Imprisonment up to 1 year but not less than 1 month and fine up to 5 thousand rupees but not less than 1 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(d)(2)</td>
<td>Production, preparation, Sale and purchase, import-export and storage of marijuana 5000 grams to 2 kg.</td>
<td>Imprisonment up to 2 years but not less than 6 months and fine up to 10 thousand rupees but not less than 2 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(d)(3)</td>
<td>Production, preparation, Sale and purchase, import-export and storage of marijuana 2 kilo gram to 10 kg.</td>
<td>Imprisonment up to 5 years but not less than 1 year and fine up to 25 thousand rupees but not less than 5 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(d)(4)</td>
<td>Production, preparation, Sale and purchase, import-export and storage of marijuana 10 kg. onwards</td>
<td>Imprisonment up to 10 years and fine up to 100 thousand rupees but not less than 15 thousand rupees</td>
</tr>
<tr>
<td>Opium, coca and other narcotic drugs made of opium and coca</td>
<td>14(1)(e)</td>
<td>Consumption of Opium, coca and other narcotic drugs made of opium and coca</td>
<td>Imprisonment up to 1 year and fine up to 10 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(f)(1)</td>
<td>Farming of opium and coca up to 25 plants</td>
<td>Imprisonment up to 3 years but not less than 1 year and fine up to 25 thousand rupees but not less than 5 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(f)(2)</td>
<td>Farming of opium and coca more than 25 plants</td>
<td>Imprisonment up to 10 years but not less than 3 months and fine up to 200 thousand rupees but not less than 25 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(g)</td>
<td>prohibited acts other than Farming of opium and coca up to 25 grams</td>
<td>Imprisonment up to 10 years but not less than 5 years and fine up to 25 thousand rupees but not less than 5 thousand rupees</td>
</tr>
<tr>
<td></td>
<td>14(1)(g)(1)</td>
<td>prohibited acts other than Farming of opium and coca 25 grams to 100 grams</td>
<td>Imprisonment up to 15 years but not less than 10 years and fine up to 200 thousand rupees but not less than 75 thousand rupees</td>
</tr>
</tbody>
</table>

---

The Narcotic Drugs (Control) Act, 2033 (1976).
14(1)(g)(3) prohibited acts other than Farming of opium and coca 100 grams onwards Imprisonment up to life imprisonment but not less than 15 years and fine up to 2500 thousand rupees but not less than 500 thousand rupees

14(1)(h) Addiction Imprisonment up to 1 year and fine up to 1 thousand rupees or both

Other narcotic drugs and psychotropic substances  
Other prohibited acts other than addiction Imprisonment up to 10 years but not less than 2 years and fine up to 2000 thousand rupees but not less than 100 thousand rupees

To enforce the Act effectively, the Nepali government has established a special investigation branch - the Narcotic Drugs Law Enforcement Unit (NDCLEU) - in 1992 under the Ministry of Internal Affairs. It has a special investigative team authorized to tackle the problem by looking closely after drug trafficking within the capital valley. Outside the valley the local police officers will investigate the case.

The below chart shows the cases of trafficking of narcotic drugs register in NDCLEU during the four years 2005 to October 2008.

**Figure 5** Narcotic drugs register in NDCLEU during the four years

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>72</td>
</tr>
<tr>
<td>2006</td>
<td>83</td>
</tr>
<tr>
<td>2007</td>
<td>79</td>
</tr>
<tr>
<td>2008</td>
<td>65</td>
</tr>
</tbody>
</table>

---

54 The Narcotic Drugs Law Enforcement Unit annual report, 2003, p. 32.
Since a few years there has been evidence that the Tribhuvan International Airport (TIA) in Kathmandu is being used for the transshipment of drugs, mainly heroin and cannabis. TIA has direct flight connections with Thailand, Bangladesh, India (five destinations), the Middle East (three destinations), Singapore, Hong Kong, China, Bhutan, the Netherlands, Germany, Austria, Russia and the U.K. The NDCLEU has improved its capacity and this resulted in a recent increase in drug seizures at TIA, including heroin from Afghanistan and Pakistan, moving through TIA to destinations in Africa and Europe, which we can see clearly from the chart below.

**Figure 6  Destroyed areas of illicit drugs Cultivation from NDCLEU**\(^5^5\)
(1991-June, 2008) (Quantity in Hectares)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>CANNABIS</th>
<th>OPIUM</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>1409.60</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1992</td>
<td>369.00</td>
<td>42.67</td>
<td>Young plant of cannabis (Ready for cultivation) were destroyed which were sufficient for cultivation in the area of 47.96</td>
</tr>
<tr>
<td>1993</td>
<td>249.90</td>
<td>1.42</td>
<td>45110 cultivated plants of cannabis were destroyed.</td>
</tr>
<tr>
<td>1994</td>
<td>82.63</td>
<td>0.13</td>
<td>23752 cultivated plants of cannabis and 562 cultivated plants of opium were destroyed.</td>
</tr>
<tr>
<td>1995</td>
<td>505.2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1996</td>
<td>58.992</td>
<td>1.806</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>367.434</td>
<td>0.653</td>
<td>Bhang 0.103 hect.</td>
</tr>
<tr>
<td>1998</td>
<td>54.92</td>
<td>1.67</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td>451.71</td>
<td>1.68</td>
<td>-</td>
</tr>
<tr>
<td>2000</td>
<td>779.61</td>
<td>0.10</td>
<td>32014 plants of cannabis were destroyed.</td>
</tr>
<tr>
<td>2001</td>
<td>55.80</td>
<td>1.9</td>
<td>210 Plants of cannabis were destroyed.</td>
</tr>
<tr>
<td>2002</td>
<td>329.57</td>
<td>11.34</td>
<td>26469 Plants of cannabis were destroyed.</td>
</tr>
<tr>
<td>2003</td>
<td>197.76</td>
<td>19.42</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>231.589</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>120.927</td>
<td>4.014</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>328.38</td>
<td>0.50</td>
<td>100 Plants of Cannabis and 19 Plants of Opium were destroyed.</td>
</tr>
<tr>
<td>2007</td>
<td>211.509</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>105.416</td>
<td>21.406</td>
<td></td>
</tr>
</tbody>
</table>

\(^5^5\) NDCLEU annual report 2007, p. 32.
Figure 7  
Heroin Trafficking Route

56 NDCLEU annual report 2007, p. 34.
Figure 8  Nepali Arrested in Drug Crime NDCLEU (2005-2008)\textsuperscript{57}

![Graph showing Nepali arrests in drug crime from 2005 to 2008.]

Figure 9  Foreigners Arrested in Drug Crime NDCLEU (2005-2008)\textsuperscript{58}

![Graph showing foreigner arrests in drug crime from 2005 to 2008.]

\textsuperscript{57} NDCLEU annual report 2007, p. 27.

\textsuperscript{58} NDCLEU annual report 2007, p. 28.
Figure 10  Hashish trafficking route\textsuperscript{59}

\textsuperscript{59} NDCLEU annual report 2007, Annex III.
Figure 11  Annual Seizures (Medicinal Drugs) (2005-2008, July)\textsuperscript{60}

![Bupronorphine graph](image)

Figure 12  Drugs of up to 2008, July Seizures in Kilogram\textsuperscript{61}

![Drugs graph](image)

\textsuperscript{60} NDCLEU annual report 2007, p. 29; second quarterly report 2008, p. 8.

3.3.7 Money Laundering

Money laundering is the processing of criminal proceeds, generated as a result of certain previous offences, including economic crime, in order to disguise their illegal origin, or to “legitimize” ill-gotten gains by disguising the sources or changing their form. Money laundering is not only a crime that violates the legal rules of the nation but it also helps to conceal the illegal proceeds of the most heinous crimes and brings the ill-gotten money ultimately back into the economy causing various adverse effects to the system. The corrupt officials, human traffickers and illegal drug dealers are the potential lucky users of this vicious cycle of money. There are various modes of money laundering in the world and three stages are common:

- First, the money earned through the illegal source is placed at a bank account, in the form of electronic money or any other monetary instrument or in highly priced goods.
- Secondly, the money is layered through a series of transfers and transactions to sufficiently hide its illegal connection. And
- Thirdly, the money is integrated into the system. After that transaction has been executed, the criminals can use the money as if it were legally earned money.

According to my knowledge of the working period of Nepal police (CID), Hawala is a common method of money laundering. The Hawala people have their network almost all over the world. They do not carry the money directly from one person to another but the agent of the particular place is ordered to pay the amount to the person who carries a secret order. The increase of Nepalese people in foreign employment has provided a better opportunity for the Hawala people. The remittances of Nepalese working in the Gulf and South-East Asian countries received through the Hawala system are higher than those using the legal banking channels.

Another method of money laundering is intermingling illegal proceeds with money stemming from legal sources and treating the whole of them like they were earned lawfully. In a case of corruption of an ex-Minister it was found that the inventory of his property did not match the known source of his income because that was extremely high. The accused Minister claimed that the assets were earned by his son engaged in a trekking business. But that income did not stem from his son’s earning capacity and was higher than he declared in his income tax. The corruption special court found the
Minister guilty of illegally accumulating money on the ground that his known source of property did not explain the income of the property so declared. The Minister was imprisoned for a term of two and half years and fined about 30000000.00 (thirty million) Nepalese Rupees in addition to confiscating the property. It may be assumed that there are much more such illegal activities linked with legal business operations and that illegal money is mixed with legal money and the former financial assets will be laundered in this way.

One of the necessary elements for facilitating money laundering are bank secrecy laws. Probably two of three banks will not ask their customer how he received the money which he pays to the bank or into his bank account. Until recently, there were no clear provisions what to do in cases where financial assets of clients are growing rapidly, in particular whether the employees of the bank have to give the whole information to a government body or are not forced to do that.  

The newly enacted Prevention of Corruption Act, 2002 provides that notwithstanding anything mentioned in any law in force, if money laundering appears from a source during the course of an investigation in a bank or financial institution within the country or abroad, the investigating authority may order the account to be frozen and if the bank does not act according to this order the investigating authority may impose a fine of up to fifty thousand Rupees on a bank or financial institution.

There is no specific legislation enacted in Nepal intending to address the problem of money laundering. However, the Foreign Exchange (Regulation) Act, 1962 has addressed the problem of money laundering to some extent. Nepal Rastra Bank (the Central Bank) is the chief regulating authority in respect of the Banking Act. It is also authorized to regulate the foreign exchange needed for the import and export business. In addition, it is the licensing authority that grants permission to money changers inside the country. If they do not follow its prescriptions or rules they can punished by a fine of three times the amount of the transaction.

Authority for investigation of the violation of the Foreign Exchange Regulations committed within the Kathmandu Valley has been given to the Department of Revenue.

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63 Case of Govinda Raj Joshi, case record register of /060-061 no 81 from CIAA.
Investigation and in other remaining jurisdictions of the country the local police authority has power to investigate such cases.

Some of these acts are related to money laundering crimes, in particular:

1. Offences under the prevailing arms and ammunitions laws,
2. Offences under the prevailing foreign exchange regulation laws,
3. Offences of murder, theft, cheating, forgery documents, counterfeiting, kidnap or abduction under the concerned prevailing laws,
4. Offences under the prevailing drug addiction control laws,
5. Offences under the prevailing national park and wild animals conservation laws,
6. Offences under the prevailing human trafficking and taking of hostages control laws,
7. Offences under the prevailing cooperatives laws,
8. Offences under the prevailing forest laws,
9. Offences under the prevailing corruption control laws,
10. Offences under the prevailing bank and financial institution laws,
11. Offences under the prevailing banking crime and punishment laws,
12. Offences under the prevailing ancient monuments conversation laws,
   and
3.4 Conceptual Framework of EC

A diagram of a conceptual framework depicting the relationship among different anti-corruption agencies and the flow of their activities to control the economic crime is presented below. This chart may show how the relations of CIAA with other agencies are shaped in detail.

Figure 13 Conceptual Framework

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According to this chart, CIAA is one of the most important agencies in Nepal. This is a constitutional body and the executive will direct its functions. Except this executive there are NVC, Attorney General, Parliament (anti corruption act watch dog), and Public account committee from the parliament and the office of the auditor General acting as observer to control EC.

The framework is built up as follows: After having received the information there is one branch for registration, it registers the corruption cases independently, and it has its own investigation procedure. Under the investigation there are clearance, prosecution and recommendations. After the investigation of the cases has been finished they will fill the case to the special court and after the decision or punishment from the special court the case will go to the Supreme Court for the appeal. The final decision for those cases will be that of the Supreme Court.
4. Law/Acts

4.1 General Structure

4.1.1 Hierarchy of Laws

The judiciary system in Nepal is based upon the Muluki Ain code, which is a combination of Hindu traditions and English common law. The court system is composed of the Supreme Court, appellate courts, and district courts. With the exception of military courts, the Supreme Court has the highest jurisdiction.

A new judicial system was established with the 1990 constitution. Since 1990, the Courts have had more autonomy due to the gradual expansion of basic judicial principles (i.e. independence of the Judiciary). Yet, the inefficiency of Nepal's judicial system has been an ongoing problem. The independence and integrity of the judiciary were repeatedly questioned in the press, because of intervention of political figures and government.

There are a lot of acts in the economic legal field in Nepal. These laws are helping to control the Economic Crime. Such activities can be, e.g., Offences under the prevailing laws on arms and ammunitions, Offences under the prevailing foreign exchange laws, Offences of murder, theft, cheating, forgery documents, counterfeiting, kidnap or abduction, Offences under the prevailing drug addiction control laws, Offences of the national park and wild animals conservation law and offences against forest law, Offences of human trafficking and taking of hostages, Offences related to cooperatives law, offences against corruption laws, offences against banking and financial laws.

For this purpose, the government of Nepal has implemented many laws to control such activities and maintain rule and regulation inside the country. In addition to the laws mentioned above, these are Constitution of Nepal, Muluki Ain 2020 BS, Offences under the prevailing ancient monuments conversation laws, or offences under the prevailing Currencies Act, 2040 (1983), the Environment Protection Act (1996), the Environment Protection Regulations (1997), the National Parks and Wildlife Conservation Act in 1973, the Labour Act of 1992, the intoxicating Substance Act 1917, and the Aquatic animals Act 1961.

The below chart can clear the hierarchy of laws, and also some of the most relevant laws of my thesis are described below (4.2) in more detail.
Figure 14  Hierarchy of Laws

International Laws

- Int. Treaties
- Interim Constitution

Domestic Laws

- General Laws (Muluki Ain)
- Specific Laws
- General decisions/Orders
- Executive agencies/Institutions
- Acts of parliament
- Internal Law Issues
- Organizational Issues

Acts

- POCA Act
- Asset money laundering Act
- Forest Law
- Income Tax Act
- Excise Duties Act
- VAT Act
- HTTCA Act
- NDCA Act
- Foreign employment Act
4.1.2 Relation between Acts and main Agencies

There is a clear laws hierarchy shown in the above chapter 4.1.1, and to complete this description, I will try to clear the relation between laws and related main agencies.

**Figure 15  Acts and Agencies Relation Chart**

<table>
<thead>
<tr>
<th>Laws/Acts</th>
<th>Agencies (CIAA)</th>
<th>RIA</th>
<th>CID</th>
<th>NRB</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Constitution</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>General Laws (Muluki Ain)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Prevention Of Corruption Act</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Asset money laundering Act</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Forest Law</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income Tax Act</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Duties Act</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value Added Tax Act</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human Trafficking and Transportation Control Act</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Narcotic Drugs Control Act</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign employment Act</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission for the investigation of abuse of authority Act, 1991</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banks and Financial Institutions Ordinance, 2004</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4.2 Various Laws relating to Economic Crime

4.2.1 The Interim Constitution of Nepal

4.2.1.1 Aim and purpose

The aim of this interim constitution is to express the full commitment to democratic norms and values including a system of competitive multiparty democratic rule, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, independence of the judiciary and concepts of the rule of law. The purpose is to guarantee the basic rights of the Nepali people to frame a Constitution for themselves and to participate in the free and impartial election of the Constituent Assembly in a fear-free environment, and keeping democracy, peace, prosperity, progressive economic-social changes and sovereignty, integrity, independence and dignity of the country as a central concern. Moreover, this Constitution is describing various Constitutional agencies such as CIAA, RIA, Auditor General and Attorney General.

4.2.1.2 Short Overview of Content

The Interim Constitution of Nepal, 2063 (2007) has been divided into 25 parts, 167 paras and 4 Schedules. In the constitution of Nepal, some constitutional bodies have been described which will directly and indirectly relate to the national economy. These constitutional bodies are authorized to control the economic activities or Economic Crimes in the context of Nepal.

Preamble
Part 1 Preliminary
1. Constitution as the fundamental law
2. Sovereignty and state authority
3. Nation
4. State of Nepal
5. Language of the nation
6. National flag
7. National anthem etc.
Part 2 Citizenship
8. Citizenship at the commencement of the Constitution
9. Naturalized or honorary citizenship
10. Acquisition and termination of citizenship
11. Citizenship team to be assigned

**Part 3 Fundamental Rights**

12. Right to freedom
13. Right to equality
14. Right against untouchability and racial discrimination
15. Rights regarding publication, broadcasting and press
16. Rights regarding environment and health
17. Education and cultural rights
18. Rights regarding employment and social security
19. Right to property
20. Rights of women
21. Right to social justice
22. Rights of children
23. Right to religion
24. Rights regarding justice
25. Right against preventive detention
26. Right against torture
27. Right to information
28. Right to privacy
29. Right against exploitation
30. Right regarding labour
31. Right against exile
32. Right to constitutional remedy

**Part 4 Responsibilities, Directive Principles and Policies of the State**

33. Responsibilities of the State
34. Directive Principles of the State
35. State policies
36. Questions not to be raised in court

**Part 5 The Executive**

37. Executive power
38. Constitution of the Council of Ministers
39. State Ministers and Assistant Ministers
40. Appointment of non-member of Legislature-Parliament as Minister
41. Remuneration and other benefits
42. Oath
43. Conduct of business of the Government of Nepal
44. The Council of Ministers after the formation of Constituent Assembly

**Part 6 Legislature-Parliament**
45. Constitution of Legislature-Parliament
46. Qualifications for membership
47. Decision as to disqualification of members
48. Vacation of seat
49. Oath
50. Speaker and Deputy Speaker of the Legislature-Parliament
51. Summoning and prorogation of sessions
52. Address by the Prime Minister
53. Quorum
54. Transaction of business in case of vacancy in membership
55. Voting
55A. Vote of confidence
56. Privileges
57. Procedure relating to the conduct of business
57A Opposition
58. Committees
59. Constituent Assembly to exercise the powers of the Legislature-Parliament
60. Restriction on discussion
61. Secretariat of Legislature-Parliament
61A. The Secretary General and Secretary of Legislature-Parliament
62. Remuneration

**Part 7 Constituent Assembly**
63. Formation of the Constituent Assembly
64. Term of the Constituent Assembly
65. Qualifications of the members
66. Decision about disqualification of members
67. Vacation of seat of a member
68. Oath of members
69. Meeting of the Constituent Assembly
70. Procedure for passing a Bill relating to the Constitution
71. Chairperson and Vice Chairperson of the Constituent Assembly
72. Vacation of the office of Chairperson and Vice Chairperson
73. Quorum
74. Transaction of Business of the Constituent Assembly in the case of vacancy in membership
75. Voting
76. Penalty for unauthorized presence or voting
77. Privileges
78. Procedure relating to the conduct of business
79. Committees
80. Secretariat of the Constituent Assembly
81. Remuneration
82. Dissolution of the Constituent Assembly
83. Acting in the capacity of Legislature-Parliament

**Part 8 Legislative Procedure**
84. Authority to introduce a Bill
85. Procedure for passage of Bills
86. Withdrawal of Bills
87. Certification of the Bill
88. Ordinances

**Part 9 Financial Procedure**
89. No tax to be levied or loan to be raised except in accordance with law
90. Consolidated Fund
91. Expenditures from the Consolidated Fund or a Government Fund
92. Expenditure chargeable on the Consolidated Fund
93. Estimates of revenues and expenditure
94. Appropriation Act
95. Supplementary estimates
96. Votes on Account
97. Votes of Credit
98. Contingency Fund
99. Act relating to financial procedures
Part 10 Judiciary
100. Courts to exercise powers related to justice
101. Courts
102. Supreme Court
103. Appointment and qualifications of Judges of the Supreme Court
104. Conditions of service and privileges of the Chief Justice and Judges
105. Removal of the Chief Justice and Judges of the Supreme Court
106. Chief Justice or Judges not to be engaged in any other assignment
107. Jurisdiction of the Supreme Court
108. Establishment, management and jurisdiction of Appellate Courts and District Courts
109. Appointment, qualifications and conditions of service and Privileges of the Judges of Appellate Courts and Districts Courts
110. Judges of the Appellate Court and District Court not to be transferred to, or engaged in any other assignment
111. Transfer of cases
112. Responsibility of the Chief Justice
113. Judicial Council
114. Judicial Service Commission
115. Duty to extend cooperation to the courts
116. Orders and decisions of courts to be binding
117. Annual report
118. Constituent Assembly Court

Part 11 Commission for the Investigation of Abuse of Authority
119. Commission for the Investigation of Abuse of Authority
120. Functions, duties and powers of the Commission for the Investigation of Abuse of Authority
121. Annual report

Part 12 Auditor General
122. Auditor General
123. Functions, duties and powers of the Auditor General
124. Annual report

Part 13 Public Service Commission
125. Public Service Commission
126. Functions, duties and powers of the Public Service Commission
Part 14 Election Commission

127. Annual report
128. Election Commission
129. Functions, duties and powers of the Election Commission
130. The Government of Nepal to provide necessary employees to the Election Commission

Part 15 National Human Rights Commission

131. National Human Rights Commission
132. Functions, duties and powers of the National Human Rights Commission
133. Annual report

Part 16 Attorney General

134. Appointment of the Attorney General
135. Functions, duties and powers of the Attorney General
136. Annual report
137. Power to appear in the Legislature-Parliament

Part 17 Structure of State and Local Self governance

138. Progressive restructuring of the State
139. Provision for local self governance
140. Mobilization and management of revenue

Part 18 Political Parties

141. Prohibition on the imposition of restrictions on political parties
142. Registration required for securing recognition for the purpose of contesting elections as a political party

Part 19 Emergency Powers

143. Emergency powers

Part 20 Provisions Regarding the Army

144. Formation of the Nepal Army
145. National Defence Council
146. Transitional provision for the combatants
147. Management and monitoring

Part 21 Amendment of the Constitution

148. Amendment of the Constitution

Part 22 Miscellaneous

149. Constitutional Council
150. Nepali ambassadors and emissaries
151. Pardon
152. Titles, honours, and decorations
154. Formation of Commissions
154A Constituency Delimitation Commission
155. Hearing for the officials of constitutional bodies and provisions regarding citizenship
156. Ratification of, accession to, acceptance of or approval of treaties or agreements
157. Decision to be made through referendum
158. Power to remove difficulties

Part 23 Transitional Provisions
159. Arrangements regarding the Head of the State
160. Provisions regarding the Council of Ministers
161. Provisions regarding the Legislature-Parliament
162. Provisions regarding the Judiciary
163. Provisions regarding constitutional bodies and officials thereof
164. Existing laws to remain in operation

Part 24 Definitions
165. Definitions

Part 25 Short Title, Commencement and abrogation
166. Short title and commencement
167. Abrogation
Schedule-1 (Relating to Article 6) National Flag
Schedule-2 (Relating to Clause (1) of Article 45)
Schedule-3 Relating to Clause (2) of Article 166
Schedule-4 (Relating to Clause (3) of Article 166)

Comprehensive Peace Accord Concluded Between the Government of Nepal and the Communist Party of Nepal (Maoist)
Agreement on Monitoring of the Management of Arms and Armies 8 December 2006

4.2.1.3 Main Instruments

The Interim Constitution of Nepal, 2063 (2007) has been published first time in Nepal Gazette division 56 number 55 part 1 date 2063/10/01 Bs. The First Amendment took place 2063 Chaitra 30 (April 13, 2007), the second amendment was 2064 Jestha 30
(June 13, 2007), the third amendment was 13 Paush 2064 (28 December 2007). The forth amendment was 16 Jestha 2065 Bs., the fifth Amendment was 29 Ashad 2065 Bs.

4.2.1.4 Procedure and Competent Agencies

4.2.1.4.1 The Commission for the Investigation of Abuse of Authority (CIAA)

The Constitution of Nepal, 1990 has established the Commission for the Investigation of Abuse of Authority and now the interim constitution of Nepal 2007\textsuperscript{67} has given continuity to this commission with powers to look into the abuse of authority by a person holding public office through improper act or corruption and to file a case against him if he is deemed to have abused power by committing corruption or an improper act or to write for departmental or other action if deemed to have committed an undue act or to submit recommendations or suggestions to the Government to reform any impracticable and inappropriate laws, rules and orders or to correct an inappropriate working system of a public institution deemed to cause the abuse of authority.

The Government provides manpower, economic and physical resources required to accomplish the constitutional responsibilities in question which were assigned collectively to the chief commissioner and commissioners. The main task of the commission’s constitutional officials and employees appointed under different groups or services of the Government is to carry out an extensive inquiry or investigation in a free and impartial way on the basis of the complaints filed and information received by the Commission from other sources.

In the interim Constitution of Nepal (art. 119) this body is described as follows:

- There shall be a commission to be called the Commission for the Investigation of Abuse of Authority of Nepal consisting of a Chief Commissioner and a number of other Commissioners as may be required. If apart from the Chief Commissioner other Commissioners are appointed, the Chief Commissioner shall act as Chairperson of the Commission for the Investigation of Abuse of Authority.

- The Prime Minister shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.

Functions, duties and powers of the Commission for the Investigation of Abuse of Authority are laid down in the following manner (art. 120):

\textsuperscript{67}The Interim Constitution of Nepal, 2063 BS. (2007).
• The Commission may, in accordance with law, conduct or cause to be conducted inquiries into, and investigations of, improper conduct or corruption by a person holding any public office. Provided that this Clause shall not be applicable to any official in relation to whom this constitution itself separately provides for such action, and to any officials with regard to whom another law has separately made special provision.

• An inquiry and investigation may be conducted, or caused to be conducted, against any official of Constitutional Body who will be removed from their office following an impeachment resolution on the ground of misbehaviour, any Judge removed by the Judicial Council on similar charges, or any person proceeded against under the Army Act after they have been removed from office, in accordance with law.

• If the Commission carried out pursuant that any person holding any public office has misused his/her authority by committing an act which is defined by law as improper conduct, it may warn such person, or forward a recommendation to the authority concerned in writing to take departmental action or any other necessary action as prescribed by the law.

• If the Commission carried out that a person holding any public office has committed an act which is defined by law as corrupt, it may lodge or cause to be lodged a case against such person or any other person involved therein in a court with jurisdiction in accordance with the law.

• If the Commission carried out that the nature of the work to be carried out by the person holding any public office falls under the jurisdiction of another authority or body, it may forward a recommendation to the authority or body concerned in writing for necessary action.

• Subject to the Constitution, other functions, duties, powers and procedures of the Commission shall be as determined by law.

• The Commission may delegate any of its powers, functions and duties relating to the inquiry, investigation or lodging of cases, to the Chief Commissioner, Commissioner or any employee of the Government of Nepal to be exercised in compliance with the conditions specified.

The Commission shall submit an annual report to the Prime Minister on the work it has performed in accordance with this Constitution, and the Prime Minister shall make arrangements to submit such report before the Legislature-Parliament (art. 121).
4.2.1.4.2 Auditor General

The Interim Constitution of Nepal 2007 also contains provisions related to the office and task of an Auditor General, as follows (art. 122):

- There shall be an Auditor General of Nepal.
- The Auditor General shall be appointed by the Prime Minister on the recommendation of the Constitutional Council.

Subject to the proviso of clause 7 ("A person once appointed as the Auditor General shall not be eligible for appointment in other Government service") the term of office of the Auditor General shall be six years from the date of appointment. Provided that,

1. If, before the expiry of his/her term, the Auditor General attains the age of sixty-five, he/she shall retire.
2. The Auditor General may be removed from his/her office on the same grounds and in the same manner as has been set out for removal of a Judge of the Supreme Court.

Functions, duties and powers of the Auditor General are laid down in the following manner (art. 123):

- The accounts of the Supreme Court, Legislature-Parliament, Constituent Assembly, Commission for the Investigation of Abuse of Authority, Auditor General, Public Service Commission, Election Commission, National Human Rights Commission, Office of the Attorney General and other offices of constitutional entities and the Nepal Army and Armed Police and the Nepal Police as well as of all other government offices and courts shall be audited by the Auditor General in the manner determined by law, with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof.
- The Auditor General shall be consulted in the matter of the appointment of auditors for carrying out the audit of any corporate body of which the Government of Nepal owns more than fifty percent of the shares or assets. The Auditor General may also issue necessary directives setting forth the principles for carrying out the audit of such corporate bodies.
- The Auditor General shall, at all times, have access to documents concerning the accounts for the purpose of carrying out the functions specified in the first clause.

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It shall be the duty of the head of the office in question to provide all documents or information which may be demanded by the Auditor General or his/her employees.

Another provision (art. 124) refers to the duty to give an Annual report:

1. The Auditor General shall submit to the Prime Minister an annual report on the work the office has performed, and the Prime Minister shall make arrangements to submit such reports to the Legislature-Parliament.

2. This annual report to be submitted pursuant to clause (1) above shall state, inter alia, the offices in respect of which the Auditor General has carried out audits in that year, any irregularities revealed by the audit, the achievements in resolving irregularities and the results obtained, and the details of recommendations for reform in future in regard to audit.

4.2.1.4.3 Attorney General

In the following, the main provisions of the Interim Constitution of Nepal, 2007 relating to the office of Attorney General are cited.

Appointment of the Attorney General (art. 134):

- There shall be an Attorney General in Nepal who shall be appointed by the Prime Minister. The Attorney General shall hold office during the pleasure or willing (this means how long does the Prime Minister want it to last) of the Prime Minister.
- No person shall be eligible to be appointed as Attorney General unless he/she is qualified to be appointed as a Judge of the Supreme Court.

Functions, duties and powers of the Attorney General (art. 135):

- The Attorney General shall be the Chief Legal Advisor to the Government of Nepal. It shall be the duty of the Attorney General to give opinions and advice on constitutional and legal matters to the Government of Nepal and to such other authorities as the Government of Nepal may specify.
- The Attorney General or officers subordinate to him/her shall represent the Government of Nepal in suits in which the rights, interests or concerns of the Government of Nepal are involved. Unless this Constitution otherwise requires, the Attorney General shall have the right to make the final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority.
• While discharging duties under this clause, the Attorney General shall have authority as follows
  1. To appear on behalf of the Government of Nepal when the latter is bringing or defending litigation.
  2. To monitor or cause to be monitored the interpretation of law and implementation of the legal principles propounded by the Supreme Court in the course of litigation.
  3. on the basis of complaints or information received by him by any means, to investigate allegations of inhumane treatment of any person in custody, or that any such person was not allowed to meet his/her relatives directly in person or through legal practitioners, and give necessary directions under this Constitution to the relevant authorities to prevent the recurrence of such a situation.

Another provision refers to the duty to give an Annual report (art. 136):
• The Attorney General shall, every year, prepare an annual report on the works he/she has performed in accordance with this constitution and other laws, and submit it to the Prime Minister, and the Prime Minister shall make arrangements to present the same to the Legislature-Parliament.

Art. 137 of Interim constitution provides the power to appear in the Legislature-Parliament:
• The Attorney General shall have the power to appear and express his/her opinion on any legal question in the Legislature-Parliament, the Constituent Assembly or any committee meetings. Provided that he/she shall not have the right to vote.

4.2.1.5 Criminal Sanctions including Punishment

There are no criminal sanctions in this Interim Constitution.

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4.2.2 Commission for the Investigation of Abuse of Authority Act, 1991

4.2.2.1 Aim and purpose

The aim and purpose of this act is to provide the power of investigation for corruption cases and to control the corruption from the nation. It is written clearly in its preamble that “it is expedient to make provisions for the Duty, Power and Responsibilities and Working Procedure of the Commission for the Investigation of Abuse of Authority”.

This is the most important law in the field of economic crime. According to this law any of the following actions taken wilfully or negligently by a person holding a public post shall be deemed as an improper action:

- Who has refused to do anything within his jurisdiction or done anything for which he has no powers,
- Who has failed to comply with the mandatory working procedures while taking any decision or issuing any order,
- Who has exercised powers vested with him for any objective or purpose in contravention of the appropriate laws, decisions or orders,
- Who has exercised his discretionary powers in a mala fide or arbitrary manner,
- Who has created unauthorized obstruction in the work of any other office, official or employee, or compelled them to do any unauthorized acts by exerting pressure on such office, official or employee,
- Who has shifted the responsibility by not doing anything which he should have done, but sent it to another office or official,
  1. Who has failed to discharge any duty pertaining to his post, which he is required to discharge according to the nature of the post,
  2. Who has got his work done by exerting undue pressures on an employee who is subordinate to him or any person who is under his influence, or
  3. Who has abused the immunity, facilities or privileges acquired in the capacity of his post.

4.2.2.2 Short Overview of Content

This act has 6 chapters and 38 articles.

Chapter I Preliminary

1. Short Title and Commencement
2. Definitions
3. Improper action

Chapter II Provisions Regarding Jurisdiction of the Commission

4. Jurisdiction of the Commission
5. Repealed by the Second Amendment
6. Regarding actions by the Commission on improper acts in institutions
7. Commission not allowed to raise questions about exercise of discretionary powers

Chapter III Provisions Regarding Improper Actions

8. Complaints with regard to improper acts
9. Verification of complaints
10. Procuring the relevant files and documents of evidence
11. Procedure for departmental action
12. Written request for departmental action
12a. to write for other necessary action
12b. to issue an order for rectifying bad results
12c. to inform the Commission

Chapter IV Provisions Regarding Corruption

13. Complaints regarding corruption
14. Preliminary investigation regarding corruption
15. Clarification to be sought from the concerned person in case information seems to be correct
16. Detention of the accused
17. Ipso Facto suspension
18. Filing of cases

Chapter V Inquiries and Investigations

19. Powers of the Commission relating to inquiries and investigations
20. Appointment of investigation officer
Chapter VI  Miscellaneous

21. Services may be availed
21a. Employee arrangement
22. Allotment of functions by the Chief Commissioner
23. Secrecy of information
23a. ... to acquire statement or to freeze transaction
23b. Order to ban issuance of passport or to put it on hold
23c. Restriction to leave place
24. Punishment for obstruction
24a. Provision with regard to summon
24b. Publication of notification
24c. Punishment for making false complaints
25. No case to be initiated against the Commission, commissioners or employees or of
   the Commission
26. Cooperation may be obtained by the Commission from other offices or employees
27. Repealed by the first amendment
28. Commission may offer suggestions
29. Cases may be initiated against retired persons also
29a. No obstruction in the proceeding and finalization of the case
29b. Confiscation of property
29c. ... to order freezing of the property of a foreigner
30. Cases may be initiated against other persons also
31. Action to be initiated by only one agency on charges of corruption
31a. Provision relating to property details
31b. Auction of goods
32. Commission may regulate its working procedure
33. Annual reports
34. Adjudicating authority
35. ... to initiate cases
35a. Provision for reward
35b. The Commission may carry out other functions
35c. Powers to appeal
35d. As per prevailing laws
36. Provisions regarding complaints or actions transferred from the Commission for the
   Elimination of Abuse of Authority
4.2.2.3 Main Instruments


4.2.2.4 Procedure and Competent Agencies

According to this law the commission has full authority to investigate the cases concerning the public sector. The CIAA may appoint an investigation officer or will establish one investigation team concerning the case and then he or it will start his/its investigation. The officer or the team can arrest a person at any time for the investigation purpose but they have to follow the rule of the nation as well as the constitution of Nepal. Any one can inform the CIAA concerning the relevant matter after that they will have started their investigation.

Jurisdiction of the Commission is described in art. 4 of the act. According to this, the Commission, in accordance with this Act or other current laws, may conduct investigations, file cases or take any action against any person holding a public post found guilty of abusing powers. The Commission, pursuant to the Act, shall not take any action in matters relating to any business or decisions taken at meetings of any House of Parliament or of any committee or anything said or done by any member at such meetings, or any policy decisions taken by the Council of Ministers or any committee thereof or judicial actions of a court of law.

Art. 6 describes that the Commission may refer any complaint filed with it regarding any improper action in any public institution to the concerned institution, or to the concerned higher body for action, according to circumstances, on the condition that the report is submitted to it, and such body shall inform both the Commission and the complainant about the action and the decision taken in respect thereto.

Complaints with regard to improper acts are mentioned in art. 8. Here, in case anyone commits improper actions having an adverse effect on matters of public interests or concern, anyone may file a complaint with the Commission and in case of matters other than this; any person who is adversely affected by the improper action may lodge a
complaint. Provided that in case the person adversely affected by improper acts has already died or it is proved that he is unable to file a complaint because of physical or mental incapacity, the Commission may initiate action in respect thereto on the basis of a complaint filed by his heir or guardian as well. If no one filing a complaint in case a tip-off is received to the Commission from any source about an improper action being committed adversely affecting matters of public interest or concern, the Commission, pursuant to this Act, may conduct an inquiry or investigation and take necessary action with regard to it. While filing a complaint on matters having an adverse impact on public interest or concern, the complaint may be filed any time and with regard to matters other than this complaints shall be filed within 35 days after the complainant comes to know of it.

According to art. 9, when the person adversely affected by improper actions personally files a complaint with the Commission, in case the complaint is forwarded to the Commission by post or by any other means, the Commission must summon the complainant to appear before it within seven days after having received such complaint for its verification. Provided that in case the contents of the complaint show that it is not based on the facts or is unclear or confusing, the Commission may decide not to take any action in respect thereto. The Commission shall inform the person adversely affected by improper actions of such decision as early as possible.

Art. 10 describes that, in case the contents of the complaints, and any evidences, if any, submitted by the complainant in respect thereto, provide reasonable grounds to believe that any person holding a public post has done any improper action as mentioned in the complaint, the Commission may procure the relevant files or documents of evidence from the appropriate office, office-holder, or person, and in case of any person who can provide important information in respect thereto, the Commission may also interrogate such person.

Procedure for departmental action is described in art. 11. According to this, in case any person holding a public post is deemed to have committed an improper action or there is reasonable ground to believe so from an investigation undertaken by the Commission, the Commission shall send a notification to such person by enclosing all the details obtained from the investigation into the complaint filed against him requiring him to submit a clarification within a prescribed period. While sending a notification, the complaint filed against the person holding a public post, all the details acquired from the investigation, the ground on which the allegations against him are based or what kind of
departmental action or punishment or action he should face in case he is convicted of the charge must be clearly mentioned in the notification.

According to art. 12 of this act, in case any person holding a public post does not submit a clarification within the time or in case, in the opinion of the Commission, the clarification submitted by him is not deemed satisfactory, the Commission may caution him or write to the appropriate authority to take departmental action against him by clearly stating the reasons and grounds depending on the degree of offence.

In case any person holding a public post commits an improper action and causes harm or loss to the Government or public corporations, the Commission shall write to the concerned body or authority to make up for the losses incurred or to take any other necessary action deemed appropriate by the Commission.

The Commission may write to the concerned authority or department in order to rectify the bad results arising out of the improper action committed by any person holding a public post.

According to art. 14, in case there is a reasonable ground to believe on the basis of any complaint or report, or from information received by the Commission from any other source, that a person holding a public post has committed an offence of corruption, the Commission may conduct a preliminary investigation into it secretly.

Detention of the accused is mentioned in art. 16 of CIAA act. Where,

- in case there is adequate ground to believe that any person against whom the Commission has initiated actions on charges of corruption may conceal or destroy any evidence, or hamper or obstruct, or adversely affect the action being undertaken by the Commission, the Commission may keep him in detention by providing with him a detention order in his name under current law.

- in case, as regards the person in detention, it is deemed necessary to continue investigation by keeping him in detention for a longer period of time since 24-hour detention is not enough for completing the process, it can be done only through the permission of a court of law by producing him in a court. While seeking permission from the court, allegations against him, its ground, the reasons for continuing probe by keeping him in detention and contents of his statement, if at all, must be clearly mentioned.

- the person who has been produced before the court for the purpose of seeking permission to keep in detention may file an application at the court requesting for his own physical check-up.
• in case permission is asked to keep this person in detention, the court, upon scrutinizing the relevant documents, shall decide whether the investigation is going satisfactorily or not, and if it is deemed satisfactory, it can grant the permission to keep in detention for a maximum period of six months, not exceeding one month at a time.

• While asking for an extended period of time to keep the accused in detention the person in detention may file an application at the concerned court by detailing all the grounds and reasons proving that his detention is not necessary, if he so desires.

Case filing is described in art. 18, In case there exist reasonable grounds to believe, on the basis of action initiated under this Act, and inquiries and investigations conducted in respect thereto, regarding a charge of corruption against any person holding a public post, that he has committed such offence, the Commission may order the investigation officer or other concerned agency or office of the Government to file a case at the appropriate Appellate Court under the current law in respect thereto.

Investigation officers will be appointed according to art. 20:

• The commission may appoint or designate any Commissioner or any employee of the Commission or any employee of Government or any institution, as investigation officer according to needs in order to conduct preliminary inquiries and investigations into improper actions or offense involving corruption under this law. Provided that while appointing the employee of the government or any institution as Investigation Officer, the Commission shall appoint or designate after having consulted with Government or the chief of the office of the concerned institution depending on the condition.

• The Investigation Officer appointed or designated by the Commission may exercise the powers vested in the Commission under this law in respect to inquiries and investigations.

Art. 35b authorizes the Commission to carry out other functions that the Commission may maintain for necessary coordination with the national or international institutions established with the objective of controlling or preventing corruption or enhance relation or mutual cooperation with such institutions. The Commission, if deemed necessary, may look for ways to carry out investigation and develop processes to prevent corruption or improper actions from taking place or carry out promotional activities with a view to promoting information about this.
According to article 35c, any order handed down by the Commission for punishment or for realizing any amount of money under this Act or any other order may challenged at the concerned court.

**4.2.2.5 Criminal Sanctions and Punishment**

Concerning the criminal sanctions and punishment, the CIAA act describes as follows. Ipso Facto suspension is mentioned in Article 17. According to this, in case the Commission has kept in detention any person holding a public post under Article 16 or Art. 19 (4), such person shall be deemed to have been ipso facto suspended from his post for the period of such detention, and in case the case has been filed against him in the Court under Art. 18, he shall be deemed to have been so suspended until the case will be disposed off. The person so suspended shall be deemed unfit for any government offices or public corporations or any other post which may cause an additional financial burden to the loan or grant amount to be received by the Government.

Art. 19 of the CIAA act is describing the Powers of the Commission relating to inquiries and investigations. The investigation team can ask any support or can take help from other related agencies to investigate the case.

In art. 23 CIAA can ask the statement from the concerning banks and other financial agencies and can freeze a transaction and the concerning bodies must freeze such property too. Except from this, the investigation officer can order to ban the issuance of passport or to put it on hold, so that the relevant person is restricted to leave the place where he/she is just staying.

The Commission may impose a maximum fine of Rs 50,000 to the concerned bank or financial institution based in Nepal for its failure to freeze transaction or account.

According to Art. 24, in cases where any person protests or causes obstruction to the process of investigation and inquiries under this Act, the concerned court may, on the basis of the Commission's report, punish him/her with a fine of up to Rs 5,000 or with a sentence of up to six months in prison or with both.

Provision with regard to summon describes Art. 24a While issuing summons in the name of a foreign national on charges under this Act, such summon shall be issued in the name of the office or the representative of Nepal, if at all, and this shall be deemed to have been carried out as per the laws. In case the office or representative is not found, summons shall be issued to the main place where such person is involved in transactions or to the permanent address of such person or to the address for
correspondence which he used while doing transactions through telex, telefax or other means of telecommunication or through postal registry and the summons thus issued shall be deemed to have been carried out as per the laws. This Section shall not be deemed to become an obstruction in issuing summon orders in the name of any person residing in a foreign country as per a separate provision made in any treaty to which the Government of Nepal is a party.

Publication of notification is described in art. 24b. According to this, while issuing a notification or a summon order in the name of any person under this Act or other current laws, in case the information about the address of the person not being located or such notice not being served or a summon not being delivered for any other reasons is received, notwithstanding anything contained in current laws, a public notice shall be published at least for two times in the national newspapers (English daily for foreign nationals) along with a brief detail of the investigation carried out by the Commission or the charge-sheet filed at the court, if at all, giving a period of 30 days to become present in the court, and the notice thus published, notwithstanding anything contained in this Act or any other current laws, shall be deemed to have been issued as per the laws.

According to art. 24c, the law has to assure that in case any person without any reasonable ground lodges a false complaint against any public servant or a person holding public post with a mala fide intention of causing injury, the Commission may fine such person up to Rs 5,000 if such complaint has been proved false.

According to art. 29, Cases may be initiated against retired persons also. According to this article, nothing contained in this Act shall be deemed to have prevented the Commission from instituting cases against any person in respect to corruption committed by him during the period when he was holding a public post, even after he has retired from such post. Notwithstanding anything contained in this Act, in case any person holding a public post is found to have abused powers when he was holding the post and the action was not taken as per this Act against him immediately, nothing in this Act shall be deemed to have prevented the proceeding against him even though he had retired from the post for whatever the reasons.

Art. 29c is concerning foreigners. According to the sub-section 1, if any foreigner summoned as per a notification issued by the Commission or pursuant to art. 24a fails to turn up at the Commission within the stipulated time and who possesses any property or enjoys any right or has any concern of Nepal, the Commission may put hold on such
property or rights or concern or may issue an order requiring the foreign national not to take such things outside the country and it shall be the duty of all to observe such order. Sub-section 2, the Commission may impose a fine of up to Rs 100,000 to a person who fails to observe the order issued as per sub-section 1, and in case the non-observance of such order has caused any harm or loss to the Government or any public institution, such harm or loss shall also be recovered from him.

Art. 34 describes that the power to hear cases filed under this Act shall be vested in the court as prescribed by the Government through a notification published in the Nepal Gazette. The court as prescribed in Nepal Gazette, while initiating and finalizing cases lodged under this Act, shall exercise the power and procedure as the special court under the current law. The verdict handed down by the court shall be appealed at the Supreme Court.

The Government shall be the plaintiff in cases instituted under this Act on charges of corruption.

According to art. 35, in case any person holding a public post or any public servant under current laws or other person is found to have committed an offence of corruption, the Commission itself under this Act or any other current law shall file a lawsuit, appeal or review the cases in its own name or by the authority designated by it. The government prosecutor or an attorney appointed by the Commission in coordination with the Office of the Attorney General shall plead, advocate or counter the charges on cases filed. The Commission may give a due reward to any person who helps the Commission in investigation, inquiries or in collecting evidences about an offence, which is punishable under this Act.
4.2.3 The Forest Act 1993

4.2.3.1 Aim and purpose

One of the most prominent sectors of economic crime in Nepal is the forest sector. So the constitution of Nepal gives high priority to conservation of natural resources and provides special protection to endangered wildlife, flora and forests. Nepal has responded to constitutional needs by enacting laws and regulations relating to forests, wildlife and biodiversity. In addition to the Forest Act 1993, Nepal has other supplementing laws that cover almost all concerns relating to the environment, including the areas of land use, forests, water, mining, cultural heritage, occupational health and noise pollution. For example, the Environment Protection Act (1996) and the Environment Protection Regulations (1997), the National Parks and Wildlife Conservation Act (1973), and the Aquatic animals Act (1961) are directly or indirectly supporting sustenance of forest resources.

The new Forest Act of 1993 has laid down a broad definition of forests: “all forests areas whether marked or unmarked, within the forest boundary including wasteland and uncultivated lands or unregistered lands surrounded by the forest or situated near the adjoining forest as well as paths, ponds, rivers or streams and reverie lands within the forest land". This Act respects all forest values, including environmental services and biodiversity, as well as the production of timber and other commodities. Actually this act has been made for proper management and conservation of forests.

4.2.3.2 Short Overview of Content

This act has 12 Chapter and 74 articles. The short overview of this act is as follows.

Chapter 1 Preliminary
1. Short title and commencement
2. Definitions

Chapter 2 Demarcation of boundaries. national forests and other provisions
3. Forest boundaries
4. Notice of Land Acquisition
5. Complaints against the acquisition of house and land
6. Amount of compensation
7. Compensation to be given
8. Land to be occupied
9. Constitution of the committee
10. On the spot enquiry to be made
11. Restriction on inclusion or acquisition of private land with in the boundaries of national forest
12. Acquisition of entire land
13. District forest officer and committee shall exercise the powers of a court
14. Removal or entries of private land from the records
15. Force to be used
16. Land not to be registered
17. No person to have any rights in the national forest
18. Rights over the national forest to be sold
19. Power to close the paths and streams with in the national forest

Chapter 3  Provisions relating to the government managed forest
20. Work plan
21. Prohibition to operate other functions in the government managed forest
22. Ownership and sale or distribution of the forest products of government managed forest

Chapter 4  Provisions relating to the protected forest
23. Protected forest
24. Forest management plan with in the protected forest

Chapter 5  Provisions relating to the community forest
25. Handover of the community forest
26. Amendment in the work plan
27. Community forest may be taken back
28. Community forest may be re-handed over
29. Punishment for contravening the work plan
30. Priority to be given to the community forest

Chapter 6  Provisions relating to the leasehold forest
31. Grant of leasehold forest
32. Lease of leasehold forest
33. Leasehold forest may be taken back
34. Paths, streams may be closed with in the leasehold forest

Chapter 7  Provisions relating to religious forest
35. Religious forest
36. Operation of the activities related with forest in religious forest
37. Religious forest may be taken back

Chapter 8  Provisions relating to the private forest
38. Provisions relating to the private forest
39. Certificate of private forest
40. To remain in the ownership of the government

Chapter 9  Provisions relating to the constitution of users groups
41. Constitution of users groups
42. Registration of users groups
43. Users group to be a corporate body
44. Report to be submitted
45. Fund of the users group

Chapter 10  Provisions relating to unclaimed and stray (dariyaburdi) timbers
46. Timber to belong to the government until evidence in support of claim is satisfactory
47. Notice regarding unclaimed and stray (dariyaburdi) timber
48. Proceedings upon the claim

Chapter 11  Offence and punishment
49. Prohibited functions in the national forest
50. Punishment
51. Punishment to one who impounds or arrests with an intention to harass
52. In the case of obstruction while discharging the duty
53. Punishment to the person assisting to escape the offender
54. Punishment for the abetment

Chapter 12  Investigation of offences and procedures
55. Necessary action to be taken to prevent offences
56. Special powers
57. Power to search
58. Forest products and other related goods may be impounded
59. Power to arrest without warrant
60. Investigation and filing of the case
61. Government to be plaintiff
62. Action to be taken if the owner of the impounded forest products, tools, weapons, boats, vehicles and quadruped are not traced out
63. Perishable goods and quadrupeds may be sold
64. Provisions relating to proceedings
65. Authority to hear case
66. Seized goods liable to confiscate
67. To be in the land ownership of the government
68. Power to use the forest
69. Technical assistance to be provided
70. Prohibition to enter into the forest area
71. Saving for acts performed in good-faith
72. Power to frame rules
73. Procedure in case of inconsistency of this act with other laws
74. Repeal and saving clause

4.2.3.3 Main Instruments

The date of the royal seal and the publication of the forest act was January 5, 1993. This was the act no 49 of 1993. The parliament of Nepal made this act in the 21st year of the reign of late king Birendra.

4.2.3.4 Procedure and Competent Agencies

The Forest act empowers the government to grant any part of a national forest in a manner conducive to the conservation and development of forests to produce raw material required by industries, to plant trees in order to increase the production of forest products for sale, to operate a tourism industry or to implement agro forestry. Forest is a good source for the national income in Nepal. Inside the department of forest and its branch offices are also the main points for EC. There are 2 types of crime inside forest these are corruption from the officials and related members of forest department and other offenders. So to control the corruption, some times the department will take the action to control this and some times the CIAA should play a vital role to control the corruption inside forest department.

For other offenders, the forest department itself has a jurisdiction power in the same manner like the court.

According to art. 13 of this act, district forest officers and committees shall exercise the powers of a court pursuant to summoning the concerned person and their witness,
examine the evidence, prescribing dates for appearance and documents to be prepared by them for the purpose of taking decision.

If a person is suspected attempting to commit any offence liable to punishment under this act or if such offence is being committed, any employee involved in the forestry work or police employee shall take measures to prevent such offence from being committed and for this purpose he may take all necessary actions including the use of necessary force.\textsuperscript{71}

According to art. 56 of this act, the employee deputed to the protection of the forest may shoot the offender under the knee in case a situation is occurred that any person obstructs within or outside the forest area to arrest the offender who is involved in the offences under this act or any person assists the offender to make him escape even after his arrest and in the event without using the weapon his life is endanger in the course of apprehending the offender.

In case there is reasonable ground to believe that an offence punishable under this act has been committed, a forest employee of at least up to the rank of the forest assistant or assistant police inspector rank may conduct search to any place but the search officer should follow the regulation at the time of search.\textsuperscript{72}

Art. 58 describes that any employee involved in the forestry work or police employee may if there exist reliable grounds to believe that this act or the rules made there under have been violated in relation to forest products, impound such forest products and all tools, boats, vehicles and quadrupeds connected such offence. The search and arrest officer should submit the report to the area forest office or district forest office as soon as possible. The employee at least up to the rank of non-gazetted second class forest assistant may release the seized goods.

Any forest employee or police employee may, if any person has committed or attempted to commit any offence to be punishable pursuant to this act, arrest such person without warrant, if there is every likelihood on his escaping in case he is not arrested. But the employee shall have to produce the person before the adjudicating authority within 24 hours exclusive of the time required for the journey.\textsuperscript{73}

The investigation into cases relating to the offences to be punishable pursuant to this act, shall be conducted by the employee at least up to the rank of non-gazetted second

\textsuperscript{71} Forest Act of 1993, art. 55.
\textsuperscript{72} Forest Act of 1993, art. 57.
\textsuperscript{73} Forest Act of 1993, art. 59.
class forest assistant and he shall file the case to the adjudicating authority on behalf of the concerned forest office with the help of government lawyer.\textsuperscript{74}

The government of Nepal shall be the plaintiff in all cases under this act.

\textbf{4.2.3.5 Criminal Sanctions and Punishment}

In this connection Nepal has enacted many laws, rules and regulations and is signatory to various relevant international conventions. Since a long time many corrupted officers and the political leaders continue smuggling wild products and animals also. Because they hamper the national economy by this action so if some one will break the motive of this law they will be punished. They can be smugglers or other persons assisting the smugglers.

The motive of the law is to preserve the forest and wild animal, stop illegal using from the smugglers to control the Economic Crime and to maintain the rule and regulation. The maximum punishment will be to recover the loss and the smuggler must pay 10,000 Rs as a fine and one year prison.

Art. 49 describes that no one shall do or cause to do and attempt to destroy or damage the shape of national forest and it shall be an offence.

Punishment is described in art. 50 of this act.

If some one acts to deforest, plough, dig or cultivate the forest land or to construct house or hut he should be punished with a fine up to 10,000 Rupees or an imprisonment up to one year or both and the house or hut built in the land also shall be confiscated. If the forest product was removed or damaged, he shall also be punished.

If some one is to set fire or to do any acts cause firing he shall be punished with a fine up to 10,000 rupees or an imprisonment up to one year or both.

If some one removes, traffics or sells and distributes forest product from forest areas the offender should be punished. The maximum punishment will be with a fine double to the amount involved or an imprisonment up to one year or both.

If the offender exports forest products to foreign country which are prohibited to export, he shall be punished with a fine equivalent to the amount involved or an imprisonment up to five years or both.

If an offender commits to take out, alter, convert, erase or destroy the forest boundary mark or to forge the mark or marking or to alter, damage or erase government mark or

\textsuperscript{74} Forest Act of 1993, art. 60.
marking stamped in the timber or standing trees he shall be punished with a fine up to 500 to 10,000 rupees or an imprisonment up to one year or both.

According to art. 51, if any forest employee involved in the forestry work or police employee, impounds any goods or arrest any person, without any proper reason, with an intention to harass such employee he shall be punished with a fine up to rupees one thousand.

If any person obstructs the government employee in discharging his official duties under this act, he shall be punishable with a fine upto 10,000 rupees or an imprisonment up to 6 month or both.\(^{75}\)

Any person who commits an offence of assisting the offender to escape shall be punishable equivalent to the offender.\(^{76}\)

Punishment for the abetment is described in art. 54. According to this, any one who abets or accomplices to commit offence under this act shall be punishable equivalent to the offender.\(^{77}\)

\(^{75}\) Forest Act of 1993, art. 52.
\(^{76}\) Forest Act of 1993, art. 53.
\(^{77}\) Forest Act of 1993, art. 54.
4.2.4 Anti Corruption Act, 2002

4.2.4.1 Aim and purpose
This Act may be cited as the Prevention of Corruption Act 2002. Its purpose is to provide for the prevention and punishment of corruption and fraud and for the establishment of an Independent Commission against Corruption. It is trying to eradicate the corruption from the country. It is expedient to make timely legal provisions relating to prevention of corruption with a view to maintaining peace, convenience, financial discipline, morality and good conduct among the general public.

4.2.4.2 Short Overview of Content
The Prevention of Corruption Act, 2059 (2002 A.D) is very effective to control the corruption. It has 5 chapters and 65 articles.

Chapter 1 Preliminary
1. Short Title, Extent and Commencement
2. Definitions

Chapter 2 Provisions Relating to Offences of Corruption and Punishment
3. Punishment to Giver and Taker of Graft
4. Punishment to Public Servants Accepting Goods or Service Free of Cost or at Lower Prices
5. Punishment for Taking Gift, Present, Award or Donation
6. Punishment for Taking Commission
7. Punishment to Public Servants for Leaking Revenue
8. Punishment to Public Servants for Getting Illegal Benefit or Causing Illegal Loss with Malafide Intention
9. Punishment to Public Servants Preparing False Documents
10. Punishment for Translating False Documents
11. Punishment for Tempering Government Documents
12. Punishment for Causing Damage to Government or Public Documents
13. Punishment for Disclosing Secrecy of Question Papers or Altering the Result of Examination
14. Punishment to Public Servants Engaging in Illegal Trade or Business
15. Punishment for Claiming False Designation
16. Punishment for Giving False Particulars
17. Punishment for Damaging Public Property
18. Punishment for Exerting Illegal Pressures
19. Punishment for Giving False Report
20. Property Deemed to be Acquired Illegally
21. Punishment for Committing Attempts
22. Punishment to Accomplices
23. Principal to be Deemed to have Committed the Offence in case a Corporate Body Commits Offence
24. Additional Punishment

Chapter 3  Investigations, Inquiries and Filling of Cases of Corruption
25. Investigations and Inquiries
26. Preliminary Inquiry
27. Seeking Explanation
28. Powers of Investigating Authority
29. Appointment or Designation of Investigation Officer
30. Functions, Duties and Powers of the Investigation Officer
31. Keeping Accused in Custody
32. Cooperation of Other Bodies May be Required
33. Automatic Suspension
34. Accepting Services
35. Keeping in Postponement
36. Filing of cases

Chapter 4  Provisions Relating to Prevention of Corruption
37. National Vigilance Center
38. Functions, Duties and Powers of the National Vigilance Center

Chapter 5  Miscellaneous
39. Statement May be Taken or Transaction or Account May be Freezed
40. Banning to Issue or Freezing Passport
41. Restriction to Leave Places
42. Provision Relating to Service of Summons
43. Publication of Notice
44. Obligations of government bodies and public institutions
45. Case May be Filed against Retired Person
46. No Hindrance to Initiate Proceedings and Finalize Case
47. Confiscation of Property
48. Order to Freeze Property of Foreigner
49. Punishment for Filing False Complaint
50. Provision Relating to Statement of Property
51. Punishment to Persons Causing Hindrance and Obstruction
52. Confidentiality of Information
53. Departmental Action to Employees Involved in Inquiries and Investigation
54. To be subjected to Imprisonment
55. Remission in the Claim of Punishment
56. No Action to be Taken
57. Delegation of Power
58. Provision Relating to Rewards
59. Special Provisions Relating to Cases of Corruption
60. Informer and his details to be kept confidential
61. Unclaimed goods to be entitled to His Majesty's Government
62. Goods may be sold
63. No Hindrance to Exercise Powers
64. Power to Frame Rules
65. Amendment, Repeal and Saving Clause

4.2.4.3 Main Instruments

The Anti Corruption Act, 2059 (2002 A.D) was published in the Nepal Gazette on 2059/3/5/4 Bs. This act is serial no. 1 of the year 2059 Bs. It was enacted by Parliament in the first year of the reign of former King Gyanendra.

4.2.4.4 Procedure and Competent Agencies

The special commission will exercise this act but until now the CIAA has been exercising this. Chapter 3 (Arts. 25 to 36) of this act are describing the procedure of the investigation authority.

In case the investigating authority has received information from any source that any person has committed or is going to commit corruption, such authority may take immediate actions including raid, seizure of documents or goods and materials or arrest
After having received such information investigation authority shall start a preliminary investigation.  

Art. 28 describe Powers of Investigating Authority. According to this, 1, the investigating authority may, while conducting investigations and inquiries into offences of corruption under this Chapter of the act, exercise the following powers: -

- To order a government body, public institution, public servant or any other person to send or to submit within a certain time any relevant document, documentary evidences or any other things before it;
- To conduct inquiry with, or to record the statement of, the public servant or any other person accused of corruption or the person to whom the investigating authority deems to have information on the relevant facts;
- The investigating authority may, upon having taken explanation from or upon completing inquiry or recording the statement of a public servant or any other person accused of corruption, release such person having executed a bond from him to appear as and when required, or having required him to appear on the prescribed date or, in case there is a reasonable cause to believe that such public servant or person may disappear or there has been a loss of an amount, the investigating authority may ask from him to submit a deposit or guarantee and require him to appear in the prescribed date or in case no deposit or guarantee is produced, keep him in custody.

2, In case the investigating authority has sent a letter having fixed a time limit to the concerned body, public servant or other person requiring to submit any document or any other material or to provide information on any matter or requiring a public servant or any other person to appear before it, it shall be done accordingly and in case it is not done, it shall be as follows:

- In case the concerned government body or public institution does not submit such document or material or does not provide information within the time prescribed, the investigating authority may send a letter to the concerned government body or a public institution to take departmental action against the chief officer of the concerned government body or a public institution and in case such a letter is received, the concerned government body or a public institution shall take action immediately.

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79 Prevention of Corruption Act, 2059, art. 26
• In case the concerned public servant or any other person does not submit the
document or material or does not provide information or does not appear within
the prescribed period, the investigating authority may impose a fine not
exceeding 1,000 rupees on such person.
• In case any government body, public institution, public servant or any other
person does not do as required to do in writing by the investigating authority even
after the departmental action or imposition of a fine pursuant to clauses (a) or (b),
the investigating authority may issue arrest warrant to get the chief officer of such
body or institute or such public servant or other person appeared and get such
document or material produced or acquired necessary information from him. In
case the chief officer of a body or institution, public servant or any other person
so arrested does not submit such document or material or does not give
information relating thereto, the investigating authority may order for keeping him
in custody for a period of up to seven days.

3. After the investigating authority's order for departmental action or payment of the fine,
in case the chief officer of the concerned body or the concerned public servant or any
other person submits an application along with reasonable causes for being unable to do
as required, and if the causes are satisfactory, such order or order of fine may be
cancelled.

4. The investigating authority may conduct or cause to conduct a search at any place
and seize any necessary materials or document or Photostat copy thereof while
conducting the search. A receipt of the material or document so seized shall be given to
the concerned person.

The investigation authority may make an appointment or designation of investigation
officer from the government officer or officer of a public institution as the investigating
officer, consultation shall be held with the Government or with the Chief officer of the
concerned body, depending on circumstances.\footnote{Prevention of Corruption Act, 2059, art. 29.}

According to art. 30, functions, duties and powers of the investigation officer shall be as
follows:
• To arrest the offender immediately and to take necessary actions;
• To conduct or cause to conduct search at any office, house, building, godown, vehicle or any other places while conducting investigation and inquiries or while collecting evidences into offences punishable under this Act;

• To exercise other powers conferred on the investigation officer.

While conducting investigation and inquiries into offences punishable under this Act, the investigation officer shall have all such powers, duties, facilities and obligations as the police is having under the prevailing laws in respect to recording statements of the accused persons, and preparing reports of public inquiries. While carrying out functions, the investigation officer may exercise the powers equivalent to the powers of a court to require the accused to appear on a prescribed date or to release him on deposit or on guarantee or detain him in case he is unable to furnish such deposit or guarantee as may be necessary.

Art. 31 describes that the investigation officer may, in case there is sufficient ground that any person having been taken action for an offence under this Act may lose or destroy any evidence or cause hindrance in the process of investigation or inquiries or cause adverse impact thereon, keep him in custody having given him an order of detention in accordance with the prevailing laws. In case the investigation or inquiries with regard to a person has not been completed within twenty four hours and it appears that the investigation needs to be continued having him detained, the investigation officer shall detain him after having presented him before the authority hearing the case and only after getting approval therefore from the authority hearing the case. While seeking for approval with the authority hearing the case, the charges against the person detained, its bases, the reason for continuing investigation having him detained and if his statement has been recorded, the contents of such statement shall be clearly stated. The person who has been presented before the authority hearing the case for approval of detention may submit an application while being presented there requesting for his physical check-up. In case a permission for detention is sought the authority hearing the case may, having considered whether or not the investigation has been carried out in a satisfactory manner and if it is found that the investigation is being carried out satisfactorily, give approval for detention for a maximum period of six months not exceeding thirty days at once or time and again. While seeking for permission for extension of time duration of, the person under the custody may, if he so wants, submit an application to the authority hearing the case mentioning the reason or basis for his not being in detention any longer.
The investigating authority may, in course of investigations and inquiries into offences punishable under this Act, ask any government body or public institution or any person for cooperation as may be necessary and it shall be the duty of such body, institution or person to cooperate as and when required. The investigating authority may take the help of police forces as well. While engaging police personnel in the work, the order issued by the investigating authority shall, with regard to the police, be equivalent to the order of the concerned Inspector General of Police. The investigation officer may ask the police officer or police personnel subordinate to him for help. It shall be the duty of the concerned police officer or personnel to assist him in case the investigation officer requires such assistance. In case the investigating authority deems it fit that because of the very nature of the offence under investigation and inquiry, it is necessary to consult an expert engaged in any agency to be involved in such investigation and inquiry, the investigating authority may ask the concerned body to make such expert available on a temporary assignment for a specific period of time; and in case such a demand is made, such body shall, notwithstanding anything contained in the prevailing laws, make available the concerned expert.\(^\text{81}\)

In case any public servant is detained on behalf of an offence he shall ipso facto be suspended until the period of detention and if a case is filed against him relating to the corruption case (art. 36 of this act), he shall ipso facto be suspended unless and until the proceedings of the case is over.\(^\text{82}\)

The investigating authority may, while conducting investigation, inquiries and taking any other actions relating thereto, require services of experts of the concerned subject or of specialized agencies. The investigating authority shall, in order to get the services referred to appoint the concerned expert or specialized agency and while appointing as such, the investigating authority shall have to enter into an agreement stating the functions to be carried out by such expert or specialized agency, the powers that may be exercised, the terms and conditions to be fulfilled, the procedures and remuneration and other benefits which such expert or specialized agency is entitled to. In case the investigating authority is in need of the service of employees of the Government or of a specialized agency, notwithstanding anything contained in the prevailing laws, such employees shall be deputed for a period required by the investigating authority.\(^\text{83}\)

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\(^{81}\) Prevention of Corruption Act, 2059, art. 32.

\(^{82}\) Prevention of Corruption Act, 2059, art. 33.

\(^{83}\) Prevention of Corruption Act, 2059, art. 34.
Keeping in postponement: While inquiring and investing under this Act, in case it appears that the alleged offence could not be proved on the basis of the collected evidences, the investigating authority may keep the complaint in postponement having published an order slip along with reasons thereof and in case of decision of postponement, the information thereof shall be given to the accused person and the complainant. Provided that nothing in this section shall be deemed to have prevented to investigate and re-inquire on such complaint if any new evidence is found later on.\textsuperscript{84}

Filing of cases: In connection with an accusation of commission of corruption, in case there is a reasonable cause to believe that the accused has committed the said offence, the investigating authority shall file a case before the authority having powers to hear the case under the prevailing laws.\textsuperscript{85}

\section*{4.2.4.5 Criminal Sanctions and Punishment}

According to art. 3 of this act, a public servant must not accept or agrees to accept graft (that means cash, goods or any type of gain or benefit also including bribe) amounting as follows for himself or for any other person for the following activities. If he or she commits those activities he or she shall be liable to a punishment of imprisonment and of a fine as per the amount involved depending on the degree of the offence.

- in consideration of his/her performing or having performed or
- of forbearing to perform or having forborne to perform any act pertaining to his/her office or the related act or
- in consideration of favouring or disfavouring or causing or not causing a loss or
- of having favoured or disfavoured or having caused or not caused a loss to any person while carrying out his/her official functions,

In case the graft has already been accepted, it shall be confiscated.\textsuperscript{86}

\textsuperscript{84} Prevention of Corruption Act, 2059, art. 35.
\textsuperscript{85} Prevention of Corruption Act, 2059, art. 36.
\textsuperscript{86} Prevention of Corruption Act, 2059, art. 3.
### Figure 16  Corruption Chart

<table>
<thead>
<tr>
<th>SN</th>
<th>Accepted Graft</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Up to 25,000 rupees.</td>
<td>Imprisonment for a term not exceeding three months.</td>
</tr>
<tr>
<td>b</td>
<td>More than 25,000 rupees to 50,000 rupees.</td>
<td>Imprisonment for a term from three to four months.</td>
</tr>
<tr>
<td>c</td>
<td>More than 50,000 rupees to 100,000 rupees.</td>
<td>Imprisonment for a term from four to six months.</td>
</tr>
<tr>
<td>d</td>
<td>More than 100,000 rupees to 500,000 rupees.</td>
<td>Imprisonment for a term from six months to one year and six months.</td>
</tr>
<tr>
<td>e</td>
<td>More than 500,000 rupees to 1 million rupees.</td>
<td>Imprisonment for a term from one year and six months to two years and six months.</td>
</tr>
<tr>
<td>f</td>
<td>More than 1 million rupees to 2,5 million rupees.</td>
<td>Imprisonment for a term from two years and six months.</td>
</tr>
<tr>
<td>g</td>
<td>More than 2,5 million rupees to 5ive million rupees.</td>
<td>Imprisonment for a term from four to six years.</td>
</tr>
<tr>
<td>h</td>
<td>More than 5 million rupees to 10 million rupees.</td>
<td>Imprisonment for a term from six to eight years.</td>
</tr>
<tr>
<td>i</td>
<td>Whatsoever amount above 10 million rupees.</td>
<td>Imprisonment for a term from eight to ten years</td>
</tr>
</tbody>
</table>

Whoever, other than a public servant, accepts or agrees to accept graft amounting as follows for himself or for any other person with the intention of convincing any public servant to perform or forbear to perform any function under his/her office or position or for convincing to perform or forbear to perform any such act or with the intention of favouring or disfavouring any person or causing or not causing any loss or for convincing to perform or forbear to perform any such act while carrying out any function under his/her office or position, shall be liable to a punishment of imprisonment as follows and of a fine as per the amount involved depending on the degree of the offence. In case the graft has already been accepted, it shall be confiscated. If someone gives a graft to a public servant or any other person in order to do or forbear to do any function, he/she
shall be liable to a punishment depending on the degree of the offence committed. Whoever abates to commit an offence punishable under this Section shall, if he/she is a public servant, be liable to a punishment as same as the punishment prescribed for the same offence, and if he/she is any other person, shall be liable to half of the punishment for that offence on the basis of the degree of the offence irrespective of whether or not the offence has been committed because of such abetment.

According to art. 4, whoever, being a public servant, accepts or agrees or attempts to accept, without a prior approval of the Government or a public institution, any goods or service free of cost or at lower prices for himself or for any other person, from any individual, having knowledge that such individual is related to or is likely to be related to any act related to his office or any act carried out or to be carried out by himself is related to any function of his office, shall be liable to a punishment of imprisonment for a term from six months to one year depending on the degree of the offence and a fine equal to the amount involved and in case such goods have already been accepted, they shall be confiscated and in case of the service, the price thereof shall be fixed and a fine equal to the price of such service shall be imposed.

According to art. 5, a public servant, who accepts, without a prior approval of the Government or a public institution, any type of donation, gifts, presents, awards or any type of benefit himself or through any member of his family or other person, so as to causing an impact in any way on any of his works which is supposed to be carried out by him according to the office he assumes; or any public servant who borrows from a person related to a work which he has to carry out according to the office he assumes, shall be liable to a punishment of imprisonment from three to six months depending on the degree of the offence and the amount shall be confiscated. If a public servant has received any present or gift in exchange of a gift or present brought from the amount of a fund belonging to the Government or a public institution, such gift or present shall be immediately submitted to his office. If not submitted, he shall be deemed to have committed the offence referred to and such gift or present shall be confiscated having him punished accordingly.

In case any type of commission, remuneration, brokerage fee, benefit or advantage is liable to be paid while performing duties by a public servant or while purchasing or hiring or taking or giving on a lease any commodity or service necessary for the Government or a public institution or while awarding or accepting a contract by the Government or a public institution or while selling or hiring or taking or giving on a lease any commodity or
service produced by the Government or a public institution, such commission, remuneration, brokerage fee, benefit or advantage shall be submitted to the concerned office within seven days from the date of receipt. In case not submitted as such, such public servant shall be deemed to have committed the offence referred to in art. 3 and the amount shall be confiscated having him punished accordingly.\(^{87}\)

Whoever being a public servant under the duty of collecting revenues, causes revenue leakage or helps or abets any person for its leakage having been involved himself in any of the following manners, shall be deemed to have committed the offence referred with regard to the amount of revenue so leaked and he shall be liable to the same punishment of imprisonment, and double of the amount of revenue leaked shall be fined: \(^{88}\)

- To assist any person in the act of leaking revenue in any manner whatsoever, having accepted any cash or kind, fee, prize or donation or any type of other benefit or forbear to collect revenue or to assist or cause to assist to collect less revenue having caused loss to the Government or a public institution by taking or not taking any type of gain from any person;
- To assess or assist to assess less revenue or to assess revenue to the effect of not charging revenue at all by not going through the documents or not investigating such documents or by not collecting necessary evidences while assessing revenue as required by the existing law;
- To embezzle the revenue collected by not depositing it in accordance with the prevailing laws;
- To release or assist to release goods, by making difference in the invoice, quality or quantity of such goods, and without collecting the prescribed revenue while assessing the revenue or carrying out valuation of such goods.

Art. 8 describes punishment to be delivered to public servants for getting illegal benefit or causing illegal loss with malafide intention. According to this provision, 1. If a public servant commits any of the following acts with the malafide intention of getting illegal benefits for himself or for any other person, or of causing loss to the Government or a public institution, he shall be liable to an imprisonment of a term from three months to three years depending on the degree of offence, and in case the amount involving the offence is known, such amount shall be confiscated having him fined.

\(^{87}\) Prevention of Corruption Act, 2059, art. 6.
\(^{88}\) Prevention of Corruption Act, 2059, art. 7.
accordingly. In case such amount is not known, an imprisonment for a term from three months to three years and a fine from ten thousand to fifty thousand rupees shall be imposed.

- To show more costs or works in an unnatural manner without any ground of justification while conducting a feasibility study of, or setting norms for, a project.
- To use or allow to use the construction materials of lower quality than that of the prescribed quality, or to certify or to approve the use of such materials as the materials of prescribed quality;
- To degrade the quality of construction work or to change the form or shape thereof or to carry out or cause to carry out construction works in contravention of the prescribed terms, conditions and standard; or to certify or to approve such construction work as qualitative and under the prescribed terms and conditions without any reasonable ground;
- To carry out or cause to carry out construction works having increased or amended the costs estimate in an unnatural manner and without any reasonable ground;
- To give or receive payment having prepared false bills or receipts or to give or receive double payment of bills;
- To procure or cause to procure excessive quantity of goods in an unnatural manner than the quantity needed without reasonable grounds;
- To carry out or cause to carry out unnatural valuation of a government property, a property of a public organization or of public property;
- To register, occupy or use or to cause to register, occupy or use a government or public property in one’s own name or in the name of other in an illegal manner;
- To value or cause to value a collateral security to be mortgaged in the name of a governmental or public organization in an excessive and unreasonable price in relation to the real prices;
- To procure or cause to procure goods of degrading quality or date expired and to procure or cause to procure goods having paid higher prices in an unnatural manner.

2. In case any public servant does not return a vehicle or a facility available to him by virtue of his official position within the prescribed time after the expiry of the official position without any reasonable ground, he shall be liable to a fine from 1.000 to 5.000
rupees depending on the degree of the offence and such vehicle or facility shall be taken back.

3. If a public servant causes any type of loss to a governmental or public property with malafide intention by having committed any act excluding the acts referred to above, he shall be liable to a punishment of imprisonment not exceeding two years or of a fine equal to the amount of the loss or both depending on the degree of the offence.

4. In case any person other than a public servant, with malafide intention of making illegal gain to himself or to any other person, does not abide by the terms and conditions of an oath, undertaking, agreement, contract, license, permit, promissory note or dealership entered into with the Government or a public institution or carries out business or misuses the facilities or powers of governmental or such institution violating the Rules or Procedures determined by or terms and conditions accepted by the Government or such institution in a manner prohibited by the prevailing law, he shall be liable to a punishment of imprisonment not exceeding two years and be fined according to the amount of loss and the amount of loss shall be confiscated.

Punishment to Public Servants Preparing False Documents is described in art. 9. According to this, if a public servant under the duty of preparing documents prepares false documents with malafide intention of causing loss to Government or a public institution, he shall be liable to a punishment of imprisonment for a term from three months to one year, and a fine from 10,000 to 50,000 rupees.

Either a public servant or any other person authorized or designated to translate documents, who wrongly translates documents, translates documents incorporating therein false particulars or makes difference in the name, surname, date, facts or other particulars with the malafide intention of causing loss to Government or a public institution, or with the intention of getting illegal benefit to himself or to any other person, shall be liable to a punishment of imprisonment for a term from three months to one year and of a fine from 10,000 to 50,000 rupees, depending on the degree of offence committed. 89

Either a public servant or any other person who corrects, adds, or changes in documents belonging to a government or a public institution without authority or in an illegal manner, shall be liable to a punishment of imprisonment for a term from three months to two years and a fine not exceeding 50,000 rupees. 90

89 Prevention of Corruption Act, 2059, art. 10.  
90 Prevention of Corruption Act, 2059, art. 11.
A public servant who conceals a document belonging to government or to a public institution or causes damage to, or destroys, such document, shall be liable to a punishment of imprisonment from six month to one year and shall be fined from 10,000 to 50,000 rupees. In case any loss is incurred due to such concealment, damage or destruction, the loss shall also be recovered.\(^91\)

According to art. 13, if the authorized person discloses or causes to disclose question papers of an examination to be conducted by a government body or a public institution before the prescribed time having given reasons of special circumstances, or whoever, being a public servant, discloses or causes to disclose the secrecy of such question paper in any manner whatsoever, or alters or causes to alter the results of examinations with the intention of making illegal advantage to himself or any other person, shall be liable to a punishment of imprisonment from three months to one year and shall be fined from 5,000 to 10,000 rupees.

A public servant who engages in trade or business in his own name or in the name of another person or in partnership with others, takes part in auction or bidding, or becomes a partner in any firm or company or a cooperative organization while being prohibited by law, shall be liable to a punishment of imprisonment for a term from three months to six months and a fine from 10,000 to 50,000 rupees, and the property earned in such a manner shall be confiscated. But this section shall not be deemed to have hindered to subscribe shares of a public limited company called for public subscription.\(^92\)

A public servant or any other person who falsely claims that he holds any position, power, capacity or facility, or enjoys such position, power, capacity or facility of a public servant which he is not entitled to or displays any symbol, dress or mark relating to a position of a public servant or wears or displays any object resembling to such symbol, dress or mark with the intention of leading others to falsely believe that these are the official symbols, dresses or marks of a public servant, shall be liable to a punishment of imprisonment for a term from one year to two years and with a fine from 50,000 to 100,000 rupees, depending on the degree of the offence committed.\(^93\)

Whoever, with the intention of securing a position of a public servant, or of continuing in such a position, or of securing any position or of getting any benefit or facility, gives false particulars regarding his educational qualifications, name, names of the father and

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\(^91\) Prevention of Corruption Act, 2059, art. 12.
\(^92\) Prevention of Corruption Act, 2059, art. 14.
\(^93\) Prevention of Corruption Act, 2059, art. 15.
grandfather, age, caste, surname, address, nationality or qualification, or gives false
description in any other matters, or submits false certificate relating thereto, shall be liable to a punishment of imprisonment for a term from six months to one year and of a fine from 10,000 to 20,000 rupees, depending on the degree of the offence committed. Whoever, being a public servant under the duty of giving statement of his property under this Act or any other prevailing laws, gives false statement either having increased or having concealed the actual property belonging to or registered in his name or under his share entitlement or belonging to his joint family, shall be liable to a punishment of imprisonment for a term from one month to three months and the fine not exceeding 10,000 rupees. The property, which has been concealed in such a manner, shall also be confiscated.  

A public servant who misappropriates, causes loss to or abuses or causes others to do so, or destroys or uses for personal purposes, while performing his duties pertaining to his office, shall be liable to be punished pursuant to art. 3 of the act and the property which has been misappropriated, damaged, misused or destroyed or used to cause others to do so, shall be recovered from him.

Art. 18 describes that, if either a public servant or any other person, compels any public servant or any other person to commit any offence punishable under this Act by exercise of fear or threat of under, kidnapping, taking away of property, of causing adverse impact on prestige or by exerting any other type of illegal pressure, shall be liable to a punishment of imprisonment for a term from four to eight years and a fine from one 100,000 to 500,000 rupees.

Whoever, either a public servant or any other person authorized to carry out auditing in a government body or in a public institution, prepares auditing report with malafide intention having shown the facts not done or happened in the transaction or having concealed the facts done or happened, shall be liable to a punishment of imprisonment for a term from three months to one year and to a fine from 10,000 rupees to 50,000 rupees depending on the degree of the offence committed. In case any public servant or any other person under the duty of submitting report having conducted a study or investigation on any subject in connection with functions of government body or public institution, prepares a report with malafide intention having shown facts actually not done or happened or having concealed facts actually done or happened, such persons shall

94 Prevention of Corruption Act, 2059, art. 16.
95 Prevention of Corruption Act, 2059, art. 17.
be liable to a punishment of imprisonment for a term from three months to one year and
to the fine from 10,000 rupees to 50,000 rupees depending on the degree of the offence
committed.\(^{96}\)

If some one attempts to commit an offence punishable under this Act, he shall be liable
to half of the punishment to be imposed on the public servant or any other person
committing such offences.\(^{97}\) Except that the accomplices to any offence punishable
under this Act shall be liable to half of the punishment to be imposed on the public
servant or any other person committing such offences. The accomplice who has given
cash or kind or made available any other type of benefit to the public servant or any
other person committing an offence or who has taken such benefit shall be liable to the
punishment as equal to the person committing the offence.\(^{98}\)

In case any firm, company or corporate body commits any act that is deemed to be an
offence under this chapter, the partners at the time of commission of the act in case of a
firm and the person acting as the principal official in case of a company or a corporate
body shall be deemed to have committed the offence. In case it is proved that such act
has been committed prior to the appointment of the person acting as the principal
official, the person who has committed the act shall be deemed to have committed the
offence. For the purpose of this Section, the "person acting as the principal official"
means the Chairman, Board Member, General Manager, Managing Director or the
Official of a company or corporate body working in the same capacity.\(^{99}\)

According to this law, the maximum punishment for the offender is to recover the
(assets) damaged, misused or destroyed by him, imprisonment for a term of eight to ten
years and a fine from 100,000 to 500,000 rupees.

If it appears from any source during the course of investigation into offences of
corruption that there has been any financial transaction or operation of an account in the
name of any person with any bank or financial institution within the country or in any
foreign country, the investigating authority may order to freeze such transaction or
account. The concerned bank or financial institute shall freeze such transaction or
account in accordance with the order of the investigating authority. In case such
transaction or account to be freezed is with a bank or financial institution in a foreign
country, the investigation authority may cause to freeze the operation of transaction or

\(^{96}\) Prevention of Corruption Act, 2059, art. 19.
\(^{97}\) Prevention of Corruption Act, 2059, art. 21.
\(^{98}\) Prevention of Corruption Act, 2059, art. 22.
\(^{99}\) Prevention of Corruption Act, 2059, art. 23.
account through the diplomatic channel. The investigating authority may impose a fine of 50,000 rupees in maximum to the chief of the concerned bank or financial institution located in Nepal not freezing transactions or accounts. The investigation authority may, if it deems fit in the course of investigation, according to the need, ask for the statement of property belonging to persons holding an office of public responsibility or freeze such property.  

The investigating authority may, on the basis of the gravity of the offence, the condition, the circumstances in which the accused committed the offence, the degree of the offence and the punishment in case of conviction of the offence, issue an order to the concerned bodies for not issuing passport to any accused or for withholding it if it has been already issued. The investigating authority may, according to the degree of the offence and the punishment in case of conviction of the offence, issue an order to any accused not to leave any place or not to go to any particular place without the approval of the investigating authority.

Notwithstanding anything contained in the existing law, while servicing summon in the name a foreigner in any offence under this Act, the summon may be served to the office or representative of such person within Nepal, if any, and service of summon in that manner shall be deemed to have duly made.

In case it has been reported that no notice could be served while sending a notice or servicing a summon in the name of any person in accordance with this Act or other prevailing laws for not finding the address of such person or for any other reasons, a public notice shall be published at least twice in a national level newspaper (in case of a foreigner in a English Daily) having given him/her a time limit of 30 days and having given a short description as to whether the investigation is underway or the case has already been filed at the authority hearing the case; and in case a notice has been published in such a way, the notice shall be or summon deemed to have been duly delivered or served to such person notwithstanding anything contained in the prevailing laws.

This Act shall be deemed to have prevented filing of a case against a retired public servant in connection with commission of corruption having embezzled or causing loss to

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100 Prevention of Corruption Act, 2059, art. 39.
101 Prevention of Corruption Act, 2059, art. 40.
102 Prevention of Corruption Act, 2059, art. 41.
103 Prevention of Corruption Act, 2059, art. 42.
104 Prevention of Corruption Act, 2059, art. 43.
government or public property or the property belonging to an organization owned by the Government even after such public servant has retired from the service.\textsuperscript{105}

In case any foreigner who does not appear before the investigating authority in pursuance of a notice sent by the investigating authority or summon served is having any property, entitlement, interest or concern within the Kingdom of Nepal, the investigating authority may order to maintain a status quo with regard to them or not to allow to take such property, entitlement, interest or concern outside of the Kingdom of Nepal unless and until such a person appears before the investigating authority, and it shall be the duty of all concerned to abide by such an order. The investigating authority may impose a fine of 1.000 rupees in maximum to the person who does not abide by the order made and in case any type of loss or damage is caused to the Government or a public institution because of non observance of such an order, such loss shall also be recovered from him.\textsuperscript{106}

In case it is found that any person has filed a false complaint against any public servant or person without having any reasonable ground for filing a complaint and with the intention of causing any type of loss, damage or harassment, the investigating authority may impose a fine not exceeding 5.000 thousand rupees on him.\textsuperscript{107}

The authority hearing the case may, on the basis of the report of the investigating authority, impose a punishment of imprisonment of a term of six months in maximum or a fine up to 5.000 rupees in maximum or both to a person who causes hindrance or obstruction in actions relating to investigation and inquiries under this Act.\textsuperscript{108}

In connection with execution of this Act, in case it is proved that the investigation officer or other employees engaged in investigation and inquiries have committed any act knowingly with the intention of causing harassment to any person, departmental action shall be taken against such employees.\textsuperscript{109} Notwithstanding anything contained in the prevailing laws, the person having been punished by a court with a term of imprisonment shall be subjected only to imprisonment.\textsuperscript{110}

The investigating authority may give complete or partial remission in the claim of punishment with regard to the accused who assists in the process of investigation carried out under this Act having himself presented as a witness on its behalf. In case

\textsuperscript{105} Prevention of Corruption Act, 2059, art. 45.
\textsuperscript{106} Prevention of Corruption Act, 2059, art. 48.
\textsuperscript{107} Prevention of Corruption Act, 2059, art. 49.
\textsuperscript{108} Prevention of Corruption Act, 2059, art. 51.
\textsuperscript{109} Prevention of Corruption Act, 2059, art. 53.
other evidences do not prove his assistance or in case he becomes hostile later on, the case may be filed against him again notwithstanding anything contained in this Act or in other prevailing laws.111

According to art. 56, notwithstanding anything contained in the prevailing laws, no action shall be taken against a public servant for disclosing confidentiality under the law relating to the terms and condition of his service who gives information for taking legal action in case of corruption committed or going to be committed. The investigating authority may, by publication of a notification in the Nepal Gazette, delegate its all or any power conferred on it by this Act to any of the His Majesty's Government's gazetted level officers.112

Reward is described in art. 58. According to this provision, the investigating authority may give an appropriate reward to the person assisting it in connection with inquiries, investigation or collection of evidences in the offences punishable under this Act.

No cases filed under this Act shall be withdrawn or compromised.

In case no owner of the goods related to the offence punishable under this Act can be traced, the investigating authority shall publish a public notice requiring the claimant, if any, of the goods so seized to claim the goods, within a time limit of 35 days. In case no claim is made within the time limit referred to or even if the claim is made but in absence of proof the claim is not tenable, such goods shall be the property of the Government having treated such goods as unclaimed goods.113

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110 Prevention of Corruption Act, 2059, art. 54.
111 Prevention of Corruption Act, 2059, art. 55.
112 Prevention of Corruption Act, 2059, art. 57.
113 Prevention of Corruption Act, 2059, art. 61.
4.2.5 The Asset Money Laundering Act, 2008 (2064)

4.2.5.1 Aim and purpose

This act is promulgated for the Prevention of Asset Laundering, according to its Preamble. Its main aim and purpose is to prevent laundering of criminally earned assets expeditiously.

The Act shall be applicable throughout Nepal and to any individual or corporate body, wherever he may be residing, when remitting, transferring or sending assets from Nepal to abroad or abroad to Nepal obtained by the act which is an offence under this Act. A crime concerning money laundering violates the legal rules of the nation and it also helps to conceal the illegal proceeds of the most heinous crimes and brings the ill-gotten money ultimately back into the economy causing various adverse effects to the system.

To promote this crime the corrupt officials, human traffickers and illegal drug dealers are the potential lucky users of this vicious cycle of money. To control these illicit operations, the government has introduced and implemented this act.

4.2.5.2 Short Overview of Content

This act has 8 Chapter and 46 articles. The short overview of this act is as follows.

Chapter 1 Preliminary
1. Short Title, Extent, and Commencement
2. Definition

Chapter 2 Provisions Relating to Offences
3. Assets not to Be Laundered
4. Assets Supposed to Have been Laundered
5. Not to Attempt, Support or Provoke

Chapter 3 Provision Relating to Identity, Transactions and Details of the Customers
6. Customers to be Identified
7. Liability of Government Entity, Bank, Financial Institution and Non-Financial Institution

Chapter 4 Provisions for Coordination Committee and Financial Information Unit

8. Formation of Coordination Committee
9. Financial Information Unit
10. Functions, Powers and Duties of Financial Information Unit

Chapter 5 Provisions for Formation of the Department and its Functions, Duties and Powers
11. Establishment of the Department
12. Powers of the Department for Investigation and Inquiry

Chapter 6 Provisions for Investigation and Inquiry
13. Complaint
14. Investigation and Inquiry
15. To Appoint or Prescribe Investigation Officer
16. Functions, Duties and Powers of the Investigation Officer
17. To Keep Under Custody for Investigation and Inquiry
18. To Order for Freezing Assets
19. Suspension of Account or Transactions
20. Seized Assets and Documents to Be Kept Secured
21. Support of Other Entities May Be Obtained
22. Filing Cases
23. Time Limitation
24. Government to Be Plaintiff
25. No Obstacle to Sue Under Prevailing Laws
26. Not to Violate Confidentiality
27. Automatic Suspension
28. Assets Deemed to Have Gained by Laundering
29. Offence not Required to be Proved

Chapter 7 Punishment
30. Punishment to the Offender
31. Imposing Fines
32. Punishment for Concealing or Destroying Evidences
33. Punishment for Creating Obstacles
34. Assets to be Confiscated

Chapter 8 Miscellaneous
35. Seizure of Passport
36. Assets to Be Released
37. Not to be Liable for Providing Information
38. Auction Sale to be Made
39. Departmental Action to the Staff involved in Investigation and Inquiry
40. Provisions Relating to Delivery of Notice
41. Notice to be Published
42. Order to Freeze the Assets of a Foreigner
43. No Obstruction to Adjudication and Decision Proceedings
44. Waiver May Be Given in Punishment
45. Reward
46. Rules May be Formulated

4.2.5.3 Main Instruments

The Asset Money Laundering Act, 2008 (2064) was enacted by the Legislature-Parliament of Nepal. This is the act No. 34 of the Year 2008 (2064), and the Date of Authentication of this act was 2008/1/28 (2064/10/14).

4.2.5.4 Procedure and Competent Agency

According to art. 8 of this act, there shall be a Coordination Committee to coordinate inter-related entities and to provide essential suggestions to the Government of Nepal in regard to the prevention of assets laundering as follows:

1. Secretary, Ministry of Finance - Coordinator
2. Secretary, Ministry of Law, Justice and Parliamentary System - Member
3. Secretary, Ministry of Home - Member
4. Secretary, Ministry of Foreign Affairs - Member
5. Deputy Governor, Nepal Rastra Bank - Member

The chief of the Financial Information Unit shall act as secretary of the Coordination Committee and the Financial Information Unit shall work as secretariat of the Coordination Committee and it shall be as determined by the committee itself.

There shall be a Financial Information Unit in Rastra Bank under art. 9 of this act, for collection and analysis of information relating to assets laundering.

The Governor of Rastra Bank shall appoint the chief of the Financial Information Unit from among the first class officers, at the least, of Rastra Bank. The Office of the Financial Information Unit shall be placed in Rastra Bank and the Rastra Bank shall manage the staffs required for it.
According to art. 10, Functions, Powers and Duties of Financial Information Unit shall be as follows:

- To obtain details of transactions under art. 7 from government entities, banks, financial institutions and non-financial institutions regularly and maintain records of those details by scrutinizing them,
- In case the notice, details and documents available to it require further inquiry and investigation on assets laundering, to make primary studies and send its details to the concerned department, government entity, bank, financial institution and non-financial institution,
- To write to the department with extensive details, should there appear doubtful transactions or look dubious or there are reasonable grounds to doubt in the details received or from the inquiry made,
- To send notice, details and documents regarding assets laundering to the Financial Information Units of other countries and international organizations or institutions and receive such notice from concerned countries and international organizations and institutions,
- To inspect transactions and records of banks, financial institutions and non-financial institutions, to obtain any information or clarification about such transactions and records and their copies if necessary,
- To manage required training programs for the staffs of government entities, departments and Financial Information Unit for prevention of assets laundering,

The entity authorized to regulate banks, financial institutions and non-financial institutions under prevailing laws may receive information from the Financial Information Unit and may provide information available with it to the Unit. The Financial Information Unit may give necessary directives to the concerned bank, financial institution and non-financial institution about the method, form, time and other procedures regarding the submission of details, statistics, notices and it shall be the duty of such bank, financial institution and non-financial institution to abide by such directives.

The Government of Nepal shall establish an Asset Laundering Prevention Department under art. 11, to make investigation and inquiry of offences under this Act. The chief of the department shall be a first class officer of civil service.

According to art. 12, the Department may exercise the powers in course of investigation and inquiry of the offences under this Act.
Art. 13 describes that any person who has information that somebody has committed, is going to commit or committing any act supposed to be an offence under this Act, may submit a complaint, application, information or notice to the department in written or oral form. The department shall register complaint, application, information or notice in written form and oral complaint, application, information or notice shall be registered after having given it a written form.

According to art. 14, the department shall conduct necessary investigation and inquiry if it receives information from a complaint or information or from any other method or source that any offence under this Act has been committed, is being committed or is going to be committed. The department shall obtain consultancy of government attorney while conducting such immediate investigation and inquiry.

The department may appoint or prescribe any officer of the department or other officer in service of government or of any public corporate body as an investigation officer in order to conduct investigation and inquiry of the offences under art. 15 of this Act.

The department while appointing or prescribing any other staff in service of government or public corporate body as an investigation officer shall consult the chief of the concerned entity or corporate body.

The investigation officer appointed or prescribed shall use powers to take necessary action by arresting the offender immediately, to conduct search or cause to conduct search operation of any office, residence, building, storage, vehicles or of any place in the course of investigation and inquiry, and to exercise other powers vested to the department under art. 16. The investigation officer while working may keep the offender on dating, release him by obtaining bail or guarantee or keep under custody with the permission of the court if he fails to provide bail or guarantee.

According to art. 17 the investigation officer may detain the person against whom proceedings have been initiated as per this Act, if there are sufficient grounds that he may extinct or destroy any evidence or create obstacles or perverse effects in the proceedings of investigation and inquiry providing him a warrant as per prevailing laws. In case the investigation and inquiry could not be completed within twenty four hours and it is deemed necessary to continue the investigation and inquiry process by detaining him further under custody, the investigation officer shall detain the offender further with the approval of the adjudicating officer presenting the offender before the adjudicating officer. The department, while requesting for permission shall clearly mention the charges against the person detained under custody, reasons and grounds thereon,
description of the affidavit of statement if any obtained and justification for continuing the investment and inquiry proceedings by detaining him under custody before the adjudicating officer. If request is made to carry out investigation and inquiry continuing detention, the adjudicating officer, after having reviewed the concerned documents and the process of investigation and inquiry whether satisfactory or not, may grant permission for detaining him up to ninety days time by time but not exceeding thirty days at a time. In case permission is requested to keep under custody, the detainee may appeal to the adjudicating officer with reasons and grounds requiring no detainment.

Art. 20 describes that the investigation officer should keep the assets and documents seized in course of inquiry and investigation under this Act safe.

According to art. 21, the department may demand support of any entities or public corporate bodies in the course of conducting inquiry and investigation of offence under this Act and it shall be the duty of such entities and bodies to provide support to the department at the time of demand. The department may also demand support of Nepal police in course of inquiry and investigation of any offence under this Act. It shall be the duty of the concerned police officer or of the police staff to provide support to the department if such support is demanded. The department if it deems necessary by the nature of offence under investigation and inquiry may make a request for consultancy from a specialist belonging with an entity or his deputation for involving him in investigation and inquiry and such entity shall have to avail or depute such specialist to the department notwithstanding whatever has been written in prevailing laws.

Art. 22 describes Filing Cases: If any one, whosoever, is deemed to have committed offence under this Act from investigation and inquiry, the department shall write to the concerned government attorney for taking decision whether a case is to be filed against him or not. The concerned government attorney decides to file a case. In response to writing, the department shall file the case with the court prescribed by the Government of Nepal by publishing notice in Nepal Gazette.

There shall be no time limitation to file a case relating to the offences under this Act. And the Government of Nepal shall be plaintiff in the cases relating to offences under this Act.

### 4.2.5.5 Criminal Sanctions and Punishment

Asset (Money) Laundering is one of the most serious crimes in Nepal. In the context of Nepal, until 2007 there was not any law to control this thing so it was easy to collect
money criminally and to make it white. The aim of this new act is explicitly to prevent laundering of criminally earned assets.

Nobody shall launder or cause to launder assets, because any one committing such activities or acts shall be deemed to have committed offence as per this Act.\textsuperscript{115}

Assets shall be supposed to have laundered in any case anyone, directly or indirectly, earns those assets from tax evasion or from terrorist activities or invests in such activities or acquires, holds, possesses or utilizes assets by committing any or all offences stipulated as follows and also in any case assets acquired, held or accumulated from investment of such assets are possessed, held or used, utilized or consumed or any other act is committed so as to present such assets as legally acquired or earned assets or sources of origin of such assets are concealed or any one assists to transform, conceal or transfer such assets with an objective of avoiding legal actions to the person having such assets:

Offences under the prevailing arms and ammunitions laws, foreign exchange regulation laws, Offences of murder, theft, cheating, forgery documents, counterfeiting, kidnap or abduction under the concerned prevailing laws, Offences under the prevailing drug addiction control laws, Offences under the prevailing national park and wild animals conservation laws, Offences under the prevailing human trafficking and taking of hostages control laws, Offences under the prevailing cooperatives laws, Offences under the prevailing forest laws, Offences under the prevailing corruption control laws, Offences under the prevailing banking and financial institution laws, Offences under the prevailing banking crime and punishment laws, Offences under the prevailing ancient monuments conversation laws, and other offences that Government of Nepal prescribes by publishing those in the Nepal Gazette.

Except from these laws, a person who has committed offences under the following Conventions or provided or collected any money knowingly used for such offences, shall be supposed to have invested in terrorist activities:

Suppression of Terrorism, 1987, any Convention against terrorist activities to which Nepal is a party.\textsuperscript{116}

The department or investigation officer may give orders to the entity concerned to prevent any transfer, pledge, sale/disposal of the assets collected by offence for a fixed time period, if it is deemed necessary in the course of investigation and inquiry or there are reasonable grounds at hand that the entity may transfer, sale/dispose or conceal or transform such assets by any manner. Or the officer can give order for freezing the related assets.\textsuperscript{117}

Anything mentioned in the prevailing laws, the department may give order, in course of inquiry and investigation of an offence under this Act, to prevent transactions or freeze bank account of a person transacting with a bank, financial institution or non-financial institution if any information was obtained that he has maintained transactions or account with such bank, financial institution or non-financial institution. Provided that such transactions or account operated with a bank, financial institution, non-financial institution or with other persons are situated abroad, the department shall make a request of freezing such transactions or account through a diplomatic channel.\textsuperscript{118}

A case may be filed under other prevailing laws if the offence under this Act is also punishable under those prevailing laws. In case a person involved in the offence under any prevailing laws is found to have committed offence under this Act, the entity or officer conducting investigation and inquiry of such offence shall inform the department about that.\textsuperscript{119}

No Investigation Officer or staff or other person involved in the investigation and inquiry shall violate confidentiality of any matter or submitted documents that came to his information in the course of investigation and inquiry or in performing his duty, unless the prevailing laws require so.\textsuperscript{120}

Any official or staff of any bank, financial institution or non-financial institution or civil servant shall be deemed to be in automatic suspension for the period he is under custody as per this Act or for the period the case is decided if any case has been filed against such staff, official or civil servant.\textsuperscript{121}

\textsuperscript{115} Asset (Money) Laundering Prevention Act, 2008, Chapter 2, art. 3.
\textsuperscript{116} Asset (Money) Laundering Prevention Act, 2008, art. 4.
\textsuperscript{117} Asset (Money) Laundering Prevention Act, 2008, art. 18.
\textsuperscript{118} Asset (Money) Laundering Prevention Act, 2008, art. 19
\textsuperscript{119} Asset (Money) Laundering Prevention Act, 2008, art. 25.
\textsuperscript{120} Asset (Money) Laundering Prevention Act, 2008, art. 26.
\textsuperscript{121} Asset (Money) Laundering Prevention Act, 2008, art. 27.
In case assets of the person sued for offence under this Act are found to be unnatural in comparison to his income source or financial condition or he is living a life unnaturally high in standard or proved to have donated, granted, gifted, provided loans, contribution or endowment more than his capacity, he is required to prove the sources of earnings and in case he fails to prove so he shall be deemed to have earned such assets by committing offences under this Act.\(^{122}\)

No one shall launder or cause to launder assets. If some one commits that crime he/she shall be punished as follows, in accordance with the degree of offence committed:\(^ {123}\)

Fine equal to the amount involved in the offence or imprisonment from one year to four years or both punishments to any person or staff of a bank, financial institution or non-financial institution who has committed offence or in case where such staff is not identified the person working as chief at the time of committal shall be punished,

In cases where an office bearer, chief or staff of a bank, financial institution or non-financial institution or public servant have committed an offence, the punishment will increase by ten percent in relation to the punishment mentioned above.

The person assisting or provoking to cause to commit offences under this Act shall be punished only one half of the offender.

There shall be 500,000 rupees fine to a bank or financial institution and from 25,000 to 100,000 rupees to non-financial institutions as per the degree of offence for their act of not submitting documents to the Financial Information Unit.\(^ {124}\)

Any person who commits the offence of concealing or destroying evidences related to acts deemed to be offences under this Act shall be imprisoned from one month to three months or 50,000 to 100,000 rupees fine or both in accordance with the degree of offence committed and any person who is assisting committing such act shall be punished half of such punishment.\(^ {125}\)

Every person is obliged to help the investigator at the time of investigation. If any one creates obstacles in the proceedings of investigation and inquiry undertaken under this Act, the adjudicating officer may punish him with an imprisonment up to six months or a fine up to 5,000 rupees or both based on the report of the investigation Officer.\(^ {126}\)

\(^{122}\) Asset (Money) Laundering Prevention Act, 2008, art. 28.
\(^{123}\) Asset (Money) Laundering Prevention Act, 2008, chapter 7, art. 30.
\(^{124}\) Asset (Money) Laundering Prevention Act, 2008, art. 31.
\(^{125}\) Asset (Money) Laundering Prevention Act, 2008, art. 32.
\(^{126}\) Asset (Money) Laundering Prevention Act, 2008, art. 33.
Any assets obtained from offences under this Act and assets accumulated from and assets utilized for committing such offences shall be confiscated or seized.\textsuperscript{127}

The goods seized in course of taking action against an offence under this Act may be auctioned by fulfilling the procedures as prescribed by the prevailing laws, if there is possibility of damage by rust or loss of any kind or breakage or rotting or loss of price due to ageing or lack of maintenance and protection due to lack of right placement.\textsuperscript{128}

The investigation officer or staff should follow the rule and behave correctly at the time of investigation and inquiry. If these persons create any troubles or tension to others knowingly in the course of investigation and inquiry of the offences under this Act or in doing any other acts, notwithstanding whatever written in prevailing laws, the secretary of the ministry concerned if such an officer is chief of the department or the chief of the department if he belongs to other staff shall take departmental action against him.\textsuperscript{129}

If any foreign person does not appear in front of the investigation officer as per his notice or even after such notice has been delivered to him, the investigation officer may issue an order to keep his assets, entitlement, interest or concern within Nepal standstill or preventing him to take it outside Nepal if he has any such assets, entitlement, interest or concern in the form as determined by the investigation officer till he presents himself before the investigation officer and it shall be the duty of all persons concerned to comply with such order. Persons not complying with the order issued shall be punished with a fine up to Rupees 100.000 by the investigation officer. The losses or harm caused to the Government of Nepal or public institution, if any, due to such non compliance of the order, shall also be recovered from him.\textsuperscript{130}

The investigation officer may provide waiver in the claim of punishment, in full or part, to a person extending cooperation in regard to the investigation and inquiry proceedings initiated under the Act when presenting such person as his witness. But if his cooperation could not be established from other evidences or if he changed his statement or made statement before the adjudicating officer against the cooperation extended by him to the investigation and inquiry officer the case against such person may be re-registered.\textsuperscript{131}

\textsuperscript{127} Asset (Money) Laundering Prevention Act, 2008, art. 34.
\textsuperscript{128} Asset (Money) Laundering Prevention Act, 2008, art. 38.
\textsuperscript{129} Asset (Money) Laundering Prevention Act, 2008, art. 39.
\textsuperscript{130} Asset (Money) Laundering Prevention Act, 2008, art. 42.
\textsuperscript{131} Asset (Money) Laundering Prevention Act, 2008, art. 44.
The new act has managed to provide an award for the informer so any person may be given an amount equal to ten percent of the amount claimed or 1 million rupees whichever is lesser as reward if he has made a complaint against an offence under this Act along with cooperation extended for investigation and inquiry or in collection of other evidences and proofs, and in a case where there is more than one informer, such amount shall be distributed proportionately between these persons.132

132 Asset (Money) Laundering Prevention Act, 2008, art. 45.
4.2.6 Nepal Muluki Ain 2020 (B.S.)

4.2.6.1 Aim and purpose

In the Muluki Ain 2020 (country code 1993) of Nepal human trafficking is also described but for this purpose there are some special laws in Nepal. There are three domestic laws in place that are addressing girl trafficking and forced child labour. These include the Labour Act of 1992, the Human Trafficking and Transportation (Control) Act, 2064, and the National Human Rights Commission Act.

Corruption seems to exist as the way of life in the political system throughout the history. Giving and accepting of gifts has been very much a way of life for the civil servants. King Prithvi Narayan Shah, who unified the country during 1745-1770, had realized the seriousness of corruption and its effect in the governance system, and thus declared, “Those who give or take bribe are the enemies of the Kingdom”.133 He introduced penalties for taking bribe. The Muluki Ain (General Code) enacted in 1854 (with amendments) had made provisions to ensure the control of corruption. It has made pecuniary penalties and imprisonments for the embezzlement of the government treasures. While the law on civil service kept changing, a new Act named Prevention of Corruption Act, 1960, replaced the Act on the control of corruption by public servants. It has prescribed pecuniary punishment and even imprisonment for committing the crime of corruption.

4.2.6.2 Short Overview of Content

Muluki Ain 2020 Bs has 5 parts, inside parts 1 and 5 there are no sections. There are 2 sections inside part 2; inside part 3, there are 22 sections, and 19 sections are inside part 4.

Preamble

Part 1 Preliminary

Part 2

Section 1 Concerning the Courts

Section 2 Punishment

Part 3

Section 1 Examination of the documents (Paper)

Section 2  Concerning Guarantor
Section 3  Welfare fund
Section 4  Labour
Section 5  Poor people
Section 6  Animal lost and found
Section 7  Trust
Section 8  Land cultivation
Section 9  Transfer of Land Ownership
Section 10 Taking land with force
Section 11 Making a house
Section 12 Husband and wife
Section 13 Division to the property
Section 14 Property related to the women
Section 15 Adopted son and daughter
Section 16 Infertility (Aputali)
Section 17 Give and take behave
Section 18 Deposit
Section 19 Donation
Section 20 Damashahi (sharing money equally)
Section 21 Registration

Part 4

Section 1 Cheating documents
Section 2 Despoliation
Section 3 Forgery
Section 4 Theft
Section 5 Firing
Section 6 Counterfeiting
Section 7 Animals
Section 8 Illegal custody
Section 8 (a) Hijacking and bond of the body
Section 9 Fight (ramming)
Section 10 Related to life
Section 11 Human Trafficking (Jiu masne bechne)
Section 12 For the treatment
Section 13  Intention for sex
Section 14  Rape
Section 15  Sex in blood relation
Section 16  Sex with animal
Section 17  Marriage
Section 18  Jari (to elope with others wife)
Section 19  Secularism of religion

Part 5 Dismissal

For the purpose of EC sections 1, 3, 6, 8 (a) and section 11 from part 4 of this Muluki Ain are important.

4.2.6.3  Main Instruments

Muluki Ain 2020 Bs. was published by the Government of Nepal and it has been enacted by late King Mahendra. This ain is a 67 number act of the year 2019 Bs. This ain has been amendment for 12 times, details are as follows:

<table>
<thead>
<tr>
<th>Amendment year (Bs)</th>
<th>Date of Royal Seal and Publication (Bs)</th>
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<tbody>
<tr>
<td>First amendment 2019</td>
<td>2021/6/17</td>
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<td>Second amendment 2024</td>
<td>2024/6/11</td>
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<td>Third amendment 2025</td>
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<td>Forth amendment 2027</td>
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<td>Tenth amendment 2050</td>
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<td>Eleventh amendment 2058</td>
<td>2059/6/10</td>
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<tr>
<td>Twelfth amendment 2064</td>
<td>2064/8/14</td>
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4.2.6.4 Procedure and Competent Agencies

These types of cases will be investigated by Crime investigation Department of Nepal police and this department will submit the case file through the help of Attorney General Office to District court. The investigation and documentation procedure of the cases related to this Ain is the same procedure as with the offences related to narcotic drugs which is described below, at chapter 4.2.12.4.

4.2.6.5 Criminal Sanctions and Punishment

Muluki Ain, in a section of the Criminal Code that addresses human trafficking, defines the trafficking of human beings as a crime. According to part 4 section 11 of this Ain is explicitly prohibited “traffic in human beings, slavery, serfdom, or forced labour in any form”. Especially, to stop the woman trafficking from the nation, art. 20 of the interim constitution of Nepal has prescribed:

- No woman shall be discriminated against in any way on the basis of gender.
- Every woman shall have the right to reproductive health and other reproductive rights.
- No physical, mental or other form of violence shall be inflicted on any woman.

It also states that “any contravention of this provision shall be punishable by law.”

It also prohibits taking any persons, by fraud or incitement, out of the country with the intention of selling them. The Muluki Ain provides for prison sentences of 10 to 20 years for trafficking offences. The penalty is 10 years’ imprisonment if the perpetrator is caught before the sale and 20 years’ imprisonment if he or she is caught after the sale. In cases in which the purchaser is found within the borders of Nepal, he or she is subject to the same punishment as the seller.

In part 4 sections 1 and 3 to this Ain, the crime of cheating is described. According to these sections, no one may cheat someone else to get a benefit, to make a false document and to show a false identity. If someone has done that and has got any benefit therefrom he has to be punished. According to this act the maximum punishment of the offence should be recovery of the loss from the offender to the victim, a fine of the same amount as that which has been lost by the victim as a result of the action of the offender.

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134 Art. 20 of the Interim Constitution of the Kingdom of Nepal.
135 Muluki Ain 2020, art. 4.
136 Muluki Ain 2020 (Jiu masne bechne mahal), Art. 1.
or imprisonment for a term not exceeding five years. If the amount of the exact loss of the victim can not be found out the offender will be punished at a fine of 5,000 rupees with imprisonment for a term not exceeding five years.\textsuperscript{137}

Any person, who knowingly aids or abets another person to commit an offence under this Act or counsels or induces another person to commit such an offence and will take and get benefit there from, shall be liable to the same penalty that is imposed on the main offender.\textsuperscript{138}

This section 3 of Muluki ain 2020 is a very important law to control bank cheating also. The police will investigate bank cheating cases and will forward the results to the competent court according to this section.

Besides this section, section 4 deals with theft and section 6 is describing the crime of counterfeiting nearly connected to the former. According to this section 6 art. 1 of the Muluki Ain (General Law), the chapter on Counterfeiting defines the crime to make forged notes and currency and prescribes punishment for that crime. This provision is very sparingly used because there are few occurrences of this type of offence. It has not posed a serious danger and another type of counterfeiting defined by the law is counterfeiting of government stamps.

If a person is engaged in counterfeiting of banknotes or coins he/she shall be punished by a term of imprisonment of ten years and fine of an equal amount of the forged notes or coins, and there will be a seizure of excisable commodities connected with the offence as well as other materials and documents helpful to prove the offence.\textsuperscript{139}

\textit{History of this Ain:}

If we like to looked more clearly upon the history of the judicial system of Nepal this system was initiated under the Ranas and despite some limited reforms, remained traditional in character till the early 1990s. The Muluki Ain of 1854 was introduced as the legal code by the first Rana Prime Minister, Jang Bahadur Rana, after his return from his European tour\textsuperscript{140}. The Muluki Ain (1854) was a written version of social code that had been in practice for several centuries in Nepal. It combined ancient Hindu sanctions and customary law and common laws modelled on the British and Indian codes with the rules

\textsuperscript{137} Muluki Ain, section 3 art. 4.
\textsuperscript{138} Muluki Ain, section 3 art. 5.
\textsuperscript{139} Muluki Ain, section 6 art. 4.
\textsuperscript{140} Upreti, Anup (2003), pp. 139 - 146.
of behaviour that had evolved over the centuries among the Newars in the Kathmandu Valley.

The Muluki Ain was amended several times and was completely revised in 1963. Over the years, the Muluki Ain blended royal edicts, proclamations, and piecemeal legislation. The entire corpus of law was consolidated in a compilation called the Ain Sangraha. Customs were applied in the absence of legislative provisions or judicial procedures. The revised code of 1963 sought to promote social harmony and declared all persons theoretically equal in the eyes of the law, thus ending legal discrimination based on caste, creed, and sex. The code granted the right to divorce, permitted intercaste marriages, and abolished the laws sanctioning untouchability\textsuperscript{141}. These provisions were drafted at the behest of the king. A uniform family law was applicable to all religious communities and was contained in the Muluki Ain. When the code was silent, however, the custom of the particular community applied. The code remained the existing substantive law till 1991\textsuperscript{142}. Under the vague instrument of the Muluki Ain prior to its 1963 revision, magistrates and justices had wide latitude in deciding cases according to their own interpretations. There was a motive for caution, as, if a higher court reversed the decision of a lower court, the magistrate of the lower court was liable to a fine, corporal punishment, or even execution. Court procedures varied greatly. The accuser was placed in jail along with the accused. Writs of habeas corpus were not issued. Prisoners often waited many months before trial. The onus of proof of innocence rested on the accused, which was tried without a jury.

Under the rules, no one could be convicted of a criminal charge without a confession, but confessions were commonly extracted by torture. The Rana courts had both executive and judicial powers, and the prime minister was the supreme judicial authority whose decision on a given case was final.

Reforms enacted under the constitution of 1948 and in the first years following the 1951 overthrow of Rana rule modernized many features of the feudal-based legal system. The prime minister was divested of judicial powers and no longer functioned as the highest court of appeal. The Supreme Court Act of 1952 established the Supreme Court as the highest judicial body, with powers and structure corresponding generally to those of the Supreme Court of India. Special travelling courts were organized and were sent into the

districts to provide easier access for citizens to the legal system. These courts were empowered to audit public accounts, hear complaints of all kinds, make arrests, hold trials, and impose sentences. An important step toward a unified judicial system came in 1956 with the establishment, mostly in the Tarai, of a series of district courts that heard civil and criminal cases. Appeals courts were set up in Kathmandu. The 1962 Panchayat Constitution stipulated that the king was solely responsible for appointing judges and providing judicial overview. 143

Under the Panchayat Constitution, the court system was headed by the Supreme Court, which was composed of a chief justice, nine judges, and a small secretarial staff. Below the Supreme Court, there were fourteen zonal courts, which, in turn, oversaw seventy-five district courts throughout the country. 144 All the lower courts had both civil and criminal jurisdiction. Although the judiciary was independent technically, in practice the courts were never assertive in challenging the king or his ministers.

The constitution promulgated in 1990 reorganized the judiciary, reduced the king’s judicial prerogatives, and made the system more responsive to elected officials. Under the new system, the king appointed the chief justice of the Supreme Court and the other judges (no more than fourteen) of that court on the recommendation of the Judicial Council. Below the Supreme Court, the constitution established fifty-four appellate courts and numerous district courts. The judges of the appellate and district courts also were appointed by the king on the recommendation of the Judicial Council. The Judicial Council, established in the wake of the pro-democracy movement and incorporated into the constitution, monitored the court system’s performance and advised the king and his elected government on judicial matters and appointments. Council membership consisted of the chief justice of the Supreme Court, the minister of justice, the two most senior judges of the Supreme Court, and a distinguished judicial scholar. All lower court decisions, including acquittals, were subject to appeal. The Supreme Court was the court of last resort, but the king retained the right to grant pardons and suspend, commute, or remit any sentence levied by any court.

The new judicial system still was in its infancy as of 1991. Some observers noted that judicial appointments had remained a source of patronage by which the elected government rewarded its supporters. Others feared that Nepal lacked the legal resources to staff an expanding and modern judicial system. The growing backlog of

143 Upreti, Anup (2003), pp. 139 - 146.
144 Rajit Bhakta pradhananga (2040 B.S.), pp. 1 - 25.
legal cases, many of them initiated during the 1990 pro-democracy upheaval, also threatened to overwhelm the system. Despite these drawbacks, however, most observers of the legal system felt the changes were forward-looking and progressive.
4.2.7 The Foreign Employment Act, 2064 (2007)

4.2.7.1 Aim and purpose

This act was made to provide for the matters relating to foreign employment. Foreign employment is one of the biggest sources for the national income of Nepal. And we may also say that it is the area most affected of the economic crime. There are a lot of agencies which are working as a bridge between the labour force and the foreign agencies. Sometimes these agencies will not follow the rule of the nation and will make a contract with the peoples or workers who like to go abroad for the employment and the foreign agencies or employee agencies. Sometimes these people will send the people for foreign employment without having a license needed for this activity, they will also take more money from the workers than the regulation permits, the agencies will not provide exact information concerning the work in foreign countries and what should be done there by the workers. From this procedure, the agencies will take extra benefit and what they are doing is economic crime. To control these types of problems, the Government of Nepal has been implementing this act.

4.2.7.2 Short Overview of Content

This act is very effective to control crime concerning illegal foreign employment. It has 12 chapter and 87 articles.

Chapter 1 Preliminary
1. Short Title and Commencement:
2. Definitions

Chapter 2 Provision Relating to Foreign Employment
3. Specifying the Countries for operating Foreign Employment business
4. Conclusion of Bilateral Agreement
5. Selection of Institution
6. Sending worker by entering into treaty or agreement
7. Minors not be sent for foreign employment
8. No Gender Discrimination
9. Special privileges and Reservation may be provided

Chapter 3 Provisions regarding the License
10. Restriction to operate Foreign Employment Enterprises without License
11. Provisions regarding the License
12. License Period and renewal
13. Cancellation of License
14. Ownership and Liability shall not be Transferred or Changed

Chapter 4 Prior Approval and Selection of Employees
15. Prior Permission shall be obtained
16. Advertisement to be Published
17. Workers to be selected and a list prepared
18. Permission to be obtained to take the Passports to Foreign Country
19. Provision relating to Sticker of Labor Permission
20. Sending for Foreign Employment
21. Permission for Foreign Employment on personal level
22. National Airport shall be used
23. Minimum Wage may be fixed
24. Service charges and Promotional expenditure
25. Entering into contract for Foreign Employment
26. Insurance to be done

Chapter 5 Provisions regarding Training and the Classification of Workers
27. Obligatory training
28. Provision regarding Institutes organizing the Orientation Training
29. Curriculum for the Orientation Training and Determination of its Standard
30. Skill Oriented Training Must be acquired
31. Classification of Workers

Chapter 6 Provision Relating to Foreign Employment Welfare Fund
32. Establishment of the Foreign Employment Welfare Fund
33. Use and operation of Foreign Employment Welfare Fund

Chapter 7 Provision regarding Inspection and supervision
34. Performing inspection
35. Performing supervision
36. Filing complaint for compensation
37. Issuing of Directives

Chapter 8 Establishment of the Board and its Function, Duties and Powers
38. Establishment of the Board
39. Function, Duties and Powers of the Board
40. Meeting of the Board and its Decisions
41. Appointment of Executive Director and the functions, Duties and Power
42. The secretariat of the Board

Chapter 9 Crime and Punishments
43. Punishment for operating Foreign Employment business without License
44. License Holder sending the workers without obtaining the permission
45. Punishment for sending a minor for Foreign Employment
46. Punishment for sending workers to countries not opened by the Government
47. Punishment for hiding or altering the documents and reports
48. Punishment for opening Branch Office without permission
49. Punishment for not publishing the Advertisement
50. Punishment for not publishing the Selection List
51. Punishment for denial to return the Amount or pay Compensation
52. Punishment for sending workers on a personal level by the License Holder
53. Punishment for taking excess money regarding Visa Fees, Service Charges and the Promotion Charges
54. Punishment for not complying with Orders or Directives
55. Punishment for working against the Contract
56. Punishment to Accomplice
57. Punishment to the person acting as the Head
58. License shall not be Re-issued
59. Opportunity to be heard to be provided

Chapter 10 Investigation and Enquiry
60. Limitation to file Complaint
61. Investigation and Enquiry of offences related to Foreign Employment
62. Power to Arrest

Chapter 11 Procedure of the Law-suit and decision
63. The Government of Nepal to be the Plaintiff
64. Provision relating to Foreign Employment Tribunal
65. Procedure of the Law-suit
66. Appeals

Chapter 12 Miscellaneous
67. Foreign Employment Department
68. Appointment of Labour Attaché
69. Remittance of the Income of the workers
70. License not issued
71. Reward by The Government of Nepal
72. Provision regarding Health Check-up
73. Provision regarding Labour-Desk
74. Provision relating to opening of Branch Office and appointment of Agents
75. Provision regarding sending back the workers to the Country
76. Returning Nepal upon expiry of the Visa
77. Privileges to the License Holder
78. The details regarding the enterprises holding License to be made Public
79. Regarding the Activities of the Department
80. Records and Reports
81. Delegation of Power
82. Power to Remove Obstructions
83. Immunity for Actions Taken With Bonafide Motives
84. Applicability of Current Law
85. Power to Frame Rules
86. Repeal and Saving Clause
87. Transfer of case

4.2.7.3 Main Instruments

The Foreign Employment Act (2007) was published by Government of Nepal, in Nepal Gazette (Issue 39), paush 30, 2064, Bs. The Government of Nepal Ministry of Law, Justice and Parliamentary Affairs is enabled to amend and consolidate the law relating to Foreign Employment Act. Date of Royal Seal and Publication of this act was 2042/7/14/4 Act No. 26 of the year 2042. Date of Certification of this act was 2064/5/19 (5 September, 2007).

4.2.7.4 Procedure and Competent Agency

Foreign Employment is one of the most essential parts of the national economy of Nepal. So there are a lot of crimes in Nepal concerning this matter. To control this crime, department of labour is playing a major role. The victim can also complain to CID. After getting the information CID department will start the investigation and if they have found a person guilty they can file the case in the court with the help of the attorney general.
No one shall be entitled to operate Foreign Employment Enterprise without obtaining license under this Act.

Institutions intending to operate Foreign Employment Enterprises shall have to submit an application with prescribed particulars to Department. After having reviewed the application, if the department considers it to be suitable to give a license to an institution to operate a foreign employment enterprise, the department shall issue such license upon receiving the prescribed license fee and a security deposit of 3 million Nepalese Rupees in cash or 700.000 Rupees in cash and the remaining 2,3 million Rupees as a Bank Guarantee.

The term of the license shall expire at the end of such Fiscal year notwithstanding on which date it was issued. License holder may pay three year's renewal fees at once and get renewal of license for three years.

If someone has committed an offence under Art. 43 of this Act and if there is a possibility that such suspect may escape if no immediate arrest is made, in such situation, a police officer may arrest such person without any warrant. And if a person has been arrested he/she shall be produced before a case hearing authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such case hearing authority.\(^{145}\)

The Government of Nepal shall be the plaintiff in a case filed under this Act.\(^{146}\)

The victimized person will be reimbursed the expenses made in connection with the foreign employment. These types of cases will be handled by the labor court.

### 4.2.7.5 Criminal Sanctions and Punishment

For this purpose, FEA mentioned above is intended to control these types of crime. According to this law, Children not attending the age of 18 may not be send for foreign employment.\(^{147}\) No one shall be entitled to operate a Foreign Employment Enterprise without having obtained a license under this Act.\(^{148}\) While sending a worker for foreign Employment, the worker shall not be discriminated on the basis of gender. Provided that the employment providing institution calls for only one gender, either males or females,

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\(^{145}\) Foreign Employment Act, 2064 (2007), art. 62.
\(^{146}\) Foreign Employment Act, 2064 (2007), art. 63.
\(^{147}\) Foreign Employment Act, 2064 (2007), art. 7.
\(^{148}\) Foreign Employment Act, 2064 (2007), chapter 3 art. 10.
then it shall not be a hindrance for sending such gender for foreign employment. May be this clause has protected against the illegal woman trafficking.\textsuperscript{149} However, the act limits this prohibition by stating that foreign employment may be provided to women by obtaining the permission of the government and their guardians. If the department of labour considers it to be suitable to give a license to an institution to operate a foreign employment enterprise, the department shall issue such license upon receiving the prescribed license fee and a security deposit. This clause will protect against the illegal trafficking of workers and will maintain the standard of the agencies.\textsuperscript{150}

The worker or his/her representative may file a complaint at the Department for compensation along with evidence if the Employment Providing Institution fails to provide employment as per the term of the contract. If the complaint is found to be reasonable, the Department may order the license holder to pay the entire amount incurred for going to foreign employment as compensation.\textsuperscript{151}

The conditions of the crime and punishment are described in arts. 43 to 59 of this act.

- If anyone operates a foreign employment business without obtaining a license which is against the provision of art. 10 (Restriction to operate Foreign Employment Enterprises without License) or takes money by giving false assurances or putting temptation on such person by explaining that he shall be sent for foreign employment or has sent any person abroad for employment, the amount so taken and fifty percent of such amount shall be realized as compensation from the person doing so. He must also reimburse the cost of round trip ticket incurred by the person that has gone for foreign employment and such person shall also be liable to a fine ranging from three lakh (300,000) to five lakh (500,000) Nepali rupees and an imprisonment for a term ranging from three years to seven years. Such person shall be liable to half of such punishment if he has not yet sent any worker abroad for employment.

- If any license-holder sends workers abroad without obtaining the license from Department or takes money from any person by giving false assurance or temptation to send such person for foreign employment but fails to send him for foreign employment abroad, the amount so taken and fifty percent of such amount shall be realized as compensation from the person doing so and the

\textsuperscript{149} Art. 8, amending section 12.  
\textsuperscript{150} Foreign Employment Act, 2064 (2007), art. 11.  
\textsuperscript{151} Foreign Employment Act, 2064 (2007), art. 36.
license-holder shall also be liable to a fine ranging from three lakh to five lakh rupees and an imprisonment for a term ranging from three years to seven years and the license of such License holder shall also be cancelled.

- If any License holder sends any minor for foreign employment against the provision of art. 7 (Children not attending the age of 18 shall not be sent for foreign employment), such License Holder shall be liable to a fine of 300,000 to 500,000 Rupees and an imprisonment for a term ranging from three to seven years.

- If any License Holder sends workers to such countries where Government of Nepal has not permitted to operate foreign employment business or sends workers to such non permissible countries by obtaining visa from a permissible country, such License Holder shall be liable for a fine ranging from 300,000 to 700,000 Rupees and for imprisonment for a term ranging from three to five years.

- Such person shall be liable to half of such punishment if he has not yet sent any worker abroad for employment.

- Any license-holder, who knowingly conceals, changes or falsifies any documents or reports to be kept pursuant to this Act or Rules made therein, shall be liable to a fine ranging from 100,000 to 300,000 rupees and imprisonment for a term ranging from six months to one year. If some one repeats the same crime twice the punishment shall be doubled and the license of such holder shall be revoked.

- If any License Holder opens a Branch Office without obtaining permission from the Department, the Department shall fine the License Holder a sum of 200,000 Nepalese Rupees for each Branch Office opened and may also issue an order to shut down such Branch Office.

- If a License Holder does not publish the Advertisement pursuant to art. 16 (Advertisement should be published in daily news paper) or publishes the advertisement without obtaining the permission from the Department, the Department shall fine such License Holder a sum of 50,000 Rupees and order to cancel such Advertisement.

- If a License Holder does not publish the Selection List of the workers pursuant to art. 17 (Workers to be selected and a list prepared) or does not notify the
Department after publication of such list, the Department may fine such license
Holder a sum of 50,000 Rupees and may order to re-publish such selection list.

- Any License Holder who does not return the money within a time limit as
mentioned under subsection (2) of art. 20 (Sending for Foreign Employment) or
refuses to pay the compensation prescribed under Subsection (2) of art. 36
(Filing complaint for compensation), the Department shall pay the concerned
worker such amount or provide compensation from the security amount
deposited by the License Holder pursuant to art. 11 (Provisions regarding the
License) and may fine such License Holder a sum of 100,000 Rupees and
revoke the License.

- In case the amount deposited under art. 11 (Provisions regarding the License) is
insufficient to recover the amount or compensation paid to the worker pursuant to
Subsection (1) above, the license-holder shall be notified by the Department to
reimburse such insufficient amount by giving 60 days notice. If such amount is
not reimbursed within such notice period, it shall be realized from the assets of
the license-holder.

- Any License Holder who sends workers on a personal level contrary to the
provision of subsection (3) of art. 21 (permission for Foreign Employment on
personal level), shall be fined a sum ranging from 100,000 to 300,000 Rupees or
the License shall be revoked or both.

- If any License Holder who obtains the Visa free of charge but levies charges for
obtaining such visa or takes excessive charges or more expenses than
prescribed, the Department shall order to refund the visa fees that are not
chargeable or such excessive fees or charges taken to the concerned worker and
shall fine the License Holder a sum of 100,000 Rupees.

- Except as provided in this Chapter, to any license-holder who does not comply
with the provisions of this Act or the Rules framed under this Act, orders or
directives issued therein, the Department shall issue a warning letter for the first
occasion, fine 5,000 Rupees for the second occasion, and if he/she repeats the
same on the third time, it may fine a sum of 100,000 Rupees and revoke the
License.
• Any License Holder who enters into contract with a worker telling him that he would employ him in a particular company but requires him to work with less remuneration and privileges in a different company or requires him to work in the company with an entirely different nature of work or if the worker has been employed in an entirely different type of work than that specified at the time of sending him for foreign employment or he is being employed with less remuneration and privileges than were initially contracted for, the Department shall fine such License Holder a sum of 100,000 Rupees and the Department shall help such workers to recover from the license-holder the lesser amount that was not paid.

• Accomplices to any offense punishable under this Act or any person who are betting to commit an offence under this Act shall be liable to half of the punishment to be imposed on the person actually committing such offences.

• Where any firm, company or institution or license-holder commits any act deemed to be an offence under this chapter, an Officer or the employee is punishable if they are figured out as committing such offence, whereas in cases, where no officer or employee is figured out, the person acting as the Head of such Firm, Company, Organization at the time of commission of such offence shall be punished.

• Once the license of a License Holder has been revoked pursuant to any provision of this Chapter, no License shall be re-issued in the name of the same organization and the same directors.

• Before revoking the License pursuant to this Chapter, the concerned license holder shall be given an opportunity to be heard.¹⁵²

¹⁵² Foreign Employment Act, 2064 (2007) chapter 9, arts. 43 to 59.
4.2.8 The income Tax Act, 2006

4.2.8.1 Aim and purpose
Its main aims are explicitly to enhance revenue mobilisation through effective revenue Collection procedure for the economic development of the nation, and to amend and integrate the laws relating to Income Tax.
Before the coming into force of this act, there was no such act to collect the income tax. The government of Nepal thought to collect a huge amount from income tax so the government implemented this new act. Moreover, this act is trying to control the misuse of the tax activities by the tax offices.
For the purposes of this Act, a person's income as well as amounts to be included and deducted in calculating that income shall be quantified in Nepali Rupees if they are quantified in currency other than the Rupees. Where an amount to be included or deducted in calculating a person's income for an income-year is quantified in a currency other than Rupees, the amount shall be converted at the standard exchange rate applying between the currency and the Rupee at the time the amount is derived, incurred, made, received, or otherwise taken into account for tax purposes.

4.2.8.2 Short Overview of Content
This act is very effective to control the EC concerning income tax. It has 24 chapter, 143 articles and 2 schedules. The short content of this act is described below.

Chapter 1 Preliminary
1. Short Title, Extent, Commencement, and Paramount Force
2. Definitions

Chapter 2 Basis of Tax
3. Imposition of Tax
4. Calculation of Tax and Tax Rates
5. Taxable Income and Classification of Income Heads
6. Assessable Income

Chapter 3 Calculation of income
7. Income from a Business
8. Income from an Employment
9. Income from an Investment
Chapter 4 Exempt Amounts and other Concessions
10. Exempt Amounts
11. Business Exemptions and Concessions
12. Gifts to Exempt Organisations

Chapter 5 Deductions
13. General Deductions
14. Interest
15. Cost of Trading Stock
16. Repair and Improvement Costs
17. Pollution Control Costs
18. Research and Development Costs
19. Depreciation Allowances
20. Losses from a Business or Investment
21. Deductions Not Allowed

Chapter 6 Tax Accounting and Timing
22. Method of Tax Accounting
23. Cash Basis Accounting
24. Accrual Basis Accounting
25. Reverse of Amounts Including Bad Debts
26. Averaging Inclusions and Deductions under Long-term Contracts

Chapter 7 Quantification, Allocation, and Characterisation of Amounts
27. Quantification of Amounts
28. Quantification in Rupees
29. Indirect Payments
30. Jointly Owned Investment
31. Characterisation of Compensation Payments
32. Characterisation of Payments Under Annuities, Instalment Sales, and Finance Leases
33. Transfer Pricing and Other Arrangements Between Associates
34. Income Splitting
35. General Anti-Avoidance Rule

Chapter 8 Calculations of Net Gains from Assets and Liabilities
36. Net Gains from Assets and Liabilities
37. Gains and Losses from Assets and Liabilities
38. Outgoings and Net Outgoings for Assets and Liabilities
39. Incomings and Net Incomings for Assets and Liabilities
40. Disposal of an Asset or Liability
41. Disposal with Retention of Asset or Liability
42. Disposal by way of Instalment Sale or Finance Lease
43. Transfer of Asset to Spouse or Former Spouse
44. Transfer of Asset on Death
45. Transfers Between Associates and Other Non-Market Transfers
46. Involuntary Disposal of Asset or Liability with Replacement
47. Disposal of Assets and Liabilities by Merger
48. Disposal of Assets and Liabilities by Splitting
49. Apportionment of Outgoings and Incomings

Chapter 9  Special Provisions for Individuals
50. Couples
51. Medical Tax Credit

Chapter 10  Special Provisions for Entities
52. Principles of Taxation in Respect of Entities
53. Distributions by Entities
54. Taxation of Dividends
55. Liquidation of an Entity
56. Dealings Between an Entity and a Beneficiary
57. Change in Control
58. Dividend Stripping

Chapter 11  Special Provisions for Insurance and Banking
59. Banking Business
60. General Insurance Business
61. Investment Insurance Business
62. Proceeds from Insurance

Chapter 12  Special Provisions for Retirement Savings
63. Retirement Contributions
64. Taxation of Retirement Funds
65. Retirement Payments
66. Outgoings and Incomings for Interest in Retirement Fund

Chapter 13  International Taxation
67. Source of Income, Losses, Gains, and Payments
68. Foreign Permanent Establishments
69. Controlled Foreign Entities
70. Taxation of Non-residents Providing Shipping, Air Transport or Telecommunications Services in Nepal
71. Foreign Tax Credits

Chapter 14 Tax Administration and Official Documentation
72. The Department
73. International Agreements
74. Taxpayers' Rights
75. Public Circulars
76. Personal Rulings
77. Form of Documentation
78. Permanent Account Number
79. Service of Documents
80. Defective Documents

Chapter 15 Record Keeping and Information Collection
81. Maintenance of Documents
82. Department's Access to Information
83. Notice to Obtain Information
84. Official Secrecy

Chapter 16 Payment of Tax
85. Form, Place, and Time for Payment
86. Proof of Tax Payable

Chapter 17 Withholding
87. Withholding by Employers
88. Withholding from Investment Returns and Service Fees
89. Withholding from Contract Payments
90. Statements and Payments of Tax Withheld
91. Withholding Certificates
92. Final Withholding Payments
93. Inclusion and Credit for Non-Final Withholding Tax

Chapter 18 Instalments
94. Payment of Income Tax by Instalments
95. Statement of Estimated Tax Payable

Chapter 19 Returns of Income and Assessments
96. Returns of Income
97. Return of Income Not Required
98. Extension of Time to File Return of Income
99. Assessments
100. Jeopardy Assessments
101. Amended Assessments
102. Notice of Assessment

Chapter 20 Collections of Tax, Remission, and Refund
103. Security for Tax Payable by Withholding
104. Charge Over Assets
105. Auction of Charged Assets
106. Departure Prohibition Order
107. Liability of the Officers of Entities
108. Recovery of Tax from Receiver
109. Recovery of Tax from Person Owing Money to Tax Debtor
110. Recovery of Tax from Agent of Non-resident
111. Suit for Unpaid Tax
112. Remission
113. Refunds and Set-off

Chapter 21 Administrative Reviews and Appeal
114. Reviewable Decisions and Procedures
115. Objection to Reviewable Decision
116. Appeal to the Revenue Tribunal

Chapter 22 Interest and Penalties
117. Penalty for Failure to Maintain Documentation or File Statements or Return of Income
118. Interest for Understating Estimated Tax Payable by Instalment
119. Interest for Failure to Pay Tax
120. Penalty for Making False or Misleading Statements
121. Penalty for Aiding and Abetting
122. Assessment of Interest and Penalties

Chapter 23 Offences
123. Offence of Failure to Pay Tax
124. Offence of Making False or Misleading Statements
125. Offence of Impeding and Coercing Tax Administration
126. Offences by Authorised and Unauthorised Persons
127. Offence of Aiding or Abetting
128. Offence of Failure to Comply with Act
129. Department may Order for Payment of Penalty Amount
130. His Majesty's Government will be a plaintiff

Chapter 24 Miscellaneous
131. Filing and Investigation of Law Suit
132. Service of Expert may be Taken
133. Departmental Action
134. Identity Card of Officers
135. Department may Exercise the Power of a Court
136. No Responsibility for Actions Taken with a Good Motive
137. His Majesty's Government may issue an Order or Direction
138. Power to Enact Rules
139. Directives may be Developed and Issued
140. Changes in Schedules
141. Police to Co-operate
142. This Act shall prevail in Tax matters.
143. Repeal, Amendment and Saving Clause

SCHEDULE-1 (Related with Section 4) Tax Rates
1. Individuals
2. Entities

SCHEDULE-2 (Related with Section 19) Calculation of Depreciation
1. Classification and Pooling of Depreciable Assets
2. Depreciation Allowance
3. Rates of Depreciation
4. Disposal of Depreciable Assets

4.2.8.3 Main Instruments
The Income tax act 2006 was published first time in Nepal Gazette 2058/12/19 Bs. by Government of Nepal. Its First Amendment was Ashad 24, 2059 Bs., the Second
Amendment was on paush 21, 2059 Bs., the third Amendment on shrawan 01, 2060 Bs., its forth Amendment on magh 01, 2060 Bs., the fifth Amendment was on shrawan 01, 2061 Bs., the sixth Amendment on magh 01, 2061 Bs., the seventh Amendment on shrawan 01, 2062 Bs., its eighth Amendment was on ashwin 16, 2062 Bs., the ninth Amendment on magh 01, 2062 Bs., the tenth Amendment was on ashad 28, 2063 Bs., the eleventh Amendment on ashad 28, 2064 Bs. It was enacted by the parliament in the twenty ninth year of the reign of late King Birendra. Government of Nepal Ministry of Law, Justice and Parliamentary Affairs is authorized to amend and consolidate the law relating to this act.

4.2.8.4 Procedure and Competent Agencies

To control the crime against the tax the Auditor General’s office in Kathmandu has been established which will be assisted by 75 district offices. RIA is also responsible for the crime against taxation. If there are officials involved in committing the crime the CIAA may also be involved for the investigation and they can register the corruption case against the officials and the related person or offenders.

According to this act, income means a person's income from any employment, business, or investment and the total of that income as calculated in accordance with this Act. And the income-year means the period from the start of Shrawan (a Nepali month) of a year to the end of Ashad (a Nepali month) of the following year.

Art. 88 of this act stipulate:

1. Where a resident person pays interest, a natural resource payment, rent, royalty, service fee, or retirement payment and the payment has a source in Nepal, the person shall withhold tax on the gross amount of the payment at the rate of 15 percent. Provided that, the tax shall be withheld at the rate of 6% on the gain as calculated under Subsection (1) (b) of Section 65 if the retirement payment is made by His Majesty's Government or an approved retirement fund.

2. Where a resident person makes the following payments, which have their source in Nepal, the person shall withhold tax at the rates specified below:
   1. if the person pays a dividend, at the rate of 5 percent on gross amount of payment,
   2. if the person pays a gain from investment insurance, at the rate of 5 percent on amount of payment of gain, or
3. if the person pays a gain from unapproved retirement fund, at the rate of 10 percent on amount of payment of gain.

3. Notwithstanding Subsection (1), where a resident bank, financial institution or any other institution issuing debentures or a company listed under prevailing laws pays the following interest, or any amounts having the nature of an interest to an individual with respect to a deposit, security, debenture or government bond, the bank or the institution or the company shall withhold tax on the gross amount of the payment at the rate of 6 percent.

1. payment which has a source in Nepal; and

2. payment which is not received by the individual in the course of conducting a business,

4. Notwithstanding subsections (1), (2) and (3), this section does not apply to the following payments:

1. payments made by an individual other than in conducting a business, or payment of rent for the lease of a building;

2. payment of interest to a resident bank or other resident financial institution; or

3. payment that is exempt from tax or subject to withholding under section 87.\(^\text{153}\)

According to art. 115, a person who is aggrieved by a reviewable decision may file an objection to the decision with the Department within 30 days after the decision is made. Art. 116 of this act prescribes that the concerning person shall go to the Revenue Tribunal for Appeal. According to this provision:

- A person (the appellant) who is aggrieved by a decision on an objection (if he/she does not agree with the decision and if he/she has some evidence to prove that decision was faulty) may appeal to the Revenue Tribunal in accordance with the Revenue Tribunal Act, 1974.

- A person who appeals shall, within 15 days of doing so, file a copy of the notice of appeal with the Department.

- The enforcement of a decision on an objection referred to in art. 114 (1) shall not be treated as stayed or otherwise affected by an appeal.

\(^{153}\) The income tax act 2006.
• Notwithstanding art. 114 (1), where a reviewable decision under that section is made by the Director General, an appeal may be filed with the Revenue Tribunal against the decision.

It shall be the duty of Police and other governmental agencies to co-operate with the Department at the time the co-operation is sought for by the Department for the implementation of this Act and the Rules made under this Act.

Art. 130 of this act says that the Government shall be a plaintiff in all lawsuits under this chapter.

Investigation and Filing of Lawsuit is described in art. 131. An investigation of the lawsuit in respect of the offences that would be imposed on the penalty under this chapter (To establish or apply as compulsory or make prevail by or To create a condition) shall be conducted by the prescribed officer and lawsuit shall be required to be filed with the concerned District Court within 35 days after completion of the investigation. But the officer conducting investigation shall acquire an opinion of Government advocate.  

Art. 135 says: For the purpose of this Act, the Department may exercise all such powers as are vested in a court under current Nepal law in respect to issuing summons to the concerned person, recording statements, examining evidences and directing the submission of the documents from the person.

True informer shall be granted a reward amounting up to 20 percent of the value of excisable commodities seized from the offender.

4.2.8.5 Criminal Sanctions and Punishment

The Income tax will always play an essential part to increase the national economy. In my opinion, income taxation is also the area mostly affected of Economic crime. So the government of Nepal has already implemented the income tax act and is trying to reduce the probability of the economic crime.

Art. 117 of this act deals with Penalty for Failure to Maintain Documentation or File Statements or Return of Income.

According to this section,

1) A person who fails to do the following shall be liable to pay a penalty for each month and part of a month calculated as the higher amount of one percent per annum of the

person's assessable income with a gross of any deductions and all amounts required to be included in calculating the person's income for the year, or Rs. 1.000 per annum:-

1. File a statement for an income-year as required by section 95(1); or
2. File a return for an income-year as required by section 96(1).

2) A person who fails to maintain proper documentation for an income year as required by section 81 shall be liable to pay a penalty for the year during which the documentation is not maintained calculated as the higher amount of 1 percent per annum of the person's assessable income with a gross of any deductions and all amounts required to be included in calculating the person's income for the year, or Rs. 1.000 per annum:-

3) A withholding agent who fails to file a statement as required by section 90(1) is liable to pay a penalty for each month and part of a month during which the failure continues calculated as 1.5 percent per annum applied to the amount of tax required to be withheld from payments made by the agent during the month to which the failure relates.

Art. 117 is related to maintaining the documentation, that means the related person should maintain the proper documents so if he doesn’t maintain properly he or she should be punished according to this provision, which I have already described before. According to art. 120, a person who makes a statement to the Department that is false or misleading in a particular way, or omits from a statement made to the Department any matter or thing without which the statement is misleading in a material particular (exact information concerning material), shall be liable for a penalty as follows:

- where the statement happened to be false or misleading without knowingly or recklessly, 50 percent of the underpayment of tax; or
- Where the statement was made false or misleading knowingly or recklessly, 100 percent of the underpayment of tax.

Art. 121 states: A person who knowingly or recklessly aids or abets another person to commit an offence of a type referred to in Chapter 23 (Offences), or counsels or induces another person to commit such an offence shall be liable for a penalty equal to 100 percent of the underpayment of that tax.\textsuperscript{155}

This act describes some other offences and punishment in arts. 123 to 129:

- Art. 123: Any person who without reasonable excuse fails to pay any tax on or before the date on which the tax is payable shall be liable on conviction to a fine

\textsuperscript{155} Khadka, Rup (2001), pp. 45 - 55.
of not less than Rs 5,000 and not more than Rs 30,000, or an imprisonment for a term of not less than one month and not more than three months, or both.

- Art. 124: A person who makes a statement to the Department that is false or misleading in a material particular (piece of articles), or omits from a statement made to the Department any matter or thing without which the statement is misleading in a material particular, shall be liable to a fine of not less than Rs 40,000 and not more than Rs 160,000, or an imprisonment for a term of not less than six months and not more than two years, or both.

- Art. 125: A person who is committing the Offence of Impeding and concerning Tax Administration (Customs, district auditor general’s office etc.) shall be liable to a fine of not less than Rs 5,000 and not more than Rs 20,000 or an imprisonment for a term of not less than one month and not more than three months, or both. But any person who attempts to commit the offences shall be liable to a half of the penalty mentioned in that subsection.

- Art. 126: Any authorised person violating section 84 (Official Secrecy) shall be liable to a fine of not more than Rs 80,000, or an imprisonment for a term of not more than one year, or both. And any person who not being authorised under this Act, collects or attempts to collect an amount of tax payable under this Act shall be liable to a fine of not less than Rs 80,000 and not more than Rs 240,000 or an imprisonment for a term of not less than one year and not more than three years, or both.

- Art. 127: Any person, who knowingly aids or abets another person to commit an offence under this Act or counsels or induces another person to commit such an offence, shall be liable to a half of the penalty that is imposed on the main offender. But, government officials who commit such an offence shall be liable to the full penalty that is imposed on the main offender.

- Art. 128: Except as otherwise provided in this Act, any person who fails to comply with any provision of this Act and the Rules under this Act shall be liable to a fine of not less than Rs 1,000 and not more than Rs 30,000.

According to Art. 133, if an officer makes an assessment with a recklessness that causes a reduction or an increment in the liability of taxpayer and even does not make an amended assessment within the time limit referred to in section 101 (3), the Department may take a departmental action against such officer to execute the
punishment that is to be imposed on the officer in accordance with the laws pertaining to
the terms and conditions of service.
4.2.9 The Excise Duties Act, 2002

4.2.9.1 Aim and purpose

Excise duty is one of the most important areas for the national economy. So this act will help to maintain the economic activities and will stop the economic crime too. Therefore, in the preamble of the act it is written: “Whereas it is expedient to maintain the good conduct, comfort and economic welfare of the public by providing for the imposition and collection of excise duties on certain commodities produced or manufactured in Nepal”.\footnote{Excise Duties Act, 1958 (2002).}

After the getting into force this act, no person shall do as follows without a license, or, even if he/she has obtained a license, in contravention of the conditions and restrictions prescribed to produce or manufacture excisable commodities, to sell excisable commodities prescribed by the Government by notification in the Nepal Rajapatra in quantities higher than the quantity prescribed therein and to stock or process excisable commodities in quantities higher than the prescribed quantities.

4.2.9.2 Short Overview of Content

The Excise Duties Act has 26 articles and 1 schedule. Below, the content of this act is described in short.

1. Short Title, Extent and Commencement
2. Definition
3. Power to Impose and Collect Excise Duty
4. Collect Excise Duty
5. Appointment or designated of Excise Officer
6. The jurisdiction of an Excise Officer
7. Valuation of Excisable Commodities
8. Production, Manufacture, Sale, Purchase or Storage of Excisable Commodities Without License Prohibited
9. Procedure of Obtaining License
10. Cancellation of the License
11. The Excise Officer may search such house or compound, vehicle or place at any time if he has reasonable grounds to suspect that any excisable commodity is being manufactured, produced or stocked by anyone

12. Powers of arrest or Seizure

13. Duty of Every Person to inform to the related authority concerning the matter

14. Reward to Person Supplying True Information

15. Penalties to Person failing to Furnish Information or Extend Cooperation

16. Punishment / Penalties

17. Seized property can be detained and auctioned

18. The authority taking preliminary action and disposing of cases shall exercise powers similar to those of a District Court according to current law.

19. ...

20. The power of the excise officer can not be delegated

21. Circumstances in Which Confiscation Proceedings may be Stayed

22. Realization of Arrears as Government Dues

23. Review of decision of the excise officer

24. The tax to be decided according to this act

25. His Majesty’s Government to frame rules in order to implement the objectives of this act

26. Abolishment and continuity of the old act

4.2.9.3 Main Instruments


Fourth Amendment was published in Nepal Rajapatra Vol. 41 No. 73 (E) Chaitra 30, 2048 (April 20, 1992). It was enacted by the parliament on the first year of the reign of former King Gyanendra.
4.2.9.4 Procedure and Competent Agencies

To control the EC is the primary duty of Auditor General’s office and 75 district offices in Nepal. Customs offices and RIA are also responsible for the crime against taxation. If there are officials involved in committing the crime the CIAA may also involved in the investigation and they can register the corruption case against the officials and the related person or offenders.

According to this act, the excise officer has been given full powers to arrest or seizure.

- The Excise Officer may, if he has reasonable grounds to suspect that any excisable commodity is being manufactured, produced or stocked by anyone in a house or compound, vehicle or place in contravention of the provisions of this act, issue orders for searching such house or compound, vehicle or place and for arresting the concerned persons. The Excise Officer may issue such orders and depute to his employee but the employee must be at least a non-gazetted second class rank of the Excise Office (There are 2 types of rank in Nepal. Gazetted means senior officer and Non-Gazetted means junior level officer), and have such house or compound, vehicle or place searched at any time.

- In case it is found in the course of a search that excisable commodities are being manufactured, produced or stocked in an illegal manner, the employee conducting the search may arrest the guilty persons and also seize the following goods found at such place:
  1. Excisable commodities which have been manufactured, produced or stocked;
  2. Tools, machinery, utensils, etc. used in manufacturing, producing or stocking excisable commodities; and
  3. Vehicles other than public vehicles used for transporting or stocking such commodities.

- Notwithstanding in case it is suspected that any of the offences mentioned in this act are being committed in any house or compound, vehicle or place, and that the guilty person may escape, or that evidence of the offence may disappear if no immediate action is taken, the Excise Officer may prepare a memorandum accordingly, and take the following actions himself or through his subordinate employees at any time:
  1. Enter into such house or compound, vehicle or place.
2. Enter into such places by breaking doors or windows after having
provided a reasonable opportunity for women staying or living at such
places, in the event of any obstacle or opposition to such entry.
3. Seize excisable commodities connected with the offence as well as other
materials and documents helpful in proving the offence, and
4. Search or arrest persons suspected of having committed any offence.
   • While entering into or searching any house or compound, vehicle or place under
this Section, it shall be necessary, if time is available, to keep as witness a
member of the concerned Municipality or village Development Committee or one
respectable person of the area, or an employee of another government office.
   • In case any Excise Officer arrests any person, or searches any person, house
and compound, vehicle or place, or seizes excisable commodities or other
materials under this act, he must send a report thereof to the officer one level
above him within 24 hours after such arrest, search or seizure. In case such
actions have been taken by the subordinate employees of an Excise Officer, they
must submit reports of such action to the Excise Officer and the Excise
Department within 24 hours.
   • For the purpose of conducting investigations into offences under this act, Excise
Officers shall have powers similar to those of a police officer under current law.

It shall be the duty of every person, whether a government employee or not, to inform
the Excise Office, and, in the absence of such office in the neighbouring area, any other
government office, of any action taken or intended to be taken in contravention of this
act by any person after he has become aware thereof.
True informers shall be granted a reward amounting up to 40 percent of the value of
excisable commodities seized from the offender after the final disposal of the case, by
the authority taking preliminary action and disposing of the case.
Appeal against the decisions taken by the Excise Officer under this act may be filed at
the Revenue Tribunal. In the case of decisions taken by Government or the authority
designated by Government, appeals may be filed at the Appellate Count.
Action to be taken in the event of conflict with other Nepal Law, notwithstanding anything
contained in current Nepal law, action in matters provided for in this act and the rules
framed here under shall be taken accordingly, and, in other matters, action shall be
taken in accordance with current Nepal law.
4.2.9.5 Criminal Sanctions and Punishment

Arts. 15, 16 and 17 of this act are describing punishment. According to article 15, if any person who is under obligation to provide information about any action taken or intended to be taken in contravention of this act after having become aware thereof, or to extend cooperation as demanded by the Excise Office, does not wilfully provide such information or extend such cooperation, as the case may be, he/she shall be punished with imprisonment for a term not exceeding three months, or with a fine not exceeding Rs 10,000 or with both.

According to this act the maximum punishment of the offence should be to seize the excisable commodities from the offender, to fine the same amount which has been seized from offender and imprisonment for a term not exceeding one year.

In case any person commits offences mentioned above, the utensils containing the excisable commodities, the tools and machinery used for their production, and the vehicles used for their transport, shall be seized in addition to the punishment to be inflicted for such offence.

Provided that in case the vehicle does not belong to the offender, but is a hired one, and if it has been used for such purposes without the permission or the owner, the vehicle shall not be seized, but the owner shall be fined the amount of Rs 25,000 and the vehicle driver shall be punished with imprisonment for a term not exceeding three months, or with a fine not exceeding Rs 15,000 or with both.

Realization of Arrears as Government Dues: In case any person does not pay any amount due to His Majesty’s Government under this act or the rules framed hereunder, the Excise Officer may realize such amount from him as arrears due to the government.
4.2.10 The Value Added Tax Act, 2052 (1995)

4.2.10.1 Aim and purpose

In the context of Nepal Value added tax (VAT) plays one of the most important and major roles in the Nepalese economic field. But just because of that, it is also a big area for the economic crime.

Its main aim is to impose and collect Value Added Tax. Concerning its purpose, it is described clearly in the preamble of this act that “Whereas, for increasing revenue mobilisation by making effective the process of collecting revenues required for the economic development of the country, it is expedient to impose a value added tax on all transactions including the sale, distribution, delivery, importation, exportation of goods or services and to collect revenues effectively by regulating the process of collection”.

4.2.10.2 Short Overview of Content

VAT was introduced Nov. 16, 1997. This tax was levied in place of the former Sales Tax, Hotel Tax, Contract Tax and Entertainment Tax. However, it could not be implemented fully until the Fiscal Year 1998/99 due to political instability and strong opposition from the business community. Since the collection of both customs duties and income tax depends, to a great extent, upon the effectiveness of VAT, the new tax is expected to help enhance revenue collection.\(^{157}\)

The new act has 44 articles and 2 schedules. Below the content of this act is described in short.

1. Short Title and Commencement
2. Definitions
3. Tax Officer may be Appointed or Designated
4. Jurisdiction of Tax Officer
5. Imposition of Value Added Tax
6. Place and Time of Supply
7. Rate of Tax
8. Assessment of Tax and Collection
9. Exemption for Small Vendor
10. Registration

\(^{157}\) Khadka, Rup (2001).
11. Cancellation of Registration
12. Taxable Value
13. Market Value
14. Invoices to be Issued Except Otherwise Prescribed
15. Unregistered Person not to Collect Tax
16. Accounts of Transactions to be Kept
17. Tax Offset
18. Returns to be Submitted
19. Tax Payment
20. Tax Officers may Assess Tax
21. Tax Collection
22. Jeopardy Assessment
23. Powers of Inspection and Audit
24. Treatment of Offsets Exceeding Tax Liability
25. Other Refunds
26. Interest
27. To be Treated as Tax
28. Provision Relating to Imports
29. Penalties
30. Suspension of Transactions
31. Power Equal to a Court
32. Appeal
33. To be Deposited
34. Delegation of power
35. Identity Card of Tax Officers
36. The Serving of Notice
37. Confidentiality
38. Tax Officers to be Punished
39. No Responsibility for the Act Carried out with Good Faith
40. Reward
41. Power to Make Rules
42. Changes in the Schedules
43. Other Prevailing Laws
44. Repeal and Safeguard Clause
4.2.10.3 Main Instruments

Value added tax act 1995 was published on Nepal gazette 2054/5/2 Bs. by the Government of Nepal. Government of Nepal Ministry of Law, Justice and Parliamentary Affairs is authorized to amend and consolidate the law relating to VAT Act. Date of Certification of this act was on 2054/8/1 Bs. Its first amendment was 2058/10/4 Bs., further amendments were made with finance ordinance 2059/9/22 Bs., finance ordinance 2060/4/01 Bs., finance ordinance 2060/10/01 Bs., finance ordinance 2061/4/01 Bs., finance ordinance 2061/10/01 Bs., finance ordinance 2062/4/01 Bs., finance ordinance 2062/6/16 Bs., finance ordinance 2062/10/01 Bs., then Amendments with finance Act 2063/3/28 and with finance Act 2007. The parliament made this act in the twenty fourth year of the rule of late King Birendra.

4.2.10.4 Procedure and Competent Agencies

VAT is also one of the most important themes of the economy of Nepal. There are a lot of crimes concerning this topic in Nepal. To control the EC there is Auditor General’s office in Nepal. Customs offices and RIA are also responsible for the crime against taxation. CIAA may also be involved in the investigation if there occurs corruption. VAT is a broad-based tax as it also covers the value added to each commodity by a firm during all stages of production and distribution. It is a modern tax system to improve the collection of taxes, to increase efficiency and to reduce tax evasion. It is also regarded as the backbone of income tax system in Nepal. The current threshold for VAT registration is Nepalese Rs. 2 million. Those vendors whose annual turnover is below the threshold can, however, register voluntarily.\(^{158}\)

According to this act, the rate of a tax will be 13% and there must be a single positive rate as specified in the Financial Act made for that year. And notwithstanding anything mentioned before, the tax on transaction of goods and services set forth in Schedule 2 shall be levied at the rate of 0 percent (Zero rates).\(^{159}\)

A person who is not registered shall not issue an invoice or any other document showing the collection of tax and shall not collect tax, and if a person who is not registered will


\(^{159}\) VAT Act 1995, art. 7.
nonetheless collect this tax, the tax so collected shall be assessed and collected from him.\textsuperscript{160}

For the purpose of this Act, a tax officer may issue a summons, record the statements of persons, receive evidence and cause to submit documents in the same manner as a court is empowered to do.\textsuperscript{161}

An appeal may be filed at the Revenue Tribunal within 35 days against a tax assessment or a penalty order by a tax office or an order made by the Director General under Section 30.\textsuperscript{162}

If the Director General decides that a tax assessment was made maliciously or negligently so that the tax amount was reduced or increased, he shall initiate a departmental action against the assessing officer in accordance with the prevailing civil Service rules provided that a reasonable time shall be allowed to the tax officer to submit his clarification.\textsuperscript{163}

According to this act, the informer would be awarded, so this system gives an incentive that the person will inform the concerning body and thus will help to reduce the economic crime. So a person who provides information with evidence showing that a taxpayer has evaded or attempted to evade all or some portions of tax shall be awarded as reward the amount equal to 20\% of the amount of tax collected on the basis of that information, and if there is more than one informant, the allotment of reward between or among them shall be as determined by the Director General.\textsuperscript{164}

\textsuperscript{160} VAT Act 1995, art. 15.
\textsuperscript{161} VAT Act 1995, art. 31.
\textsuperscript{162} VAT Act 1995, art. 32.
\textsuperscript{163} VAT Act 1995, art. 38.
\textsuperscript{164} VAT Act 1995, art. 40.
4.2.10.5  Criminal Sanctions and Punishment

Art. 29 of this act describes the punishment or penalties. According to this section, a tax officer may impose the following fines if a person commits the following offences:¹⁶⁵

- Every person engaged in any transactions shall apply within 90 days from the commencement of this Act to a tax officer in the prescribed form for registration. If some one did these activities without registration according to this law he has to pay his payable tax and Rs. 10,000 as a fine.

- The registered person shall display the registration certificate in a conspicuous place at his principal place of transactions. If there is more than one place of transaction, he shall display in a conspicuous place at each place, other than the principal one, a copy of the registration certificate attested by a tax officer. A registered person shall have to use his registration number for all transactions related to value added tax, excise and customs and to other transactions as prescribed as well. And every registered person shall inform the tax officer within 15 days of any changes in the information pertaining to the application for registration. If some one does not follow this prescription he has to pay every time 1,000 Rs as a fine.

- Every registered person is required to issue an invoice to the recipient, in supplying any goods and services and it shall be the duty of the recipient to obtain an invoice or to keep that with him always when he has to send these goods outside the area. If some one does not follow this regulation he will be punishable for 5,000 Rs as a fine and has to pay the payable tax. An unregistered Person is not allowed to collect tax, according to this act he or she has to pay the amount which has been collected and a fine in the percent according to the rule of VAT.

- A taxpayer shall keep an up-to-date account of his transactions of the tax period, if he has not done so he has to pay 10,000 Rs. as a fine, and such accounts wherever placed shall be made available for inspection to a tax officer upon his request. If some one does not abide by his instructions he has to pay 5,000 Rs. every time.

- Every taxpayer shall self assess the amount of tax he is required to pay every month and shall submit, as prescribed, a tax return to a tax officer within twenty

¹⁶⁵ VAT Act 1995, art. 29.
five days after the close of that month. Such return shall be submitted whether or not a taxable transaction was carried out in that month. On infringement of these provisions he has to pay the bigger amount from 0.05% per day from the payable tax or 1.000 Rs for the tax period. That means if the fine amount is bigger than 1.000 Rs he has to pay 0.05% from the payable tax.

- A tax officer may start an examination, if there is a reasonable ground to believe that a taxpayer required to be registered under this Act has been involved in a taxable transaction without being registered. For this reason if the tax officer asks any type of help for the period of Inspection and Audit the concerning body or person must assist him. If some one creates an obstruction to the tax officer for this period he has to pay 5.000 Rupees for each time he does so.
- If a person commits any of the following offences a tax officer may impose a fine not exceeding twice the amount of tax (it means 100% of the tax) or an imprisonment up to six months, or penalise the person with both the fine and the imprisonment:
  1. On preparing false accounts, invoices or other documents,
  2. On committing a fraud or an evasion of tax,
  3. If an unregistered person acts as if he were a registered person,
  4. Carrying out a transaction by infringing Section 30 (if a registered person commits twice or more of any of the offences mentioned in Section 29, the Director General may order a tax officer to close such person's place of transactions up to seven days so that transactions are not carried out).\textsuperscript{166}
  5. If some one makes false invoices or sells exact prices but shows a minor rate than the exact rate.

If we look at the situation of tax compliance in the context of Europe, VAT Compliance\textsuperscript{167} varies hugely from one country to another. In Italy, 40% of revenue is uncollected, in some sectors as much as two-thirds. By way of contrast, in Holland, whilst there was revenue loss of only 6 percent, none the less 34 percent of firms had added VAT. In France, whilst the revenue loss was estimated to be relatively low (only 3%), 66% of

\textsuperscript{166} RAJASWO, 7 June 2003. magazine on revenue and tax matters 34.
VAT payers had understated the value of taxable sales (though only a quarter of these under-declarations were judged to be fraudulent).
4.2.11 The Human Trafficking and Transportation (Control) Act, 2064 (2007)

4.2.11.1 Aim and purpose

Human Trafficking is the most dangerous crime in the economic and social field of Nepal. It is so organized (this crime is so wide spread) because of the lack of education mostly among rural people. So part 3 of the Constitution of Nepal relates to the fundamental rights of all citizens of Nepal. These rights include right to equality, right to freedom, right to property, and right to religion. The right against exploitation (art. 20) specifically prohibits any trafficking in persons: "Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law."

The Human Trafficking and Transportation (Control) Act 2064, prohibits the trafficking of girls and women. Trafficking is defined as "an act of threat, incitement, and sale of women for the purpose of prostitution." 168

It is clearly described in the preamble that "Whereas it is expedient to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such activity by enacting law, the 'Legislature-Parliament' has enacted this Act", so we may say that it is its main aim and purpose.

4.2.11.2 Short Overview of Content

The Human Trafficking and Transportation (Control) Act, 2064 is only one effective law to control human trafficking. So the government of Nepal has implemented this act. It has 4 parts and 30 sections. Below the content of this act is described in short.

Part 1 Preliminary

1. Short Title, Jurisdiction and Commencement
2. Definition: Unless the subject or context otherwise requires, in this Act

Part 2 Provisions of Offence and Investigation

3. Human beings not to be trafficked and transported
4. Acts considered as Human Trafficking and Transportation
5. Reporting
6. Certifying the statement
7. Arrest and investigation
8. Prosecution in custody
9. Burden of proof
10. Right to keep separate legal professional
11. Provision of Translator and Interpreter

Part 3 Provisions of Rescue, Rehabilitation and Reconciliation
12. Act related to Rescue: Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land
13. Rehabilitation Canter
14. Rehabilitation Fund

Part 4 Provision of Punishment and Compensation
15. Punishment
16. Exemption from Punishment
17. Compensation
18. Seizure of Property
19. Award
20. Confidentiality of the informant
21. Exemption from penalty
22. Claiming the offence against morality
23. Formation of a Committee
24. Punishment for obstruction
25. Prohibition against disseminating confidential information
26. Security
27. In camera court proceedings
28. State case
29. Power to make rules
30. Dismissal and Protection

4.2.11.3 Main Instruments

The Human Trafficking and Transportation (Control) Act 2064, was published first time in 2043/7/24/3 Bs. in Nepal Gazette. This is the act no. 15 of 2053 Bs. The ‘Legislature-Parliament’ has enacted this Act.

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4.2.11.4 Procedure and Competent Agencies

CID department will be responsible to handle this case. Art. 5 describes, that if anyone knows that the offence is being committed or may be committed, he/she can report to the nearest police office. If the person who reports to the office puts a written request to remain unnamed, the police office which registers the report should maintain his/her confidentiality.

According to art. 6, if the person reporting under art. 5 is a victim, the police office should take the statement immediately and the victim shall be taken to the nearest district court to certify the statement as soon as possible. If a police office brings a victim to certify a statement the district judge, notwithstanding anything contained in the existing law and even if the offence related with that statement doesn’t fall within the jurisdiction of that district court, shall certify the statement after reading it aloud and noting any additional details of the case. If the statement of the victim is certified, the court can take the certified statement as evidence even if the victim does not appear in the court.

Art. 7 describes, if any act considered to be an offence under this Act is being committed or may be committed or attempted in a house, land, place or a vehicle, and if there is a chance the offender will escape or evidence relating to the offence will disappear or be destroyed if immediate action is not taken; notwithstanding anything contained in the existing law, a police officer of the rank sub-inspector or higher may prepare a report and carry out any of the activities listed below at any time:

When carrying out such activity police personnel shall, if possible, identify representatives of local bodies or otherwise those present at the time of activity as witnesses and provide a copy of the details of the activity to the owner of the house, land, place or vehicle.

The court should keep the accused in custody while prosecuting cases on other offences that fall under art. 4. Notwithstanding anything contained in the existing law, a person accused of an offence under this Act shall provide evidence proving that he/she did not commit the offence.

If a victim wishes to keep an additional legal professional to represent his/her case during court hearings, he/she has the right to be represented by a separate legal professional for an offence under this Act.

If the working language used by the concerned court and office in dealing with an offence under this Act is not understandable by the victim, he/she can manage for the translator or interpreter with the permission of the court.
The name and address of the informant and the details provided by the informant shall be kept confidential.

If an accused charged of committing an offence under this Act accepts an offence and co-operates with the police, public prosecutor or court to collect evidence and arrest other accused or abettor, and if he/she has committed the offence for the first time, the court can reduce the punishment for that offence to him/her by maximum 25 percentages. But if his/her assistance is not proved by evidence or if he/she provides statement in court in detrimental to his/her earlier support provided to police and public prosecutor, notwithstanding anything contained in this Act and existing law, a case can be re-filed against him/her.

Concerning the claim of the offence against morality, while framing a charge sheet in court for an offence under this Act, the concerned public prosecutor may claim the accused to have committed an offence against morality.

If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under art. 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:

- Provide security during travelling in course of attending case proceeding in court,
- Make arrangement to keep under police protection for certain period,
- Keep at rehabilitation center.

At the time for case proceeding and hearing of an offence under this Act shall be conducted in In-Camera court. But only parties to the proceeding, the attorneys or other non-parties permitted by the court can enter to the court during proceeding and hearing. Nepal government shall be the plaintiff in all cases filed under this Act, and such cases shall be deemed included in Schedule 1 of the State Case Act, 2049. Nepal government shall make necessary rules to implement the objective of this Act.

Nepal government can form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control an offence under this Act.

To control the child trafficking there is the Children’s Act, 2084, of 1992 containing certain provisions addressing child trafficking even though Nepal’s national legislation does not contain specific provisions protecting children from trafficking.\textsuperscript{169} The act, which

defines a child as any “human being below the age of 16 years”\textsuperscript{170}, prohibits the use or involvement of children in any “immoral profession.”\textsuperscript{171} It also prohibits child pornography and discrimination between sons and daughters.\textsuperscript{172} Moreover, it prohibits parents from selling their children as offerings to gods during religious rites or rituals.\textsuperscript{173} In this situation the government of Nepal established a separate special court, which is supposed to take cases on trafficking in Kathmandu. Beyond efforts relating to the judiciary, the project also calls for establishing special anti-trafficking investigative units within the Nepal police.\textsuperscript{174} The Nepal police force also has incorporated the issues of trafficking in children and child sex abuse in its regular training program.\textsuperscript{175} The government and the working agencies concerning the human trafficking are more conscious and the government has made this law more effectively after 1998, when one Nepalese woman committed suicide in Kuwait in 1998 after her employers attempted to rape her. The cabinet decided to ban female migration to the Gulf States. However, the Department of Labour and Employment revoked the ban in January 2002, fearing that it would compel women to migrate illegally, thus increasing their vulnerability to exploitation. The ban is still effective in the informal sector for women who, for example, want to work as domestic servants.\textsuperscript{176} If we look at the data of the number of women victims of trafficking seeking justice, the number has decreased in the past few years because of social stigma, threats, the lengthy and costly judicial process, the possibility of re-victimization, and lack of access to the legal system which might prevent more victims from filing cases. Only 54 cases were filed in 2002–03 whereas 130 cases were filed in 1997–98, and 40 were filed in 2001–02.\textsuperscript{177}

\textsuperscript{170} Art. 2(a).
\textsuperscript{171} Art. 16.
\textsuperscript{172} Art. 5.
\textsuperscript{173} Art. 14.
More than 100 organizations are working in Nepal to improve girls’ lives. Most of the organizations are located in the Kathmandu Valley only. The organizations focus on the anti trafficking activities, including education, reproductive health, legal training, and domestic violence counselling. The National Network against human Trafficking is a coalition of about 65 NGOs that has been working through various awareness programs to prevent trafficking of women and girls. The Alliance against Trafficking in Women and Children in Nepal is a loose network of 15 organizations. Action against Trafficking and Sexual Exploitation of Children (ATSEC) is a network of 29 grassroots organizations in the eastern part of Nepal.

Maiti Nepal is one of the most essential groups and agencies controlling these activities. It has a network of 29 grassroots organizations in the eastern part of Nepal, working to prevent trafficking for forced prostitution. The members of this organization are doing criminal investigations, wage legal battles against traffickers and advocate for victims on the local, national, and international level. They are providing shelter, counselling, and health care, informal education in literacy and law, and income-generating skills for the rescued girls. The group has set up an anti trafficking network along the Nepal–India border with assistance from both governments. Maiti Nepal announced in 2004, that it saved 1,200 women from becoming trafficking victims in the 10 years since it was established.

ABC/Nepal is also working against the trafficking of women and children from Nepal by organizing and it is implementing various community programs. The group concentrates its activities on prevention, rehabilitation, research and publication, lobbying and networking.

Child Workers in Nepal Concerned Centre (CWIN) is an organization for the children. It produces annual and biannual reports on the state of the children’s rights. The centre has recorded a total of 2,866 cases of child victims of labour exploitation, children murdered or otherwise killed, missing children, abused (including sexually abused)

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181 www.maitinepal.org (dated April 15, 2008).
182 Xinhua General News Service, January 5, 2004. 80 Nepalese Women Rescued from Being Trafficked to India.
children, trafficked children, children forced into prostitution, and children affected by armed conflict or by conflict with the law.\textsuperscript{185} International Labour organization (ILO) has launched a programme called the Elimination of Child Labour in 2001 for 2 years. Its effort was to eliminate child trafficking and the goal was to target 2,000 Nepalese families and provide aid to 400 children rescued from exploitative conditions.\textsuperscript{186} The Asian Development Bank undertook a Regional Technical Assistance program in July 2001 in Bangladesh, India, and Nepal, in order to increase its understanding of how its existing country programs and regional policy could be used to support and strengthen anti-trafficking initiatives in this region.\textsuperscript{187} Besides these agencies in Nepal there are a lot of other organizations working to combat the commercial sexual exploitation of children or trafficking including Planet Enfant, Watch, Shanti Rehabilitation, Sstri Shakti, Nai Bikhas Sangh, the United Children’s Fund (UNICEF), Save the Children UK, Save the Children US, Save the Children Norway, Saathi, and the Peace Rehabilitation Centre.\textsuperscript{188}

4.2.11.5 Criminal Sanctions and Punishment

According to this Act, it is considered as Human Trafficking and Transportation:

If anyone commits any of the following acts he shall be deemed to have committed human trafficking:

- To sell or buy a person for any purpose, to force someone into prostitution, with or without financial benefit, to remove human organs except otherwise determined by law and to engage in prostitution.

If anyone commits any of the following acts, he shall be deemed to have committed human transportation:

- To take a person out of the country for the purpose of buying and selling and to take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion.

\textsuperscript{184} ABC/Nepal  \url{http://www.abcnepal.org.np} (dated June 15, 2008).
\textsuperscript{188} ECPAT International Online Database, April 5, 2004, \url{http://www.ecpat.net}. 

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abduction, hostility, allurement, influence, threat, abuse of power and keep him/her into one's possession or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation. 

Punishment and compensation has been described in part 4 art. 15 of this act. According to this provision:

Any person who commits an offence as stated under Section 3 (Human beings not to be trafficked and transported) shall be punished as follows:

- 20 years in prison and a fine of Rs 200,000 for selling or buying a human being,
- According to the degree of offence, 10 years to 15 years in prison and a fine of Rs 50,000 to Rs 100,000 for forcing into prostitution, with or without financial benefit,
- 10 years in prison and a fine of Rs 200,000 to Rs 500,000 for removing human organs except otherwise determined by law,
- One month to three months in prison and a fine of Rs 2,000 to Rs 5,000 for a person engaged in prostitution.
- For a person who is involved in transportation of human being for the purpose of buying, selling and engaging in prostitution
  1. 10 years to 15 years in prison and a fine of Rs 50,000 to Rs 100,000 for taking a person out of the country.
  2. 15 years to 20 years in prison and a fine of Rs 100,000 to Rs 200,000 for taking a child out of the country.
  3. 10 years of prison and a fine of Rs 50,000 to Rs 100,000 for taking a person from one place to another within the country.
  4. 10 years to 12 years in prison and a fine of Rs 100,000 for taking a child from the place to another place within the country.

Art. 4 of this act describes “acts considered as Human Trafficking and Transportation”. According to its sub-section 2(b), if anyone commits that “to take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostility, allurement, influence, threat, abuse of power and keep him/her into ones possession or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of

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189 Human Trafficking and Transportation act 2064 (2007), art. 4.
prostitution and exploitation, that act shall be deemed to have committed human transportation”.

• For this connection if someone is taking a person from one place to another within the country he shall be in prison for one year to two years, and if someone is taking a person out of the country for the purpose of exploitation he shall be in prison for two years to five years.

• The person engaged in provocation, plotting and attempting an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence.\textsuperscript{190}

A court shall provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender. If the victim dies before receiving the compensation, and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation. And if there are no dependant parents and minor children to receive compensation, the amount should be accrued in the rehabilitation fund.\textsuperscript{191}

Any type of movable or immovable property of the accused as a result of an offence under this Act shall be seized. And if someone has proved that anyone uses or provides to use any house, land or vehicle for any offence under this Act, that house, land or vehicle shall be seized, too.\textsuperscript{192}

In order to reduce the crime and to get true information from the public side, there is an award for each case. Where anyone is rescued or a person involved in an offence is arrested because of anyone reporting an offence under this Act or giving notice that an offence is going to be committed, the informant shall receive, from the rehabilitation fund established under art. 14, ten percent of the fine levied as punishment under art. 15 as an incentive.\textsuperscript{193}

Every person must support the investigation for this case. Anyone obstructing an investigation of an offence under this Act shall be fined up to Rs 10,000.\textsuperscript{194}

To control Human trafficking Muluki Ain (the country code) especially the jiu masne bechne ko mahal (chapter on life destroy and selling) is also relevant in Nepal.

\textsuperscript{190} Mulki Ain 2020 BS. (1963), Human Trafficking and Transportation(Control) Act, 2064.
\textsuperscript{191} Human trafficking and transportation control act 2007 (2064), art. 17.
\textsuperscript{192} Human trafficking and transportation control act 2007 (2064), art. 18.
\textsuperscript{193} Human trafficking and transportation control act 2007 (2064), art. 19.
\textsuperscript{194} Human trafficking and transportation control act 2007 (2064), art. 24.
According to this section, the punishment for the offence of selling a person is imprisonment for up to 20 years, and anyone who takes a person to a foreign territory with the intention of selling that person is subject to imprisonment for up to 10 years. A crime of forcing a woman into prostitution is punishable by imprisonment for up to 15 years. Accomplices to the traffickers are punished with imprisonment for up to 10 years.¹⁹⁵

Prohibition against disseminating confidential information: Without the consent of the victim, anyone shall not publish or broadcast the real name, photograph or any information which is detrimental to his/her character. Any person who publishes or broadcasts the name, photograph or other information shall be subjected to a fine of Rs 10,000 to Rs 25,000.

¹⁹⁵ Muluki ain 2020 Bs (1993) Ji.ma.be mahal (art. 8).
4.2.12 The Narcotic Drugs (Control) Act, 2033 (1976)

4.2.12.1 Aim and purpose
Narcotic drugs are one of the major problems for all nations, because it will hamper the young generation directly and also create the greater problem in the national economy. So, illegal trade of these drugs create EC in the international context. Thus, the aim and purpose of the Narcotic Drugs control act is to control illegal trade or business and to control the EC from Nepal. This Act shall also be applicable to Nepalese citizens or foreigners, who, while residing in a foreign country, conduct transaction of export or import of narcotic drugs from or into Nepal in contravention of this Act or Rules framed or order issued hereunder. Any person who commits any act mentioned shall be prosecuted and punished according to this Act as if he had committed such act within Nepal.

4.2.12.2 Short Overview of Content
This act has 3 chapters and 25 sections. Below the content of this act is described in short.

Chapter 1 Preliminary
1. Short Title, Extent and Commencement
2. Extra Territorial Applicability of the Act
3. Definition

Chapter 2 Prohibition and Control
4. Prohibited Acts
5. Non applicability of Prohibitions
  • Notations to be made on the Recommendation Paper of the Medical Practitioner
  • Responsibility of the Medical Practitioner
6. Prohibition not to be applied to His Majesty's Government
7. Authority Empowered to Issue Warrants
8. Power to Enter, Search, Seize and Arrest Without a Warrant
  • 8A. The Particulars of Financial Transaction to be Demanded
9. Report of Arrest and Seizure to be submitted
  • 9A. Secrecy to be maintained
10. Arrested person and seized goods to be produced before the Judicial Authority
   • 10A. Anything may be taped or censored
11. The Narcotic Drugs Control Officer may issue an order to destroy Narcotic Drugs
   • 11A. Narcotic Drugs to be destroyed after being the time extended from the court in the narcotic drug case
   • 11B. The records of destroying of narcotic drugs to be maintained
   • 11C. His Majesty's Government may make available the Narcotic Drugs for Preparing Medicine
   • 11D. May be submitted as evidence
12. Onus of Proof
13. .

Chapter 3 Penalties
14. Penalties
15. Punishment for Permitting Prohibited Acts in ones Building, Land or Vehicle
16. Punishment for Repeated Offence
17. Punishment for conspiracy, attempt, abetment and accomplice in an offence
   • 17A. Punishment for those doing transaction of other substances as if it was narcotic drug
   • 17B. Punishment for those not providing the particulars or documents related to narcotic drugs
18. Confiscation of Materials Connected with the Offence
   • 18A. Property to be Confiscated
   • 18B. The informer is to be rewarded
   • 18C. Punishment may be remitted
   • 18D. The employees to be rewarded
   • 18E Some amount of the fine to be made available to the Treatment Centre
19. Power to withhold prosecution or remit punishment
   • 19A. No Proceedings are to be Undertaken while Undergoing Treatment
20. Special provision as to stocks of narcotic drugs under previous license
21. Provision regarding to Narcotic Drugs Control Officer and Narcotic Drugs Control Administration
   • 21A. Judicial Authority and Appeal
   • 21B. Functions Power and Duties of the Investigating Authority
• 21C. The Scientific equipments and weapons may be taken
• 22. Government to be a plaintiff
• 22B. No punishment for the works done in good faith
• 22C. Provision in relation to extension of time
• 23. Provision Regarding Cases Filed Before the Commencement of this Act
• 23A. Prevailing Law is to be Applicable
• 24. Power to frame rules or issue orders
• 25. Repeal Clause

4.2.12.3 Main Instruments
Narcotics Drugs (Control) Act, 2033 (1976) was published in Nepal gazette 2033/6/10 Bs. Certification was made by late king Birendra. This is the act no 24 of the year of 2033 Bs. The first Amendment of this Act was 2043/7/24 Bs, the Second Amendment was 2044/6/9 Bs, and the Third Amendment 2050/2/32 Bs.

4.2.12.4 Procedure and Competent Agencies
According to this act NDCLEU and CID department are responsible to investigate the case related to this act and they will file the case to the special court with the help of attorney general. Nothing contained in this Act shall be deemed to have prevented the Government or any institution working under the full and complete supervision and control of the Government of Nepal after having obtained a special license, from cultivating, preparation, producing, manufacturing, exporting or importing narcotic drugs for purposes of medicine or scientific research or from selling narcotic drugs to any person on the recommendation of a recognized medical practitioner.

The Narcotic Drugs Control Officer may issue warrants for the arrest and search of any person if he has reason to believe that such person has committed or is about to commit any offence punishable under this Act. The Narcotic Control Officer may issue orders for conducting a search of any building, land, vehicle or any other place if he has reason to believe that any person connected with the offence has been hiding in such building, land, vehicle or other place or that any narcotic drug has been kept therein. If there is reason to believe that any offence punishable under this Act is being committed in any building, land, vehicle or other place and that the offender may escape or that evidence of the offence may disappear, the Narcotic Drugs Control Officer or
police personnel at least up to the rank of Assistant Sub-Inspector of Police may after making a record to that effect take any of the following actions at any time: He can enter, search, seize and arrest without a warrant. But the entry into or search of any building, land, vehicle or any other place under sub-section (1) shall be conducted, if time so allows, in the presence of a member of the concerned Municipality or Village Development Committee or ward committee or any local gentleman or an employee of any government office. Provided that there is proper ground of non-availability of a member of Municipality or Village Development Committee or Ward Committee or gentlemen of that locality or presence of employees of other government offices for preparing the report, even if attempts were made to that effect, the report may be prepared in the presence of at least two Narcotic Drug Investigation Officers or in the presence of two equal persons at least to the rank of Assistant sub-inspector of police.\textsuperscript{197}

The particulars of financial transaction may be demanded if there is reliable ground that any person, organisation - institution, firm, company or international organisation has carried out illegal transactions of narcotic drugs. A narcotic drugs control officer may ask for the particulars of the account of such person, firm, organisation - institution, company or international organisation, kept at any bank or financial institutions. If it is seen to be used in the illegal transaction of narcotic drugs, the judicial authority may give order to the concerned bank or financial institution to freeze such amount.\textsuperscript{198}

Any person arrested or goods seized by the Narcotic Drugs Control Officer under this Act shall be produced before a Court of law within twenty four hours of such arrest or seizure excluding the period of journey from the place of arrest to such court.\textsuperscript{199}

The Government of Nepal shall be the plaintiff in all cases under this Act and all such cases shall be deemed to have been incorporated in Schedule 1 of the Government Cases Act, 1961.\textsuperscript{200}

If anyone informs the Narcotic Drugs Control Officer of the transaction or use of a narcotic drug which leads to the proving of offence and if the offender is punished and if there is imposition of fine, the informer shall be provided twenty percent of the amount of fine as reward. The name of person receiving such reward shall be held secret.\textsuperscript{201}

\textsuperscript{196} Narcotics Drugs (Control) Act, 2033 (1976), art. 7.
\textsuperscript{197} Narcotics Drugs (Control) Act, 2033 (1976), art. 8.
\textsuperscript{198} Narcotics Drugs (Control) Act, 2033 (1976), art. 8a.
\textsuperscript{199} Narcotics Drugs (Control) Act, 2033 (1976), art. 10.
\textsuperscript{200} Narcotics Drugs (Control) Act, 2033 (1976), art. 22.
\textsuperscript{201} Narcotics Drugs (Control) Act, 2033 (1976), art. 18b.
If anybody has been punished with an imprisonment and with a fine in the case of narcotic drugs by the judicial authority, the Government may reward twenty percent of the amount of such fine to the employees involved in the narcotic drugs control and investigation activities.202

Concerning the Institutions and National Policy, the Department of Narcotics Control and Disaster Management under the Ministry of Home Affairs (MHA) has overarching responsibility for narcotics issues in Nepal. The MHA has established a National Co-ordination Committee for Drug Abuse Control (NCC) under the Home Minister. This committee includes the Secretaries of Home, Health, Finance, Education, Foreign Affairs and Communications, together with the Inspector General of Police, Members and Secretary of the Planning Commission, and members of NGOs and other professional organizations. Generally, it has met less than once a year. Below the NCC there is an Executive Committee, the members of which include joint secretaries from the ministries of Education, Finance, Law and Justice, Health, and Women and Social Welfare, a Deputy Inspector General of Police (DIGP), National Project Director of the Drug Abuse Demand Reduction Project, and the Chief of the National Drug Control Law Enforcement Unit (NDCLEU). This committee meets more regularly than the NCC, and is working towards closer co-operation and co-ordination of national efforts, and a strengthening of management procedures, policy and strategy.

The Government of Nepal has ratified the two UN Conventions related to narcotic drugs, namely, the Single Convention on Narcotics Drugs, 1961 (as amended by the 1972 Protocol) and the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988. Nepal is still not a party to the 1971 Convention. Except from this, the intoxicating Substance Act, 1917 also deals with issues of drug control.

The Narcotics Drug Control Act of 1976 was subject to a comprehensive and important amendment in 1993. The amendment which came into force on 14 June 1993 included:

- incorporation of the SAARC convention of 1992 on Narcotics Drugs and Psychotropic Substances,
- inclusion of the provisions of the 1961 Single Convention (including the 1972 Protocol amending that Convention) and the 1988 UN Convention on Illicit Trafficking of Narcotic Drugs and Psychotropic Substances,
- legalization of controlled delivery,

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202 Narcotics Drugs (Control) Act, 2033 (1976), art. 18d.
• increased penalties for drug offences,
• an asset seizure section,
• a section on money laundering (including a bank secrecy act),
• legislation on advanced investigation techniques and methods of gathering evidence such as wire tapping (including room and telephone bugging) and surveillance photography,
• authorization of NDCLEU to prosecute drug law offences, and a reward scheme;
• the destruction of seized drugs.

Following these amendments, discussions were held during the period 1994 - 1995 between UNDCP and Government of Nepal regarding the formulation of separate legislation in the areas of money laundering, asset forfeiture and criminal conspiracy. A legal consultation mission to Nepal was carried out. Working together with a government lawyer with considerable experience in narcotics control, the mission successfully drafted an amendment to the Narcotics Drug Control Act, a Witness Protection Act, a Mutual Legal Assistance Act, a Crime Proceeds Act, and a Controlled Chemicals, Equipment and Materials Rule Act.

4.2.12.5 Criminal Sanctions and Punishment

This is a most serious crime and we can also say this is an organized crime. This crime is not so serious for the national economy but it is a serious crime for the economic society as a whole and so it is also serious in the field of economic crime. Few years before, there was no effective law concerning this crime but now there are a lot of rules and regulations to control these activities.

The Narcotics Drugs (Control) Act, 2033 (1976) is the legal framework for drug control issues in Nepal. Art. 3(a) of the act stipulates narcotic drugs as including: cannabis, medicinal cannabis, opium, processed opium, plants and leaves of coca, any substance prepared with mixing opium, coca extracts which include mixtures or salts, any natural or synthetic narcotic drug or psychotropic substance and their salts and other substance as may be specified by the Nepal Gazette notification.

It is prohibited for any one to cultivate, produce, prepare, purchase and sell, distribute, export or import, conduct any trafficking in, store, or consume cannabis.

It is not allowed to cultivate opium or coca or produce opium or coca leafs or other narcotic drugs, to manufacture or prepare narcotic drugs, to sell or distribute narcotic
drugs, to export or import narcotic drugs, to purchase, store, possess, or conduct any traffic in narcotic drugs and to consume narcotic drugs other than cannabis.\footnote{Narcotics Drugs (Control) Act, 2033 (1976), art. 4.} It is a responsibility of a medical practitioner that while prescribing narcotic drugs, he must not prescribe it to those who do not need it or prescribe more than what the requirement is even to those for whom it is required.\footnote{Narcotics Drugs (Control) Act, 2033 (1976), art. 5b.}

Penalties are described in chapter 3 art. 14. According to this law, a person will be punished according to the gravity of offence, that means

- Who consumes cannabis shall be punished with an imprisonment for a term up to one month or with a fine up to 2,000 rupees.
- Anyone who cultivates up to 25 cannabis plants shall be punished with an imprisonment for a term up to three months or with a fine up to 3,000 rupees.
- Who cultivates more than 25 cannabis plants shall be punished with an imprisonment for a term of three year or with a fine from 5,000 to 25,000 rupees.
- Anyone who produces, prepares, purchases, sells and distributes, exports or imports, traffics and stores cannabis shall be punished as follows:-
  1. With an imprisonment for a term up to three months or with a fine up to rupees 3,000 if it is up to fifty grams.
  2. With an imprisonment for a term from one month to one year and with a fine from 1,000 to 5,000 rupees, if it is within fifty grams to 500 grams.
  3. With an imprisonment for a term from six months to two years and with a fine from 2,000 to 10,000 rupees, if it is within 500 grams to two kilograms.
  4. With an imprisonment for a term from one year to three years and with a fine from 5,000 to 20,000 rupees, if it is within two kilograms to ten kilograms.
  5. With an imprisonment for a term from two years to ten years and with a fine from 15,000 Rs. to 100,000, if it is ten kilograms or more than this.
- Anyone who consumes opium, coca or any other narcotic drugs made therefrom shall be punished with an imprisonment for a term of up to one year or with a fine up to 10,000 rupees.
- Anyone who cultivates opium poppy or coca bush shall be punished as follows:
1. With an imprisonment for a term of one year to three years or with a fine of 5,000 rupees to 25,000 rupees, in case of the cultivation of 25 plants.

2. With an imprisonment for a term from three years to ten years and with a fine from 25,000 to 200,000 rupees in case of cultivation of more than 25 plants.

Anyone who commits any prohibited acts other than consumption of opium, coca, or any other narcotic drugs made there from and cultivation of such plants shall be punished as follows:

1. With an imprisonment for a term from five years to ten years and with a fine from 5,000 to 25,000 rupees for anyone doing transaction up to 25 grams.

2. With an imprisonment for a term from ten years to fifteen years and with a fine from 70,000 to 200,000 rupees for anyone are doing transaction from 25 grams to 100 grams.

3. With an imprisonment for a term from fifteen years to life imprisonment and with a fine from 500,000 to 2,5 million rupees for anyone doing transaction of any quantity more than 100 grams.

- Anyone who addicts to any natural or synthetic narcotic drugs and psychotropic substances and their salt and other substances, as specified by the Government by a notification published in the Nepal Gazette, from time to time, shall be punished with an imprisonment for a term up to two months and with a fine up to 2,000 rupees or both.

- Anyone who commits any other prohibited acts other than those mentioned above shall be punished with an imprisonment for a term from two years to ten years and with a fine from 100,000 to 2 million rupees.

- If the owner of any building, land or vehicle or the person in possession thereof wilfully permits any act to be committed in any building, land or vehicle as is prohibited under art. 4, he shall be punished with an imprisonment for a term which may extend from six months to five years or with a fine up to 10,000 rupees. If the owner of the building, land or vehicle has committed such offence or has permitted such offence to be committed, such building, land or vehicle may be liable to confiscation.205

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205 Narcotics Drugs (Control) Act, 2033 (1976), art. 15.
• If any person who had been punished once under this Act again commits or repeats any other offence mentioned hereunder, he shall be punished for each subsequent offence, in addition to the prescribed punishment, with an imprisonment for a term which may extend up to five years and with a fine up to 100,000 rupees. 206

206 Narcotics Drugs (Control) Act, 2033 (1976), art. 16.
4.2.13 Banks and Financial Institutions Ordinance, 2004

4.2.13.1 Aim and purpose

Before this ordinance was enacted, there was no clear rule and regulation for the banks and financial institutions. Its main aim and purpose is to regulate the banks and financial institutions. So in the Preamble of this ordinance is written that “it is expedient to amend and consolidate forthwith the current legislation relating to banks and financial institutions and thus make it suitable to the times in order to promote the trust of the public in the overall banking and financial systems of the country, protect and promote the rights and interests of depositors, provide reliable and quality banking and financial intermediary services to the public through healthy competitions among banks and financial institutions, minimize risks relating to the banking and financial sectors, liberalize the banking and financial sectors and further boost and consolidate the economy of Nepal, and make necessary legal provisions relating to the establishment, operation, management and regulation of banks and financial institutions”.

4.2.13.2 Short Overview of Content

This act has 12 chapters and 93 sections. Below, the content of this act is described shortly.

Chapter 1 Preliminary
1. Short Title, Extent, and Commencement
2. Definitions

Chapter 2 Provisions Concerning Establishment of Banks or Financial Institutions, and Securities Thereof
3. Establishment of Banks or Financial Institutions
4. Approval to be Obtained to Establish a Bank or Financial Institution
5. Power to Deny Approval
6. Prospectus
7. Allotment of Shares
8. Transactions in Securities
9. Prohibition on Selling or Pledging as Collateral or Mortgaging Shares and Debentures
10. Prohibition on Banks or Financial Institutions to Purchase Their Own Shares
11. Restriction On Transactions in Securities

Chapter 3 Provisions Concerning Boards of Directors and Executive Chiefs of Banks or Financial Institutions

12. Formation of Board of Directors
13. Maintenance of a List of Professional Experts
14. Functions, Duties and Powers of the Board
15. Delegation of Powers
16. Power to Form Sub-Committees
17. Appointment of Directors
18. Disqualifications of Directors
19. Qualifications of Directors
20. Tenure of Directors
21. Remunerations and Facilities of Directors
22. Directors obliged to Provide Information
23. Meetings of the Board
24. Responsibilities and Obligations of Directors
25. Records of Directors
26. Appointment and Conditions of Service of Executive Chief
27. Functions, Duties and Powers of the Executive Chief

Chapter 4 Provisions Concerning License

28. No One Other Than Banks or Financial Institutions May Conduct Financial Transactions
29. Application to be Filed for License to Conduct Financial Transactions
30. License to be Issued to Conduct Financial Transactions
31. Classification of Licensed Institutions
32. Power to Refuse to Grant License to Conduct Financial Transactions
33. Power of the Rastra Bank to Prescribe Conditions
34. Special Provisions Concerning Opening of Offices by Foreign Banks or Financial Institutions
35. Suspension or Cancellation of License
36. Licensed Institution of a Lower Class May be Converted into a Licensed Institution of a Higher Class
37. Licensed Institution of a Higher Class to be Converted into Licensed Institution of a Lower Class
38. Liquid Assets to be Maintained
39. List of Licensed Institutions to be Published

**Chapter 5  Provisions Concerning Capital**
40. Capital to be Maintained
41. Capital to be Increased
42. Capital Fund
43. Risk-Bearing Fund
44. General Reserve Fund
45. Exchange Equalization Fund
46. Restriction on Distribution of Dividends

**Chapter 6  Provisions Concerning Operation of Financial Transactions**
47. Financial Transactions That Licensed Institutions May Conduct
48. Functions Which A Licensed Institution Must Not Perform

**Chapter 7  Regulation, Inspection and Supervision**
49. Power of the Rastra Bank to Regulate
50. Banking or Financial System and Credit Control
51. Power of the Rastra Bank to Issue Directives in Relation to Interest Rates
52. Power of the Rastra Bank to Inspect and Supervise
53. Inspections to be Made by Foreign Banks or Financial Institutions
54. Control Over Licensed Institutions
55. (Licensed Institutions) Duty to Submit Particulars

**Chapter 8  Provisions Concerning Supply and Recovery of Credits**
56. Credit to be Supplied
57. Provisions Concerning Recovery of Credit

**Chapter 9  Provisions Concerning Accounts, Records, Particulars and Reports**
58. Accounts and Records to be Maintained Accurately
59. Balance Sheet, Profit and Loss Account, and Audit
60. Appointment of Auditor
61. Disqualifications for Appointment as Auditor
62. Particulars to be Submitted
63. Functions, Duties and Powers of Auditor
64. Report to be Submitted
65. In the Event of Vacancy in the Post of Auditor
66. Auditor to Certify
67. Remuneration of Auditor

Chapter 10  Provisions Concerning Amalgamation of Licensed Institutions
68. Amalgamation of Licensed Institutions
69. Application to be Filed for Amalgamation of Licensed Institutions

Chapter 11  Provisions Concerning Offences and Penalties
70. Actions Which Are Deemed Offences
71. Penalties
72. His Majesty’s Government to be Plaintiff
73. Rastra Bank to Furnish Information
74. Penalties for Violation of the Rastra Bank Regulation
75. Appeals May be Filed

Chapter 12  Miscellaneous
76. Permission to be Obtained for Voluntary Liquidation
77. Order of Priority in the Settlement of Liabilities While Liquidating A Licensed Institution
78. Arbitration
79. Secrecy to be Maintained
80. Power to Issue Directives to Freeze Accounts
81. Claim or Title to Deposits
82. Particulars of Unclaimed Deposits or Dividends
83. Recovery From or Confiscation of Deposits
84. Management Expenses
85. Power to Remove Obstructions
86. Exemptions and Facilities
87. Immunity for Actions Taken With Bonafide Motives
88. Oath-Taking
89. Actions Not to be Invalidated
90. Power to Frame Rules
91. Power to Frame By-Rules
92. Applicability of Current Law
93. Repeal and Saving Clause
4.2.13.3 Main Instrument

The Bank and financial institutional ordinance 2004 was published in Nepal gazette 2060.10.21.04 (February 4, 2004). All functions and actions performed under the Bank and Financial Institutions Ordinance 2060 issued on 2060 Magh 21 shall be deemed to have been carried out and performed under this Ordinance. (Added in Ordinance 2061). Former King Gyanendra has promulgated this Ordinance under Art. 72 of the 1990 Constitution of Nepal.

4.2.13.4 Procedure and Competent Agencies

NRB will have to play a major role in regulating banks and financial institutions under this act and the financial institutions should follow this act at the time of establishment stage and after that too.

Art. 3 of this act describes that every person desirous of establishing a bank or financial institution in order to conduct financial transactions under this Ordinance may do so by registering it as a public limited company according to current law.

According to art. 4, for the purpose of establishing a bank or financial institution the concerned person must, before applying for the registration of the bank or financial institution according to current law, apply to the Rastra Bank for prior approval along with the following documents and the fee prescribed by the Rastra Bank:

- Memorandum of Association of the proposed bank or financial institution.
- Articles of Association of the proposed bank or financial institution.
- Feasibility study report of the proposed bank or financial institution.
- Personal particulars of the promoters in the form prescribed by the Rastra Bank.
- A certified copy of the agreement signed, if any, among the promoters before the establishment of the bank or financial institution in relation to the establishment of the bank or financial institution.
- Evidence of clearance of tax by the promoters up to the fiscal year immediately preceding the date of application under this Section.
- Other particulars and documents prescribed by the Rastra Bank in relation to the establishment of a bank or financial institution.

On receipt of an application for prior approval the Rastra Bank shall, if it finds it appropriate to grant its approval following the examination of the documents that have been submitted, grant its approval to establish the concerned bank or financial institution within 120 days from the date of receipt of the application by prescribing or without
prescribing any conditions. In case such approval is to be denied, the applicant shall be notified accordingly by explicitly mentioning the reasons therefore.

In case any foreign bank or financial institution applies for the establishment of a bank or financial institution under this Ordinance with investments to be made jointly by itself and a corporate body established in Nepal or a citizen, or as a subsidiary company with cent percent shares owned by itself, the Rastra Bank shall grant its approval to establish it under this section.

Art. 5 says that the Rastra Bank may refuse to grant its prior approval for the establishment of a bank or financial institution in the following circumstances:

- In case the name of the proposed bank or financial institution is identical to that of any bank or financial institution which has already been registered and is still in existence.
- In case the name of the proposed bank or financial institution, or the financial transactions to be conducted by it, seems/seem to be inappropriate or undesirable from the viewpoint of public interests, morality, etiquette, religion, caste, sect, community, etc.
- In case the objectives of the proposed bank or financial institution are contrary to current law.
- In case the establishment of the bank or financial institution seems to be technically inappropriate.
- In case a study of the feasibility study report, particulars and documents and other information relating to its infrastructures submitted by the proposed bank or financial institution does not provide grounds to believe that it can conduct financial transactions in a healthy and competitive manner.
- In case no application for the registration of the memorandum and articles of association has been filed in the names of all the promoter-members of the proposed bank or financial institution.
- In case the name and address of the witness has not been explicitly mentioned in the memorandum and articles of association of the proposed bank or financial institution following affixation of their signatures on them by all the promoters by explicitly mentioning their names and addresses in the presence of the witness.
- In case every promoter of the proposed bank or financial institution has not agreed to subscribe to at least one share of it.
• In case every promoter of the proposed bank or financial institution has not clearly specified the number of shares to be subscribed by him/her while affixing his/her signature on the memorandum of association.
• In case the fee to be paid and the documents to be submitted under art. 4 is not paid or are not submitted.
• In case any condition prescribed by the Rastra Bank is not fulfilled.

In case the registration of the memorandum and articles of association of the proposed bank or financial institution is denied in any of the circumstances, the Rastra Bank shall notify the applicant accordingly.

Before publicly issuing its securities, every bank or financial institution must secure the approval of the Securities Board in relation to the registration of the prospectus according to the current law relating to securities, and have the prospectus registered at the Rastra Bank. Until the prospectus is so registered, the concerned bank or financial institution, or anybody acting on its behalf, may not publish its prospectus. The formalities to be fulfilled while issuing a prospectus and the matters to be mentioned in the prospectus shall be as mentioned in the current law relating to securities. For the purpose of securing the approval of the Securities Board for the registration of its prospectus, the concerned bank or financial institution must, subject to current law relating to securities, apply to the Securities Board in writing. The Rastra Bank shall not register a prospectus until it receives in writing information about the grant of its approval by the Securities Board in relation to the registration of the prospectus. The bank or financial institution must allow every person desirous of perusing the prospectus to peruse the same without collecting any fee or charge.207

Every bank or financial institution must set apart at least 30 percent of its issued capital for public subscription. The bank or financial institution may set apart not more than five percent of the shares for its employees. Every bank or financial institution to be established with the joint investment of a foreign bank or financial institution must sell and allot to the public shares in the percentage prescribed by the Rastra Bank from time to time. While inviting applications from the public for the purchase of its shares, every bank or financial institution must demand payment of cent percent of the face value of its shares along with the application.208

208 Banks and financial institutions ordinance 2004, section 7.
Art. 8 describes the Transactions in Securities: While issuing its securities for public subscription, every bank or financial institution must perform all functions relating to their sale and allotment and collection of payments in consideration thereof according to current law relating to securities. Every bank or financial institution must submit to the Rastra Bank and the Securities Board one copy of each of the agreement signed by it in relation to conducting transactions in its securities through any institution dealing in securities within seven days from the date of signing the agreement. Anything contained in current law, the promoter of a bank or financial institution may not sell, mortgage or pledge as collateral any share registered in his/her name for at least five years from the date of commencement of financial transactions. In case the promoter of a bank or financial institution wishes to sell, mortgage or pledge as collateral any share registered in his/her name after five years from the date of commencement of financial transactions by the bank or financial institution, he/she may do so subject to the conditions prescribed by the Rastra Bank. In case the promoter of a bank or financial institution holding a license and conducting financial transactions on the commencement of this Ordinance has not already sold the shares owned by him/her, he/she may not sell, mortgage or pledge as collateral the shares owned by him/her for five years from the date of sale of shares set apart for public subscription (Prevailing in Ordinance 2060 but deleted in Ordinance 2061.)

Art. 9 describes that, in generally, no bank or financial institution may purchase (buy back) its own shares or supply credit against the security of its own shares. But, there are some exceptional cases, i.e.

- the shares issued by the bank or financial institution are fully paid-up.
- the shares issued by the bank or financial institution are already registered with the Securities Board.
- the Articles of Association of the bank or financial institution provide for the purchase of its own shares.
- the general meeting of the bank or financial institution adopts a special resolution authorizing the bank or financial institution to purchase its own shares.
- the amount of loan to be repaid by the bank or financial institution is not going to be more than double the amount deposited in the capital and general reserve funds after it purchases its own shares.

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• the value of its own shares to be purchased by the bank or financial institution is not going to be more than 20 percent of its total paid-up capital and the amount deposited in the general reserve fund.
• the act of purchasing its own shares is not going to be prejudicial to the directives issued by the Rastra Bank from time to time in that connection.

Every bank or financial institution must apply to the Rastra Bank for permission to act by explicitly mentioning the following matters. On receipt of such an application, the Rastra Bank may, if it deems so appropriate on the basis of the particulars received, grant permission to the bank or financial institution to purchase its own shares. On receipt of permission, the concerned bank or financial institution may purchase its own shares in any of the following ways within six months from the date of receipt of the permission, or within 12 months from the date of adoption of the special resolution by the general meeting, whichever is the latest. It must furnish information to the Rastra Bank about the number of shares so purchased, the amount paid in consideration thereof, and other necessary particulars related thereto within 30 days from the date of purchase. A separate Capital Refund Reserve Fund shall be established and an amount equal to the face value of the shares purchased (by a bank or financial institution) shall be credited to it. The amount credited to the fund must be maintained as in the case of the paid-up capital and it must cancel all such shares within 120 days from the date of purchase. The circumstances in which a bank or financial institution may not purchase its own shares and other matters concerning such purchases shall be as prescribed by the Rastra Bank.

No Director, Executive Chief, auditor or Secretary of a bank or financial institution, or any person directly involved in the management or accounting functions of a bank or financial institution, may sell or purchase, pledge as collateral or mortgage, give away or accept as gift or donation, or exchange the securities of the concerned bank or financial institution, or those of its subsidiary companies, or cause or allow any of such activities, under his/her own name or in the name of his family, or in the name of any firm, company or institution under his/her own or his/her family's control while he/she remains in his/her post, or for at least one year from the date of his/her retirement from his/her post.²¹⁰

²¹⁰ Banks and financial institutions ordinance 2004, section 11.
The Rastra Bank shall have full powers to regulate and systematize the functions and businesses of licensed institutions.\textsuperscript{211}

According to art. 50, the Rastra Bank may issue directives to licensed institutions from time to time in relation to banking or financial system, currency and credits. It shall be the duty of the licensed institutions to comply with such directives.

The rates of interest to be paid on deposits and to be charged on credits by the licensed institutions shall be as prescribed by the Rastra Bank.\textsuperscript{212}

The Rastra Bank may inspect and supervise any office of a licensed institution at any time, or make arrangements for doing so. Such inspection and supervision operations may be carried out also by deputing to the concerned office (on-site) any officer of the Rastra Bank or any expert designated by the Rastra Bank, or by requisitioning detailed particulars and information at the Rastra Bank itself (off-site). And the financial institutions should help to NRB for that purpose.\textsuperscript{213}

Art. 53 describes that a foreign bank or financial institution may inspect its office established in Nepal after securing the approval of the Rastra Bank under this Ordinance and subject to the conditions prescribed by the Rastra Bank. The concerned foreign bank or financial must submit to the Rastra Bank a copy of the inspection report prepared by it after conducting inspection.

Every licensed institution must maintain its accounts, records, books, ledgers, etc. in a true and correct manner.\textsuperscript{214}

Every licensed institution must prepare its balance sheet, profit and loss account, statements of cash flow, and other financial statements in the form and according to the procedure prescribed by the Rastra Bank. Within five-months after the expiry of each fiscal year, every licensed institution must prepare its balance sheet, profit and loss account, cash flow statement, and other financial statements in the form and according to the procedure prescribed by the Rastra Bank and have them audited. Such financial statements must have been signed by at least two Directors, the Executive Chief, and the auditor.\textsuperscript{215}

\begin{thebibliography}{99}
\bibitem[211]{211} Banks and financial institutions ordinance 2004, section 49.
\bibitem[212]{212} Banks and financial institutions ordinance 2004, section 51.
\bibitem[213]{213} Banks and financial institutions ordinance 2004, section 52.
\bibitem[214]{214} Banks and financial institutions ordinance 2004, section 58.
\bibitem[215]{215} Banks and financial institutions ordinance 2004, section 59.
\end{thebibliography}
The general meeting of the concerned bank or financial institution shall appoint an auditor from among the auditors included in the list of auditors approved by the Rastra Bank.\textsuperscript{216}

The functions, duties and powers of an auditor appointed under art. 60 shall be as provided for in current law. The auditor must submit his/her audit report to both the concerned licensed institution and the Rastra Bank.

Cases relating to offences mentioned in art. 70 shall be filed with the Government as the plaintiff, and such cases shall be deemed to have been included in Schedule 1 of the 1993 State Cases Act.\textsuperscript{217}

\subsection*{4.2.13.5 Criminal Sanctions and Punishment}

Offences are described in art. 70 of this ordinance. According to this, an offence shall be considered to have been committed in case any person takes any of the following actions:

- In case any person conducts financial transactions without having obtained a license under this Ordinance or in violation of the conditions of the license, or accepts deposits, advances credit or issues debentures or other financial instruments in violation of this Ordinance or the orders or directives issued under this Ordinance, or pays or collects interest in violation of the rates prescribed by the Rastra Bank, or deals in foreign exchange in violation of this Ordinance or current law or the orders or directives issued under this Ordinance.
- In case any office-bearer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books and other documents relating to the accounts of a licensed institution as per this Ordinance or the orders or directives issued under this Ordinance, violates such secrecy.
- In case any person takes any action, other than those mentioned above in violation of this Ordinance or any order or directive issued under this Ordinance.

Art. 71 describes Penalties. According to this provision, any person who commits any of the following offences shall be punished as follows:

- Any person who conducts financial transactions without obtaining a license under this Ordinance shall be punished with a fine not exceeding 300 percent of the amount involved in the transactions, or with imprisonment for a term not

\textsuperscript{216} Banks and financial institutions ordinance 2004, section 60.
\textsuperscript{217} Banks and financial institutions ordinance 2004, section 72.
exceeding three years, or with both, along with the confiscation of the amount involved in the transactions.

- Any person who deals in foreign exchange in violation of this Ordinance or any other current law shall be punished with a fine not exceeding 300 percent of the amount involved in the offence, or with imprisonment for a term not exceeding three years, or with both.

- Any person who accepts deposits, advances credit, or issues debentures or other financial instruments in violation of this Ordinance or any order or directive issued under this Act (sic), or pays or obtains interest in violation of the rates prescribed by the Rastra Bank, shall be punished with a fine not exceeding 200 percent of the amount involved in the offence, or with imprisonment for a term not exceeding two years, or with both.

- In case any office-bearer who is responsible for maintaining the secrecy of the financial transactions, accounts, records, ledgers, books, and other documents relating to the accounts of a licensed institution as per this Ordinance or any order or directive issued under this Ordinance violates such secrecy, he/she shall be punished with a fine not exceeding Rs 500,000, or with imprisonment for a term not exceeding one year, or with both.

- Any person who commits the offence mentioned above in art. 70 shall be punished with a fine equal to the amount involved in the offence, or with imprisonment for a term not exceeding one year, or with both, along with the confiscation of the amount involved in the offence.

- In case it is not possible to confiscate and determine the amount involved in an action taken by any person in violation of this Ordinance, the concerned person shall be punished with a fine not exceeding Rs 1,000,000, or with imprisonment for a term not exceeding one year, or with both, depending on the gravity of the offence.

In case any licensed institution or any other individual, firm, company, or institution commits any of the offences mentioned in art. 70, the concerned office-bearers of the licensed individual, firm, company or institution shall be subjected to penalties under this Section.

Any licensed institution or any other individual, firm, company or institution that attempts to or helps in any way to commit any of the offences mentioned in art. 70 shall be punished with not more than half of the punishment prescribed.
Any licensed institution or any office-bearer of a licensed institution dissatisfied with any order of penalty issued by the Rastra Bank under art. 74 may file an appeal with the Appellate Court within 35 days from the date of receipt of the order. While filing an appeal, it shall be mandatory to furnish with the Rastra Bank a deposit of 50 percent of the amount of fine, in case a fine has been imposed.\textsuperscript{218}

The Rastra Bank may direct a licensed institution at any time to freeze any account opened in the concerned licensed institution in the name of any individual, firm, company or institution in such a manner as to prevent the withdrawal or transfer of funds in any way from that account in connection with investigations into any type of crime or in connection with protecting the national interests by checking national or international terrorist activities or organized crimes. It shall be the duty of the concerned licensed institution to abide by the directives issued by the Rastra Bank.\textsuperscript{219}

\textsuperscript{218} Banks and financial institutions ordinance 2004, section 75.
\textsuperscript{219} Banks and financial institutions ordinance 2004, section 80.
4.3 Comparison between and Assessment of all the Laws

4.3.1 Aim and purpose

The aim and purpose of the interim constitution is to establish a system of competitive multiparty democratic rule, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, and full freedom of the press, independence of the judiciary and concepts of the rule of law. It wants to guarantee the basic rights of the people by framing a Constitution for them.

But the Banks and Financial Institutions Ordinance is especially destined for to control and regulate banks and financial institutions. It is related to NRB.

Muliki Ain 2020 (country code 1993 is referring to Cheating, forge, human trafficking and counterfeiting) is a general law which controls the internal legal system of the country. Actually it wants to eradicate the general crimes from the nation. The Human Trafficking and Transportation (Control) Act is implemented especially to control the human being trafficking which is related to Muluki Ain 1993 (jiu Masne bechneko mahal).

The Narcotic Drugs (Control) Act, 2033 (1976) is trying to control the narcotic drugs and also it is trying to control misuse of these drugs within the nation. These 3 acts described above are related to CID.

Foreign Employment Act, 2064 (2007) is aimed at controlling the illegal foreign employment. It also wants to stop illegal business of the manpower, i.e. those who are working in the field of foreign employment. This Act is a little bit similar to human trafficking and control act. Department of labour is related to this act.

The aim and purpose of Forest Act 1993 is to control the illegal trade from forest and to preserve the forest, nature and wildlife. It is related to forest department of Nepal government.

The aim and purpose of Commission for the Investigation of Abuse of Authority Act, 1991 is describing the right and responsibility of CIAA (the ombudsman of Nepal) and it also wants to provide the power to CIAA to control the corruption inside the government offices, banks and other financial institutions. Concerning the aim and purpose of Prevention of Corruption Act 2002, this act is to provide for the prevention and punishment of corruption and fraud. It also wants to eradicate the corruption from the country.
The aim and purpose of **Asset Money Laundering Act**, 2008 (2064) is to prevent laundering of criminally earned assets. It is also trying to control illegally remitting, transferring or sending assets from Nepal to abroad or abroad to Nepal. There are separate bodies to investigate the crime but it is also related to CIAA, NRB and RIA.

The aim and purpose of **income tax act** 2006 is to enhance revenue mobilisation through effective revenue collection procedures for the economic development of the nation. Especially it wants to collect money as tax upon the income of a person.

Concerning the aim and purpose of **Excise Duties Act**, 1958 (2002), this act is destined to maintain the good conduct, comfort and economic welfare of the public by providing for the imposition and collection of excise duties on goods produced or manufactured in Nepal. It also wants to control that no person shall produce or manufacture excisable commodities or to sell excisable commodities without licence. The aim of **Value Added Tax Act** 1995 is to impose and collect Value Added Tax and its purpose is for increasing revenue mobilisation by making effective the process of collecting revenues from all transactions including the sale, distribution, delivery, importation, exportation of goods or services and to collect revenues effectively by regulating the process of collection. These 3 tax acts are related to department of revenue investigation.

If we compare the aim and purpose of these acts the interim constitution is totally different from the other acts.

The **Asset Money Laundering Act**, **Forest Act**, **Foreign Employment Act**, **Banks and Financial Institutions Ordinance** have their own aims and purposes. Actually, they are not related to each other but their main aim is to control the EC from the nation.

The aim and purpose of **Commission for the Investigation of Abuse of Authority Act** and of the **Prevention of Corruption Act** is not so different. Both of them are related to corruption control.

**Muliki Ain 2020** (country code 1993 is referring to Cheating, forge, human trafficking and counterfeiting), **Trafficking and Transportation (Control) Act** and **Narcotic Drugs (Control) Act** are almost the same according to the nature of the crime. They are related to peace and maintaining law and order inside the country.

The **income tax act**, **Excise Duties Act** and **Value Added Tax Act** are related to taxation and also are related to the RIA. So they have almost the same nature.
4.3.2 Short Overview of Content

The **Interim Constitution** of Nepal has been divided into 25 parts, 167 paras and 4 Schedules. **Muluki Ain 2020** (country code 1993) has 5 parts, inside part 1 and 5 there are no sections. There are 2 sections inside part 2; inside part 3 are 22 sections and 19 sections are inside part 4.

The **income tax act** 2006 has 24 chapter, 143 articles and 2 schedules. **Banks and Financial Institutions Ordinance**, 2004 has 12 chapters and 93 sections. **Foreign Employment Act**, 2064 (2007) has 12 chapter and 87 articles, **Forest Act** 1993, 12 Chapter and 74 articles. **Anti Corruption Act** 2002 has 10 parts and 91 articles.

The **Asset Money Laundering Act**, 2008 (2064) has 8 Chapter and 46 articles. **Commission for the Investigation of Abuse of Authority Act**, 1991 has 6 chapters and 38 articles. **The Human Trafficking and Transportation (Control) Act** 2064 (2007) has 4 parts and 30 sections.

The **Narcotic Drugs (Control) Act**, 2033 (1976) has 3 chapters and 25 sections.


If we compare the short overview of content of acts, the Interim Constitution and Muluki Ain are the common basis and both of them are the guideline for all other acts. Although only income tax act, excise duty act, VAT act, BAFIO and asset money laundering act are directly related to financial matters, according to the nature of a short overview of content the income tax act, excise duty act, VAT act, BAFIO and asset money laundering act as well as forest act, foreign employment act and anti corruption act have almost the same structure as those former acts. The asset money laundering act, CIAA act and human trafficking and transportation control act are very similar, and the narcotic drugs control act, VAT act and excise duty act are almost of the same structure.

4.3.3 Main Instruments

The **Interim Constitution of Nepal**, the **Asset Money Laundering Act**, 2008 (2064), **Foreign Employment Act**, 2064 (2007) and the **Human Trafficking and Transportation (Control) Act** 2064, 2007 are the latest acts of all instruments dealt with in this study. These have been enacted by the 'Legislature-Parliament' and were published at different dates in Nepal Gazette.

**Muluki Ain 2020** (country code 1993), was amended 12 times which is the maximum in relation to other acts. It has been enacted by late King Mahendra, and was published
first time dated on 2019/12/30 Bs. in Nepal Gazette. It has been amended last time and published on 2064/8/14 Bs. The Narcotic Drugs (Control) Act 2033 (1976), The Income tax act 2006, Forest Act 1993, Value added tax act 1995, The Excise duty act 2000 and Commission for the Investigation of Abuse of Authority Act, 1991 were enacted by late king Birendra and were published at different dates in Nepal Gazette. Banks and Financial Institutions Ordinance 2004 and Anti Corruption Act 2002 were enacted by former king Gyanendra and were published at different dates in Nepal Gazette.

4.3.4 Procedure and Competent Agencies

The Interim Constitution of Nepal is the main door as well as the basic level for the activities of the government of Nepal and for all other acts. Banks and Financial Institutions Ordinance, 2004 is an act related to the banks and financial institutions. So it has separate procedures for its implementation (cf. above chapter at 4.2.13.4). NRB is the main agency to implement this act.

Concerning the offences related to the Muliki Ain 2020 (country code 1993), The Human Trafficking and Transportation (Control) Act 2064 (2007) and The Narcotic Drugs (Control) Act, 2033 (1976), there are the same procedures (cf. above at chapter 4.2.11.4. and 4.2.12.4) regarding investigation and documentation of the cases. CID, Attorney General and NDCLEU are the main agencies authorized to implement these acts.

The procedures for the Foreign Employment Act, 2064 (2007) and Forest Act 1993 are almost the same but the cases with foreign employment act are related to department of labour and inside this department a labour court has been established. That court has jurisdiction to decide the cases like the district courts. Concerning the cases relating to forest act, inside the forest ministry there are district forest offices for every district and the district offices may use the same powers like the district courts (cf. above chapter 4.2.3.4. and 4.2.7.4.). A special court will be Appellate court for these both.

The procedures for Commission for the Investigation of Abuse of Authority Act 1991, The Asset Money Laundering Act, 2008 (2064) and Prevention of Corruption Act 2002 are almost the same (cf. above chapter 4.2.2.4., 4.2.4.4 and 4.2.5.4). These acts are implemented by to CIAA, RIA and NRB.
The income tax act 2006, Excise Duties Act 1958 (2002) and Value Added Tax Act 1995 are related to RIA. The procedure of the cases related to these acts is almost identical and has been described above (cf. chapter 4.2.8.4, 4.2.9.4 and 4.2.10.4)

4.3.5 Criminal Sanctions and Punishment

Comparing criminal sanctions between various the acts which are working in the field of EC control, the interim constitution of Nepal has to play a vital role but there are no criminal sanctions in the Interim Constitution of Nepal. To control such activities or crime, the Constitution provides for several constitutional bodies such as CIAA, Auditor general, attorney general and others. Especially, CIAA is endowed with a lot of powers in this connection. The Commission may impose a maximum fine of Rs 50,000 to the concerned bank or financial institution based in Nepal for its failure to freeze transaction or account. If any person protests or causes obstruction to the process of investigation and inquiries under this Act, the concerned court may, on the basis of the Commission's report, punish him/her with a fine of up to Rs 5,000 or with a sentence of up to six months in prison or with both. The Commission may impose a fine of up to Rs 100,000 to a person who fails to observe the order, and in case the non-observance of such order has caused any harm or loss to the Government or any public institution, such harm or loss shall also be recovered from him. The Commission for the investigation of abuse of authority Act, 1991 was created especially to control the EC which is resulting from corruption done by various officials of the governmental or public sector. After the implementation of this act, the CIAA has been doing well to control such activities, but the act has not provided any power for the investigator to investigate the cases from the private sector. So, CIAA is not effectively working in all sectors inside the country concerning these matters.

The Anti Corruption Act, 2059 (2002 A.D) is also intended to control the corruption as well as EC. So it is assisting the activities of CIAA. According to this act, the maximum punishment is imprisonment for a term of eight to ten years and a fine from 100,000 to 500,000 rupees.

Forest is one of the most prominent sectors of economic crime in Nepal. Because we have so many raw materials in our mountain areas and also a lot of forest, this will supply or be exported to India and other foreign states to produce Aurvedic medicine. Thus, the constitution of Nepal has given high priority to conservation of natural resources and provides special protection to endangered wildlife and the forests. So, the
Forest Act 1993, is destined to protect the environment, water, mining, occupational health and noise pollution. But this act is not so effective in real life to control the EC because the ministry of forest and its departments are much more corrupted than others. Because of this, EC is growing under this ministry. The maximum punishment of the offender shall be with a fine equivalent to the amount involved or an imprisonment up to five years or both.

In the field of EC, Asset (Money) Laundering is one of the most serious crimes in Nepal. There was not any law in Nepal to control these activities until 2007, so it was easy to collect money criminally and to make it white. For this connection, Asset (Money) Laundering Prevention Act, 2008 was implemented. The aim of this new act is to prevent laundering of criminally earned assets. Nobody shall launder or cause to launder assets, to remit, transfer or send assets from Nepal to abroad or from abroad to Nepal obtained by an activity, and all that will be an offence under this Act. But, this act is also not familiar in the Nepalese society and the financial sectors are also not abiding by it properly because of the traditional working system of the banking officials and also the privacy right of the customers of the bank (i.e. the official of the bank, or from the bank side can not flash or out the customers or account holders detail without his permission).

There shall be 500,000 rupees fine to a bank or financial institution and from 25,000 to 100,000 rupees to non-financial institution as per the degree of offence for their act of not submitting documents to the Financial Information Unit. The offender shall be imprisoned from one month to three months or 50,000 to 100,000 rupees fine or both in accordance with the degree of offence committed and any person who is assisting committing such act shall be punished half of such punishment.

Muluki Ain (2020 BS) is a Combination of Hindu traditions and English common law. The judiciary system in Nepal is based upon the Muluki Ain code, where, in a section of the Criminal Code, which addresses human trafficking, the trafficking of human beings is defined as a crime. According to this Ain, there is explicitly prohibited traffic in human beings, slavery, serfdom, or forced labour in any form. This Ain was effective in previous time but now, it is old or outdated and also without a clear system. Maximum punishment will be 10 to 20 years for Human trafficking offences. For the Cheating offence maximum punishment should be recovery of the loss from the offender to the victim, a fine of the same amount as that which has been lost by the victim as a result of offence or imprisonment for a term not exceeding five years. If there is no exact loss of the victim,
the offender will be punished at a fine of 5,000 rupees with imprisonment for a term not exceeding five years.

Section 6 of this Ain is describing the crime of counterfeiting. According to this section, Counterfeiting defines the crime to make forged notes and currency and prescribes punishment for that crime. This provision is very sparingly used because there are few occurrences of this type of offence.

The foreign employment is the area most affected of the economic crime. Foreign employment is one of the biggest sources for the national income of Nepal. For this connection, there are a lot of agencies which are working as a bridge between the department of labour and the foreign agencies. Some of them will not follow the rule of the nation and will make a contract with the peoples or workers who like to go abroad for the employment and the foreign agencies or employee agencies. To control EC in this field, the government of Nepal has implemented Foreign Employment Act, 2064 (2007). But because of political involvement and the personal interest of the high level officials, the act is not applicable or has not come into force properly. The maximum punishment shall also be liable to a fine ranging from three lakh to five lakh rupees and an imprisonment for a term ranging from three years to seven years and the license of such License-holder shall also be cancelled.

The Income tax, Excise duty and Value added tax will always plays an essential part to increase the national economy. These areas are also mostly affected of Economic crime. So the government of Nepal has already implemented the income tax act 2006, Excise Act 1958 (2002) and Value Added Tax Act 1995. These acts are trying to reduce the probability of the economic crime. The maximum punishment of income tax act shall be liable to a fine of not less than Rs 80,000 and not more than Rs 240,000 or an imprisonment for a term of not less than one year and not more than three years, or both. The maximum punishment of the offence of excise duty act should be to seize the excisable commodities from the offender, to fine the same amount which has been seized from offender and imprisonment for a term not exceeding one year.

VAT is new for Nepal. It was introduced on 16 Nov. 1997. Since the collection of both customs duties and income tax depends, to a great extent, upon the effectiveness of VAT, the new tax is expected to help enhance revenue collection. But these acts are not properly implemented because of political involvement in the business field and also companies’ and personal interest of high level officials in the taxation field. The maximum punishment of the offence against the VAT act that an officer may impose
consists of a fine not exceeding twice the amount of tax (it means 100% of the tax) or an imprisonment up to six months, or the person may be penalised with both the fine and the imprisonment.

The Human Trafficking and Transportation (Control) Act 2064, is very important in the context of Nepalese EC sector. It prohibits the trafficking ("an act of threat, incitement, and sale of women for the purpose of prostitution") of girls and women. Human Trafficking is organized and the most dangerous crime in the economic and social field of Nepal. It relates the fundamental rights of all citizens of Nepal. The Right against Exploitation laid down in the Constitution of Nepal, part 3 (art. 20) specifically prohibits any trafficking in persons: "Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited". In the Muliki Ain 2020 (country code 1993), human trafficking is also described. Except this, the Labour Act of 1992 and the National Human Rights Commission Act are also addressing girl trafficking and forced child labour. There are many acts to control this crime but lack of modern investigation systems, unqualified investigators, old and traditional court procedure and the corrupt mentality of attorney general office and sometimes political pressure and the personal interest of the high level officials, are major hindrances for not controlling such crime, and sometimes also these act itself are unclear and some of their provisions are outdated.

Drug trafficking is a most serious organized crime for the society, although it is not so serious for the national economy. It is anyway a serious crime in the field of EC. Few years ago, there was no effective law concerning this crime but now there are a lot of rules and regulations to control these activities. The Narcotics Drug Control Act from 1976 was subject to a comprehensive and important amendment in 1993. The maximum punishment of the offence of Drug trafficking act is imprisonment for a term from fifteen years to life imprisonment and a fine from 500,000 rupees to 2,500,000 for anyone doing transaction of any quantity more than 100 grams.

At last, there are a lot of acts implemented in the field of EC. But the major deficit is that none of these acts are defining the EC more precisely. Regarding the punishment system of such crimes, Human Trafficking and Control Act and Narcotics Drug Control act have stronger sanctions than others.

Actually, the purpose of the acts is to control the criminal activities in the field of EC but there is no real connection among them. And also the investigation agencies, financial sectors, politicians, other related officials, lawyers and even the judges of the courts are also not clear about and familiar with the definition of EC.
5. Working agencies to control the Economic Crime

5.1 General Overview: Structures of Government and Executive Branch

On May 28, 2008, Nepal’s government became a democratic republic after over 200 years as the world’s only Hindu monarchy. This was an important change in the history of Nepal. King Gyanendra was head of state and commander-in-chief. The prime minister heads a Council of Ministers appointed from the elected House of Representatives and the National Assembly. On November 9, 1990, Late King Birendra promulgated a new constitution which introduced a multi-party system. May 28, 2008, there was an election of Constitutional assembly and 601 (575 from the election and 26 nominated from the government) members were elected from different 24 parties. Dr. Rambaran Yadav has just been elected president of Nepal July 23, 2008.

Last election of Constitutional assembly was held on 20 June 2007 for 601 seats. The Election Constituency Delimitation Commission recommended the following number and distribution of seats: 335 members would be elected through a proportionate electoral system, 240 members through election in constituencies and 26 on recommendation by the Council of Ministers.

According to the Interim constitution of Nepal, the executive, legislative and judiciary bodies function and exercise their rights independently. Supreme Court acts as court of appeal and review, but also has powers of original jurisdiction and presides over four regional, 15 zonal and 75 district courts.

In Nepal, there are 5 Development regions, 14 zones, 75 districts, currently; there are 3914 VDCs and 58 Municipalities in the country. Each VDC is composed of 9 wards, Municipality ward ranges from 9 to 35. Kathmandu is the capital city.
## First democratic elections: CA and seats of the parties

<table>
<thead>
<tr>
<th>Name of party</th>
<th>Total seat</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communist Party of Nepal (Maoist)</td>
<td>229</td>
<td>38.10</td>
</tr>
<tr>
<td>Nepali Congress</td>
<td>115</td>
<td>19.13</td>
</tr>
<tr>
<td>Communist Party of Nepal (Unified Marxist-Leninist)</td>
<td>108</td>
<td>17.97</td>
</tr>
<tr>
<td>Madhesi Jana Adhikar Forum, Nepal</td>
<td>54</td>
<td>8.98</td>
</tr>
<tr>
<td>Tarai-Madhesh Loktantrik Party</td>
<td>21</td>
<td>3.49</td>
</tr>
<tr>
<td>Rastriya Prajatantra Party</td>
<td>8</td>
<td>1.33</td>
</tr>
<tr>
<td>Communist Party of Nepal (Marxist-Leninist)</td>
<td>9</td>
<td>1.50</td>
</tr>
<tr>
<td>Sadbhavana Party</td>
<td>9</td>
<td>1.50</td>
</tr>
<tr>
<td>Janamorcha Nepal</td>
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<td>1.33</td>
</tr>
<tr>
<td>Communist Party of Nepal (United)</td>
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<td>0.83</td>
</tr>
<tr>
<td>Rastriya Prajatantra Party Nepal</td>
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</tr>
<tr>
<td>Rastriya Janamorcha</td>
<td>4</td>
<td>0.66</td>
</tr>
<tr>
<td>Rastriya Janshakti Party</td>
<td>3</td>
<td>0.50</td>
</tr>
<tr>
<td>Nepal Workers Peasants Party</td>
<td>5</td>
<td>0.83</td>
</tr>
<tr>
<td>Sanghiya Loktantrik Rastriya Manch</td>
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<td>0.33</td>
</tr>
<tr>
<td>Nepal Sadbhavana Party (Anandidevi)</td>
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<td>0.50</td>
</tr>
<tr>
<td>Rastriya Janamukti Party</td>
<td>2</td>
<td>0.33</td>
</tr>
<tr>
<td>Nepali Janata Dal</td>
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<tr>
<td>Communist Party of Nepal (Unified)</td>
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<tr>
<td>Dalit Janajati Party</td>
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<tr>
<td>Nepal Rastriya Party</td>
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<tr>
<td>Samajbadi Prajatantrik Janata Party</td>
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<tr>
<td>Chure Bhawar Rastriya Ekta Party</td>
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<td>0.17</td>
</tr>
<tr>
<td>Nepal Loktantrik Samajbadi Dal</td>
<td>1</td>
<td>0.17</td>
</tr>
</tbody>
</table>

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Figure 18  Chart of Ministries in Nepal

- Head of the Government (Prime Minister)
- Ministry of Defense
- Ministry of Home Affairs
- Culture, Tourism and Civil Aviation
- Education and Sports
- Foreign Affairs
- Finance
- Local Development
- General Administration
- Agriculture and Cooperatives
- Environment, Science and Technology
- Industry, Commerce and Supplies
- Information & Communication
- Peace and Reconstruction
- Women, Children and Social Welfare
- Land, Reform and Management
- Forests and Soil Conservation
- Water Resources
- Health and Population
- Physical Planning and Works
- Labour and Transport Management
- Law and Justice and Parliamentary Affairs
The chart below will clear the structure of executive branch.

**Figure 19** Structures of Executive Branch

There are some constitutional Bodies in Nepal which are mentioned below.

1. CIAA,
2. Auditor General,
3. Public Service and
4. Election Commission.

To control the EC, the structure of government of Nepal and also the constitutional bodies are playing a vital role. Below, in chapter 5.2 the working agencies are described in details.
5.2 Important Working Agencies

5.2.1 Commission for the Investigation of Abuse of Authority (CIAA)

5.2.1.1 Legal Status
CIAA is an apex constitutional body for controlling corruption in Nepal. It strives hard to fight against incidental, institutional and systemic corruption in the public sphere. CIAA is playing the roles of ombudsman, investigator and prosecutor simultaneously. It aims to crack down on corruption by a systems-based approach. It also focuses on detection and punishment of corrupt behaviour, as well as on social, cultural and institutional reform. To attain the ultimate goal of good governance and for consolidating the rule of law in the country, all types of measures like punitive, preventive and promotional ones are taken to reduce corruption.

Part 11, art. 119 of the Interim Constitution of Nepal is describing the Commission for the Investigation of Abuse of Authority. According to the interim Constitution, CIAA is a constitutional body. The government of Nepal has implemented the Commission for the Investigation of Abuse of Authority act 1991.

According to art. 119:

1. There shall be a Commission for the Investigation of Abuse of Authority in Nepal consisting of a Chief Commissioner and as many other Commissioners as required. If additional Commissioners are appointed apart from the Chief Commissioner, the Chief Commissioner shall act as Chairperson of the Commission for the Investigation of Abuse of Authority.

2. The Prime Minister shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.

3. Subject to the proviso in sub-clause (a) of clause (7), the term of office of the Chief Commissioner and other Commissioners shall be six years from the date of appointment. Provided that,
   - If, before the expiry of his/her term, the Chief Commissioner or a Commissioner attains the age of sixty-five, he/she shall retire.
   - The Chief Commissioner or a Commissioner may be removed from his/her office on the same ground and in the same manner as has been set out for the removal of a Judge of the Supreme Court.
4. The office of the Chief Commissioner or a Commissioner shall be deemed vacant under the following circumstances
   • if he/she submits a written resignation to the Prime Minister,
   • if pursuant to clause (3), his/her term expires or he/she is removed from his/her office,
   • if he/she dies.

5. No person shall be eligible to be appointed as the Chief Commissioner or a Commissioner unless he/she
   • holds a Bachelor’s Degree from a university recognized by the Government of Nepal,
   • is not a member of any political party immediately before the appointment,
   • has at least twenty years experience in the field of accounting, revenue, engineering, law, development or research and is a distinguished person
   • has attained forty-five years of age, and
   • possesses a high moral character.

6. The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall not, so long as they hold office, be altered to their disadvantage.

7. A person once appointed as the Chief Commissioner or Commissioner shall not be eligible for appointment in other Government Service. Provided that,
   • nothing in this Clause shall be deemed to be a bar to appointment of a Commissioner of the Commission for the Investigation of Abuse of Authority as its Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his/her term of office shall be computed as to include his/her tenure as Commissioner as well.
   • nothing in this clause shall be deemed to be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject.
5.2.1.2. Composition Structures

CIAA has delegated its authority to all 5 Regional Administration Offices and 75 Chief District Officers. In each Regional Administrative Office, a special abuse of authority investigation section has been established. These offices are managed by legal experts who exclusively look into the issues of corruption and improper conduct. Similar exclusive arrangements have also been made in 10 major districts on a pilot basis. These pilot basis forums consist of government officers, representatives of business community and NGO (Non Governmental Organization) actors. They are setting up action plans to curb corruption and mal-efficiencies at the local levels.
Figure 20  Composition Structure of CIAA

CIAA Annual report 2007, Schedule 1 (p. 287).

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221 CIAA Annual report 2007, Schedule 1 (p. 287).
5.2.1.3 Tasks and Powers

CIAA is an independent anti-corruption institution. Its primary authority is to conduct or to cause to be conducted inquiries into, and investigations of improper conduct or corruption by a person holding any public office.

CIAA is a major agency in Nepal to control the EC. Its tasks and powers are described in art. 120 of the Interim Constitution of Nepal. According to this provision:

1. The Commission for the Investigation of Abuse of Authority may, in accordance with law, conduct or cause to be conducted inquiries into, and investigations of, improper conduct or corruption by a person holding any public office. Provided that this Clause shall not be applicable to any official in relation to whom this Constitution itself separately provides for such action, and to any officials with regard to whom other law has separately made special provision.

2. An inquiry and investigation may be conducted, or caused to be conducted, against any official of a Constitutional Body removed from their office following an impeachment resolution on the ground of misbehaviour, any Judge removed by the Judicial Council on similar charges, or any person proceeded against under the Army Act after they are removed from office, in accordance with law.

3. If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant that any person holding any public office has misused his/her authority by committing an act which is defined by law as improper conduct, it may warn such person, or forward a recommendation to the authority concerned in writing to take departmental action or any other necessary action as prescribed by the law.

4. If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant that a person holding any public office has committed an act which is defined by law as corrupt, it may lodge or caused to be lodged a case against such person or any other person involved therein in a court with jurisdiction in accordance with the law.

5. If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant that the nature of the work to be carried out by the person holding any public office falls under the jurisdiction of another authority or body, it may forward a recommendation to the authority or body concerned in writing for necessary action.
6. Subject to this Constitution, other functions, duties, powers and procedures of the Commission for the Investigation of Abuse of Authority shall be as determined by law.

7. The Commission for the Investigation of Abuse of Authority may delegate any of its powers, functions and duties relating to the inquiry, investigation or lodging of cases, to the Chief Commissioner, Commissioner or any employee of the Government of Nepal to be exercised in compliance with the conditions specified.

### Figure 21  Trends of workload and outputs of CIAA

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<td>Total complaints</td>
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<td>3564</td>
<td>4324</td>
<td>4759</td>
<td>3732</td>
<td>3966</td>
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<td>1261</td>
<td>859</td>
<td>1313</td>
<td>1606</td>
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<tr>
<td>Disposed cases</td>
<td>2135</td>
<td>2976</td>
<td>3353</td>
<td>3709</td>
<td>3188</td>
<td>2481</td>
<td>2015</td>
<td>698</td>
<td>498</td>
<td>861</td>
<td>920</td>
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<td>New court cases filed by CIAA</td>
<td>65</td>
<td>115</td>
<td>114</td>
<td>113</td>
<td>98</td>
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<td>61</td>
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<td>13</td>
<td>12</td>
<td>9</td>
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<td>Suggestion/Attention drawn, no. of cases</td>
<td>26</td>
<td>115</td>
<td>19</td>
<td>28</td>
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<td>35</td>
<td>37</td>
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<td>Warnings, number of cases</td>
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<td>42</td>
<td>24</td>
<td>25</td>
<td>15</td>
<td>8</td>
<td>21</td>
<td>NA</td>
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<td>Departmental actions, number of cases</td>
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<td>29</td>
<td>45</td>
<td>39</td>
<td>38</td>
<td>25</td>
<td>18</td>
<td>12</td>
<td>13</td>
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<tr>
<td>Cases decided by court</td>
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<td>92</td>
<td>109</td>
<td>106</td>
<td>130</td>
<td>32</td>
<td>6</td>
<td>73 dec’d up to 2000</td>
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</table>

The next chart shows the total complaints and disposed cases from CIAA Fiscal Year 2000 to 2007.

---

Figure 22  Total complaints and disposed cases from CIAA\textsuperscript{223}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure22.png}
\caption{Total complaints and disposed cases from CIAA}
\end{figure}

\textsuperscript{223} CIAA Annual Report 2007, Schedule 10, p. 304.
**Figure 23** Outputs of CIAA F/Y 2000-2007\(^ {224}\)

![Graph showing outputs of CIAA F/Y 2000-2007 with data points for cases filed in court, departmental actions, warnings, attention drawn, and suggestions over the years 2000 to 2007.]

Figure 24  CIAA Annual plans 2003 – 2007\textsuperscript{225}

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<tr>
<th>S.N.</th>
<th>Description</th>
<th>year 1</th>
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<td>% Deptl. Action</td>
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<td>97</td>
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\textsuperscript{225} Strategic Plan of CIAA Magh 2059: Surya Nath Upadhyay, Chief Commissioner of CIAA, pp.13 - 15.
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<td>% of total Prosecution</td>
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<td>% of total Deptl action</td>
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<td>Ratio of cost recoveries and savings to annual budget</td>
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<td>15</td>
<td>20</td>
<td>25</td>
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</table>
5.2.1.4 Co-operations with other Agencies

The Commission for the Investigation of Abuse of Authority is a main agency to control the EC.

For the purpose of inquiries and investigations into abuse of authority, the Commission may obtain the cooperation of any department or office of HMG, including the Police Headquarters, the National Investigations Department and their subordinate offices, or any institution, or the services of any employee of such department, office or institutions. In case the nature of the abuse of authority into which the Commission is conducting inquiries and investigations makes it necessary to hold consultations with any expert working in any department, office, or institution, or to involve such expert in inquiries and investigations, the Commission may request the concerned department, office or institution to send this person on deputation for a specified period. In case the Commission has sought the cooperation of any department, office or institution, or any employee working therein, it shall be the duty of such department, office, institution or employee to provide such cooperation to the Commission.

The chart below may clear the relation between CIAA and other agencies. According to this chart, the Commission for the Investigation of Abuse of Authority is the main agency for EC and it has to be related to other agencies, beside these agencies it has to work with local administration offices, Attorney General Office, Auditor General’s office and Public Service Commission. CIAA is responsible for corruption related to all the public officials so it is directly related to the whole offices related to the Government organization and institutions.
Figure 25  Chart Relation between CIAA and other agencies
5.2.2 Judicial Council (JC)

5.2.2.1 Legal Status

The Judicial Council is established under art. 113 of the Interim constitution of Nepal 2007. It is a body mainly responsible for making recommendations for the appointment, transfer, disciplinary action and dismissal of service of judges. Besides, it may recommend other matters relating to administration of justice.

The term of office of the members of the Judicial Council shall be four years and their remuneration and privileges shall be the same as those of a Judge of the Supreme Court.

The members may be removed from office on the same grounds and in the same manner as provided for the removal of a Judge of the Supreme Court.

The Chairperson and members of the Judicial Council may obtain and study the documents and files of a case related to any complaint lodged against a judge, and may furnish information thereon to the Judicial Council.

The judicial council has its own secretariat headed by the secretary appointed by the Government of Nepal 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 decisions of the council.

5.2.2.2. Composition Structures

The Judicial Council shall consist of the following as its Chairperson and members:

a) The Chief Justice – Chairperson
b) The Minister of Justice – Member
c) Senior-most Judge of the Supreme Court – Member
d) A person to be nominated by the Prime Minister from among jurists – Member
e) A senior advocate, or an advocate who has at least twenty years experience to be appointed by the Chief Justice on the recommendation of the Nepal Bar Association – Member.

So, there are 5 members among Chairperson in Judiciary Council in Nepal.

The term of office of the members other than ex-officio ones is four years.
5.2.2.3 Tasks and Powers

The Judicial Council has been constituted under the chairmanship of the Chief Justice of Nepal. One of the major functions of the Council is to conduct disciplinary action against, and dismissal of judges who are involved in corruption and other improper matters. The Judicial Council is a body mainly responsible as an administrator of justice for making recommendations for the appointment, transfer, disciplinary action and dismissal of service of judges. The chief justice of Nepal could exercise or he could give orders to maintain the administrative discipline to the appeal courts and the district courts under the recommendations of the Judicial Council.

The Judicial Council may, while carrying out preliminary investigation of a complaint received against a judge, constitute a Committee of Inquiry, if it has determined that a detailed investigation by an expert is required.

The other functions, duties and powers of the Judicial Council shall be as determined by law.
5.2.2.4 Co-operation with other Agencies

Judicial Council is not directly related with other agencies. It just handles the judicial system and administration system of the Courts. The chart below may clear its status.

Figure 27 Chart Relation of judicial council to other judicial bodies
5.2.3 National Vigilance Center

5.2.3.1 Legal Status

The Nepal Government has established a National Vigilance Center for the effective control of corrupted activities and in order to create and promote awareness against corruption. It was instituted as per Chapter 4 of the anti-corruption Act, 2002. National Vigilance Centre (NVC) was established to create awareness against corruption and to further activities related to prevent corruption. It was established in Shrawan 27, 2059 B.S. under the direct supervision and control of Prime Minister of Nepal. The main task of this center is based on the proverb "Prevention is better than cure" through establishing preventive and promotional measures to act against corruption activities. Various efforts have been made in the past to fight against corruption. NVC is a milestone in this context.

At first, the public must be aware about the eradication of corruption. In the context of Nepal, literacy rate is low. Even the citizens of the country are not aware about the fact that the Government is managing the state from their public money paid as tax. The unawareness of the people made corruption within the society rampant. Therefore NVC is working among the people upon any issues concerned to bring improvement in Government/Public sector services and finally to create a situation that discourages any kind of corruption activities in future. The center especially focuses on the preventive and promotional activities.

5.2.3.2 Composition Structures

Under the Chief Officer of NVC, there are two divisions; a Administration/Monitoring Division and a Technical Audit division. Below these divisions, there are seven different sections.

There are total 55 permanent staffs including one gazetted Special Class Officer (Secretary) holding the post of Chief Officer. Among these, 30 posts are allotted for officer gazetted level, and the remaining 25 for the assistant level. Among 30 officer gazetted level posts, 16 posts are for administrative and 14 posts for technical officers. Likewise there are 12 posts of administrative and 13 posts of technical staffs among the assistant level staffs.
Beside these, 20 people including driver, peon, guard, sweeper, gardener are also assigned as employees of the organization. All these posts are assigned under a contract basis.

After the termination of Special Police Force and the decision made by the Ministry council of Nepal Government in 2061/1/7 B.S., 86 Police Staffs were retained in the NVC. The NVC Organization chart below may show the structure of NVC more clearly.

**Figure 28  NVC Structure Chart**
5.2.3.3 Tasks and Powers

National vigilance Center has been established mainly to play a preventive and vigilant role in order to ensure good governance by fair economic discipline, moral ethics and transparency. Therefore, NVC was formed according the Chapter 4 of the anti-Corruption Act, 2002 (2059 B.S.) in order to mitigate corruption activities in an effective manner and to build a corruption-free society.

The Anti-corruption Act, 2002 (2059BS.) is also describing the work, duties and responsibilities that are assigned to National Vigilance Centre, as mentioned below:

- To make alert and to collect information on whether the regular works are conducted or not conducted by Ministries, Departments, and Public institutions of Nepal Government.
- To conduct surveillance, surprise audits and inspections in corruption prone places or works.
- To monitor statements of property and income declared by individuals holding public office.
- To make the necessary recommendations to Government with regard to policies, strategies and law reforms related to the corruption control.
- To manage the establishment of a complaint box.
- To provide suggestions and directions to all organizations the activities of which are necessarily aimed at controlling corruption.
- To collect necessary information by updating corruption-related information from organizational officers of corruption-related investigation division in respect of guilty persons. The investigation authority or investigation officer must prove the criminal behavior or crime of the suspected persons, but the suspected person should prove him self innocent too.
- To deliver to concerned agencies any information received about corruption.
- To conduct or provide any instant work related to corruption prevention.
- To conduct or cause to be conducted other functions prescribed by Government of Nepal.

According to the approved strategy and policy by the government regarding Anti-Corruption Plan, 2060, the Centre has been assigned the following works:\textsuperscript{226}

\textsuperscript{226} www.org_chart.php national vigilance.htm (15 June 2008).
## Strategy and policy regarding Anti-Corruption Plan

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<th>SN</th>
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<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To make the works of Public development transparent, economical and managed</td>
<td>To manage the effective auditing of any public development work qualitatively and keep the involved people in disciplined manner by establishing the Technical Audit Division within NVC</td>
<td>The audit of the development programmes shall be done by the centre with the establishment of Technical Audit Division by 2006</td>
</tr>
<tr>
<td>2</td>
<td>Maintain the effectiveness of NVC activity by creating economic discipline through the established constitution and promote institutional capacity of other Government organizations.</td>
<td>To make able and strengthen with managing the useful resources for the NVC, and reporting to the concerned organization about the property details from the existing law for taking necessary actions</td>
<td>Investigating the property details of the Public Servant submitted to the concerned authority or not</td>
</tr>
</tbody>
</table>
| 3  | To discourage the corruption related activities in the land sector with effective land management of Public, Government /Guthi | • To update the land records of all Government, Public and Guthi and make arrangement of keeping records in NVC and Guthi Sasthan  
• To control strictly the attitude towards land capturing by effective land management of Guthi, Public Government | |

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A Technical audit may be defined as "A systematic, independent process for obtaining evidence and evaluating this objectively to determine the extent to which needs or expectations are fulfilled."

**Main Duties and Responsibilities of Chief Officer**

- Monitoring, alert, generating awareness, emphasizing on anti-corruption culture.
- Long, Middle and Short Term planning to be made to fulfill the objectives of NVC.
- To conduct surveillance, surprise audits and inspections in corruption prone places or works.
- Collection of information (under art. 4, sub-art. 2 (e)).
- Work in coordination with GOs/ NGOs/ INGOs/Civil Society in order to minimize corruption.
- Submission of half yearly Progress Reports to the Prime Minister.
- Performing various legal administrative works necessary for the organization.
- Distribution of responsibilities among the different branches within the organization.
- To assign and perform various other activities as desired by the Nepali Government.

**Duties and Responsibilities of Planning and Administrative Department**

- To assign new staffs incl. their promotion, monitoring and evaluating their activities along with reward or punishment.
- Effective management and utilization of resources and assets of the organization.
- Work out for transferring employees to different areas.
- To assist in providing necessary help and suggestions to required persons and organization.
- To assist in human resource development through scholarship, promotion and training.
- To conduct surveillance, surprise audits and inspections in corruption prone places or works.
- To act as spokesperson of the organization.
- To help in documentation of important papers and reports from inside and outside sources.
• Monitoring and evaluation of ongoing activities in the organization.
• To prepare the annual budget, approval of expenses and maintaining the account of the related matters.
• Monitoring of the plan and programs run by the Foreign Aid
• To organize various meetings, seminars, workshops and awareness-rising programs.
• To prepare annual reports
• To assist in the positive contribution for anti-corruption as well as rewarding those working for it.
• To update corruption-related rules and regulations.
• To maintain the secrecy regarding control of the corruption activities.
• To monitor the various activities in a regular manner.
• To ask Ministries, Departments and other Public Institutions to put up a complaint box to deal with public grievances and advise or direct them on matters related to corruption prevention.
• To monitor the activities against corruption from various public and Government Organization.
• To monitor statements of property and income declared by persons assuming public positions.
• To instruct the various sub-departments to perform their duties accordingly.

Information Collection and Investigation Department
• To collect information on whether or not the functions of Government offices and Public Institutions are properly conducted and alert them.
• To collect the complaints and information related to corruption through various means and media.
• To conduct surveillance, surprise audits and inspections in corruption prone places or works.
• To investigate and collect the information of various service-providing organizations.
• To conduct surveillance inspections for the effectiveness of the Technical Audit of the organization.
• To research and investigate the collected information.
• To observe and inspect the activities of suspected Government officials.
• To observe and report suspected activities of government officials and send the report to the Monitoring Division.
• To alert and send report to the related Department for taking necessary action against those doing corruption.
• To prepare report and suggestion to prevent and control the corruption.
• To strain the truth from the collected information.
• To assign the personnel to collect the facts and real information.
• To manage the ground for awareness-raising and alerting the culprit found out through the investigation process.
• To work against the corruption, together with the Government Organization, NGOs and Civil Society.
• Submission of the progress reports to the Head of the Department.
• To perform the various other duties and responsibilities as assigned by the Central Department.

5.2.3.4 Co-operations with other Agencies

The Government of Nepal has established a NVC under the direct supervision and control of the Prime minister, for the effective control of the corrupted activities. It should also create and promote awareness against corruption. So, NVC is monitoring the whole bureaucracy and the officials who are working within the public sector like Administration, Public Commission, Courts and other agencies like CIAA, CID, NDCLEU, RIA, NRB and other banking sectors too.

The chart below may show these relationships more clearly.
Figure 30 Chart Relation NVC with other Agencies

- Administration offices
- Prime Minister
- CIAA
- NDCLEU
- RIA
- NRB
- CID Police
- Courts
- Public Service commission
5.2.4 Crime Investigation Department of Nepal Police

5.2.4.1 Legal Status

Nepal Police department is attached to and supervised by the Ministry of Home Affairs. This CID is described in Police Act 2012 (B.S.). Art. 15 of this act is dealing with the CID and its task. Its main purpose is crime control, to investigate the relevant cases and to maintain rules and regulations inside the country.

5.2.4.2 Composition Structures

Under the police department, there are five regional offices (Eastern Regional Police Office, Middle Regional Police Office, Western Regional Police Office, Middle Western Regional Police Office, Far Western Regional Police Office), 14 zonal offices (Regional Unit Police offices Mechhi, Koshi, Sagarmatha, Janakpur, Bagmati, Narayani, Gandaki, Lumbini, Dhaulagiri, Rapti, Bheri, Karnali, Shetri, Mahakali).

Finally, there are 75 district offices (Taplejung, Panchthar, Ilam, Jhapa, Shankhuwashawa, Dhankuta, Therathum, Sunshari, Morang, Sholukhumbu, Okhaldhunga, Khotang, Bhojpur, Udayapur, Shiraha, Saptari, Dolakha, Ramechhap, Shindhuli, Dhanusha, Mahottari, Sharlahi, Shindhupalchowk, Kavre, Rashuwa, Nuwakot, Dhading, kathmandu, lalitpur, Bhaktapur, Chitwan, Makawanpur, bara, Parsa, Rautahat, Manang, Kaski, Lamjung, Gorkha, Shangja, Tanahu, Mustang, Myagdi, Baglung, Parbat, Palpa, Gulmi, Arghakhanchi, Kapilbastu, Rupandehi, Nawalparasi, Salyan, Pyuthan, Dang, Rukum, Rolpa, Dailekha, Surkhet, Jajarkot, Bank, Bardiya, Humla, Jumla, Mugu, Kalikot, Dolpa, Bajhang, Bajura, Achham, Doti, Kailali, Darchula, Baitadi, Dadeldhura, Kanchanpur), and below these district offices, there are several stations. CID department distributed their manpower inside almost all the police offices.

Especially, for the Valley (i.e. Kathmandu, Lalitpur and Bhaktapur District) there is one special CID branch in Kathmandu which will handle the 3 districts in the valley. Under this Branch or district CID head quarter, there are 3 CID branches in those three different districts inside the valley.

The charts below may show the structures of CID more clearly.
5.2.4.3 Tasks and Powers

Inside the police department in Nepal, there is one CID department. Inside that, officials will investigate the cases and hand over the case to the related court through the help of the Attorney general’s office.

For the Katmandu valley, there is a special branch for crime investigation. That Branch will investigate the cases and hand them over to the district level office of the crime investigation branch and that branch will prepare the documents with the help of Attorney general’s office and submit them to the related court.

The most responsible part within the investigation has been given to the officer of the district police office. He is obliged to control the relevant matter and will report results to the department. The department will monitor the activities and the performance of the investigators and the cases of the 75 districts of Nepal. It has been given the power to
investigate the cases according to the law of Nepal. The main task of its officers is to control the crime and investigate the criminal cases and to hand over the case file to the different courts of Nepal with the help of Attorney general’s Office. Generally this department will investigate criminal activities such as social, political and economic ones.

The cases may be divided in 4 pillars, which are as follows:

- Pillar 1 is related to Homicide/Murder/Genocide, Rape, and Crime against State, Human Trafficking and Narcotics / Drugs.
- Pillar 2 is Dacoits (looting people and their property with the force used by weapons), Inside Dacoits (CID is keeping the crimes like Theft & Burglar), Vehicle Theft, Cyber Crime, Arson and Intellectual Property rights.
- Pillar 3 concerns Fraud/ Counterfeit, Organized Financial Crime, Social Misdemeanors, Serious Crime Related to Public Health, Food items, Custom & Revenue.
- Pillar 4 is related to Kidnapping, Wanted Offenders, Blackmail and Organized Crimes.

5.2.4.4 Co-operation with other Agencies

Crime Investigation should assist the other agencies, e.g. CIAA, which are authorized to investigate in order to control the economic and other crime. So CID is helping to investigate the cases which are related to CID and also to other agencies like CIAA, RIA, Courts, NRB and other financial institutions and other legal agencies, namely those whose offices have judicial authority like forest department, labor department etc.

The chart below can clear more details.
Figure 32 Chart CID’s Co-operations with other Agencies
5.2.5 Narcotic Drugs Control Law Enforcement Unit

5.2.5.1 Legal Status

Narcotic Drug Control Law Enforcement Unit was established in 1992 according to art. 21 of Narcotic Drugs (Control) Act, 1976 (2033 BS). This article is the provision regarding to Narcotic Drugs Control Officer and Narcotic Drugs Control Administration. According to it,

1. The Government shall establish a Narcotic Drugs Control Administration under the Ministry of Home Affairs for carrying out the objectives of this Act and may appoint or designate a Chief Narcotic Drugs Control Officer, one or more Narcotic Drugs Control Officers, Deputy Narcotic Drugs Control Officer and other officers as and when necessary.

2. The Chief Narcotic Drugs Control Officer shall act as chief of the Narcotic Drugs Control Administration and the Chief Narcotic Drugs Control Officer shall supervise control, direct and coordinate the measures relating to control of narcotic drugs under this Act.

3. Notwithstanding anything contained in other provisions of this Act, if it is established that any Government employee has taken bribe with a view to assist a person facilitating the sale and use of narcotic drugs, penalty shall be imposed on such employee under the prevailing law and an additional penalty equivalent to the half of the penalty given to such offender involved in due sale and use of narcotic drugs.

5.2.5.2 Composition Structures

Nepal Police has immersed itself wholeheartedly in controlling the sale and transit of narcotic drugs for which it has been organizing awareness-raising campaigns through various interactive programs and seminars. For this purpose solely, the NDCLEU was set up in New Baneshwor Kathmandu and opened various branches in different parts of the country, like in Kakadvitta, Biratnagar, Birgunj, Pokhara, Bhairahawa, Nepalgunj and Mahendranagar. Apart from these branches, there are investigation officers too throughout the country who have been working towards the aim of fulfilling that responsibility. There are two charts below which can clear the structure of NDCLEU.
Figure 33 Composition Structure of NDCLEU

Senior Superintendent of Police
Narcotic Drug Control Officer

Superintendent of Police
Deputy Narcotic Drug Control Officer

Deputy Superintendent of Police
Narcotic Drug Control Officer

Staff A.S.I.

Duty Officer (Round the clock)
JCO

Terminal Building

TIA
Dy. S. P.

Cargo Building

Branch Office

Kakadvitta
Biratnagar
Birgunj
Pokhara
Bhairahawa
Nepalgunj
Mahendranagar

Administration Section
General Adm. /Personnel Insp.

Prosecution Insp.

Operation Section Insp.

Intelligence Section Insp.

Computer Section S. I.

Account / Store Section S. I.

Library Section
A. S. I.

General Service Transport / Maintenance S. I.

Security S. I.
### Figure 34 Posting Chart of NDCLEU

<table>
<thead>
<tr>
<th>Section</th>
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<th></th>
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<th>Total</th>
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<td>11</td>
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<td>1</td>
<td>1</td>
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<td></td>
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<tr>
<td>3</td>
<td>Biratnagar Branch</td>
<td></td>
<td></td>
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<td>1</td>
<td>1</td>
<td>1</td>
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<td></td>
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<tr>
<td>4</td>
<td>Birgunj Branch</td>
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<td>1</td>
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<tr>
<td>5</td>
<td>Pokhara Branch</td>
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<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>Bhairahawa Branch</td>
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<td>1</td>
<td>1</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Nepalgunj Branch</td>
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<td></td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Mahendranagar Branch</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td>Total</td>
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<td>1</td>
<td>2</td>
<td>13</td>
<td>13</td>
<td>14</td>
<td>9</td>
<td>21</td>
</tr>
</tbody>
</table>

#### 5.2.5.3 Tasks and Powers

To control the sale of Narcotic Drugs, the Narcotic Drugs (Control) Act, 1976 (2033 BS.) as the fundamental law against the trafficking and misuse of narcotic drugs and the Intoxicating Substance Act, 1917 were enacted for the purpose of fighting drug abuse and trafficking. The adverse effects of drug addiction created and widened the market for such drugs. To supply the market, international smugglers became active and Nepal, among other countries, was seriously concerned to curb such activities. To control these activities Nepal also changed its penal policy through the amendments of that Act.

For this task, the government created a unit named “The Narcotic Drugs Control and Law Enforcement Unit” (NDCLEU). That unit has started its work with its available human resources, has been maximizing its efforts and collaborating with other national and international organizations, agencies and the community police to raise Narcotic Drugs awareness among the people. NDCLEU is also active in programs that deal with the fight against drugs by assigning trainers for those programs. Looking at the nature and the seriousness of the concerned task, it has also been maintaining a prudent and

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necessary association with related national and international agencies for the control of
narcotic drugs and the investigation of drug-related crimes.
Narcotic Drugs Act art. 21B describes the functions, power and duties of the
Investigating Authority. According to that provision:

1. The investigating authority while being deputed in the control of narcotic drugs
   shall enjoy the rights equal to that of police pursuant to prevailing laws in course
   of conducting investigation of narcotic drugs.

2. While conducting investigation in the transaction of narcotic drugs, the
   investigating authority shall enjoy the rights equal to that of custom officer
   pursuant to prevailing Custom Act to search the goods of the person seen
   doubtful in the transaction of narcotic drugs. Provided that before conducting
   such search, the investigating authority shall have to issue a search warrant to
   the concerned person.

3. The investigating authority shall enjoy the right equal to that of postal officer
   pursuant to prevailing Postal Act, to censor any matter to be received by post
   which is seen doubtful in course of investigation of narcotic drugs.

Art. 21C describes that the authority and employees to be engaged in the investigating
function of narcotic drugs and the employees related to narcotic drug control shall have
the right to carry and use scientific equipment, communication devices and weapons and
the material to be used in that weapon, which are necessary in course of investigation
and control activities.

5.2.5.4 Co-operations with other Agencies

The Narcotic Drugs Control and Law Enforcement Unit is directly related to the Ministry
of Home Affairs. It has good cooperation with CID department because the staffs of this
agency are directed from Nepal police department. If there is corruption inside the
NDCLEU, of course CIAA is also related.

The chart below may show its cooperation with other agencies.
Figure 35  Cooperation of NDCLEU with other agencies
5.2.6 Revenue Investigation Authority

5.2.6.1 Legal Status

To control and investigate the economic crime as well as corruption, there is one further agency in Nepal called the Department of Revenue Investigation (RIA). The functioning of the department is guided by the Leakage of Revenue (Investigation and control) Act 2052 (B.S.). According to the foreign exchange regulation act 2058 (B.S.), to control and investigate the cases related to foreign currency and foreign exchange, Department of Revenue Investigation (DRI) will appoint an investigation officer. He will investigate and control related crime concerning the RIA. The government of Nepal has published the act on 2059/6/1 (B.S.) in Nepal Rajpatra (Gazette) Div. 52 no. 44 (C) PART 3, and appointed the Director General of RIA as investigation officer. According to this act, Director General of RIA can appoint the Deputy Director General or its Directors as investigators.

For the Custom, the Government has appointed as investigator the Deputy Director General of RIA and the chief of its unit officer. This has been decided by cabinet on 2003 (2060/3/12 B.S.) according to the Custom Act 2019, art. 40.

For the VAT act, the Government has appointed as investigator the section officer of RIA. This decision was implemented on 2058/8/15 (B.S.) according to the VAT Act 1995 (2052 B.S.), art. 3.

Institutional strengthening and regulatory mechanism to control corruption is underway in the last few years. Even though corruption control agencies have important roles to play in combating corruption, good governance with a serious commitment to root out corruption is necessary while simultaneously stimulating economic growth and providing employment opportunities remain the key factors for a corruption-free society. Anti-corruption agencies can play important roles in right tracking the government and expediting policy and legislative forms. Nevertheless, the anti-corruption agencies need sufficient resources and responses from the government to intensify their actions. The broad perspective of the people about the nature of corruption and the findings of TI on the degree of corruption warrant a pro-active role to be played by RIA, the executive agency and the emerging civil society.
5.2.6.2. Composition Structures

Figure 36 Structure of DRI

5.2.6.3 Tasks and Powers

This department (RIA) is overseen and supervised by the Ministry of Finance. The functioning of the department is guided by the Leakage of Revenue (Investigation and
control) Act 2052 (B.S.). The potential areas, where leakage of revenue is prone, are basically and broadly divided into these categories. The three main categories are: export and import; clearance of value added and income taxes; and transactions, where foreign currency is involved.

Department of Revenue Investigation has its own mobile force, though inadequately staffed, to monitor possible areas of revenue leakage. Its main source of information is the information from the informers who are setting from RIA, from public and the experience of the mobile team itself. The rate of information it receives through government institutions is very low.

Its investigation and case filing process is almost the same as CIAA, NDLEU and CID department (cf. above, chapter no 5.2.1.3, 5.2.4.3 and 5.2.5.3). Its investigation officer may use the power like search and seize and warrant in the same manner as the power of CID officer, CIAA investigation officer and Drugs control officer, but the area of investigation is different from that of other agencies. Its main area is taxation. The areas of investigation of the DRI are VAT and other taxes, Customs and foreign currency. Its officers have power to check and control the irregularities or offences related to the Income Tax act, Excise Duty act, Foreign exchange regulation act, Leakage of Revenue (Investigation and control) Act, VAT act etc.

Despite of all inadequacies, the contribution of the department towards the fight against corruption is considerable.

The following table illustrates the contribution of RIA (DRI) in combating corruption in a meaningful way.
The table illustrates that the ratio of cases filed in the court has increased by 5.27 times, the sum of the amount recovered and/or materials seized by 5.12 times, whereas the amount of bail has been reduced by 0.78 times in comparison to the previous year. This is a good indicator of the role of DRI in intensifying actions against corruption.

### 5.2.6.4 Co-operations with other Agencies

To control revenue leakage and other tax evasion, RIA is playing a major role. RIA has good relations with other agencies like CID, Customs, CIAA, Attorney General etc. The chart below can clear this relation.

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\[ ^{228} \text{RIA Annual progress reports, 2001 and 2002.} \]
Figure 38  Chart Relation RIA with other agencies
5.2.7 Debt Recovery Tribunal

5.2.7.1 Legal Status

Debt Recovery is one of the biggest problems in the economic sector of Nepal. For this purpose, a Debt Recovery tribunal (DRT) has been established under the Act of Recovery for Debts of Banks and Financial Institutions 2002 (2058 BS.). Debt Recovery Tribunal is a three Member judicial body that not only takes decisions on the petition filed by a Bank or a Financial Institution but also recovers, as per the verdict, the bad loans and orders the transfer of the money to the concerned lending agency. This Act has become effective July 17, 2003.

Recovery of bad loans by banks and financial institutions has turned into a big issue in the financial sector of Nepal. This has greatly caused negative impact upon Banks' profit, government revenue and the overall financial sector of the country. This calls for an effective system and mechanisms that cause the early recovery of debts of Banks and also of bank-like institutions as specified by Nepal Rastra Bank as the Monetary Authority.

A special institutional mechanism has evolved to address the debt-recovery problem through judicial steps and early settlement of cases. This initiative needs to be transparent and informative to all concerned. Considering the reality described above, Debt Recovery Tribunal (DRT) has set-up the following pages where visitors can acquire information on the introduction, powers, functions and jurisdiction and a status report regarding different petitions lodged with the Tribunal.

The detailed Rules framed under the Act have already been made effective by the Government. The Tribunal may determine its procedures on its own, subject to the Act.

5.2.7.2 Composition Structures

The Debt Recovery Tribunal is a 3 Member judicial body.
5.2.7.3 Tasks and Powers

The Tribunal has been granted the power to originally try and settle cases on recovery of loans of banks and financial institutions. The jurisdiction of the Tribunal shall be all over the country and it may exercise all powers equal to that of a district court. All undecided cases lying in the district courts shall be transferred to the Tribunal under the provision of the Act. The tribunal has the same powers including to issue summons, to summon presence of petitioner, defendant, witness, to administer oath, to take deposition, to examine proofs, evidence and necessary documents or statements, to require submission of documents, to require furnishing of security and to impose punishment as the court of law has under the prevailing law. If the Tribunal holds that contempt of court has been committed, it may punish the accused with a fine or imprisonment or with both.

\[229\] DRT annual progress reports, 2007, p. 32.
The Tribunal may issue an interim order to the concerned office to withhold such property until another order is issued if the Tribunal thinks it necessary to withhold the security or the movable or immovable property owned or possessed by, or title to which belongs to, the guarantor of the borrower so as to prevent such security or property from being transferred, transmitted or sold.

All commercial banks, Agricultural Development Bank, Nepal Industrial Development Corporation and other financial institutions as specified by Nepal Rastra Bank from time to time are eligible lending agencies for filing the case (if the principal recoverable is Rs 500,000 or more).

They must also fulfill the following conditions to file the petition:

- Ample discussions and activities were held and carried out with the borrower to settle, or cause to be settled, the debt,
- The bank and financial institution took adequate action on the recovery of debt but the debt could not be recovered.

They must file a petition within the following time limit:

- In the case of loans already matured at the time of commencement of the Act, within 3 years from the date of commencement of the Act.
- In the case of loans matured after the commencement of the Act, within 3 years from the date of such maturity.

After a loan has been recovered, the concerned lending agency shall pay 1 percent of the loan amount to the Tribunal. This also includes the fee of 0.25 percent paid at the time of filing the case.

The loan recovery fee shall be deposited to the specified Revenue Account of the Government of Nepal.

The Tribunal has to try and settle a case filed under the Act not later than 150 days from the date of submission of a note of defense, if not submitted, from the date of expiration of the time limit for the filing of a note of defense.

The dissatisfied party may file an appeal within 15 days, to the appellate tribunal along with cash deposit - 30 percent- of amount held recoverable by a decision made by the Tribunal.

The one member Appeal Authority normally shall decide the case within 90 days. In the context of loan recovery his/her decision shall be final and no further appeal can be made.
After the case is decided, the Tribunal has to issue an order in the name of Loan Recovery Officer to implement the decision through him along with cooperation of various agencies and individuals as specified in the Rules framed under the Act. While issuing such order the Tribunal may also specify a period for the implementation of the decision.

If the debt recovery officer be in need in the course of implementation of a decision, he may seek assistance of the local administration and police. These are obliged to render assistance to the officer.

The order issued by the Debt Recovery Officer shall deem to be the order issued by the Tribunal. If any person disobeys any order given by the Debt Recovery Officer, the Tribunal may institute contempt proceedings against that person under the provision of the Act.

In recovering the principal and interest of a loan, the Debt Recovery Officer will, consistent with the decision of the Tribunal, follow the procedures described below, subject to the prevailing law:

- to take possession of, or auction, the borrower’s other movable or immovable property whether furnished as security or not,
- to take possession of, or auction, the guarantor’s movable or immovable property,
- where any individual is a borrower or guarantor, to arrest such individual and detain him pursuant to the prevailing law.
Figure 40  Filing the Cases from the financial Institutions in DRT

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</tbody>
</table>

230 DRT annual report 2006, p. 31; DRT annual report 2007, p. 35.
**Figure 41** Filing the Cases from Banijya Banks to DRT\textsuperscript{231}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Nepal Bank Ltd</td>
<td>930</td>
<td></td>
</tr>
<tr>
<td>RBB</td>
<td>450</td>
<td>21</td>
</tr>
<tr>
<td>Nepal Bangladesh Bank Ltd.</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Nepal SBI Bank</td>
<td>40</td>
<td>12</td>
</tr>
<tr>
<td>Nepal Credit &amp; Commerce Bank Ltd.</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>NBL Bank Ltd.</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Himalayan Bank Ltd.</td>
<td>23</td>
<td>1</td>
</tr>
<tr>
<td>Lumbini Bank Ltd.</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Bank of Katmandu</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>N.I.C. Bank Ltd.</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Laxmi Bank Ltd.</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Everest Bank Ltd.</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Machhapuchhere Bank Ltd.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Siddhartha Bank Ltd.</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Agricultural Dev. Bank Ltd.</td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

\textsuperscript{231} DRT annual report 2006, p. 32; DRT annual report 2007, p. 36.
5.2.7.4 Co-operation with other Agencies

DRT is directly related to NRB and other banking and financial institutions. DRT has powers equal to the district court, so the decision of the DRT should be appealed to Appeal court. The debt recovery officer may seek assistance of the local administration and police if he needs their help in the course of implementation of a decision, and the local administration and police must render assistance to the officer. So DRT has to cooperate with Local Government or local administration, CID, Auditor General, NRB, Financial Institutions, Courts and so on. I have been trying to clear this in the chart below.

Figure 42 Chart DRT relations with other agencies
5.2.8 The Auditor General

5.2.8.1 Legal Status

The office of the Auditor General (OAG) is a constitutional body (i.e., it is mentioned in the constitution). Part 11 art. 119 of the Interim Constitution of Nepal is describing about the OAG.

The Auditor General shall be appointed by the Prime Minister on the recommendation of the Constitutional Council.

The term of office of the Auditor General shall be six years from the date of appointment. Provided that,

- if, before the expiry of his/her term, the Auditor General attains the age of sixty-five, he/she shall retire.
- The Auditor General may be removed from his/her office on the same grounds and in the same manner as has been set out for removal of a Judge of the Supreme Court.

The office of the Auditor General shall be deemed vacant in the following circumstances

- if he/she submits a written resignation to the Prime Minister,
- if his/her term expires or he/she is removed from his/her office,
- if he/she dies.

No person shall be eligible to be appointed as the Auditor General unless he/she

- holds a Bachelor’s Degree in Management, Commerce or Accounts from a university recognized by the Government of Nepal, or has worked as a Special Class Officer of the Government of Nepal after having successfully completed the Chartered Accountants examination, or having at least twenty years experience in the field of auditing,
- is not a member of any political party immediately before appointment,
- has attained forty-five years of age, and
- possesses high moral character.

The report of the Auditor General is discussed intensively at the Parliamentary Committee which scrutinizes at length the financial accountability of the government. The Public Accounts Committee, which is chaired by a member of the opposition party, calls the Secretary of the particular executing agency to explain the situation in order to seek clarification. The Committee sets up a report outlining in detail the recommendation containing actions to be taken by the government. The report is passed by parliament.
The debate in the committee meeting is widely reported in the media, which puts strong pressure on the concerned agency to clear any irregularities and take preventive measures for the future. This report is an important means to put the government under pressure in order to enforce a proper and fair financial management. It also contains a lot of information, which is very useful for further action on suspected corruption cases. The OAG makes a great contribution to the control of corruption in an indirect way by showing specifically irregularities, violations of financial rules and embezzlement of funds.

5.2.8.2. Composition Structures

Figure 43 Structure of OAG

---

Defense, Construction & Social Service Department

- Education, Health, Women, Children, tourism & labor Auditor General Directorate
  - Health, Population & Women Auditor Directorate (a)
  - Health, Population & Women Auditor Directorate (b) Auditor Personal- 5
  - Tourism, industry & labor Auditor Directorate Auditor Personal- 3
  - Education Auditor Directorate (a)
  - Education Auditor Directorate (b) Auditor Personal- 5

- Prime Minister, Cabinet, National Planning Commission, General Administration & Defense Auditor General Directorate
  - Prime Minister, Cabinet, National Planning Commission, General Administration & Defense Auditor Directorate Auditor Personal- 6

- Physical Planning & Construction Auditor General Directorate
  - Public Construction Auditor Directorate (a)
  - Public Construction Auditor Directorate (b) Auditor Personal- 8
  - Town Development, Physical Planning & Drinking Water Auditor Directorate (a)
  - Town Development, Physical Planning & Drinking Water Auditor Directorate (b) Auditor Personal- 7

- Information & Communication, Peace & Reconstruction Auditor Directorate Auditor Personal- 3
5.2.8.3 **Tasks and Powers**

The office of the Auditor General is a constitutional body responsible mainly for auditing the accounts of the government institutions, constitutional bodies, parastatals and the other bodies, which are responsible for spending public money. After the completion of the auditing of the fiscal year, the Auditor General presents an annual report to the Parliament. The annual report outlines the government’s performance on accounts and explains the Auditor General's opinion whether the accounts are kept as per the National Auditing and Accounting Standards required by the relevant legal provisions. It assesses the overall state of the financial discipline and recommends the course of actions necessary to improve the quality and efficiency in the government’s accounts. Since several years, the Auditor General's report has been rather critical on the financial management. It has pointed out weaknesses in resolving the problem of irregularities, which are increasing every year. It further pointed out the financial indiscipline, violations of financial rules and regulations as well as embezzlement of public funds. It has critically observed the deteriorating quality of accounts keeping, timely reporting and internal auditing of the accounts.

According to the Interim Constitution of Nepal (art. 119)

1. The accounts of the Supreme Court, Legislature-Parliament, Constituent Assembly, Commission for the Investigation of Abuse of Authority, Auditor General, Public Service Commission, Election Commission, National Human Rights Commission, Office of the Attorney General and other offices of constitutional entities and the Nepal Army and Armed Police and the Nepal Police as well as of all other government offices and courts shall be audited by the Auditor General in the manner determined by law, with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof.

2. The Auditor General shall be consulted in the matter of the appointment of auditors for carrying out the audit of any corporate body of which the Government of Nepal owns more than fifty percent of the shares or assets. The Auditor General may also issue necessary directives setting forth the principles for carrying out the audit of such corporate bodies.

3. The Auditor General shall, at all times, have access to documents concerning the accounts for the purpose of carrying out the functions specified in clause (1). It shall be the duty of the head of the office in question to provide all documents or
information which may be demanded by the Auditor General or his/her employees.

4. The accounts to be audited shall, subject to the relevant law, be maintained in such form as is prescribed by the Auditor General.

5. In addition to the accounts of the offices, the law may also require that the accounts of any other office or institution be audited by the Auditor General.

The Auditor General shall submit to the Prime Minister an annual report on the work the office has performed, and the Prime Minister shall make arrangements to submit such reports to the Legislature-Parliament. The annual report shall state, inter alia, the offices in respect of which the Auditor General has carried out audits in that year, any irregularities revealed by the audit, the achievements in resolving irregularities and the results obtained, and the details of recommendations for reforms in future in regard to audit.

5.2.8.4 Co-operation with other Agencies

The Auditor General is one of the most important people of the national economy because he is the head of the office of the Auditor General. The office of the Auditor General will handle the whole accounts of all government offices and courts. These offices shall be audited by the OAG with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof. So, the whole offices and agencies should maintain good cooperation with this office to control the EC. The relations may be made clear by the chart below.
Figure 44  Chart OAG relations with other agencies
5.2.9 Nepal Rastra Bank

5.2.9.1 Legal Status

The banking sector of Nepal is essentially affected by the economic crime and also for this reason; Nepal Rastra Bank (NRB) is responsible to control the banking system in Nepal.

Nepal Rastra Bank is the Central Bank of Nepal, so we can say this is a bank of the banks. It was established in 1956 under the Nepal Rastra Bank Act, 1955, to discharge all central banking responsibilities including guiding the development of the embryonic domestic financial sector.

The new Nepal Rastra Bank Act, 2058 (2002) was dated January 30, 2002 (date of Royal Accent), and the amendment of this act was certified\approved November 9, 2006. The act states that it is expedient to establish a Nepal Rastra Bank to function as the Central Bank to formulate necessary monetary and foreign exchange policies, to maintain the stability of price, to consolidate balance of payment for sustainable development of the economy of Nepal, and to develop a secure, healthy and efficient system of payment; to appropriately regulate, inspect and supervise entities in order to maintain the stability and healthy development of the banking and financial system; and for the enhancement of public credibility towards the entire banking and financial system of the country.

5.2.9.2. Composition Structures

Figure 45 The structure of NRB\textsuperscript{233}

\textsuperscript{233} Nepal Rastra Bank Smarika 2005, p. 15.
5.2.9.3 Tasks and Powers

Functions, Duties and Powers of the Bank are described in art. 5 of Nepal Rastra Bank Act, 2058 (2002). According to this provision, in order to achieve the objectives of the Bank its functions, duties and powers shall be as follows:\textsuperscript{234}

- To issue bank notes and coins;
- To formulate necessary monetary policies in order to maintain price stability and to implement or cause to implement them;
- To formulate foreign exchange policies and to implement or cause to implement them;
- To determine the system of foreign exchange rate;
- To manage and operate foreign exchange reserve;
- To issue licenses to commercial banks and financial institutions to carry on banking and financial business and to regulate, inspect, supervise and monitor such transactions;
- To act as a banker, advisor and financial agent of Government of Nepal;
- To act as the banker of commercial banks and financial institutions and to function as the lender of the last resort;
- To establish and promote the system of payment, clearing and settlement and to regulate these activities; and
- To implement or cause to implement any other necessary functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act.

While exercising the powers conferred by this Act or any other prevailing law, the Bank shall have power to carry out other functions and take actions, which are incidental thereto.

Prior Rights of the Bank are described in art. 6 of the Act:

- for the purpose of recovering any loan, which the Bank has given to any borrower or any other type of claim of the Bank against any borrower, the bank shall have prior rights of security over cash deposited in an account in the name of such borrower at the bank or in any commercial bank or financial institution or against any other movable and immovable property owned by the borrower for the purpose of recovering such loan.

\textsuperscript{234} Rastra Bank Act, 2058 (2002), arts. 5 and 6.
The Bank shall recover its loan by taking into its custody the cash or movable or immovable property using its prior rights and selling such property as prescribed. According to the new Nepal Rastra Bank (NRB) Act of 2002, the primary functions of this bank are

- to formulate necessary monetary and foreign exchange policies to maintain the stability in prices and consolidate the balance of payments for a sustainable development of the economy of Nepal,
- to develop a secure, healthy and efficient system of payments,
- to make appropriate supervision of the banking and financial system in order to maintain its stability and foster its healthy development, and
- to further enhance the public confidence in Nepal's entire banking and financial system.

Its mission is to maintain macro-economic stability through sound and effective monetary, foreign exchange and financial sector policies. This bank is eminently aware that, for the achievement of the above objectives in the present dynamic environment, sustained progress and continued reform of the financial sector will be of utmost importance. To take careful account of this great responsibility, NRB is seriously pursuing various policies, strategies and actions.

### 5.2.9.4 Co-operations with other Agencies

In art. 9 of Nepal Rastra Bank Act, 2058 (2002), the relation between Government of Nepal and the Bank is described more detailedly. Any contact by Government of Nepal with the Bank and by the Bank with the Government under this Act shall be made through the Ministry of Finance.

According to art. 10 which is related to the Coordination with Public Bodies, the Bank may, in order to achieve its objectives, engage in necessary coordination with public bodies or their agencies or their organs. The Bank shall, on a request made by Government of Nepal, provide all necessary information on the balance of payments, banking and financial matters. And the government of Nepal, public bodies and the private sector shall, in the event of request made by the Bank, provide any necessary information on economic and financial matters.

According to art. 11 of this act (related to the International Cooperation and Relationship), the Bank shall represent Nepal in international organizations and associations on matters within the jurisdiction of working areas of the Bank such as...
monetary policy, foreign exchange policy, and balance of payments, bank supervision and other related matters. The Bank may provide the services of banking and payment to foreign government, foreign central banks, foreign banks and international organizations, or associations, and obtain similar types of facilities from them. The Bank shall take part in international organizations or associations working for the financial and economic stability through international monetary cooperation. And the Bank, while taking part in international organizations or associations as a representative of Nepal, shall assume the responsibility and undertake the functions to be carried out on behalf of the country.

The chart below may clear the matter.

**Figure 46  NRB relations with other agencies Chart**
5.3 Comparison and General Assessment

5.3.1 Common Features and Parallels

5.3.1.1 Legal Status

Regarding the legal status of these agencies, The Commission for the Investigation of Abuse of Authority, The Judicial Council and Auditor General (OAG) are described in the Interim Constitution 2007 of Nepal. This means that these bodies are constitutional bodies. Functions, duties and responsibilities of these agencies shall be shaped according to the prescriptions of the constitution of Nepal.

National Vigilance Centre is a watch dog of the nation concerning corruption and good governance. It has been instituted as per Chapter 4 of the anti-corruption Act, 2002. This agency is directed by Prime Minister of Nepal.

Debt Recovery tribunal (DRT) has been constituted under the Act of Recovery for Debts of Banks and Financial Institutions 2002 (2058 BS.). This Act has become effective July 17, 2003. The tribunal not only takes decisions on the petition filed by a Bank or a Financial Institution but also recovers, as per the verdict, the bad loans and orders the transfer of the money to the concerned lending agency.

Nepal Rastra Bank (NRB) was established in 1956 under the Nepal Rastra Bank Act, 1955. This Act 2058 (2002) was reshaped after Royal Accent January 30, 2002, and the amendment of this act was certified/approved November 9, 2006, to discharge all central banking responsibilities including guiding the development of the embryonic domestic financial sector. The NRB functions as the Central Bank authorized to formulate necessary monetary and foreign exchange policies, to maintain the stability of price.

CID department is described in Police Act 2012 (B.S.). Art. 15 of this act describes the CID and its task. Its main purpose is crime control and to investigate the cases and to maintain the rule and regulation inside the country.

NDCLEU has been established in 1992 according to art. 21 of Narcotic Drugs (Control) Act, 1976 (2033 BS). This provision deals with Narcotic Drugs Control Officer and Narcotic Drugs Control Administration. There is a separate unit for the Drugs investigation directly related to the Ministry of home Affairs but nowadays the staffs are mobilized by the CID department and they are all police officials. So both agencies, NDCLEU as well as CID, are attached to and supervised by the Ministry of Home Affairs.
Department of Revenue Investigation is guided by the Leakage of Revenue (Investigation and control) Act 2052 (B.S.). The foreign exchange regulation act 2058 (B.S.) is related to issues of foreign currency and foreign exchange. To control and investigate the related cases thereto the government of Nepal appointed the Director General of RIA as investigation officer. For the cases related to Custom, the Government has appointed as investigator the Deputy Director General of RIA and the chief of its unit officer according to the Custom Act 2019, art. 40. For the cases concerning to VAT act, the Government has appointed as investigator the officer of RIA in implementing the VAT Act 1995 (2052 B.S.), art. 3.

5.3.1.2. Composition Structures

Comparing the composition structures of the related agencies in the field of EC, we can see three types of structures:

1. The first one is related to the common feature from the point of legal status or legal point of view.
2. The second one is related to observer agencies.
3. The third one is related to parallels regarding the nature of their work or the investigation and crime control.

The chart below may show this more precisely.
5.3.1.3  Tasks and Powers

Concerning the tasks and powers, two types of them can be separated. One is related to the legal point of view and second is referring to the nature of their work. Inside this work nature, we can find three types, i.e. observation, investigation and crime control and both observation and crime control.

1. Relation to legal point of view:
   - Related to Constitution
   - Related to specific Acts

2. Work nature
   - Related to investigation and crime control.
   - Both observation and Crime control.

The figure below can show this more detailedly.
5.3.1.4 Co-operations with other Agencies

Looking at common features and parallels concerning the cooperation with other agencies, three types of cooperation among these agencies may be found. These are as follows:

1. For investigation and crime control
The Judicial Council, courts, Attorney General (OAG), NVC, CIAA, CID, NDCLEU, RIA and local administration

2. For Judiciary and crime control
The Judicial Council, courts, NVC, DRT, local administration, others (e.g. Forest department, Labour department)

3. Tax or Revenue
The Judicial Council, courts, Auditor General (OAG), NVC, RIA, CID police, Customs, DRT, NRB, local administration and CIAA.
The chart below may clear this matter.

Figure 49  Co-operation with other agencies
5.3.2 Divergences

5.3.2.1 Legal Status

Concerning the divergences about the legal status of the agencies, some agencies like CIAA, JC and Auditor General are described in the constitution of Nepal, so they are constitutional bodies. But other agencies are implementing their tasks according to various acts of Nepal.

At the time of amendment of the acts, which are related to these agencies, it seems that the parliament of Nepal or the ministry of law were not giving enough attention concerning duties and responsibilities of these agencies. So the structures, duties and responsibilities of these agencies should be amended according to the situation and should look at all the agencies together at that time.

5.3.2.2 Composition Structures

Discussing the composition structure of the above mentioned agencies working in the field of EC, these agencies are directly subordinated to different Ministries which may be described as follows:

1. Constitutional Body (immediately responsible to the President only, not to any Ministry)
2. Attached to Prime Minister
3. Attached to Ministry of Home Affairs
4. Attached to Ministry of Finance
5. Attached to Ministry of Law

The chart below may show the relations with Ministries more clearly.
Figure 50  Agencies - Chart of composition structure

According to this chart, there are different agencies concerning the EC field, but these agencies are not subordinated each other. Moreover, these agencies are not related to each other and the work of these agencies is also not clearly separated. So agencies which are working just for the observation in the field of EC can be established under different ministries but related to the investigative agencies for EC field their tasks and powers must be formulated by one single Ministry in order that the agencies can work properly and effectively.

5.3.2.3  Tasks and Powers
Tasks and powers of the agencies have been described above at chapters 5.2.1.3, 5.2.2.3, 5.2.3.3, 5.2.4.3, 5.2.5.3, 5.2.6.3, 5.2.7.3, 5.2.8.3 and 5.2.9.3 in more detail. According to these explanations, the CIAA is trying to control corruption within the governmental and non governmental offices. The Judicial Council is also trying to do the same as well as to control the administrative activities inside the Courts. The National
Vigilance Centre is also trying to effectively control the corrupted activities and to create and promote general awareness against corruption. The CID department is dealing with political, social and economic crimes. They are trying to maintain law and order properly inside the country especially by dealing with such cases like cheating, forgery, drug trafficking, human trafficking, counterfeiting, and fraud. To control drug abuse and drug trafficking, NDCLEU is also active inside the country. RIA, DRT and the office of The Auditor General are controlling the tax system, VAT and other custom related issues. NRB is monitoring the banking or financial system inside the banks.

The agencies are interrelated at the period of investigation of the cases related to EC and also regarding the relevant documentation, but actually they do not have real good relations between themselves. If there happened something or some cases occur in the field of EC, and if someone provides some information to them concerning these cases, the agencies will start the cases for investigation. Because the agencies are not related to one single ministry since they are working under different ministries, they have no proper relation among themselves regarding the investigation process. And they will also not think it necessary at all to ask or consult other agencies. Thus, sometimes it happens that different agencies will investigate the same case at the same time, and definitely they will just have lost their time for nothing.

So it can be suggested that on the one hand, The Judicial Council, Nepal Rastra Bank (NRB), Auditor General (OAG) and the National Vigilance Centre may work further on under different ministries but the Commission for the Investigation of Abuse of Authority, CID department, The Narcotic Drugs Control and Law Enforcement Unit’ (NDCLEU), Department of Revenue Investigation and Debt Recovery tribunal (DRT) must be under one single umbrella i.e. under the direction of a single ministry and should investigate the case together.

5.3.2.4 Co-operation with other Agencies

There are several agencies working to control the EC in Nepal. Among these agencies, JC, OAG, NVC and NRB are working as observers, and some agencies like CIAA, CID, NDCLEU, RIA and DRT are investigator agencies. These agencies are working to control the crimes related to the field of EC. They have relations between each other but these relations could be much closer than they are now.

So, the working system of those agencies is not so effective to control the EC. First of all, their investigation and other working systems are rather traditional. They do not have
enough coordination between each other. Sometimes the same cases will be registered at different agencies because of the lack of clear legal jurisdiction and the weak information system of the agencies.

For example, if there are committed some illegal activities by public officials in the field of VAT or taxation and if that information is received by the RIA, the Auditor General, NVC and CIAA, they will investigate that case separately. Because of these activities of agencies, the information could leak and the offender then might remove or destroy the evidence to the related case. And one case (like bank cheat or fraud) can be the subject of investigation for (at least) two agencies like CIAA and CID department.

So, to control this thing and to make effective investigation and control regarding the EC, there is a real need for one effective investigation agency in the field of EC or they at least have to investigate jointly. Then, there must be clear cooperation between the relevant agencies.

The chart below may clear this structure. According to the chart, there should be one agency responsible for EC and under this agency, there should be different branches. The main agency should handle the whole branches to effectively control the EC. These branches should be structured as follows.

1. Main Legal Branch
2. Branch for Observation
3. Branch for Corruption Control
4. Branch for Human Trafficking
5. Branch for Taxation
6. Branch for Drugs Trafficking
7. Branch for Security
8. Branch for Forgery and Cheating
9. Branch for other cases like forest, labor etc.
Figure 51  Cooperation of agencies - Purpose chart
6. **Cases related to the field of Economic Crime**

6.1 **Assessment**

6.1.1 **Method of the research**

The method of this part of the thesis is not only based on desk research. CID office, CIAA, banks, courts, and other related offices have been visited at the time of research. It was studied and watched nearly whether they have met their responsibility well or not. Specially, the interview and questionnaire method was applied in this research effort. So, a field visit plan was proposed for about six months in Nepal 2006 and for 3 months of field visit on 2007. At that, time the concerned authorities were visited and requested for relevant data. In order to inquire upon the reliability of the primary data, they were checked by comparing them with data from electronic sources, annual reports, newspapers and other published and unpublished official documents.

6.1.1.1 **Interviews**

At the time of research, numerous personnel from different fields including officials from many concerned organizations were interviewed. The author was asking various rules-related questions concerning current issues of economic crime. Crosscheck of the information obtained from interviews was also made by using other sources and interviews with other concerned individuals. Visited persons at the time of research were as follows:

1. Mr. Ranjan Krishna Aryal, Joint secretary of law development commission, ministry of Law (former Investigation officer of CIAA)
2. Mr. Tirthraj Sharma, Secretary of CIAA
3. Mr. Nanda Bahadur Subedi, Advisor Director of CIAA
4. Mr. Kumar Chudal, Assistant Attorney General CIAA
5. Mr. Ghana Shyam Sharma, Investigation Officer financial crime of CIAA
6. Mr. Kumar Ghimire, investigation officer CIAA
7. Mr. Laxman Kumar Pokharel, Dept. Director General of DRI
8. Mr. Kul Prasad Chudal, Director of DRI
9. Mr. Kebal Bhandary, Assistant Secretary of finance Ministry (RIA)
10. Mr. Raju Man Singh Malla, Joint secretary of Ministry of Law
11. Mr. Bir Bikram Rayamajhi, Deputy Governor of NRB
12. Mr. Bhaskar Mani Gyawalyi, NRB Director of Legal Department
13. Mr. Hari Nepal, NRB Director of Legal Department
14. Mr. Dul Raj Bashyal, Speaker of NRB (National Debt Department Thapathali)
15. Mr Prawin Bhattrai, NRB Legal Dept. CIAA
16. Mr. Radhes Pant, President of Bank Association Nepal
17. Mr. Yam Mahat Manager, Standard Charter Bank of Nepal
18. Mr. Dhruba Prasai Bhandari, Dept. Chief of finance RBB
19. Mr. Bhanu Bhakta Joshi, Dept. Chief of finance Nepal Bank Limited NBL
20. Mr. Pradeep Rayamajhi, Himalayan Bank Kathmandu
21. Mr. Ramesh Singh Khadka, Dept. chief of Agricultural Dev. Bank Kathmandu
22. Mr. Hari Bahadur Thapa, Journalist
23. Mr. Baburam Dhakal, Journalist
24. Mr. Rakesh Jha, Journalist
25. Mr. Shailendra Rajbhandari, UNDP
26. Mr. Ashish Thapa, Executive Director of Transparency International Nepal
27. Mr. Dilip Kumar Paudel, ex. Chef Justice in Supreme Court of Nepal
28. Mr. Lohit Chandra Shah, Registrar of Special Court of Kathmandu
29. Mr. Devendra Paudel, Deputy Registrar Appellate Court Patan
30. Mr. Madhav Prasad Mainali Bench, Assistant Special Court of Kathmandu
31. Mr. Gehendra Raj Pant, Secretary of the Registrar of Supreme Court
32. Mr. Niraj Pun, AIG of CID Department Nepal Police
33. Mr. Pashupati Upadhaya, SP Nepal Police
34. Mr. Keshav Prasad Adhikary, SP Valley CID branch Kathmandu
35. Mr. Tulasi Prasad Adhikary, Deputy Superintendent of CID
36. Mr. Prem Bhandari, CID Inspector valley office Rahipokhari Kathmandu
37. Advocate Bharat, Upreti Company and Commercial Law
38. Advocate Shiva Rijal, Company and Commercial Law
39. Advocate Gopal Krishna Ghimire, Criminologist
40. Advocate Bal Krishna Dhakal, Human Rights Law
41. Advocate Madhav Prasad Koirala
42. Mr. Mahesh Bhandari, Criminal
43. Mr. Madhu Sudan Puri, Criminal
44. Mr. Gokul Kharel, Business man and social worker
45. Mr. Chhabi Lal Bhusal, Politician and social worker
46. Mr. Narendra Jha, ex. CID Inspector and social worker
47. Mrs. Sarswoti Bhusal, Social worker
48. Mrs. Parbati Bhattrai, Social worker
49. Mrs. Phulmati Chaudhary, Social worker
50. Mr. Ram Prakash Shah, Police Inspector NDCLEU

At the time of interview, the author talked directly with these persons and discussed different matters with them, for example:

1. How they are defining the Economic Crime?
2. Which types of problem are they facing to deal these cases?
3. Whether the laws are sufficient to deal with and to control these cases?
4. What can be done in future to control this?
5. How did the concerning agencies execute their work of fighting to control these crimes?
6. What has been its impact on economic crime or corruption reduction?
7. Is there any special body or organization established to control these types of crimes?
8. Are laws sufficient to control this phenomenon, what types of problems are faced by the agencies to work for this and how is the legal practice concerning this issue?
9. What lessons can CIAA and other related agencies draw from the discussion in formulating and implementing anti-corruption and anti-economic crime strategies?
10. What types of impact have you seen in the society because of this crime?

To clarify this matter, a questionnaire was provided and it was requested from the persons mentioned above to insert any related data. The reliability of the data was also checked at the time of data collection (cf. below, at chapter 6.2).

Except this, at the time of interview the author was getting several types of replies concerning the questions mentioned above. The answers were almost of the same nature:

- Concerning the interview, almost all of the persons were unknown concerning the matter.
• They informed the author that they were facing a lot of problems in this area like traditional system, lack of up to date law concerning the EC field, judiciary system and corrupted mentality inside the whole bureaucracy.

• No sufficient Laws in this field to control EC.

• There must be changes in respect of a lot of things including acts, system of the bureaucracy, judiciary system etc. (cf. below, at chapters 7.3 and 7.4).

• The agencies are doing whatever they can but they have to change their system. The investigating body must be independent and several agencies must have a much better coordination between each other (cf. below, at chapters 7.3 and 7.4).

• If the agencies could not work well or effectively or if the corruption increased from day to day, the EC will also be increased in numbers.

• There are some agencies like e.g. CIAA, RIA, CID fighting EC, but they are not working effectively.

• The agencies are also facing a lot of problems like untrained investigators and untrained judiciary system in this field, corruption, political pressure, old and traditional acts and traditional system of bureaucracy.

• CIAA and other agencies should use an effective team work to control this crime. Especially, the investigators must be trained better than now and should keep themselves out of political and top official's pressure.

• The social structure has been damaged because of corruption; the system of society has been changed to the way of corrupt mentality. The general public is harassed because of the corrupt system, and because of this, the crime is increasing from day to day.
6.1.1.2 Analysis of Existing Materials on Economic Crime
All the available reports and records of previous studies on Economic Crime were studied and analyzed during the course of research. The information thus gained was cross-examined from comparative method and field observations. In some places, there were conducted focussed group discussions among various information providers and lawyers. Specifically, such discussions were performed in the context of a current case of an Economic Crime.

6.1.1.3 Field Study at offices and other
At the research period, the Crime Investigation department of Nepal police, Attorney General's office, Courts, CIAA, Revenue investigation office, the central bank of Nepal and other banks too were visited several times. At that period, for the details of information concerning the several topics, Judges, officers and the concerning staff of related offices were visited and more information was taken from them. Relevant data were taken from the courts, from records of the police crime investigation department as well as the attorney general’s local branches and CIAA which is only one of Nepal’s corruption control offices for all types.
6.1.2 Collected sample of cases

From these sources, at the research time in Nepal the following cases were collected.

6.1.2.1. Crime Investigation of Nepal Police

(1) Nepal Agricultural Development Bank, Rastriya Baniyaa Bank, Himalayan Bank vs. Madhu Sudan Puri and Banti giri, etc. 8 persons

Brief of the case

Madhu Sudan Puri and other criminals were together making false signatures relating to several account holders and taking cheque books from the different banks and taking money from the banks by cheating more than 20 million Nepali rupees. The police investigated the cases and the attorney General of Kathmandu district did hand over the case in the Kathmandu district courts. Now all those persons are in prison but the case is not decided yet.

(2) Nepal Indoschwez Bank vs. Madhu Sudan Puri, Banti giri and Mahesh Bhandari

Brief of the case

Madhu Sudan Puri, Mahesh Bhandari and other criminals were together making false signatures relating to the account holder Norbu Chring, the owner of the yak carpet industry and taking cheque books from the Nepal Bank and taking money from the banks by cheating 2,055,000 rupees. The police investigated the cases and the attorney General of Kathmandu district did hand over the case in the Kathmandu district courts. Now they are in prison but the case is not decided yet.

(3) Nara Bahadur Sunuwar vs. Durga Bahadur Pathak human trafficking (cheating)

Brief of the case

Offender Durga Bahadur Pathak had prepared fake documents and convinced the victim Nara Bahadur Sunuwar that he would send him to a foreign country for work and he cheated him 40,000 Rs. But he did not send him to the foreign country. The victim

235 District police office Kathmandu annual report 2000, p. 11.
236 District attorney general’s office annual report 2000, p. 9.
237 Case no 37, F/Y 2059/2060 Bs.CID Case record register, register no 10.
reported to police and the police started the investigation and filed the case in the district court with the help of Attorney General’s office. The court had ordered to keep him in jail but the case is not decided yet.

(4) The Narcotic Drugs Control and Law Enforcement Unit vs. Nigerian citizen Mr. Ojeriehi Hyctnh

Brief of the case

The Narcotic Drugs Control and Law Enforcement Unit had arrested the Nigerian citizen Mr. Ojeriehi Hyctnh with cannabis and started to investigate against him. They found some fake US dollars rated 200 and the equipment to use to make fake notes. After having finished the investigation they made a charge sheet of Counterfeiting and handed over the case in the special court. The court ordered to put him in prison but the case is not decided yet.

6.1.2.2. Commission for the Investigation of Abuse of Authority CIAA

(1) CIAA vs. Sher Bahadur Thapa and 142 persons concerning the NBL

Brief of the case

Ex. Managing Director of Nepal bank LTD. Sher Bahadur Thapa, his staff and another 142 persons prepared false statements and provided bad loans to the public. Concerning the granting of the loan for Bishow Priya Malla, Mahendra Prasad Gadtaula, Mohan Sahani and Laxmi Prasad Acharya were making a false statement. They evaluated high costs of the property for the application by the client for the loan to run some business, which was very much different from the actual governmental evaluation made by the land revenue office, and were providing maximum loan (i.e. bad loan or issuing loan more than actual cost of the collateral).

The bank was providing a loan of 52,096,5890,22 Nepali rupees but the security for granting the loan was not sufficient so the debtor did not pay back that sum or loan to the bank timely. After the actual matter had been known by CIAA, this agency registered the corruption case against them and started investigation. For this purpose they made 4 separate cases or 4 groups of the cases which are follows:

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238 Case no 834, F/Y 2061/2062 Bs. NDCLEU Case record register.
239 Case no 10/260, F/Y 2059 Bs. Special court Case record register.
(a) In CIAA vs. Bishow Priya Malla with 19 persons the case was submitted in the appellate court. The amount of the case was 20,950,976.72 rupees. The court decided\textsuperscript{240} that 14 persons were convicted to have done the crime.

- The main 2 loan receivers, Bishow Priya Malla and Gehendra BDR, Malla were sentenced to pay 10,475,488.36 Nepali rupees per person. If there would be no fulfilment by the above persons the main loan provider Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa should pay the rest of the amount to the bank.

- One year of prison for Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa and six months of prison for Purushottam Shrestha, Rajani Lochan Prasad Tandukar as well as a fine of Rs 5,000 for all three persons.

- Rs 5,000 fine for Ramesh Manandhar, Prakash Manandhar, Lok BDR Shrestha, Dhruba Ram Pradhan, Krishna BDR Karanjit, Rabi Shrestha and Pradip Neupane, Rs 2,500 fine for Uttam Nepal.

- At last, the court has found five persons innocent in this case.

(b) In CIAA vs. Mahendra Prasad Gadtaula with 17 persons

This case was submitted in the appellate court. The amount of the case was 96,128,531.01 Nepali rupees. The court decided that 14 persons were convicted of having done the crime.

- The main three loan receivers were sentenced to pay - Keshav Bhattrai 20,874,094.34 rupees, Bijaya Prasad Lohoni 763,603.00 rupees and Mahendra Prasad Gadtaula 67,590,834.67 rupees of the corrupted amount, and they had to pay the same amount as a fine.

If there would be no fulfilment by the above persons. i.e. the main loan providers Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa should pay the rest of the amount to the bank.

Moreover, the court ordered punishments of

- two years of prison for Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa, one years of prison for Uttam Nepal, 9 month prison for

\textsuperscript{240} The special court decision quarterly report November 2005 and the special court annual report
Purushottam Shrestha, 6 month prison for Mahanta BDR Maharjan and Rajani Lochan Prasad Tandukar and a fine of Rs 5,000 for all five persons.

- Rs 5,000 fine for Ujwal Kumar Dhakal, Bishnu Ram Shrestha, Lok BDR Shrestha, Krishan BDR Karanjit, Keshav Lal Shrestha and Narendra Meher Shrestha.

- Finally, the court found three persons innocent in this case.

(c) In CIAA vs. Mohan Sahani with 55 persons, the case was submitted to the appellate court. The amount of the case was 190,006,045,83 Nepali rupees. The court decided that 38 persons were convicted of having done the crime.

- The main 16 offender were sentenced to pay, i.e. Mohan Sahani 105,100,071,98 Rs., Durga Datta Panday 18,524,345,48 Rs., Binod Shahi 8,789,320,14 Rs., Shanti Shrestha 6,195,350,11 Rs., Prakash Ranabhat 7,648,506,16 Rs., Bala Kanta Chaudhary 1,346,646,34 Rs., Ajaya Kumar Chaudhary 1,346,646,34 Rs., Pradip Ratna Tuladhar 396,926,06 Rs., Sarbaghya Ratna Tuladhar 396,926,05 Rs., Amar Tamrakar 396,926,06 Rs., Bidhya Pariyar 10,073,628,22 Rs., Prasasthi Thapa 5,182,182,37 Rs., Rajkumar Thapa 5,182,182,37 Rs., Rishi Ram Ghimire 5,715,578,61 Rs., Manoj Kumar Pandit 8,234,575,68 Rs., Karna Bir Uparkoti 5,486,233,86 Rs.

If the persons mentioned above do not fulfil their obligations towards the main loan provider, Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa should pay the rest of the amount to the bank.

In this case, too, the court took further sentences as follows:

- Two years of prison for Ex. Managing Director of Nepal bank Ltd. Sher Bahadur Thapa, one year of prison for Uttam Nepal and Purushottam Shrestha, 9 month prison for Rajani Lochan Prasad Tandukar, 6 month prison for Shashi Kiran Shrestha and a fine of Rs 5,000 for all five persons.

- Rs 5,000 fine for Bishnu Ram Shrestha, Lok BDR Shrestha, Krishan BDR Karanjit, Narendra Meher Shrestha, Pradip Neupane, Ramesh Man Joshi, Purna Ram Sharma Dawadi, Prakash Manasdhari, Dhruba Ram Pradhan, Ishwor Man Joshi, Tirtha Narayan Maharjan, Dr. Hari Bamsa Jha, Keshav Lal
Shrestha, Narendra Raj Bhattrai and Mandan Prasad Dhungel, and Rs 2,500 fine for Tirtha Ram Shrestha and Indira Gurung.

(d) In CIAA vs. Laxmi Prasad Acharya concerning 51 persons the case was submitted to the appellate court. The amount of the case was 213.880.336.66 Nepali rupees. The court decided that 30 persons were convicted having done the crime. As a consequence thereof

- The main 16 offenders or main loan receivers were sentenced to pay-Laxmi Prasad Acharya 10, 54, 17,381.48 Rs., Bharat Raj Koirala 2,46,15,160.28 Rs., Moti Upreti 87,38,248.54 Rs., Achhut Prasad Rijal 2,22,53,918.77 Rs., Krishna Prasad Luitel 1,62,00.387.75 Rs., Rudra Prasad Bhattrai 64,56,693.50 Rs., Chiranjibi Achharya 33,33,046.00 Rs., Apachi Gaundar Chandan 73,03,636.95 Rs., Padmawati Chandan 73,03,636.95 Rs., Pulkit Rabindran 73,03,636.95 Rs.

If these persons would not fulfil their obligations towards the main loan provider, Ex. Managing Director of Nepal bank LTD. Sher Bahadur Thapa should pay the rest of the amount to the bank.

Further sentences taken by the court were

- 2 years of prison for Ex. Managing Director of Nepal bank LTD. Sher Bahadur Thapa, 1 years of prison for Ambar Kumar Khadka, Uttam Nepal, Purushottam Shrestha, 6 month prison for Shashi Kiran Shrestha, Rajani Lochan Prasad Tandukar and Mahanta BDR Maharjan and a fine of Rs 5,000 for all seven persons.

- Rs 5,000 fine for Bishnu Ram Shrestha, Lok BDR Shrestha, Krishan BDR Karanjit, Narendra Meher Shrestha, Sabal Lal Singh, Roshan Man Joshi, Padam Kumar Pradhan, Pradip Kumar Chapagai, Dr. Hari Bansa Jha, Keshav Lal Shrestha, Narendra Raj Bhattrai and Tek Nath Chamlagai, and Rs 2,500 fine for Indira Gurung.

(2) RBB, Nepal Bank Limited NBL, NIDC Nepal Industrial Development Corporation and Himalayan Bank Limited vs. Binod Chaudhary and Industrial Man

**Brief of the case**

A business man of Nepal Binod Chaudhary who is the owner of the Chaudhary group has taken loans from different banks and financial corporations for the purpose of running the Mahalaxmi Sugar Mill. His Partner was a Member of Parliament, Birendra Kumar Kanoudiya. After having received the loan they did not pay the obligations resulting from that to their creditors, the financial institutions. These institutions declared and published Binod Chaudhary’s name in the blacklist. Mr Chaudhary filed case to the Supreme Court against the decision of the financial institution and he also argued that he was not responsible for the loan any longer but the evidences were in favour of the institutions.

But the Judges of the Supreme Court gave a verdict decision concerning the banks in respect of listing the Mill owned by businessman Binod Chaudhary on a blacklist for defaulting banks’ loans.

Against the decision of SC, the case had been taken to the Public Account Committee (PAC) of the House of Representatives. There was a hearing in the PAC of the House of Representatives where the lawyers representing the banks requested that the committee will initiate impeachment process against the SC judges who gave verdict in a case involving Mahalaxmi Sugar Mill. The SC verdict barred the banks from listing the Mill owned by businessman Binod Chaudhary and MP Birendra Kumar Kanoudiya on blacklist for defaulting banks’ loans.

The chairman of the committee Chitra Bahadur KC and members Dilli Raj Sharma, NP Saud, Mohan Bahadur Basnet and Lila Mani Pokhrel assured the lawyers they would initiate a process to impeach the judges if the lawyers submitted valid grounds for the same. “Submit in writing valid grounds to impeach the judges and we will initiate the process by presenting the report in the House,” the MPs told the lawyers.\(^{242}\)

Lawyers Purna Man Shakya, Shailendra Dahal, Prakash Wosti and Jogendra Keshari Ghimire participated in the PAC meeting. They also said that the judges did not follow the precedents already set by the SC and the financial norms and ethics while deciding the case, and had favoured the businessmen.

\(^{242}\) The report of Public Account Committee (PAC) of the House of Representatives September 2006.
(3) CIAA vs. Manager Dilip Kumar Shrestha of Rastriya Banijya Bank New Baneshwor branch Kathmandu with 7 persons concerning NRBB.\textsuperscript{243}

Brief of the case

There was no legal authority to open LC (letter of credit) in the Branch office and the president of NRBB had sent Manager Dilip Kumar Shrestha of Nepal Rastriya Banijya Bank New Baneshwor branch Kathmandu, to open the LC account for the favour of D&D clothing P. Ltd with the help of manager Birendra Nath Lohoni, manager Shree Krishna Shrestha, Account officer Bharat BDR Basnet, Co-account officer Gita Parajuli, Senior Assistant Mahendra Bhakta Pradhananga and Managing director of D&D clothing P. Ltd. Krishna Nath Gayakwad.

According to the bank rule the bank has to make payments to the party after having received the deposit from it but the bank paid the party without having got any deposit from it according to the letters of credit. They provided loans to the D&D clothing P. Ltd. 49 times with a total sum of US $ 1,630,767.64, i.e. Nepal rupees 980,07,210.12 without any security. For this reason they got benefits from the Managing director of D&D clothing, P. Ltd., Krishna Nath Gayakwad, and they made loss for the bank as well.

CIAA investigated that case and found that they (RB B) did misuse their authority and committed a crime of corruption in respect of the sum of US $ 16,30,767.64 or Nepal rupees 9,80,07,210.12, respectively. So CIAA had filed the case after investigation to the special court and the court charged verdicts as follows:

The main offender - Managing director of D&D clothing P. Ltd. Krishna Nath Gayakwad - was proved having committed the crime against the corruption control act so the court sentenced him to pay Rs. 6,45,30,827.46 to recover and a fine of the same amount. Moreover, there was a fine of 5,000 for Birendra Nath Lohoni and Dilip Kumar Shrestha, fine of 4,000 for Bharat BDR Basnet, Gita Parajuli, and Mahendra Bhakta Pradhananga.

(4) CIAA vs. Manager Wokil Yadav of Rastriya Banijya Bank branch Namche, Nepal with 8 persons concerning the corruption of NRBB.\textsuperscript{244}

Brief of the case

\textsuperscript{243} Decision no 54 Case no 58/325 F/Y 2059 Bs. Special court Case record register.

\textsuperscript{244} Decision no 37 Case no 111/470 F/Y 2059 Bs. Special court Case record register.
Manager Wokil Yadav of Rastriya Banijya Bank branch Namche and his staff senior assistant Baiju Nath Thakur Barahi, Assistant Dev Raj Bastola and Assistant Krishna Bahadur Katuwal had prepared false documents and provided bad loans totalling Rs. 14,00,000 (fourteen hundred thousand) to Mrs. Pasang Phuti Sherpa, Doma Sherpa Lakpa Sherpini, and Dachhiri Sherpa. According to the banking regulation no one may take Hydro power Loan, only the company can take that loan but these persons nonetheless provided that loan and thus violated Banijya bank Act and corruption control act.

So CIAA filed the case after having finished the investigation and submitted the corruption case against them in the special court in 2005\textsuperscript{245}. This Court decided that

- The main 4 offenders or main loan receivers should pay to the bank in order that this institution would recover the loan. It was decided that Mrs. Pasang Phuti Sherpa Rs. had to pay 4,00,000 (four hundred thousand), Doma Sherpa Rs. 4,00,000 (four hundred thousand), Lakpa Sherpini Rs. 4,00,000 (four hundred thousand), and Dachhiri Sherpa Rs. 2,00,000 (two hundred thousand). They should also pay the same amount as a fine to the court.

Further more, it was decided that if these persons would not fulfil their obligations towards the main loan provider, the Manager Wokil Yadav should pay the rest of the amount to the bank. Besides this verdict, the court ordered punishments as follows: 1 year of prison for Wokil Yadav, 6 month prison for Baiju Nath Thakur Barahi, Dev Raj Bastola and Krishna Bahadur Katuwal.

\textsuperscript{245} CIAA annual report 2005, pp. 30 - 45.
6.2 Questionnaires and Responses

6.2.1 Banks

6.2.1.1 The questionnaire for Banks

Questionnaire for banking cases

Name: -
Address: -

1. What kind of transactions your bank has been doing?
2. When was your bank established?
3. In which sector your bank has been investing mainly?
4. How is your experience in respect of taking back loans?
5. How is your opinion in respect to governmental attitude and existing laws in this regard?
6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
7. What are the preconditions set by your bank for providing loans?
8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?
9. Do you have any case, which has been evaluated more than asset? and have taken more loans?
10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?
11. If it is found what will you do? Do you take any legal action to those? (It means if any party has valued more and taken loan than the value of deposited property what action have been taken to those)
12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?
13. If not what kind of law should be formulated?
14. Are you able to take back loan by adopting existing laws?
15. People are taking loan by showing fake document nowadays how do you control this?
16. What kinds of economic crime have taken place in your bank for last 2 years? Please give some examples for “economic crimes”
17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?
18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?
19. Can you give example of this behaviour when it happened in the past?
20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?
21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?
6.2.1.2 Responses from Banks

6.2.1.2.1 Nepal Rastra Bank (NRB)

From the Deputy Governor NRB

Name: Bir Bikram Rayamajhi
Address: NRB, Kathmandu

1. What kind of transactions your bank has been doing?
   - Government Transactions, Public Debt Management and Refinance to banks and financial institutions

2. When was your bank established?
   - April 1956

3. In which sector your bank has been investing mainly?
   - Foreign currency investment and Government securities.

4. How is your experience in respect of taking back loans?
   - No Answer (N. A.)

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   - N. A.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
   - No such obstacles. However, introduction of acts like prohibition of money laundering will be supportive for properly performing commercial bank’s duties.

7. What are the preconditions set by your bank for providing loans?
   - Repayment capacity, Track record and Security.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?
   - N. A.
9. Do you have any case, which has been evaluated more than asset? and have taken more loans?
   • N. A.

10. How this property has been evaluated and in which relation the loan to be granted has been to the asset deposited as basis thereof?
   • N. A.

11. If it is found what will you do? Do you take any legal action to those?
   • N. A.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?
   • Not sufficient.

13. If not what kind of law should be formulated?
   • Enforcement of law should be made more efficient and quick.

14. Are you able to take back loan by adopting existing laws?
   • N. A.

15. People are taking loan by showing fake document nowadays. How do you control this?
   • It is the responsibility of the bank concerned with disbursing loans.

16. What kinds of economic crime have taken place in your bank for the last 2 years? Please give some examples for “economic crimes”
   • N. A.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?
   • Based on supervisory concern
     1. Effective enforcement of supervisory findings of shortcomings.
     2. Forwarding the case to the police for further investigation and actions.
     3. Making the directors and CEOs personally liable in the case of conflict of interest.
     • Effective implementation of regulatory norms issued by the Central Bank.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?
19. Can you give examples of this behaviour when it happened in the past?

• N. A.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

• N. A.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

• N. A.
From the Director of NRB Legal Department.

Name: Bhaskar Mani Gyawali
Address: NRB, Legal Department Kathmandu

1. What kind of transactions your bank has been doing?
   - Formulating monetary policy
   - Keeping price stability
   - Regulating banks and financial institutions

2. When was your bank established?
   - April 1956

3. In which sector your bank has been investing mainly?
   - Foreign currency investment and Government securities.

4. How is your experience in respect of taking back loans?
   - N. A.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   - Theoretically strong and positive.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
   - No.

7. What are the preconditions set by your bank for providing loans?
   - N. A.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?
   - N. A.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?
   - N. A.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?
    - N. A.
11. If it is found what will you do? Do you take any legal action to those?
   • N. A.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?
   • No. The private bank sector too is to be kept under control of CIAA.

13. If not what kind of law should be formulated?
   • Any crime or bank fraud should be the subject of investigation of CIAA.

14. Are you able to take back loan by adopting existing laws?
   • N. A.

15. People are taking loan by showing fake document nowadays. How do you control this?
   • N. A.

16. What kinds of economic crime have taken place in your bank for last 2 years? Please give some examples for “economic crimes”
   • N. A.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?
   • N. A.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?
   • Yes. Many cases are being filed in the police CID branches too and they are investigating those cases.

19. Can you give example of this behavior when it happened in the past?
   • In 1999-2000 also one forged cheque of a department of government was found.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?
   • The person will be dismissed from the job, he/she will be obligated to recover the monies lost and the case will be filed by CIAA.
21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

- By monies recovered from the criminals.
6.2.1.2.2  President of Bank association Nepal

Name: Radhesh Pant
Address: Bank of Kathmandu Nepal

1. What kind of transactions your bank has been doing?
   - Our bank has been accepting deposit, advancing loan, investing in governmental securities, domestic call money markets and foreign call money markets, trading in foreign currencies, remittance activities etc.

2. When was your bank established?
   - In 1993

3. In which sector your bank has been investing mainly?
   - Our bank has been investing in the corporate as well as in the retail sector. In the corporate sector, we have been investing in fields like Ghee (Butter), Yarn, corrugated sheets, fast moving consumable goods like noodle, iron and steel, hydropower, medical college, trading etc. In the retail sector, we have been investing in housing, vehicle finance and education etc.

4. How is your experience in respect of taking back loans?
   - It is a mixed one. In case of failed projects, recovery of the money is not possible in the most of the cases. But in full default cases, taking back loans will be difficult and take time but this situation is not possible if strict measures are taken.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   - Governmental attitude towards taking back loan is positive. Similarly, the existing laws in this regard need more improvement. The implementation part seems weak and it is necessary that better care will be taken through coordinated strong judiciary mechanism.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
   - The various laws are contradicting each other. In this situation, banks face problems. Governmental cooperation is needed in this regard, however, because of structural problems in the government, effective government cooperation is lacking.

7. What are the preconditions set by your bank for providing loans?
   - Disbursement of loans is done in line with terms and conditions set out in credit policy & product paper. In case of corporate loan and business loan, a detailed analysis of different aspects of the project is carried out to understand its
feasibility. Similarly, in case of retails loan, there will be carried out an analysis of source of income of the applicant.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?

• We have appointed an authorized valuator for assessment of the value of fixed assets proposed as a security against the exposure. The final value is based on the distress value of the property. We have a separate policy for valuation of the property. We have not advanced loan against company shares to a large extent. Some advances against company shares have been made on a case to case analysis basis.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?

• No. Valuation is done through distress value mechanism so the case of evaluating more than asset does not arise. But if the price of the assets falls drastically after having advanced the loan, the case may arise.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?

• The loan is not solely disbursed on the basis of value of property. The first way out is looking at the feasibility of the project and its financing requirements.

11. If it is found what will you do? Do you take any legal action to those?

• We shall first blacklist the valuator if the property is valued more. Furthermore, we shall ask the customer to deposit excess loan taken over the actual value of the property or ask for additional property.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?

• Legal remedies are not sufficient because the laws are not very strict with regards to accountability.

13. If not what kind of law should be formulated?

• Laws clearly stating accountability of the concerned bodies need to be formulated.

14. Are you able to take back loan by adopting existing laws?

• It depends on the case to case basis. Yes, in case of collateral we are able to take back loans to a large extent. But in case of personal guarantee, it is very difficult to attack and liquidate the property of the guarantor to take back the loan by adopting existing laws.
15. People are taking loan by showing fake document nowadays. How do you control this?

- The documents are verified to a large extent through the requirement of showing original documents. Apart from this we have know your customer (KYC) guidelines which take care of this aspect to a large extent.

16. What kinds of economic crime have taken place in your bank for the last 2 years? Please give some examples for “economic crimes”

- Some case of Counterfeit signature has been noticed.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?

- Confirming large withdrawals over telephone prior to the payment is in place. This process needs to be effectively followed. Apart from this, effective procedures have been laid down for issuance of cheques.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?

- Yes.

19. Can you give example of this behavior when it happened in the past?

- One year ago one person came to the bank and cashed his Cheque. After that, we came to know that he was making similar sign as our actual customer. Because of the help of CCTV (close circuit television) we found this person and handed him over to the police.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

- He will be dismissed from the job, the loss will be recovered from him and the case will be filed by CIAA as a criminal offence.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

- By monies recovered from the bank to the customer.
6.2.1.2.3 Himalayan Bank Limited

Response from the Director of Himalayan Bank Ltd.

Name: Pradip Rayamajhi
Address: Himalayan Bank Ltd Thamel Katmandu, Nepal

1. What kind of transactions your bank has been doing?

The Credit Management and Administration Department (CMAD) basically handles transactions relating to loan implementation consisting of the aspects mentioned below:
- Disbursement of new and renewed credit limits
- Settlement of past due and accrued interest
- Reversal of penal interest
- Capitalization of interest
- Settlement of loans
- Monitoring and making amendments in the loan repayment schedule
- Various multiple debit and credit transactions as and when required

2. When was your bank established?

- Himalayan Bank Limited was established in 1992 A.D. The banking operations started from the year 1993 A.D.

3. In which sector your bank has been investing mainly?

- Corporate Sector Loan

4. How is your experience in respect of taking back loans?

- It is very difficult to recover the bad loans. There is no co-operation from the defaulting borrowers to pay back the loan.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?

- There are provisions in the existing Laws. However, the borrowers who defaulted are not willing to pay back loans, and if a bank tries to vacate the mortgaged property, there is no strict law to support the financial institution. We can take as an example the Case of Mahalaxmi Sugar and Mr. Binod Chaudhary, where the Court has given verdict in favor of Mr. Binod Chaudhary, not taking into consideration the overall effect in the banking industry.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?

- As such there are no such obstacles in banking laws & government co-operation.
7. What are the preconditions set by your bank for providing loans?

- Before implementation of the credit limits of the clients, we ascertain to it that the party has completed all the legal formalities and our documentation process.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?

- HBL has a list of approved valuators which conduct the valuations of all the Fixed Assets Collateral. The valuators arrive at a distress value that is generally at 70% to 80% of the fair market value. We have 130% collateral margin requirement and sometimes we even opt for 200% collateral requirement margin.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?

- Such cases have rarely happened. Loans are generally sanctioned on fully secured basis.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?

- N. A.

11. If it is found what will you do? Do you take any legal action to those?

- As per NRB Directives, if there is an overvaluation of any property, valuator will be blacklisted at CIB.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?

- Sufficient to take action.

13. If not what kind of law should be formulated?

- N. A.

14. Are you able to take back loan by adopting existing laws?

- Yes.

15. People are taking loan by showing fake document nowadays. How do you control this?

- We have never come up with such a situation. However, we verify the documents thoroughly before disbursement of the credit limits. Legal actions are taken against any fraudulent practices.
16. What kinds of economic crime have taken place in your bank for the last 5 years? Please give some examples for “economic crimes”

- N. A.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?

- We have sufficient internal controls. The BAFIA act has required banks and financial institutions to have them there effectively.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?

- N. A.

19. Can you give examples of this behavior when it happened in the past?

- N. A.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

- N. A.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

- We do by reimbursing them first and then recovering the amount from the criminals.
6.2.1.2.4 Rastriya Banijya Bank

Response from the Director of Rastriya Banijya Bank Central Office Kathmandu

Name: Dhruba Prasad Bhandari
Address: Rastriya Banijya Bank Central Office Kathmandu.

1. What kind of transactions your bank has been doing?
   • This Bank does all the banking transactions specified in banking law and other transactions as specified by central bank from time to time.

2. When was your bank established?
   • This bank was established January 23, 1966.

3. In which sector your bank has been investing mainly?
   • This bank has invested its portfolio mainly in the trading and Industrial sector.

4. How is your experience in respect of taking back loans?
   • The taking back of loans is comparatively complicated. Due to low knowledge of the staffs in analyzing the proposals submitted by the clients, the bank had thrown its lending on collateral backed loans. The realization of real estate seems to be more complicated.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   • This bank being a fully owned government bank, it has to carry out some of the programs launched by the governments. Sometimes, government feels it is the primary duty of the bank to do so, in spite of non profit making activities. In this globalized scenario, government should allow the bank to operate in the competitive environment to be fit to survive in the competition.
   • Moving toward the existing law, the government in principle is trying its best to improve the situation of corporate governance of the banks. It has been introducing new laws like insolvency law, debt recovery laws and other laws required by the situation. Recently, through its annual budget government has announced to take action against bank defaulters.
   • In conclusion, banks are trying to succeed in competition by improving their corporate governance position and professional management. On the other side, implementation of laws has not been so fruitful to the development of banking sector from government side.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
• Though there are no clear cut obstacles, in some cases the bank has faced some difficulties from judiciary. A strong commitment will be required to deal with the defaulters from government side. Otherwise, Banks will be helpless to perform their duties in a proper manner.

7. What are the preconditions set by your bank for providing loans?

• The conditions set by the bank for providing loans may vary from case to case. Sometimes the bank may put forward the condition to do all business through it. This will enable the bank to streamline and have knowledge of its business. Other conditions to be put by the bank are the same as in other banks.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?

• The evaluation of immovable property is carried out through professional engineers who are enlisted in the panel of the approved valuators. The system adopted by these professionals may vary as to some technical aspects but in general, they follow the guidelines prescribed by the bank and other guidelines prescribed by the governmental agencies. On the other hand, the valuation of shares of the company as collateral is done normally on the market price.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?

• In the past, there happened many such cases inside our bank.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?

• The evaluation of property to be lodged as collateral has been practiced by the fraud or employee, who is practiced to use the lacunas inherent in rules. Normally, such property is used as collateral to finance either huge disbursements or on small amount.

11. If it is found what will you do? Do you take any legal action to those?

• They will be liable according to stringent legal provisions. If it is found, the bank will try to get other properties associated with such party and request the government agencies to get the property to the favor of the bank. Bank will try to exercise all available option to get money back from the parties.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?

• That is sufficient to take action against the persons who are involved in such activities.

13. If not what kind of law should be formulated?
There should be the legal framework to put such persons and groups behind bars until full recovery of such loans to the borrower.

14. Are you able to take back loan by adopting existing laws?

- Yes, but sometimes the bank has been defeated in the trial due to the lack of adequate banking knowledge to the judiciary. Even then, there should be reform on such laws with stringent penal provisions against defaulting borrowers.

15. People are taking loan by showing fake document nowadays. How do you control this?

- Earlier we had this problem but now the bank has established a professional management team. So this practice is totally controlled. Earlier the high profile staffs were also not sufficiently qualified to do a proper appraisal of projects submitted by the client. That level of knowledge led to the disbursal of loans on the basis of fake or unreliable proposals.
- Now the time has changed, management has been trying its best to educate the staff for better appraisal of project proposals and putting more stringent penal provisions on employees by laws permitting to take penal action against such employees.

16. What kinds of economic crime have taken place in your bank for the last 5 years? Please give some examples for “economic crimes”

- There are no such economic crimes clearly indicated but disbursement of loans on the basis of fake documents and by lodging less valuable collateral was prevalent till 4 years before now. This practice has been totally abolished.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?

- We have enough internal control over banking operations. There are regular visits to the branches and frequent monitoring of loan and other accounts and also timely internal audit of all. So this will definitely reduce the economic crime.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?

- The bank had witnessed some instances of such forgery. Such incidence happens in the case of the signature of the low literate people. And in cases where there is no strong internal control in place due to low staff number.

19. Can you give example of this behavior when it happened in the past?

- In such cases, the payee becomes able to get more pages of cheque book and forges the original signature which has been done by him at the account opening time. In some cases, the payee becomes able to alter the amount.
20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

- He will be dismissed or terminated from the job, the loss will be recovered from him and the case will be filed as a criminal offence.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

- In such instances, bank makes good to the account holders if
  1. The crime is evident and there is a serious fault from the side of bank.
  2. If staff is involved, sometimes they make good to withdraw the amount to the account holders.
  3. But if the forgery seems much complicated the account holders may have to wait till the adjudication process will be completed.
6.2.1.2.5 Nepal Bank Limited

Response from the Director of Nepal Bank Limited Central Office Kathmandu
Name: Bhanu Bhakta Joshi
Address: Nepal Bank Limited Central Office Kathmandu.

1. What kind of transactions your bank has been doing?
   - This Bank does all the banking transactions specified in banking law and other transactions as specified by central bank from time to time.

2. When was your bank established?
   - This bank was established in 1937 AD (1994 BS.)

3. In which sector your bank has been investing mainly?
   - This bank has invested its portfolio mainly in the trading and industrial sectors. Nowadays also consumer financing, autos, home loan etc.

4. How is your experience in respect of taking back loans?
   - The taking back of loans is comparatively complicated. Four years ago, wrongly advanced loans could not be recovered even till today. In spite of new management, no good outcome was found concerning this matter. After I joined the bank no such problems are found in major terms.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   - The government is indifferent towards its policy and laws. The existing laws are not adequate for that.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks’ duties?
   - Though there are no clear cut obstacles, in some cases the bank has faced some difficulties from judiciary, because in the court there is no good experience concerning the banking law. The commercial law is not also developed well in our country. The selfness attitude of the government policy and narrow vision in macro banking are the problems.

7. What are the preconditions set by your bank for providing loans?
   - For Business loan, the establishment period should be more than 3 years.
   - For auto loan using period should not more than 5 years in case of second hand cars.
   - Generally in Hydro Power, auto, home loans 30% margin will be kept.
• Own valuator should value the collateral.
• In case of swapping loan there should not be left more than a 6 months expiration period after having obtained loan from the previous financing.
• Limit is fixed for funding non-funding loan.

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?

• The evaluation of immovable property is carried out through professional engineers who are enlisted in the panel of the approved valuators.
• On the other hand, the valuation of the shares of the company as collateral is done normally on the market price of the stock changes.
• 30% to 40% as per the margin will be kept for different companies.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?

• At least since 4 years no such case is found, but before that time, we had such cases found due to mismanagement of the bank.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?

• The lowest valued property is valued at optimum level and the loan will be granted at that valued property.

11. If it is found what will you do? Do you take any legal action to those?

• First of all the bank will try to convince the party to repay the loan, will give him 3 times a chance to repay and after that it will blacklist that party.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?

• No. It is not sufficient to take action against the persons who are involved to value assets.

13. If not what kind of law should be formulated?

• Criminals should be discarded by the society.
• Except from that, there should be the legal framework to put such persons and groups in jail until full recovery of such loans.

14. Are you able to take back loan by adopting existing laws?

• Not at all, sometimes the bank has been defeated in the trial due to the lack of adequate banking knowledge of the judiciary. Even then, there should be reform on such laws with stringent penal provisions against defaulting borrowers.
15. People are taking loan by showing fake document nowadays. How do you control this?

- The documents should be made interrelated while taking loan in order to know whether the customer has attached income tax and VAT information from the concerning department or not.

16. What kinds of economic crime have taken place in your bank for the last 5 years? Please give some examples for “economic crimes”

- Forgery of cheques / signature, Letter of Credit opened & paid but no goods are imported.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?

- If we have enough internal control over the banking operations, frequent monitoring of loan and other accounts and also timely internal audit of all, that will reduce the economic crime.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?

- N. A.

19. Can you give example of this behavior when it happened in the past?

- N. A.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

- He will be dismissed or terminated from the job, the loss will be recovered from him and the case will be filed as a criminal offence.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

- First, the bank will investigate itself, if required it will take help of police and if found guilty the criminal has to pay the whole amount to the victim.
6.2.1.2.6 Nepal Agricultural Development Bank Limited

Response from Dept. chief of Agricultural Dev. Bank Limited, Central Office Kathmandu
Name: Ramesh Singh Khadka
Address: Nepal Agricultural Dev. Bank Central Office Kathmandu.

1. What kind of transactions your bank has been doing?
   - Deposit collection
   - Loan investment in different sectors
   - Remittance
   - Bank guarantees

2. When was your bank established?
   - Nepal Agricultural Dev. Bank was established in 1964 and reshaped in 2005 as Nepal Agricultural Dev. Bank limited.

3. In which sector your bank has been investing mainly?
   - Before 2005 this bank invested only in the agricultural field but after 2005 also in business, agriculture, industry and Hydro Power etc.

4. How is your experience in respect of taking back loans?
   - Sometimes taking back loans is comparatively complicated. Some clients do not pay intentionally but some others want to pay but the project or business fails so they could not pay. In most cases the lower class clients are always ready to return the loan but high loan is always difficult to take back.

5. How is your opinion with respect to governmental attitude and existing laws in this regard?
   - In my opinion governmental attitude and existing laws and policies should change or reform according to the market situation and changing trend of international banking policies. The existing laws are not adequate for that.

6. Did you find any obstacles in banking law and governmental cooperation on behalf of properly performing banks' duties?
   - There is a lack of clarity in the banking law, i.e. banking and financial institution act. When the bank completes the procedure of action to hold the property, there is no easy mechanism to help the purchaser so the legal action of taking back loans becomes weak.

7. What are the preconditions set by your bank for providing loans?
Besides the governmental rules and the regulations we consider following preconditions of issuing loans:

- Project status
- Viability of loans
- Capacity of creditors (experience area, market position of the production)
- Safe collateral
- Proof of collators documents

8. How do you evaluate assets (unmovable property, company share yearly transaction if it is company) and what kind of mechanism you are using?

- The evaluation of immovable property is carried out through professional staffs which are enlisted in the panel of the approved valuators. They will value the property according to the governmental and banking policy.
- We do not accept the company shares as collateral for loans.

9. Do you have any case, which has been evaluated more than asset? and have taken more loans?

- We have so many cases concerning this. In such cases the bank administration has taken action against the valuator in at least 50 cases per year in 250 branches of the bank.

10. How this property has been evaluated and in which Relation the loan to be granted has been to the asset deposited as basis thereof?

- The property has been evaluated on the basis of blueprint maps issued by government of Nepal rather than the infrastructure of the assets.

11. If it is found what will you do? Do you take any legal action to those?

- Yes. We will take legal action according to the situation of the case. In some cases we take disciplinary action against the staff as per bank rules and regulations and we also take legal action against the clients according to the rules and regulations of Nepal.

12. Do you think legal remedies are sufficient to take action for those who are involved to value assets?

- Yes. It is sufficient to take action against the persons who are involved to value assets.

13. If not what kind of law should be formulated?

- N. A.

14. Are you able to take back loan by adopting existing laws?

- Yes.
15. People are taking loan by showing fake document nowadays. How do you control this?

For the control of using fake documents, we should take care in the following ways.
• To properly examine the documents
• To verify the government issued documents
• To verify the property by doing field visits.

16. What kinds of economic crime have taken place in your bank for the last 5 years? Please give some examples for “economic crimes”

• Taking loan over collateral, cheques and fax cheque, by using fake documents etc.

17. How do you control or do you have taken preventive measures to reduce or control those economic crimes in the future?

• To provide proper training to the staff
• Co-ordination with government agencies and other banks
• By making proper laws to control this
• If we do enough internal control over the banking operations, frequent monitoring of loan and other accounts and alert the branches for the concerning matters and also make timely internal audit of all, this will reduce the economic crime.

18. Do you have any case of bank cheating (by making similar sign of account holder by others) as it has been done in the past?

• Yes. We have lots of such crimes in our bank.

19. Can you give example of this behavior when it happened in the past?

• In 1999 a woman customer claimed for her deposited money but in the account there was no money and it had been already withdrawn from that account by the issued cheque. After investigation it was found that she herself was also involved in that crime.

20. If your staff is also found guilty on cases as mentioned before what kind of banking punishment do you give?

• He will be dismissed or terminated from the job, the loss will be recovered from him and the case will be filed as a criminal offence.

21. How do you compensate the account holders whose deposited amount has been drawn by way of economic crimes?

• First, the bank will investigate itself, if the account holder is not involved in that case we will pay him immediately. For the investigation if required will be taken help from police and if found guilty the criminal has to pay the whole amount to the bank.
6.2.1.3 Analysis of the Bank cases

At the period of the research of the banking sector interviews were also conducted with the relevant persons to clear the concept of economic crime and the view of the research.

During this research time, it has been found that there are a lot of such criminal activities inside the banking sector. Some of them are described as a crime in the current rule and regulations and some of them are not referred to directly. Economic crime is a new concept in the context of Nepal. There is not a single definition in the law concerning economic crime, so no one can say clearly that specific activities are economic crime. In the research period I have not seen any single person directly or indirectly related to the legal and administration field of a bank who knows exactly what is economic crime.

Many banks are still hanging with the old system which means that preparing the documents is not computerized but still a leisure book system (Dhadda) is used, which is so easy to remove either by the criminals or the corrupt staff. It is proven that the criminals are a hundred times faster and better qualified than the banking staff.

During this research period, I have learned that only few banks like Rastriya Banijya Bank are well managed. Nowadays RBB has established professional management and has hired qualified personnel. So this criminal activity is almost controlled there. Earlier, high profile staffs were also not qualified sufficiently to do a proper appraisal of projects submitted by the client. That low level of knowledge led to the disbursal of loans on the basis of fake or unreliable proposals. The management has been trying its best to educate the staff for better appraisal of project proposal and putting more stringent penal provisions in employees' by-laws and also informing them that penal action will be taken against any employees if they commit such activities.

Relating to the crime inside the institution like banks, however, there is anecdotal evidence that corporations tend to prefer private solutions rather than reporting crime to the authorities, in particular when the perpetrator is an employee or a manager of the company. It seems that concerns for business reputation are usually the reason for this, but it could also be a consequence of corporate criminal liability in the sense that most of these arrangements imply a cover-up of the underlying crime.\textsuperscript{246} These private agreements are usually inefficient and have a negative effect on deterrence. The possibility of a private solution dilutes deterrence because it reduces the expected

sanction for offenders. As a consequence, legal policy should discourage private agreements.247

In my point of view, there are mainly three types of problems inside the banking sector to control such types of criminal activities.

- **Corruption:** Corrupt mentality will be found inside the banking staff and unqualified staffing, as well as inside the high class of the government officers who are directly related to the banking sector and also the top political personalities, who are mishandling and misusing the whole banking activities like providing loan and so on. The self ness attitude of the government policy and narrow vision in macro banking are the problems.

- **Rules and regulation:** The banking laws and regulations are not clear and not sufficient in this modern and electronic age. The banking and commercial laws are also not well developed in our country. There is no real clarity in the banking laws, banking and financial institution act so that when a bank completes the procedure of action to hold the property, there is no easy mechanism to help the purchaser so the legal action of backing loans becomes weak.

- **Judiciary:** This problem is one of the most essential problems in the field of banking to control the EC. In some decisions of the courts concerning the banking cases the judges are giving verdict decisions although it seems they are hardly informed about the banking and commercial law. It means the courts are not practiced in dealing with the banking laws. In some cases the bank has been defeated in the trial due to the lack of adequate banking knowledge to the judiciary. Moreover, there should be reform on such laws with stringent penal provisions against defaulting borrowers.

Thus, the major assessment and **suggestion** is that there should be a separate court in Nepal to control these types of crime. It means a separate economic court focusing on cases of economic crime is needed in Nepal.

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6.2.2 Courts

6.2.2.1 The questionnaire for Courts

Judiciary

Questionnaire for the Registrar of the Supreme Court

Name:
Address:

1. What is the ratio of the case of corruption and financial irregularities in the court?

2. What kind of financial cases have been registered in the court?

3. What is the percentage of those which have been found to be economic crimes?

4. Do you think financial irregularities have taken place inside the court during the case proceeding to decision making process?

5. Has any case been found where staff or any responsible person have been held responsible for taking bribe and giving wrong decision by which plaintiff does not get justice?

6. Who cannot get justice by these financial irregularities what is the provision to compensate the victims? (A person who has taken bribe in order to harm others is offender and those who have been affected by such activities are the victims, compensation should be given either in the form of justice or economic remuneration by the related company or government)

7. What preventive measures have been taken to control financial irregularities inside the court in the future?
Questionnaire for the judge of Special Court

Name:  
Address:  

1. What kind of financial cases (economic crime) have been recorded in this court?  
2. How many percentage cases are found to be economic crime in the real sense?  
3. Why all the cases are not found real economic crime? (Cases will be given which is not found economic crime by the court but it is really related with economic crime according to investigator)  
4. Are you satisfied with the job of investigator who is directly involved to find out these crimes?  
5. If not why?  
6. Do you give an order to investigator to reinvestigate, if the investigation is not found satisfactory? Or which consequences do result if the investigation is not found satisfactory?  
7. What are the real differences of the work done by special court and criminal court?  
8. Do you think economic defaulters have been punished more than the previous general court?  
9. Do you think criminal court is more effective to punish economic defaulters, in what sense?  
10. Is there any chance that criminals will escape prosecution because of insufficient laws?  
11. If yes what kind of laws are essential and why?  
12. It is said that “justice delayed is justice denied” and it is seen in the court? What do you think why justice is delayed especially in the economic crime cases? (Especially court takes more time to give justice in these cases)  
13. How can justice be provided effectively and properly in a given time frame?
6.2.2.2 Responses from Courts

6.2.2.2.1 Supreme Court

Response from the Registrar of the Supreme Court

Name: Dr. Ram Krishna Timalsena
Address: Supreme Court Nepal

1. What is the ratio of the case of corruption and financial irregularities in the court?

- The Supreme Court does not entertain jurisdiction to hear such cases. For this particular purpose, we have separate Special Court, which hears the cases of corruption and financial irregularities. Therefore, the ratio can not be traced out among the Supreme Court cases.

2. What kind of financial cases have been registered in the court?

- Not exactly such cases, however, but there are some cases which come under this jurisdiction like cases on property without legal source, forgery certificates, misuse of government property, bribery, cheating, misuse of foreign currency, Khota Chalan (illegal use of duplicate currency) etc.

3. What is the percentage of those which have been found to be economic crimes?

- The percentage can not exactly be traced out because there might be many interlinks in those cases. There are huge volumes of cases in Supreme Court, among those the court decides many cases in a day where the issue might be associated but it is not easy to identify them categorically.

4. Do you think financial irregularities have taken place inside the court during the case proceeding to decision making process?

- I do not think so.

5. Have any cases been found where staff or any responsible person have been held responsible for taking bribe and giving wrong decision by which plaintiff does not get justice?

- No such cases have been found till today. Officially, no complaints have been registered or brought before the Registrar and the Chief Justice.

6. Who cannot get justice by those financial irregularities what is the provision to compensate the victims?

- There are no laws which have been enacted to this effect. The concept of victimology now is considered as a matter of brain-storming and the government
is thinking that laws relating to this effect are a must. Let’s hope for legal provisions that will be made shortly.

7. What preventive measures have been taken to control financial irregularities inside the court in the future?

- The Supreme Court is quite aware to avoid such incidents so we are taking many precautionary measures to this effect. We have enacted Court’s Procedural Regulations for prompt, speedy and impartial justice to the court users. We have taken many steps towards transparent and accountable judiciary. We believe that where a transparent and accountable judiciary exists there is no possibility for such irregularities to take place.
6.2.2.2 Special Court

Response from Registrar of Special Court of Kathmandu
Name: Lohit Chandra Shah
Address: Registrar of Special Court of Kathmandu

1. What kind of financial cases (economic crime) have been recorded in this court?

- Jurisdiction of this court has been confined to all corruption cases which are directly and indirectly related with economic benefit. Our court divided corruption cases into the following 3 categories for the procedural management: Disproportionate property, file corruption and fake certificate.

2. How many percentage of cases are found to be economic crime in the real sense?

- All kind of corruption cases have been filed in this court. Directly or indirectly corruption cases are related with economic benefit.

3. Why all the cases are not found real economic crime? (Cases will be given which is not found economic crime by the court but it is really related with economic crime according to investigator)

- Maybe lack of evidences.

4. Are you satisfied with the job of investigator who is directly involved to find out these crimes?

- Not fully satisfied.

5. If not why?

- Because some investigations are incomplete and insufficient. By this reason many defendants have been able to get decision on their favor and court takes a long time to reach its decision.

6. Do you give an order to investigator to reinvestigate, if investigation is not found satisfactory? Or which consequences do result if the investigation is not found satisfactory?

- We have no such provision of reinvestigation order to investigator.

7. What are the real differences of the work done by special court and criminal court?
• This court has been established for hearing the special determined cases such as corruption and crime against the state. But the general criminal courts have been given jurisdiction to hear all the other criminal cases.

8. Do you think economic defaulters have been punished more than the previous general court? (Now special court and criminal court has been formed to deal with the cases of economic crime)

• The economic defaulter has been punished more heavily than it was done by the previous general court in corruption cases from this court.

9. Do you think criminal court is more effective to punish economic defaulters, in what sense?

• We do not have such kind of separate criminal court but now we are exercising the separate criminal branches in some districts.

10. Is there any chance that criminals will escape prosecution because of insufficient laws?

• Yes. There will be more chance that the criminals escape from prosecution because of weak or insufficient laws.

11. If yes what kind of laws are essential and why?

• Law should be strong and should cover the entire field of economic crime. Especially in white color crime the criminals are very clever and involved in organized shape in such criminal activities. So they can easily escape if they found even a small loophole of the law.

12. It is said that “justice delayed is justice denied” and it is seen in the court? What do you think why justice is delayed especially in the economic crime cases? (Especially court takes more time to give justice in these cases)

• That’s true that “justice delayed is justice denied”. But in the economic crime, especially in the corruption cases many evidences are examined in the court and a big number of persons are involved. They perform such crimes in an organized way. So to collect the evidence and to examine them takes a long time so the procedure is long before a decision will be given. Besides this, lack of proper trained manpower, proper facilities and physical infrastructure are also playing a vital role as a cause for delay for the decision making.

13. How can justice be provided effectively and properly in a given time frame?

• Trained manpower, proper infrastructure, appropriate laws, public support to the court and proper prosecution are necessary to provide effective justice in a given time frame.
I have collected the data from special court in my research time, it shows that they are trying to provide quick decisions concerning the corruption cases. Below, we can see how many cases they decided from 2002 to 2007.

**Figure 52** DecisionS on the cases filing from CIAA\(^{248}\)

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>No. of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>32</td>
</tr>
<tr>
<td>2003</td>
<td>130</td>
</tr>
<tr>
<td>2004</td>
<td>106</td>
</tr>
<tr>
<td>2005</td>
<td>109</td>
</tr>
<tr>
<td>2006</td>
<td>92</td>
</tr>
<tr>
<td>2007</td>
<td>11</td>
</tr>
</tbody>
</table>

**Figure 53** Chart on cases mentioned above

6.2.2.3 Analysis of the Courts cases

All the available information and records of the research time on economic crime in the courts were examined on the basis of comparative method and field observations. Interviews were also conducted with the judges of district court and special court as well. A small talk was also conducted with the chief justice and other relevant persons in the Supreme Court to clarify the concept of economic crime and the view of the research at the period of field study. In my research time, I have got some information about such criminal activities inside the courts, as far as the judges are also involved there in these activities. There is no clear definition concerning the Economic crime so most of the related persons in the courts are also uninformed about this topic. In the research period, I have not seen any single person who “knows and can clear exactly what is economic crime” which was the same experience for me that I have got from the search of banking sector. The staffs of the courts are still attached to the old system and old mentality. The document system is not modern and not computerized so it is easy to remove and destroy it by the criminals or the corrupt staff. It is proven that the criminals are hundred times faster and qualified than the staff. There is lack of knowledge about the economic crime because there are no clear data, so if I asked them for some data they always asked me inside which types of title of the crime this specific crime must be put. Some cases are filed there like corruption, forgery certificates, misuse of government property, bribery, cheating, misuse of foreign currency, Khota Chalan (illegal use of duplicate currency) etc.

I talked to the registrar of the Supreme Court concerning corruption by the judges and staffs. Even though there were some cases to this related matter, and just few months before my visit two judges were dismissed because of committing corruption at the time giving decision in district court, the registrar was not willing to inform me about the details. I have only got the information from him that the Supreme Court is quite aware to avoid such incidents so they were taking many precautionary measures to this effect. Supreme Court has enacted Court’s Procedural Regulations for prompt, speedy and impartial justice to the court users. Supreme Court has taken many steps towards transparent and accountable judiciary. Supreme Court believes that where a transparent and accountable judiciary exists there is no possibility for such irregularities to take place.
Concerning the question of verdict cases and delayed decision of the judges of the different courts and its related officers, they answered me that the lack of clear legal provisions and incomplete documents from the investigation part are the main causes thereof. The Special court pointed out that in the corruption cases and other organized crimes many evidences must be examined in the court and the criminals perform such crimes in an organized way. So to collect the evidence and to examine it takes a long time and thus, the procedure is long before a decision will be given. Besides this lack of proper trained manpower, proper facilities and physical infrastructure, appropriate laws are also playing a vital role to delay for the decision making or delay to provide justice.

In conclusion, these are also other causes to give proper and quick decision from the courts but according to lawyers and related persons the main cause of the delay and verdict decision is the corrupt mentality inside the courts, prosecution and related investigation team. It has even come to be known that in the organized crime there is one group active inside the legal field in Kathmandu which will visit the concerning judges, attorney generals office and the investigation officers in order to get favour for the criminals. The group is ready to spend money or other things to influence decisions for their favour.
6.2.3 Crime Investigation Department of Nepal Police (CID)

6.2.3.1 The questionnaire of Crime Investigation Department of Nepal Police

Questionnaire for the agencies of Investigation
Questionnaire for the head of the Crime Investigation Department of Nepal Police
Questionnaire for the Investigation Officer of CID Department of Nepal Police

_Name:
_Address:

1. What kind of financial cases have been recorded in your office?
2. How do you investigate those cases?
3. Which office and what types of person have been found involved more in this type of cases?
4. Do you find any obstacles to investigate in these cases?
5. If so what kind of obstacles? And where do they result from?
6. Why they create obstacles?
7. What is the percentage that your office wins in these cases?
8. What are the reasons why your office loses such cases?
9. Do you think existing law is lacking in respect of investigation and filing the cases, or what?
10. Who are the persons/institutions responsible to increase those economic crime cases?
11. What should the government do to control economic crime?
12. Do you have anything to say? Do you wish to get a personal statement?
13. Do you think court is providing appropriate decisions on these cases?
14. If not why?
6.2.3.2 Responses

6.2.3.2.1 CID Headquarters Naxal

Questionnaire for the head of the Crime investigation Department of Nepal Police

Name: D.I.G.P. Niraj Pun
Address: Crime Investigation Department of Nepal Police

1. What kind of financial cases have been recorded in your office?

According to the record of CID branches, we have such crimes in Nepal:
- Embezzlement of public fund
- Fraudulent bank transactions
- Making fraud documents to receive loan from the banks
- To open the LC account to take facility of foreign currency but not working properly
- Cheating by making fake or forged document
- Cheating cases related to the land revenue
- Illegal Trafficking for foreign employment
- Counterfeiting
- Illegal import and export
- Revenue leakage and Tax evasion (all taxes)

2. How do you investigate those cases?

- Information collection and analysis of the relevant documents
- Raid to the suspected person, the area and premises visit
- Recording the statements of concerned suspects and witnesses.
- Interview (statement of) with concerned peoples
- Collecting necessary documents and verifying the documents.
- Conducting file inspection where applicable

3. Which office and what types of person have been found involved more in this type of cases?

- Land mafias
- Brokers of the banks, real estate and revenue
- People working in banks and revenue offices
- White color criminals
- Corrupt politicians
- Manpower agencies and their brokers
- People engaged in business and industries
- Business community (traders/industrialist)
- Foreigner / Traveler

4. Do you find any obstacles to investigate in these cases?
• Yes. Here are some obstacles.

5. If so what kind of obstacles? And where do they result from?

• Insufficient, vague and ambiguous rules and regulations.
• Old and traditional panel code (Muluki Ain) system
• Uncooperative attitude of higher officer and politicians
• Political/social pressure and lack of public support
• There is no special definition in Nepalese laws concerning EC. And one effective law should be made to control EC
• There are more agencies working on the investigation for related EC, which is not effective and which are not related to each other. So, there should be one separate investigation agency for economic crime.
• Unavailability of records and documents
• Old record system and incomplete record of transaction
• Influence of the corrupt mentality inside the investigation team
• Training and resources limitations

6. Why they create obstacles?

• Possibilities of higher officials involvement
• Lack of keeping proper records
• Lack of sensitivity towards the crime
• Hidden benefit
• Low morale

7. What is the percentage that your office wins in these cases?

• 70 to 80 percent

8. What are the reasons why your office loses such cases?

• Court is rather sensitive to economic crime. Or the lack of sensitivity on the part of the court toward this crime
• Somehow, low level of preparation before filing.
• Due to ambiguous rules
• Due to the uncooperative attitude of officials and witnesses

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?

• Yes. There is some lacking. Some laws were enacted decades ago and not modified as per present needs (especially in pick pocketing, counterfeiting and foreign exchange)
• There were several revenue leakage cases not covered by law.

10. Who are the persons/institutions responsible to increase those economic crime cases?
- Banks / financial institutions
- Bank Managers, Banking staffs, Business men, Manpower Company, Politicians, and those persons who know the financial activities
- Employees of the concerned institutions
- Taxpayers (traders/industrialists)
- People with power may be organizational chiefs and acting on behalf of those persons
- Lower employees of the reputed families

11. What should the government do to control economic crime?

- Government should make a clear vision and proper and effective law to control the economic crime
- Strong and updated legal provisions and fearless environment
- It must stop the political pressure
- It should provide suitable training to investigators

12. Do you have anything to say? Do you wish to get a personal statement?

- Strong political will and high morale of investigator is necessary to fight against economic crimes.

13. Do you think court is providing appropriate decisions on these cases?

- Yes. But not always.

14. If not why?

- Because of influence of high power, corruption, legal provisions and rather sensitive attitude to economic crime.
6.2.3.2.2 CID Valley Branch Office

Response from the investigation Officer of CID Valley Branch Office, Kathmandu
Name: S.P. Keshav Prasad Adhikari
Address: CID Valley Branch Office, Kathmandu

1. What kind of financial cases have been recorded in your office?

According to the record of CID branches we have such crimes in Nepal:

- Dacoit
- Snatching
- Fraud/Cheating
- Fake currency
- Burglary

2. How do you investigate those cases?

- Information collection and analysis of the relevant documents
- Visit the crime scene from the export
- Raid to the suspected person and the area
- Interrogation of the suspect and recording the statements of concerned suspects and witnesses
- Interview (statement of) with concerned peoples
- Collecting necessary documents and verifying the documents
- After having finished documentation hand over the case to district investigation office.

3. Which office and what types of person have been found involved more in this type of cases?

- Land mafias
- Brokers of the banks, real estate and revenue
- People working in banks and revenue offices
- Corrupt politicians
- Manpower agencies and its brokers

4. Do you find any obstacles to investigate in these cases?

- Yes.

5. If so what kind of obstacles? And where do they result from?

- Lack of physical resources and scientific aids such as : Transportation, investigation kits, Cameras, computer and IT equipments for investigation, finger print kits, necessary budget for informer
- Insufficient, vague and ambiguous rules and regulations
- Political/social pressure and lack of public support
6. Why they create obstacles?
   - Lack of such resources (above, no. 5)
   - Lack of keeping proper records
   - Lack of sensitivity towards the crime

7. What is the percentage that your office wins in these cases?
   - 70 to 80 percent

8. What are the reasons why your office loses such cases?
   - Lack of full public support
   - Lack of information
   - Lack of physical resources and scientific support
   - Lack of sensitivity on the part of the court toward this crime
   - Due to the uncooperative attitude of officials and witnesses

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?
   - Yes. There is some lacking. Some laws were enacted decades ago and not modified as per present needs (especially in pick pocketing, burglary, counterfeiting and foreign exchange)

10. Who are the persons/institutions responsible to increase those economic crime cases?
    - Banks / financial institutions
    - Bank Managers, Banking staffs, Business men, Manpower Company, Politicians, and those persons who know the financial activities
    - People with power may be organizational chiefs and acting on behalf of those persons

11. What should the government do to control economic crime?
    - To provide suitable training and resources to investigators
    - Government should enforcement strong laws and clear vision to control the economic crime.
    - It must stop the political pressure and fearless environment
    - Promotion of the staffs.

12. Do you have anything to say? Do you wish to get a personal statement?
    - No

13. Do you think court is providing appropriate decisions on these cases?
    - Yes. But not always.
14. If not why?

- N. A.
6.2.3.2.3 CID Katmandu district office

Questionnaire for the Crime Investigation Officer District office of Nepal Police
Name: S.P Dhaka Ram khatri.
Address: CID Kathmandu district office

1. What kind of financial cases have been recorded in your office?

According to the record of CID branches we have such crimes in Nepal.
- Forgery
- Fraud/cheating
- Fraudulent bank transactions
- To open the LC account to take facility of foreign currency but not working properly
- cheating by making fake or forge document
- Cheating cases related to land revenue
- Illegal Trafficking for foreign employment
- Counterfeiting

2. How do you investigate those cases?

- To record First Information Report
- Information collection and analysis of the relevant documents
- Raid to the suspected person, the area and premises visit
- To get permission from court to put suspect in police custody
- By recording the statements of concerned suspects and witnesses
- Interview with (statement of) concerned peoples
- To send the related documents to the forensic lab for scientific examination
- Collecting necessary documents and verifying the documents
- By conducting file inspection where applicable
- To send the documents and suspect to the court to help the attorney general's office

3. Which office and what types of person have been found involved more in this type of cases?

- Bank and financial institutions
- Manpower agencies and their brokers
- Land mafias
- Brokers of the banks, real estate and revenue
- People working in banks and revenue offices
- White color criminals
- Corrupt politicians and well educated people who life in the city
- People engaged in business and industries
- Foreigner/Traveler
4. Do you find any obstacles to investigate in these cases?

- Yes.

5. If so what kind of obstacles? And where do they result from?

- Difficult to collect the evidence because of insufficient resources and facility
- The court will not take as an evidence the statement of suspect or criminal
- Not sufficient time for investigation
- Lack of trained and equipped group of investigator
- Insufficient, vague and ambiguous rules and regulations
- Political/social pressure and lack of public support
- There is no special definition in Nepalese laws concerning EC. And it should be made one effective law to control EC
- There are more agencies which are working to the investigation for related EC, which are not effective and not related to each other. So, there should be one separate investigation agency for economic crime.
- Influence of the corrupt mentality inside the investigation team
- Training and resources limitations

6. Why they create obstacles?

- Possibilities of higher levels involvement
- Hidden benefit
- Low morale

7. What is the percentage that your office wins in these cases?

- 60 percent.

8. What are the reasons why your office loses such cases?

- Low level of preparation before filing because of the lack of well educated trained and well equipped investigator
- Time limit for the case filing to the court
- Due to the uncooperative attitude of official and witnesses
- Court is rather sensitive to economic crime. Or the lack of sensitivity on the part of the court towards this crime

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?

- Yes, laws were enacted decades ago and not modified as per present needs (especially in pick pocketing, counterfeiting and foreign exchange)
- There were several financial and revenue leakage cases not covered by law
- Punishment system should be strong
- There must be a separate economic crime court
10. Who are the persons/institutions responsible to increase those economic crime cases?

- Banks/financial institutions
- Bank Managers, Banking staffs, Business men, Manpower Companies, Politicians, reputed persons who like to earn money easily without doing hard labor and those persons who know the financial activities
- Employees of the concerned institutions

11. What should the government do to control economic crime?

- It should make a separate investigation agency for the whole EC cases
- Investigator must be qualified and suitable training must be provided to him
- There must be a separate court for the economic crime
- Government should make the clear vision and proper and effective law to control the economic crime
- Strong and updated legal provisions
- Political pressure must stop

12. Do you have anything to say? Do you wish to get a personal statement?

- No

13. Do you think court is providing appropriate decisions on these cases?

- Yes. But not always.

14. If not why?

- N. A.
6.2.3.3 Analysis of CID

For the research purpose, interviews were also conducted with the CID department and its investigation officers in different branches. A short talk was also conducted with the head of the CID department to clear the concept of economic crime and the view of the research at the period of field study.

Actually, the police officers have rarely knowledge about these matters. They do not have any concept about EC but they are just developing their concept concerning financial crime. According to them, the lack of a clear definition and concept about EC, lack of exact laws concerning EC, lack of trained and well educated persons concerning this matter and lack of physical facilities are the reasons that they can not investigate well. Besides this, the whole CID department is dependent upon an old investigation system and dominated by the chief of police and the ministry of home as well as political pressure.

The CID department is also little informed about EC, and this is true for the courts and the banking sector, too.

The staffs are still hanging with the old system and old mentality, the investigation is out dated that means third degree methods are still in practice and they believe that is only one effective method. Lack of the knowledge about the economic crime means, that there are no clear data and information. Some cases are filed there like forgery, misuse of government property, bribery, cheating, misuse of foreign currency, Khota Chalan (illegal use of duplicate currency) etc.

Some data’s from CID department are put down below, according to the record of annual reports of CID department of Nepal police Headquarter from 1999 to 2006.\(^\text{249}\) The chart shows the conditions and the comparison of EC during some years.

According to the record of FIR record of CID district office Kathmandu 2002 to 2006, the following cases are registered in the field of economic crime:

Figure 55  Economic Crime Chart of District police office Kathmandu

There is no special definition in Nepalese laws concerning EC, and there should be made one effective law to control EC. Laws are not modified as per present needs (especially in pick pocketing, counterfeiting and foreign exchange). There are more agencies which are working for the investigation for related EC, which is not effective because they are not related to each other. So, there should be one separate investigation agency for economic crime. Besides this, there are a lot of obstacles for investigation and documentation concerning the EC. These are

- insufficient, vague and ambiguous rules and regulations
- old and traditional panel code (Muluki Ain) system
- uncooperative attitude of higher officers and politicians
- political/social pressure and lack of public support
- lack of availability of records and documents
- traditional or old record system and incomplete records of transaction
- influence of the corrupt mentality inside the investigation team
- training and resources limitations.

To conclude the several ways and means how EC can be better controlled, it follows that Government should establish a single separate investigation agency for the whole EC cases. The Investigator must be qualified and suitable training must be provided to him. Government should make the proper and effective law to control the economic crime and must think to update old legal provisions and to establish a strong punishment system. If the government wishes to control the EC it must manage to create a separate court for the economic crime.
6.2.4 CIAA and RIA

6.2.4.1 Questionnaire for the Investigation agencies (CIAA and RIA).

1. Questionnaire for the Commission for the Investigation of the Abuses of Authority (CIAA)

2. Questionnaire for the Investigation Officer of Commission for the Investigation of the Abuses of Authority (CIAA)

3. Questionnaire for the Director/investigation officer of Ministry of finance Department of Revenue Investigation (RIA)

Name:
Address:

1. What kind of financial cases have been recorded in your office?

2. How do you investigate those cases?

3. Which office and what types of person have been found involved more in this type of cases?

4. Do you find any obstacles to investigate in these cases?

5. If so what kind of obstacles? And where do they result from?

6. Why they create obstacles?

7. What is the percentage that your office wins in these cases?

8. What are the reasons why your office loses such cases?

9. Do you think existing law is lacking in respect of investigation and filing the cases, or what?

10. Who are the persons/institutions responsible to increase those economic crime cases?

11. What should the government do to control economic crime?

12. Do you have anything to say? Do you wish to get a personal statement?

13. Do you think court is providing appropriate decisions on these cases?

14. If not why?
6.2.4.2 Responses from investigation agencies (CIAA) and (RIA)

6.2.4.2.1 Questionnaire for the Commission for the Investigation of the Abuses of Authority (CIAA)

Name: Nanda Bahadur Subedi
Address: Department of the CIAA

1. What kind of financial cases have been recorded in your office?
   - Revenue leakage by government officials
   - Embezzlement of public funds
   - Fraudulent bank transactions

2. How do you investigate those cases?
   - By collecting and examining relevant documents
   - By recording the statements of concerned suspects and witnesses
   - By verifying the documents
   - By conducting file inspection where applicable

3. Which office and what types of person have been found involved more in this type of cases?
   - People working in banks, revenue offices
   - People engaged in business and industries
   - Officials related to construction and procurement offices
   - Persons who have backing by politicians

4. Do you find any obstacles to investigate in these cases?
   - Yes. Some.

5. If so what kind of obstacles? And where do they result from?
   - Unavailability of records and documents
   - Vague and ambiguous rules and regulations
   - Uncooperative attitude of higher officers
   - Difficulties in collecting evidence from abroad
   - Lack of morale and good conduct of tax personnel
   - Resources limitations

6. Why they create obstacles?
   - Possibilities of higher officials involvement
   - Lack of keeping proper records
   - Lack of sensitivity towards the crime

7. What is the percentage that your office wins in these cases?
• Formerly very low
• Presently comparatively high, more than 70 percent

8. What are the reasons why your office loses such cases?

• Due to ambiguous rules
• Due to the uncooperative attitude of officials and witnesses
• Due to the lack of sensitivity on the part of the court towards this crime

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?

• No

10. Who are the persons/institutions responsible to increase those economic crime cases?

• Employees of the concerned institutions
• People with power and influence behind them
• Delay in referring the crime to proper authority

11. What should the government do to control economic crime?

• Rules and regulations to be made clear and stern
• Fearless environment to stop political pressure
• Investigation authorities to be referred to in time
• Administrative and regulatory authority to be active
• Measures to build up to collect information and documents from foreign countries
• Strong commitment of government to combat corruption is a must

12. Do you have anything to say? Do you wish to get a personal statement?

• Most financial crimes have their root in the political field. Political leaders and ministers tend to benefit by designing persons of their choice in creative positions. Leaders and political chiefs pay lip service but tend to benefit through corrupt employees.

13. Do you think court is providing appropriate decisions on these cases?

• Higher courts are not sufficiently sensitive to the crime

14. If not why?

• Judges not properly trained and hangover of the traditional jurisprudence
6.2.4.2.2 Questionnaire for the Investigation Officer of CIAA

Name: Ghana Shyam Sharma
Address: Investigation Officer of CIAA

1. What kind of financial cases have been recorded in your office?
   - Banking fraud
   - Overvaluation of assets
   - Small project but large amount of disbursement
   - Client disappointing
   - Loss of tax to government
   - Manager and credit officer involvement in bad loans

2. How do you investigate those cases?
   - By demanding the related documents
   - By presenting the victim
   - By visiting the site of the project
   - By visiting for collateral and if necessary freezing of bank account and other fixed assets

3. Which office and what types of person have been found involved more in this type of cases?
   - Most cases are seen inside the Nepal bank limited (NBL), NADB and RBB
   - Bank managers and its officials, tax officers, revenue officers and land reform officers are mostly involved

4. Do you find any obstacles to investigate in these cases?
   There are so many obstacles. But major ones are
   - Lack of resources
   - lack of expertise and
   - Political/social and higher officials’ pressure.

5. If so what kind of obstacles? And where do they result from?
   - They will directly effect to make the necessary legal documents

6. Why they create obstacles?
   - To escape and to be saved himself and also the corrupt personal from the crime.

7. What is the percentage that your office wins in these cases?
   - More than 70 percent

8. What are the reasons why your office loses such cases?
• Due to ambiguous rules
• Due to the uncooperative attitude of officials and witnesses
• Due to the lack of sensitivity on the part of the court towards this crime
• Lack of sufficient evidence

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?
   • No

10. Who are the persons/institutions responsible to increase those economic crime cases?
   • Employees of the concerned institutions
   • People with power may be organizational chiefs and persons acting on behalf of that former person
   • Lower employees of the reputed families

11. What should the government do to control economic crime?
   • Strong and updated legal provisions and fearless environment
   • It must stop the political pressure
   • To provide suitable training to investigators

12. Do you have anything to say? Do you wish to get a personal statement?
   • No

13. Do you think court is providing appropriate decisions on these cases?
   • Yes, but not always

14. If not why?
   • N. A.
Questionnaire for the Director/ investigation officer of Ministry of finance Department of Revenue Investigation (RIA)

Name:  Kewal Prasad Bhandari
Address:  Department of Revenue Investigation, Pulchowk, Lalitpur, Nepal

1. What kind of financial cases have been recorded in your office?
   - Illegal import and export
   - Tax evasion (all taxes)
   - Inappropriate use of foreign exchange

2. How do you investigate those cases?
   - Information collection and analysis
   - Highway raid and premises visit
   - Collection of necessary documents
   - Interview with (statements of) concerned people
   - Document analysis findings

3. Which office and what types of person have been found involved more in this type of cases?
   - Private/public companies
   - Business community (traders/industrialists)
   - Foreigners/Travelers

4. Do you find any obstacles to investigate in these cases?
   - Non cooperative nature of taxpayers
   - Incomplete record of transaction
   - Political/social pressure
   - Lack of public support
   - Resources limitations of DRI

5. If so what kind of obstacles? And where do they result from?
   - Poor and inappropriate legal provisions
   - Lack of morale and good conduct of tax personnel
   - Resources limitations

6. Why they create obstacles?
   - Easy to influence
   - Hidden benefit
   - Low morale

7. What is the percentage that your office wins in these cases?
- More than 90 percent in misappropriation of foreign exchange

8. What are the reasons why your office loses such cases?
   - Court is rather sensitive to revenue risk. Just look towards legal process. Somehow, low level of preparation before filing.

9. Do you think existing law is lacking in respect of investigation and filing the cases or what?
   - Yes. There is some lacking. Some laws were enacted decades ago and not modified as per present needs (especially in foreign exchange.)
   - There were several revenue leakage cases not covered by law.

10. Who are the persons/institutions responsible to increase those economic crime cases?
   - Taxpayer (traders/industrialists)
   - Manpower company
   - Banks/financial institutions

11. What should the government do to control economic crime?
   - Strong and updated legal provisions and fearless environment
   - Stop political pressure

12. Do you have anything to say? Do you wish to get a personal statement?
   - Strong political will and high morale of revenue officials is must to fight against economic crimes
   - Transactions of corporate sector and trading must be based on record

13. Do you think court is providing appropriate decisions on these cases?
   - Yes, court provides appropriate and positive decisions

14. If not why?
   - N. A.
6.2.4.3 Analysis of the investigation agencies (CIAA and RIA)

There are a lot of agencies in Nepal for the purpose of controlling the economic and social crime. But CIAA is the only agency organized to fight against the corruption in Nepal. The government is trying to provide CIAA and RIA sufficient powers, facilities and other resources for the investigation.

In respect of the jurisdiction of CIAA, the CIAA Act 2048 (2\textsuperscript{nd} Amendment) has just limited the legal mandate of this agency to public sector corruption only so ostensibly leaving out private sector from CIAA purview. The law is thus defective and urgently needs to be amended to include the private sector as well as the judiciary and the army into CIAA’s investigation net.

For the better performance of CIAA, the agency needs to be thoroughly restructured to effectively spearhead the anti-corruption crusade. A complete overhaul of its internal structure, workforce, investigation system, legal jurisdiction and power outreach dimensions will have to be performed seriously in order to give a new momentum to the fight against corruption. Otherwise, anti-corruption efforts will end up as a fiasco.

Moreover, we can see that this organization is also hanging over the old tradition of investigation and further process.

However, they are trying to do their best but due to ambiguous rules, the uncooperative attitude of officials and witnesses and the lack of sensitivity on the part of the court towards this crime CIAA is losing many cases. Many economic crimes have their roots in the political field. Political leaders and ministers tend to benefit by designing persons of their choice in creative positions. Leaders and political chiefs pay lip service but tend to benefit through corrupt employees.

The working style of RIA is rather the same as CIAA. The RIA is fighting more in the taxation field. The system of investigation and documentation is also traditional and the persons who are related to RIA should be changed themselves as well as the working behaviour of its officials.

According to their view, the Courts are rather sensitive to revenue risk. They just look towards legal process and also sometimes low levels of preparation before filing the case are the reason of loosing the cases. And also there is some lacking because laws were enacted decades ago and not modified as per present needs (especially in foreign exchange). There are several revenue leakage cases not covered by law.

In the analytical view it has been found that
• Sometimes there is also corrupted mentality inside the officials.
• The rules and regulations also must be effective both in respect of the officials who are working within those agencies and also to the offenders.
• And the last and major problem is to control such activities is the role of Judiciary. To develop the judiciary system, there a separate economic criminal court must be established and suitable training must be provided to the related judges and officials.
• Special facilities and appropriate knowledge must be provided to the investigators too so that they could provide good service.
6.2.5 Case of Criminals

6.2.5.1 Questionnaire for Criminals

Name:
Address:
Case:
History of punishment:

1. Why have you been arrested?
2. Have you been involved in economic crime cases?
3. How police is behaving to you?
4. Have you been tortured by police? (If yes, clear that what did you do against that or did you take any action?)
5. Who you think is responsible for this case?
6. Why have you been involved in this case?
7. Is there any personal reason to be involved in it?
8. How do you get involved in this case?
9. Who has helped you to do this economic crime?
10. Do you get help from the employee or any authority to perform your crime?
11. If so who were involved?
12. Why did they (employee or any authority) get involved?
13. Have you given any remuneration to those?
14. Do they get any punishment together with you?
15. If not why?
16. Who encouraged you to perform this crime?
6.2.5.2 Responses

6.2.5.2.1 Response from Criminal Madhu Sudan Puri

Name: Madhu Sudan Puri
Address: Kathmandu Battisputali, now in central jail Kathmandu
Case: Banking cheating
History of punishment: 4 years 6 months imprisonment and as a fine 500,000,00 Rs.

1. Why have you been arrested?
   - I was arrested because the police suspected me of cheating a bank on finding money at home.

2. Have you been involved in economic crime cases?
   - Actually I was not involved. There were not any direct evidences to prove the allegation. Just because of my so called statement during my stay in police detention, I have been charged so.

3. How police is behaving to you?
   - Initially, I was arrested by valley crime investigation branch, where I was tortured by the police officers to confess the crime which I did not commit. Such wild torture forced me to confess as they want, just to save my life. A complete un-ability of plaintiff (government) existed to prove the charge against me at the court during trial period by presenting disputeless witness or evidences according to the law. However the court has sentenced me, but the case is under the jurisdiction of the appellate level right now.

4. Have you been tortured by police? (If yes, clear that what did you do against that or did you take any action?)
   - I have answers this question above at no. 3. I have mentioned my free and fair statement regarding the torture at the court. The policemen who tortured me did not appear at the court even they had to be, since they had filed FIR against me in the case.

5. Who you think is responsible for this case?
   - Certainly, the illegal, baseless and biased attitude and the activities of the police. If I would have been allowed just to give my free and fair statement, I would not have been here in jail till now.

6. Why have you been involved in this case?
   - Incidentally, I was not involved.

7. Is there any personal reason to be involved in it?
8. How do you get involved in this case?

- No

9. Who has helped you to do this economic crime?

- According to the charges made by police, and so-called crime history, bank staffs are directly involved. But however, they are not charged.

10. Do you get help from the employee or any authority to perform your crime?

- No

11. If so who were involved?

- No

12. Why did they (employee or any authority) get involved?

- N. A.

13. Have you given any remuneration to those?

- N. A.

14. Do they get any punishment together with you?

- No

15. If not why?

- According to the incident, the bank staffs must have been punished. But, since they are not charged in the charge-sheet, filed in the court by the district attorney, they are privileged of impunity.

16. Who encouraged you to perform this crime?

- N. A.
6.2.5.2.2 Response from Criminals Mahesh Bhandari

Name: Mahesh Bhandari  
Address: Chabahil 7, Kathmandu, now in central jail Kathmandu  
Case: Banking cheating  
History of punishment: 4 years 6 months imprisonment and as a fine 500,000.00 Rs.

1. Why have you been arrested?
   - I was arrested on the charge of cheating a bank, or bank fraud.

2. Have you been involved in economic crime cases?
   - Actually I was not involved.

3. How police is behaving to you?
   - The behaviour of police was not like a human behavior. I mean police behaved in a cruel and inappropriate manner.

4. Have you been tortured by police? (If yes, clear that what did you do against that or did you take any action?)
   - I was not only physically tortured by police but also mentally too. I could not take any legal and other action because there was not such provision regarding it in the police custody.

5. Who you think is responsible for this case?
   - I think the third party took advantage from the weakness of the banking system.

6. Why have you been involved in this case?
   - I was not involved directly and indirectly too in this case but the certain situation shows that I am also involved.

7. Is there any personal reason to be involved in it?
   - The person who was arrested in this case was my relative so I was also arrested with him.

8. How do you get involved in this case?
   - No, I was not involved.

9. Who has helped you to do this economic crime?
   - There is no question of anybody helping me in this crime. Because I was not involved in this crime. They have charged me false.
10. Do you get help from the employee or any authority to perform your crime?
   • No.

11. If so who were involved?
   • I do not know.

12. Why did they (employee or any authority) get involved?
   • I do not know.

13. Have you given any remuneration to those?
   • I do not know.

14. Do they get any punishment together with you?
   • Yes.

15. If not why?
   • N. A.

16. Who encouraged you to perform this crime?
   • I was not involved but just certain circumstances make me accused.
6.2.5.3 Analysis of the Criminals statements

In this research period and at the time of my service period, I have seen that the criminals accepted their crime easily and after filing the case in the court there is a tendency that they will deny their offences. They will give there statement in front of the court that the police has tortured them so that they were compelled to give their statement to the investigation officer. Because of this statement of the main offender, the courts can not give proper justice and also the other offender sometimes will succeed to be set free from the charge. Sometimes the lacking capability of the investigator and the old method of investigation could lead to the result that the innocent would be in prison and the criminal will be outside. If the investigator is not capable and could not do his investigation well, that will not be conforming to the laws on criminal jurisdiction.

It is true that the investigation method is still not modern in Nepal because of the old mentality of the investigator and the lack of proper training. The third degree method is still useful and effective there.

Especially, in the economic crime the offences are so organized that it is not easy to reach the criminals and to found the evidence. The criminals are so clever and their activities are so modern but the investigation method and the mentality of investigator is still traditional. Because of this, the criminals and their activities are a hundred times better and far more modern than the activities of investigator.
6.2.6 Overall Conclusion

This research was conducted not only at the desk top, but also by visiting several persons and several offices related to the field of inquiry. There have been collected sample cases from different CID branches, CIAA, Banks and courts. The questionnaire was provided to the banks, courts, different branches of CID, CIAA, RIA and as well as the criminals, and those persons gave answers which are reproduced above.

In general, looking at the EC inside the corporations or financial institutions or financial sectors, main two actors (Principal and Agent) can play a vital role to increase the EC. The agent's contribution to crime is sometimes more apparent to the casual observer than that of the principal, whose role may be equally critical to the offence. The employee who falsifies records or product quality, enters into an agreement to fix prices, or dumps toxic waste into a stream causes the offence through actions that may be no less critical than the action of a manager or management team that encourage the individual employee to commit the offence directly, or indirectly, by creating a work environment that leads the employee to believe part of his or her job is to participate in the offence.

Polinsky/Shavell and Segerson/Tietenberg have shown in their works\textsuperscript{251} that the economic crimes inside the corporate sector might be apt to illuminate the potentially significant role that hidden actions by the principal in the modern corporation such as shareholders or top management can play in causing or preventing crime, which was already described by Kornhauser in 1982\textsuperscript{252}. They were also discussing several questions that the multi-agent, or principal–agent, perspective on the structure of the modern corporation rises for the design of sanctions. Paramount is the question of whether the enforcement authority’s optimal strategy is to impose sanction on the principal, the agent or both.

In the context of Nepalese financial sector, mainly three types of problems are existing inside the banking sector to control such types of criminal activities. Corruption and the lack of knowledge of investigators to the relevant topics is the first main problem. The second one is that rules and regulations are not sufficient in this sector and the last one is the Judiciary system: Lack of enough knowledge or adequate banking knowledge to the judiciary some judges are leading to verdict decisions concerning the banking cases.

Looking inside the court, many of the decisions concerning this matter are verdict and delayed decision from the judges. Even though they want to clear that, the lack of clear legal provisions and incomplete documents from the investigation part are the main causes thereof. But the main cause of the delay and verdict decision is the corrupt mentality inside the courts, prosecution and related investigation team. Besides this lack of proper trained manpower, proper facilities and physical infrastructure, hardly appropriate laws are also playing a vital role to delay for the decision making.

The use of criminal law in enforcing regulations and antitrust law has not been perceived as the most effective and efficient way to achieve optimal deterrence\(^\text{253}\). However, in the context of environment regulations, for example, it has been urged that criminal fines may play a useful role in overcoming regulatory ineffectiveness.

There are two conceivable enforcement solutions to regulation: a system with a low burden of proof (hence high probability of conviction) and low penalties (due to the high frequency of errors in adjudication) and a system with a high burden of proof (hence low probability of conviction) and high penalties. For the sake of arguments, just suppose the regulatory penalty and the criminal sanction are both monetary fines. Given socially optimal enforcement effort, it is usually more effective to fine offenders by a regulatory body (first system) rather than by the courts (second system). The rationale for this result is that a regulatory penalty is less costly and entails a higher probability of effective sanction for the offender, due to a lower burden of proof and disregard for mental status or other qualifications of the offender’s misconduct. Also the regulator may sanction ex ante (that is, even before the act results in a harm), which can serve as another means of alleviating the judgement proofness problem, whereas courts typically sanction ex post.

Even though it is generally more effective to have a penalty imposed by a regulator rather than by the courts, in some conditions it is optimal to have both of them. There are two lines of reasoning to justify this coexistence:

On the other hand, individuals may wish to dispute regulatory decisions and consequently appeal to the courts. The possibility of an appeal is efficient at two levels.

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Ex post, it corrects the errors of an earlier decision.\textsuperscript{256} Ex ante, it produces adequate incentives for regulators to perform efficiently.\textsuperscript{257}

A second line of reasoning justifies the coexistence at the same time of regulatory hearings and criminal proceedings, not as a result of an appeal, but as independent acts. Apart from the obvious case in which the regulatory fine cannot be optimal due to a wealth constraint of the offender and so imprisonment is required for efficient deterrence (hence, the need for criminal law), the possibility of agencies costs’ when delegating law enforcement, legal error and collusion between the regulator and the offender might, under certain limited conditions, justify the observed legal dichotomy, and the imposition of a criminal sanction on top of a regulatory penalty.\textsuperscript{258}

Thinking about the condition of the investigation agencies, insufficient, vague and ambiguous rules and regulations, old and traditional panel code (Muluki Ain) system or outdated acts, uncooperative attitude of higher officers, witnesses and politicians, political/social pressure and lack of public support, unavailability of records and documents, old record system and incomplete records of transaction, influence of the corrupt mentality inside the investigation team, training and resources limitations are the main obstacles for investigation and documentation concerning the EC. Because of lack of sensitivity on the part of the court towards this crime CIAA is losing many cases. Leaders and political chiefs pay lip service to ethics but tend to benefit through corrupt employees. The RIA is doing almost the same work like CIAA, but it is fighting more in the taxation field.

Especially, criminals in the economic crime are well organized and modern whereas the investigation method and the mentality of investigators are still traditional. So, it is not easy to found the necessary evidence to impose sanctions on those persons.

At last, to control the EC,

- A separate economic court focussing on cases of economic crime is needed in Nepal and suitable training must be provided to the related judges and officials inside the courts.
- An effective law should be made and old acts should be modified as per present needs.

There are several agencies which are working to the investigation for EC; they are not effective, however, because they are not related to each other. So, the government should create single separate investigation agency for the whole EC cases. The investigator must be qualified and it must be provided suitable training to him.
6.3 Detailed analyzing of a specific case “Governor and Director of NRB”

6.3.1 Description of the case

Investigator Ranjan Krishna Aryal CIAA vs. Governor of Central Bank of Nepal (Nepal Rastra Bank) and Executive Director of NRB Surendra Man Pradhan

Details of the case

There was a $2,659,580 fund from World Bank destined for re-engineering the NRB. Its aims were improving the prudential regulatory framework and strengthening the supervisory function, as well as developing a bank crisis management and restructuring unit.

For this purpose, Mr Bhattrai and Mr Pradhan had prepared a contract with IEF Inc Lloyd Hill Oakton, USA, in association with KPMG, Sri Lanka, to reform programs in a financial sector of Nepal Rastra Bank. After that the governor terminated the contract but the first instalment had already been paid. He did not claim the compensation with the IEF Inc Lloyd Hill Oakton, USA, in association with KPMG, Sri Lanka. After that one unknown person reported informally to CIAA and requested to CIAA for the investigation. In the investigation time, CIAA found that the contract was illegal and there was a fake consultant company.

The CIAA filed the case against NRB Governor Bijay Nath Bhattarai and Executive Director Pradhan at special court that deals with cases involving corruption and irregularities in government. Nepal's central bank governor and director were suspended after the state's anti-corruption agency had filed a case against them. According to Nepalese law, the government officials are automatically suspended as soon as the CIAA files a case against them.

The case against governor Bhattarai and executive director Pradhan, who remain suspended since the CIAA slapped them with charges of financial irregularities, has attracted even the attention of donors, some of them publicly expressing disenchantment over the delay in settling of such a sensitive case involving the governor and executive director of the central bank.'

Bhattarai and Pradhan were charged by the CIAA June 29 2007 accusing them of misappropriating public funds received under foreign aid worth 25 million Rs. by creating

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259 Case no 309/111/063-064 from CIAA case record register.
a fake consultant company. They were hiring foreign consultants to help improve the bank's management practices. The investigation showed that the consultants never came to Nepal, but 25 million Rs. (US $ 390.000, € 290.000) in payments were made to them. According to the corruption act if this fact would been proved, they have to face two years in prison.

The CIAA pleaded that Bhattarai and Shrestha committed corruption and the two NRB officials had caused the nation a loss of 25 million Rs. by signing and terminating the fake contract signed with the IEF Inc Lloyd Hill Oakton, USA, in association with KPMG, Sri Lanka.

Figure 56  The pictures of Offenders

Bijaya Nath Bhattrai  Surendra Man Pradhan
6.3.2 Short overview of judicial system in general

Nepal is (now) a democratic republic. There is an independent judiciary system. The Constitution is the supreme law of this land. Muluki Ain is one of the most important laws of Nepal. The whole judicial system and the procedure of the courts are described in it. According to the interim constitution of Nepal the judicial system is structured as follows:

Figure 57 Judicial System in Nepal

According to this chart, there is one Supreme Court in Nepal, under the Supreme Court there are 14 Appeal Courts and 75 District Courts. Moreover, there is one Special Court which is also an appeal court related to the EC like corruption and drugs. Some agencies like CIAA, RIA, forest department etc. have jurisdiction power to decide
relevant cases. They have to follow the same procedure as the district courts and concerned persons and parties can go to the Special Court directly for appeal against the decision of such agencies.

The Supreme Court will monitor the decisions of the lower courts. The last decision of Supreme Court should be followed by other courts in the same manner as an legislative act. If there is mistake from the judge or inside the court the judicial council will monitor the whole judicial system and also determine the punishment for the judges.
6.3.3 Investigation

CIAA is responsible to investigate the corruption cases. Inside the CIAA, they have their investigator, a representative from the attorney general’s office and also the police officers team. The duties and responsibilities of these officials have been already described above (cf. above, at chapters 4.2.1.1, 4.2.2, 4.2.4 and 5.2.1)

After the case had been registered, the CIAA started the investigation. They were mainly focussing their investigation on the following circumstances:

- In the Appendix D of that contract was written that the key personal of those who should be coming to Nepal for that purpose were Mr. Y.A Piyatissa, Mr. Thuraiappah Baskarakumaran, Mr. Kuruppu Achchige Don Nimal, Mr. Goonathilake Atapattu and Mr. Sithamparappillai Thilaganathan. But there was neither written their identity nor which country are they belonging to.
- There was written in clause 6.4 of that contract that “the First payment of an amount equal to a month of remuneration will be paid on the submission of Inception Report and work plan for two years of assignment accompanied by a monthly progress report of accomplishment during month versus work plan”. According to this clause there should be a work plan together with an inception report. But that report was not delivered and they were asking the first payment already at a time when they had just told that they would submit the plan after gathering the related 7 persons together. The NRB team nevertheless accepted the inception report and paid them US$ 68,277.49.
- The terminating of that fake contract was out of the jurisdiction of the governor.
- After having terminated the contract, they were not claiming the compensation due from the defaulter.
- Two types of addresses, i.e. IEF Solutions and IEF Inc., were mentioned in the letter head of the contractor.
- A further issue was whether Bijaya Nath Bhatraai and Surendra Man Pradhan committed corruption or not.
- The last issue related to the question whether according to the contract the five persons had to come to Nepal for work or not.

The CIAA found that the consultants never came to Nepal and also they had not concluded any contract with NRB and the signature below the contract was also not
made by them. But according to the record of NRB, the 25 million Rs. in payments was made to them.
So, the CIAA suspended both managers of NRB and started further investigation slapping them with charges of financial irregularities.

6.3.4 Evidence
At the time of the investigation, the CIAA collected many evidences against the two offenders, i.e. Bijaya Nath Bhattrai and Surendra Man Pradhan. CIAA found that the whole contract was fake. There was not any company who had concluded a contract with NRB. Bijaya Nath Bhattrai and Surendra Man Pradhan were committing financial irregularities worth nearly Rs 25 million in a financial sector reform programme. Concerning the investigation process, the KPMG had written to CIAA (see documents below, at figure 58) that
- “We appreciate your initiative taken to investigate the above matter and assure our support for this process. We trust you appreciate that the Firm's reputation is fundamental to us and we would like to be updated on the progress of the above matter”.
- And they wrote that their organization was innocent concerning the contract. KPMG, a Sri Lanka-based consulting firm, also replied that it did not authorize A.N. Fernando to sign a consulting agreement with the central bank on February 6, 2006.
- KPMG had further written to the court that “Mr. A. N. Fernando who was supposed to have signed said agreement with the Central Bank of Nepal on behalf of our firm has never been to Nepal and the signature appearing on page 3 of the agreement sent by you is not his signature”.
- KPMG was replying to a court letter sent to it on January 16, 2008. The court had asked the firm to clarify the authenticity of the document.
For this purpose the CIAA was collecting various evidences like statements of the witness and documents. Some of them are reprinted below (Figure 58 10 pages of evidence collected by CIAA).

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260 Charge-sheet from CIAA concerning the Governor and Executive Director of NRB, 29 June, 2007.
Mr Ranjan Krishna Aryal
Commission for the Investigation of Abuse of Authority
Kathmandu
Nepal

9 January 2008

Dear Sir

Nepal Rastra Bank ("NRB")

Agreement on Consulting Services — Authorisation of our letter dated 18 June 2007

We refer to the fax dated 31st December 2007, from Nepal Rastra Bank (NRB) addressed to you, a copy of which is enclosed for your reference as Attachment I. A copy of our response to NRB dated 9th January 2008 is also enclosed as Attachment II.

Background

We received the above mentioned fax on 31st evening by close of business requesting us to confirm the authenticity of our letter dated 18 June 2007 addressed to you (Please refer Attachment II) and seeking specific information to determine the authenticity of our said letter.

Although it mentioned about 3 days, our reply was requested on 3rd January 2008, the next day itself, which happened to be a public holiday, as in most parts of the world. As part of our firm’s risk management policy and based on the advice given by our legal advisors, we are of the opinion that we should only provide all required information directly to the Court or to Commission for the Investigation of Abuse of Authority ("CIAA"), if a request is made by them directly.

We however, decided that it would be appropriate to keep you informed of this matter, as our letter which is being questioned was addressed to you. We furnish below our responses to the queries raised by NRB, for your reference.

1. Authenticity of our letter

We attach a copy of our letter dated 18 June 2007, addressed to you, duly certified by our lawyers Messrs Julius & Creasy confirming that it is a true copy of our letter.
2. Information required to determine the authenticity of our letter

- The letter was signed by Mr. R. N. Asirwatham, senior partner of our firm. His contact details are as follows:
  i. Telephone number: +94 11 242 6500 or +94 11 232 1444
  ii. Fax: +94 11 244 5872
  iii. Mailing Address: KPMG Ford Rhodes Thornton & Co
     32A Sir Mohamed Mucar Mawatha, Colombo – 03, Sri Lanka.

- Designation: Senior Partner

- Letter of Authority: We enclose a letter signed by our lawyers Messrs Julius & Creasy dated 9th January 2008 certifying various matters in respect of which independent confirmation is required (Please refer Attachment IV).

We wish to emphasize that, considering the status of the investigation and our risk management procedures, we will only be submitting all necessary information directly to you or to the Court, in the event any request is made to us directly by either of you.

We trust you appreciate that the Firm’s reputation is fundamental to us and that we should comply with our internal policies, given that an investigation is currently going on.

We appreciate all your initiatives taken to investigate the above matter and assure our support for this process.

Please do not hesitate to contact Mr. Rajah Asirwatham, Senior Partner on +94 11 242 6500 / +94 11 232 1444 should you need further clarification.

Yours sincerely,

Ford Rhodes Thornton & Co

RNA/RJ

CC:
1. His Excellency Mr. Amardil Surnith Nakandila
   Ambassador Extraordinary and Plenipotentiary
   Embassy of the Democratic Socialist Republic of Sri Lanka
   Kathmandu, Nepal

2. Hon. Chairman
   Hon. Special Court, Babar Mahal,
   Kathmandu, Nepal
To:
KPMG Ford, Rhodes, Thornton & Co.
(Chartered Accountants)
32A, Sri Mohamed Maccar Mawatha,
P.O. Box No. 186
Colombo 00300
Sri Lanka
Fax: 94-11-244-6058
94-11-254-1249


Dear Sir,

You may be aware of the fact that the Special Court, Kathmandu, is looking into the alleged charge of corruption against some of our senior officers filed by Commission of Investigation of Abuse of Authority of Nepal.

This correspondence is done in relation to the order of Special Court, Kathmandu, dated 28 December 2007 in a corruption related case involving Governor and Executive Director of Nepal Rastra Bank in a Financial Sector Technical Assistance Project where in KPMG Sri Lanka features as a collaborating partner. As required by the order of the said Court, Nepal Rastra Bank has been asked to check the authenticity of the letter dated 18 June 2007 from KPMG Ford, Rhodes, Thornton & Co. (Chartered Accountants), Sri Lanka which is addressed to the Commission of Investigation of Abuse of Authority of Nepal. As the said letter of 18 June 2007 does not carry the name of the specific signatory and his designation, kindly provide the following information and documents to us which is required for determining the authenticity of the said letter:

i) The name contact address such as telephone number, fax number and mailing address of the person who has written the name of Ford, Rhodes, Thornton & Co. (Chartered Accountants), Sri Lanka in handwritten form in the signature page of the said letter.

ii) The designation of the person who has written the name of Ford, Rhodes, Thornton & Co. (Chartered Accountants), Sri Lanka in handwritten form in the signature page of the said letter.

iii) Letter of authority, if any, in favor of the person referred in (i) above to represent Ford, Rhodes, Thornton & Co. (Chartered Accountants), Sri Lanka.

This Court has asked Nepal Rastra Bank to procure your reply authenticated by an authorized person on the details of his status and address within 3 days i.e. dated by 1 January 2008 as the next hearing is set.

Yours sincerely,

[Signature]

Shashikant K.C.
Deputy Governor
Nepal Rastra Bank
Nepal Rastri Bank  
Bank and Financial Institutions Regulation Department  
for 2 January 2006. I would really appreciate your cooperation in this regard and request your reply by 1 January 2006. Thanking you.

Sincerely Yours,

Raj Adhikari 
Director

Copy to:  
1. The World Bank, Country Representative Office for necessary support in making their reply available.  
2. His Excellency Ambassador of Sri Lanka in Nepal for necessary support in making their reply available.
Mr Keshav Raj Acharya
Director
Nepal Rashtra Bank
Bakhuwai
Kalimaha
Nepal

3 January 2008

Dear Sir

Nepal Rashtra Bank (“NRB”)

Agreement on Consulting Services – Authorisation of our letter dated 18 June 2007

We write with reference to your fax dated 31 December 2007, which was received by us on that date at 4.15pm. You have requested to provide details of the person who has signed our letter dated 18 June 2007, which was addressed to Mr Rajan Krishna Arya, Investigation Officer, and Commandant for the Investigation of Abuse of Authority (CIAA).”

We wish to bring it to your attention the following paragraph from your fax,

“...the Court has asked NRB to produce your reply authenticated by an authorised person on the details of his status and address within 3 days, i.e. latest 1st January 2008 as the next hearing is set for 2nd January 2008. I would really appreciate your cooperation in this regard and request your reply by 1st January 2008.”

The fax was sent to us only on 31st evening by close of business. Although it mentioned about 3 days, our reply was requested on 1st January 2008, the next day itself, which happened to be a public holiday, as in most parts of the world.

As part of our firm’s risk-management policy and based on the advice given by our legal advisors, we are of the opinion that we would provide all required information directly to the Court or to CIAA, if a request is made by them directly.

Please do not hesitate to contact Mr Rajan Asthwalkar, Senior Partner on + 94 11 242 6500 / + 94 11 242 6444 should you need further clarification.

Yours Faithfully,

[Signature]

RNA&RJ
Mr Raman Kushush Aryal  
Investigation Officer  
Commission for the Investigation of Abuse of  
Authority  
Kathmandu  
Nepal

18 June 2007

Dear Sir

Nepal Rashtra Bank ("Central Bank of Nepal")

Agreement on Consulting Services – Request for confirmation

With reference to your fax dated 14 June 2006 and letter dated 15 June 2007 we wish to confirm the following for your reference:

- We have only forwarded our corporate profile and credential to M/S IEF Inc in December 2004 to submit a proposal for Consultancy Services based on the RFP issued by the Central Bank of Nepal

- Subsequent to the submission of the proposal our Firm has not performed any work, what so ever to the Central Bank of Nepal, either on joint partnership with M/S IEF Inc or individually.

- No payments have been received by our Firm either from the Central Bank of Nepal or IEF to the date of this letter.

- Our Firm has not signed any agreements with the Central Bank of Nepal

- None of the Partners, who are the authorised representatives of our Firm, has visited Nepal for so many years. Mr A N Fernando, whose has supposed to have signed the said agreement with Central Bank of Nepal, on behalf of our Firm, has never been to Nepal and the signature appearing on page 2 of the agreement sent by you on 15 June 2007 is not his signature.

- The letter dated 3 May 2004 included in the documentation sent you, which appears to be on our letter head with the signature of another Partner of our Firm, Mr Reynz Mihular,
is not our letter head, as our official letter head has the names of all our partners at the
bottom. Further the signature appearing on the said letter is not the actual signature of
Mr Rayaz Mihinlar.

We appreciate your initiatives taken to investigate the above matter and assure our support for this
process.

We trust you appreciate that the Firm’s reputation is fundamental to us and we would like to be
updated on the progress of the above matter.

Please do not hesitate to contact Mr Rajan Aswatham, Senior Partner on +94 11 742 6500/74
11 732 1444 should you need further clarification.

Yours sincerely,

[Signature]
Chartered Accountants
RMA/RJ

CC: His Excellency Mr Anaraliy Samith Nakandala
Ambassador Extraordinary and Plenipotentiary
Embassy of the Democratic Socialist Republic of Sri Lanka
Kathmandu.

Certified True Copy

[Signature]
Julius & Creasy
Colombo
9 January 2008

Ms. Ranjani Joseph,
Partner- Audit
KPMG Ford Rhodes Thornton & Co.,
32A Sir Mohamed Macan Markar Mawatha,
Colombo 3.

By Hand

Dear Madam,

Re: Nepal Rashtra Bank

We refer to your email of 8th instant in the above connection.

We enclose an amended draft of the letter to be addressed by you to the CCAA. Please attach to this letter the enclosed signed letter from us also addressed to the Investigation Officer CCAA together with attachments referred to in both letters.

We note that certain letters dated June 2006 were replied by your letter of 18th June 2007. Please let us know whether the letters from CCAA were in fact received by you in 2006 and remained un-replied until June 2007?

Copies of some documents that were obtained from the Internet are also enclosed for your information and records.

Yours faithfully,

Per Pro. Julius & Creasy

Ms. Manjula De Alwis
9 January 2008

Ranjan Krishna Aryal Esq.,
Investigation Officer,
Commission for the Investigation of Abuse of Authority,
Tangal,
Kathmandu,
Nepal.

Dear Sir,

Re: Nepal Rastra Bank

We are writing on the instructions of our Client KPMG Ford, Rhodes, Thornton & Co., in the above connection.

We have been advised that Nepal Rastra Bank has requested confirmation on the following information to determine the authenticity of our Client’s letter to you dated 18th June 2007.

1) The name contact address such as telephone number, fax number and mailing address of the person who has written the name of Ford, Rhodes, Thornton & Co.

The Name of the person: Mr. Rajan N. Ashratham
Tel No: +94 11 242 6500 or +94 11 232 1444
Fax No: +94 11 244 5872
Mailing Address: KPMG Ford, Rhodes, Thornton & Co.,
32A Sir Mohamed Macan Markar Mawatha,
Colombo 3.

ii) The Designation of the Person: Senior Partner of KPMG Ford, Rhodes,
Thornton & Co.

We enclose a certified true copy of our Client’s letter addressed to you dated 18th June
2007 to be produced in Court if necessary.

We confirm that the procedure in Sri Lanka in the case of a Partnership is for all letters
and documents to be signed in the name of the firm. A signature by an individual partner
in the firm’s name binds all the partners and the firm and this is in strict accordance with
the law of Sri Lanka.

Yours faithfully, [Signature]
6.3.5 Charging

The CIAA accused Bhattarai and Pradhan of causing loss worth 25 million Rs. to public property by not claiming compensation after having terminated a consulting agreement unilaterally with KPMG, a Sri Lanka-based consulting firm. Bhattarai and Pradhan face charges of committing financial irregularities worth nearly Rs 25 million in a financial sector reform programme. The relevant contract was signed on February 6, 2006, and the decision terminating the contract was done by the governor November 9, 2006. The offenders were said to have misused their power committing violations of the Corruption Control and Prevention Act (2059 BS) 2002, art. 8 (3). CIAA claimed in his charge sheet that both the defendants of the case were found involved in misusing the fund of the Bank received from World Bank under the NRB reform project. The CIAA submitted the file (charge-sheet) in the special court June 29, 2007 accusing them of misappropriating the public fund received under foreign aid worth 25 million Rs. by creating a fake consultant company.

There were originally two versions from the CIAA.

- The acting chief of CIAA, Mr. Lalit Bahadur Limbu, agreed with the investigation officer and he charged Bijaya Nath Bhattarai and Surendra Man Pradhan that they were involved in the corruption case of NRB, so they should be punished according to the corruption control and prevention act 2002, art. 8 (3).
- But another and separate version was from Commissioner of CIAA, Mr. Bed Prasad Shivakoti. He did not agree with the investigator and he wanted to give clean chit (free from the charge that means he decided to acquit the defendants) to Bijaya Nath Bhattarai and Surendra Man Pradhan.

But at last, the CIAA charged both managers to have been acting against the corruption control and prevention act 2002, art. 8 (3), and submitted the charge-sheet in the special court.
6.3.6 Decision of the court
After having submitted the charge sheet of corruption case against Bijaya Nath Bhattarai and Surendra Man Pradhan from CIAA to the special court June 29, 2007, the Special Court was suspending its verdict on the case on various grounds for some months. Then, the three presiding judges of the Special Court were giving three different verdicts on the case of corruption they were hearing in the court. The three judges had come up with three separate opinions on the case in their verdict issued on February 17, 2008. The chief judge of the Special Court, Bhoop Dhoj Adhikary, concluded that the case did not have enough strength and suggested the accused be given a clean chit; he decided to acquit the defendants. A second judge of the court, Komal Nath Sharma, pointed at the need for further evidence to proceed with the case while the third judge, Cholendra SJB Rana, saw enough evidence to sentence them as guilty; he decided to slap a jail term stating that their corruption had been proved.

The case was referred to the Supreme Court on February 27, 2008 as per the provision of art. 6 (5) of the Special Court Act (BS. 2059).

Since 16 March 2008 the Supreme Court started a hearing on the corruption case of suspended governor of Nepal Rastra Bank Bijaya Nath Bhattarai and Ex. Director Surendra Pradhan. Government attorney Saroj Raj Gautam pleaded on behalf of the CIAA. Gautam claimed that Bhattarai and Pradhan had signed a fake contract and had caused the nation a loss of 30 million Rs. by terminating the contract signed with the IEF Inc. Lloyd Hill Oakton, USA. in association with KPMG, Sri Lanka. The Supreme Court on Tuesday 18 March 2008 slapped a fine of US$ 51732 (around 3.5 million Nepali Rs.) each against suspended governor of NRB Bijaya Nath Bhattarai and NRB director Surendra Man Pradhan holding that the corruption charge against them was proved.

Tahir Ali Ansari, single bench of Justice, issuing a verdict on the case said that both the defendants of the case were involved in misusing the funds of the Bank received from World Bank under NRB reform project. They did not initiate steps to obtain compensation from a consulting firm after having terminated a contract with that firm in a financial sector reforms programme, so it was found that the duo embezzled 51.732 US$ by terminating a contract signed with a joint venture of Lloyd Hill Oakton, USA, in association with KPMG, Sri Lanka. The apex court had asked them to pay a fine equal to
the same amount embezzled. According to the court, they should be punished as per the art. 8 (3) of the Corruption Control Act 2059 BS.
6.3.7 Conclusion

This case study shows that in Nepal there might be many such organized economic crimes committed by top officials. Only some of them will come to the knowledge of the public and the investigation agencies whereas some of them will be hidden for ever. The criminals are obviously 100 times faster than the investigation authority. Thus, it seems necessary to restructure the investigation agencies inside, and moreover, recruitment of its staff and the investigation system should be modernized. The officials and the investigators inside the agencies must be better trained and their resources updated. Proper facilities must be provided for them. The acts concerning EC should be defined clearly so that judges could not delay or avoid an adequate decision.

If we analyse the history of the investigation from CIAA and the decision from the special courts in the ex. managers’ case, it is clear that Nepal’s judiciary, investigation system and also the legal system are hanging from the traditional system and corrupted mentality. Because of this fact, they cannot provide proper justice to the public and this helps to increase the economic crime in the context of Nepal. So, this might be the main problem inside the investigation and also the decision making process in Nepal.

There are a lot of acts are implementing in the field of EC (cf. above, at part 4). But there are no definitions about the EC in the acts of Nepal. Actually, the acts which are implemented to control the criminal activities in the field of EC are not related closely enough to each other. The major problem is that the investigation agencies, financial sectors, politicians, other related officials lawyers and even the judges of the courts are also not clear and familiar with the definition of EC.

For this connection, a clear message should be sent to the corrupt officials in Nepal that corruption would be no more tolerated. For this to happen the investigations must be complete on all fronts and the designated court must decide as soon as possible when a case has been submitted to it. Justice delayed is, of course, justice denied. People in Nepal say that the special court, under influence of the finance mafia, was unable to decide on a verdict, so the case was referred to the Supreme Court, although corruption charges are under the special court’s jurisdiction.

To control this problem there should be a separate and expert investigation authority and a qualified separate court for the field of Economic Crime.
7. Remedies for the Economic Crime

7.1 General Observations

Crime is a shadow of civilization. So its size and shape depend upon the form of society and development of the system. Corruption, kidnapping, hijacking, drug and human trafficking have become ever more serious crimes to tackle with. The methods used to commit crime are always new in the sense that the criminals partake of modern knowledge and technique. The reasons given for the increase in crime include unemployment, economic backwardness, overpopulation, illiteracy, more awareness of the society concerning crime and inadequate equipment of the police force and other investigation agencies.

There is a change in the forms and dimensions of criminality going on along with the changes in the living style of society and social values. There is a change in the form of criminality since society itself changes culturally and technologically. Crime occurs and seems to increase with the acceleration of change and development, which in recent years has been specially associated with such crucial processes as industrialization, urbanization, social mobility and the development of (information) technology.

The more direct public services, such as police, prison, court, probation, parole should have specific programs to deal with economic crime. These might include measures to increase the efficiency of the police, improve the training of police officers and the investigation officers of relevant agencies, and develop new techniques in forensic science and crime detection. Moreover, new building programs to avoid traditional methods or new court procedures to expedite justice, perhaps programs to integrate and improve the entire justice system including the reform of the law itself if appropriate seem to be urgently needed.

In Nepal, the Constitution and other rules and regulations are guaranteeing to the people the use of their property within the framework of the law according to their free will. If someone hampers them and infringes upon that property that victim should recover that economic loss. But today, different laws are hardly able to sufficiently protect different types of property of the citizens of Nepal.

A major problem with Nepal’s domestic laws is lack of enforcement. Corruption in the legal system is prevalent. Despite the formal recognition of human trafficking and drug
trafficking as a major problem and the existence of laws to curtail it, trafficking continues.\textsuperscript{261}

### 7.2 Actual Deficits

During my research, I could see that banking sectors, investigation agencies, land revenue office, courts and other governmental offices are directly affected by the EC. Augmentation of the population, degradation on religious and moral values, and the aspirations for a higher leaving standard of the people led to the corruption in modern society in comparison to the situation in the primeval age; consequently more people became hungry on money and power to fulfill all their desires. The corruption been developed as a social syndrome like a panic.

There are a lot of agencies working in the field of EC in Nepal. CIAA, RIA, CID, NRB, NVC, DRT, AG and NDCLEU are the major agencies for the investigation of EC. Some of them are working just for observation and others are working for investigation. But those agencies have no good cooperation between each other during the time of investigation.

Each investigative agency has its own force and investigation method. They are not closely related each other so sometimes the same information will be registered in more than one agency and they will just ruin their time for nothing.

Department of Revenue Investigation has its own mobile force, though inadequately staffed, to monitor possible areas of revenue leakage. Its main source of information stems from RIA, from public and the experience of the mobile team itself. The rate of information it receives through government institutions is very low.

DRI faces several problems. But despite of all inadequacies, the contribution of the department towards the fight against corruption is considerable.

In general, there are a lot of causes increasing the economic crime in Nepal:

- Lack of strong and proper rules and regulations,
- Lack of political commitment and political protection to corrupt behaviors as political ideology and support.

• Low salary and allowances to civil officials that are inadequate to maintain their basic needs.

• Insufficient legal provisions which do not define corrupt activities properly.

• Delayed decision by court in the case of corruption that will not send message to general people that the corrupt would be punished.

• Lack of transparency in managerial and development activities. Secrecy may pave the way for corruption.

• Politicians, managers as well as civil workers have rarely feeling of public accountability. Lack of accountability helps to misuse power and that increases corruption.

• Public awareness concerning matter (EC) or weak civil society and lack of public pressure against corruption is another cause of corruption in Nepal.

• Weak monitoring system and discretionary power have played a big role to further corruption.

• Attachment of the whole bureaucracy to old (tradition) and working style,

• Corrupt mentality of the officials, lack of knowledge of the investigation officers,

• Lack of knowledge inside the attorney general’s office and courts concerning EC is increasing day to day so the agencies which are working for the purpose of controlling EC do not succeed.

According to the survey of Transparency International 2001-2002, 262 land administration was perceived to be the most corrupt sector followed by the customs department. Police and judiciary were ranked as third and fourth most corrupt sectors respectively.

EC is also increasing day by day inside the financial institutions and corporations because of actions of shareholders and sometimes the top level managers and employees respectively. So, to control the EC inside the financial or corporation sector, the best strategy will be to penalize the corporation or financial institution, and thus its

shareholders, rather than placing the entire sanction on managers and employees implicated in the offence\textsuperscript{263}. Evidence that the threat of shareholders loss creates an incentive for top managers to take steps to prevent crime, reviewed here, supports the view that imposing sanctions on shareholders can beneficially deter crime and that an enforcement strategy of imposing sanctions only on shareholders can be sufficient in some instances. Further research into the mechanisms by which threats of shareholder loss translate into changes in corporate structure and conduct is needed, however.

7.3 Improvements of Control Mechanisms

Economic Crime is the most harmful disease in respect of the development of the nation as well as for the national economy. If the government of the country neglected or ignore of this problem, the system of the country and the economy of the nation will be gravely damaged.

So the government of Nepal is trying to establish a mechanism to better control this crime but actually the government is not getting any achievements concerning this matter because of the old and traditional untrained investigation system and procedure, unqualified and unequipped officials, corrupted mentalities inside the judiciary system and bureaucrats, corrupted politicians and their pressure inside the bureaucrats.

For this connection, we need one effective remedy or control mechanism to control this situation. So we have to modernize the system of the offices and the entire bureaucracy, the whole judiciary system and its employees.

The control mechanism of EC could be as follows:

- To formulate effective new laws, new positions, new forms of education and training, improved investigation and prosecution sectors, significant and efficient co-operation between agencies (tax authorities etc.), generally positive response at local enforcement levels
- To generate the concept of economic crime statistics, strengthen research programme,
- To establish separate agencies for investigation and control of the EC
- To build a separate Court for EC and provide proper knowledge and training to the related officials as well as the judges.
- To create public awareness concerning economic crime and to create helpful attitude in respect to the investigation units.
- To put into force an Economic Crime Control Programme (awareness of the public, frequent field visits by investigators to offices related to EC etc.).
- To monitor the activities of working NGOs and help them as far as possible if they need it (especially in the human trafficking field)
• To make a strategy to control economic crime of the private sector too
• To make strong and relevant laws to control the white colour and organized crime
• To prepare a control mechanism especially for organized and white color crimes
• To establish an effective network at the governmental level and the public level too
• To reduce social and political pressure in the investigation and implementation time of EC
• To create a concept or a strategy of political and social movement against the EC
• To motivation the working teams and, in particular, assure them of their job and personal security

If we implement these various aspects of a control mechanism properly, the Economic Crime can be eradicated from the nation and the national economy can be developed significantly.
7.4 Recommendations

EC offences and its offenders are so well organized, so it is not easy to reach them and to find out the evidence. The criminals are so clever and their activities are so modern whereas the investigation method and the mentality of investigator are still traditional. Because of this, the criminals and their activities are hundred times far better and modern than the activities of the investigator. The criminals will accept the offences easily in front of police but in front of court they will deny the whole history so that the court can not provide the proper decision. Thus, the victim also can not get justice and compensation.

The compensation system is not clear in the Nepalese law so that it is really difficult for the victim to get compensation and it also takes a long time. So they feel that "Justice delayed is of course justice denied".

In the following, the most important recommendations will be summarized:

- The government should make a strong control mechanism for the field of EC. It should change the old and traditional working system of the officials, the investigators and the investigation system and procedure should be made more modern and they should be better equipped and trained, so officials should be highly qualified. The judiciary system should also be changed. Adequate facilities and equipment should be proved to the officials and its employees working inside the Judiciary and the related agencies in the field of EC.

- There should be established only one agency to control the EC, so that they can save time and can work effectively. For this purpose there should be one agency to investigate the EC and inside this agency there should be one main legal branch and 8 special branches, which tasks should be observation, corruption control (all types of cases related to the corruption), human trafficking, taxation (VAT, Income Tax and Excise Duty), drugs trafficking, security (related to concerning police force for its security), forgery and cheating (related to the banks and other institutions and organizations), other issues (Forest, Department of labor etc). The chart below may clear this matter.
• For this purpose, also the separate court and its procedure should be adapted appropriately.
The chart above may show how the government and other organizations could control the EC. According to this chart,

- There should be Created a new Investigative Agency or the existing ones should be combined.
- Training and Education should be provided to Investigators.
- Support, suggestion and/or social exclusion to the Corrupted persons should be provided for.
- There should be created new Economic Courts and proper training should be provided to the Judges.
• There should be improvement concerning the team of supervision, evaluation, watch dog and monitoring.
• Help should be given to the needy people and there should be facilitation of their demands and needs.
• Anti Corruption Movement should be initiated from time to time.
• Advertisement and Ensuing Integrity should be promoted.
• There should be created a sound environment for anticorruption and the relevant Acts should be formulated and updated in a timely and adequate manner.

Lack of Separate court and investigative agency for EC has been found during my research, so it is strongly recommended that a separate investigation agency related to the whole EC should be established. But the major suggestion is that there should be a separate court in Nepal to control these types of crime:

• A separate economic court is needed in Nepal.
• The government should create a separate investigation agency for the whole EC cases.
• The Investigator must be qualified and the officers of the agency must be provided suitable training.
• Government should make proper and effective laws to control the economic crime; it must alter the updated legal provisions and establish a strong punishment system.
8. Summary and Conclusion

8.1 Summary

During my research, I was talking to persons from different offices (e.g. Courts, CIAA, Crime Investigation Department of Nepal Police, Attorney General Office, Revenue Investigation Authority Department, Debt Recovery tribunal, Nepal Rastra Bank, Himalayan Bank, Rastriya Banijya Bank, Agricultural Development Bank, Nepal Bank LTD. and The Bank of Kathmandu) in the field visit time for 6 months in Nepal. These places and offices are concerned with the economic crime, so I was trying to talk directly to those people who were working within or connected to the offices mentioned above. I requested them to fill up my questionnaire which I had prepared for different offices and as far as possible for the criminals, too. I collected from them answers to that questionnaire and also other related data. I also took some interviews from relevant persons and officers.

It was not easy to get information from them and also not easy to collect sufficient data. Because no one has a clear idea of what is exactly EC, which topics are related to this. I learned that this was a totally new idea there. Even the courts and the investigation agencies were unfamiliar concerning these matters. Nowadays, they are just developing some ideas about financial crime.

However, legislation dealing with economic crime was enacted in Nepal, so several efforts have been made to better control economic crime in recent years. But this legislation is hardly adequate to cope with the complexity of the problems that have arisen by the globalization of economic activities. There are a lot of hurdles for controlling corruption. Many types of crimes are invariably associated with Economic crime. Tax evasion, money laundering, corruption, cheating banks and others, illicit trafficking of drugs and cartelling have become the main tools of economic crime. They have acted as lubricant for the smooth running of the crime machine. There are some laws to control them but all of them are somehow outdated and urgently need revamping and there are some areas where no law is in existence. Laws against drug trafficking, trafficking in human beings, and counterfeiting are in existence but now they do need modification. Some segments of the anti-trafficking laws are included in the anti-corruption law, narcotic drugs law and banking laws, which are, however, not sufficient and hanging with old system. Further on, there are no laws at all regulating computer
crimes and cyber crimes. So, it is necessary to enact legislation intended to target the crime of money laundering. Similarly, like in respect of other crimes the ratio of convictions for economic crime is not very satisfactory and we need an essential improvement after having diagnosed the problems of economic crimes empirically.

All these crimes undermine the value of democracy and morality, and they jeopardize social, economic and political development. There is a general realization in Nepal that there exists also a high level of corruption in the country. If the criminal techniques go ahead of the techniques of Economic Crime investigation, there can hardly be any effective trial at the stage of criminal proceedings. If there is written in the law book that if some one is involved in that types of crimes and he will be punishable 2 to 10 years for his criminal behavior, the officials will ask for money to reduce the punishment. If they get it from clients they will reduce the punishment and if they do not get it then they will charge fully – an attitude which is the biggest problem in Nepal in the field of crime investigation and control and also in the field of jurisdiction.

It is possible to meet this challenge only when all those persons who have the ultimate responsibility for the governance of the country endeavor to establish a new tradition of integrity. Corruption can not be totally eliminated. However, it can be reduced significantly by legal and administrative measures, coupled with social and political commitment for its reduction. The political commitment, public awareness, mass media and education can play an important role in the control of corruption as well as the Economic Crime.

8.2 Conclusion

Nepal is a developing country and it is a poor one, too. Strengthening of institutions and of regulatory mechanisms to control corruption has been rapidly taking place in the last few years. In May 2008, the Nepali people decided to establish a republican country. There is not really a strong policy commitment to control the economic crime but some agencies like CIAA, RIA are obliged to and trying to fight against those crimes. Political system and bureaucratic machinery must be made accountable and reward and punishment must be made more prompt and stricter to control this phenomenon.

Corruption in Nepal has flourished due to political favoritism. Corrupt officials are always protected by certain political parties because politicians receive money almost regularly from such officials. Concerning the EC in Nepal I would say that “there is no crime without the involvement of political persons”, although law enforcement agencies do
prosecute corrupt officials and recommend the government to take appropriate action against them. The nexus between political parties and businessmen is another factor which has promoted the culture of corruption in Nepal. Businessmen are bribing political parties in the name of “donation” and various other forms. Businessmen then bribe bureaucrats and operate their “black”, i.e. illegal business. They don't pay taxes and their products are not up to standards. It is true that the law is usually applied in the case of common people who don't have any connection with the power centers. Action against low-level officials will be taken immediately, whereas the high-ranking officials enjoy impunity. Political parties are eroding their public confidence due to the immensely growing culture of corruption and impunity among themselves.

In the context of economic crime inside the business, special attention should be devoted to political economy issues. Corporations can more easily corrupt enforcers, regulators and judges because they are better organized, are wealthier and benefit from economies of scale in corruption.

Not surprisingly, the OECD convention against corruption targets companies and public officials rather than individuals. Corruption is especially problematic because it weakens deterrence.264 Corruption intends to manipulate politicians and the media. By making use of large grants, generous campaign contributions and influential lobbying organizations, criminals within organizations may directly (via legislator) or indirectly (via opinion makers) push law changes and legal reforms that benefit their illegal activities. And corporations have easier access to lawyers and legal consultants who can uncover legal loopholes. For example, companies may commit tax avoidance without running into tax evasion problems due to better counseling with respect to tax law265 or they may become “tax ghosts” without being detected by the tax authority.266

The challenge to society is therefore to tackle the problem of EC emanating mostly from the political patronization of corrupt and criminal elements. A well functioning civil society can play a constructive role in the prevention of such types of activities and make the people aware of the nature and extent of EC. To control the EC a pro-active role must be played by CIAA, Auditor General's Office, DRI, CID, executive agencies and the emerging civil society. Nepal, in the last two years, has come out vigorously to work

against the menace of corruption and related criminal activities. The international community has supported Nepal in its efforts.

EC is increasing day to day world wide, but it is really harmful to developing countries like Nepal. Banking sectors, Investigation agencies, land revenue office, courts and other governmental offices are directly affected by the EC. The working agencies with the purpose of controlling EC do not succeed because of the lack of the strong and proper rule and regulation, public awareness concerning this matter, hanging of the whole bureaucracy to old tradition and working style, corrupt mentality of the officials, lack of knowledge of the investigation officers, lack of knowledge inside the attorney general’s office and courts concerning EC.

The main areas of EC are Banks, police offices, land revenue offices, judiciary, tax offices, forest office, many other governmental and non-governmental organizations, public and private sectors. Transparency International\textsuperscript{267} ranked as first and most corrupt sector the Land administration, second was the customs department and the Police and judiciary were ranked as third and fourth. According to that report, educational institutions, hospitals, electricity and water supply offices, banks and tax offices are also affected by EC. There is further stated that 48% inside the police and 42% inside the judiciary evolved into corruption.

Nowadays, human trafficking is one of the major and most sensitive fields of EC. Nepalese law against trafficking is very strict, as concrete evidence is required for a successful prosecution. It takes a minimum of 2 years to deliver a verdict, and victims usually must testify several times, so many of them simply stop pursuing their cases. The accused, which are often relatives or acquaintances of the victims, pressure the women to drop their charges. Looking at the records, in 40 percent of cases police fails to catch the offender. Guilty verdicts are handed down in only 33 percent of cases, and of those cases, 61 percent result in prison sentences of more than 10 years.\textsuperscript{268} But according to the data, the number of women victims of trafficking seeking justice has decreased in the past few years because of social stigma, threats, prolonged, expensive proceedings and hanging to old traditional and corrupted mentality within the judicial process. Moreover, the possibility of re-victimization, and lack of access to the legal

\textsuperscript{267} Transparency International Nepal annual report 2002, pp. 32 - 45.
\textsuperscript{268} Dhakal, Sanjaya, Nepal's Victims of Trafficking Shy away from Justice, Oneworld.net, January 8, 2004.
system prevent more victims from filing cases. Only 54 cases were filed in 2002–03 (130 cases were filed in 1997–98, and 40 were filed in 2001–02).

There are many economic crimes inside banks, courts, land administration and other offices and its officials. There are three main problems inside these offices and officials to control such types of criminal activities.

- Corruption is a major disease of EC. Corrupt mentality inside the bureaucracy, top label politicians and unqualified staffing is responsible for mishandling and misusing the whole system of economic activities inside the government and financial sectors. The selfness attitude of the government policy and narrow vision in macro banking are also problems.

- The actual rules and regulation of Nepal are not sufficient to control the EC. There is no clear legal action for such crimes like pick pocketing, counterfeiting and foreign exchange. Especially, banking rules and regulation are not clear and not sufficient for this modern and electronic age. There is no easy mechanism to help the purchaser so the legal action of backing loans becomes weak.

- Judiciary is one of the most essential problems. There is lack of the knowledge about the economic crime inside judiciary, since there are no clear data. Some cases are filed there like corruption, forgery certificates, misuse of government property, bribery, cheating, misuse of foreign currency, Khota Chalan (illegal use of duplicate currency) etc, but the judiciary has no idea about the EC. Some decisions of the courts concerning the banking cases are verdict decisions. It seems that judges are not informed about the banking and commercial law or that the courts are not practiced to banking affairs: In some cases the bank has been defeated in the trial due to the lack of adequate banking knowledge of the judiciary. Even then, there should be reform on such laws with stringent penal provisions against defaulting borrowers. Concerning the question of verdict cases and delayed decisions by the judges of the different courts and related officers, my impression is that lack of clear legal provisions and incomplete documents from the investigation part was the main cause. The Special court pointed out that in the corruption cases and other organized crimes many evidences must be examined in the court since criminals perform such crimes in an organized way. So to collect the evidence and to examine it takes a long time and the procedure till a decision will be delivered is long. Besides this there is lack of proper trained
manpower, of proper facilities and physical infrastructure, and lack of appropriate laws is also playing a vital role to delay the decision-making. But lawyers and related persons say that the main cause of the delay and verdict decision would be the corrupt mentality inside the courts, prosecution and related investigation teams. In the organized crime there seems to be one group active inside the legal field in Kathmandu which visits the concerning judges, attorney generals office and the investigation officers for the favor of the criminals. The group is ready to pay money or hand over other things to those officials to make decisions for their favor.

Inside the CID department, they have their own procedure of investigation and controlling concerning the EC. The staffs are still hanging with the old system and old mentality, the investigation system is outdated that means third degree method is still in practice. Although they don’t believe that they still use that method effectively. This department is also little informed about EC but some cases are filed there like forgery, misuse of government property, bribery, cheating, misuse of foreign currency, Khota Chalan (illegal use of duplicate currency) etc.

Another problem is that there are more agencies like CIAA, RIA etc. working to the investigation for EC, but they are not closely related to each other. So, there should be one separate investigation agency for economic crime. Besides this, there are a lot of obstacles for investigation and documentation concerning the EC. These are: Insufficient, vague and ambiguous rules and regulations, old and traditional panel code (Muluki Ain) system, uncooperative attitude of higher officer and politicians, political/social pressure and lack of public support, unavailability of record and documents, old record system and incomplete record of transaction, Influence of the corrupt mentality inside the investigation team, training and resources limitations.

In the main case concerning the Governor and director of NRB, the whole history to the investigation by CIAA and the verdict decision by the special court shows that Nepal’s judiciary, investigation system and also its legal system is hanging from the traditional system and corrupted mentality. Otherwise there would be no need to give three types of decision for one case by 3 judges. Thus, they cannot provide proper justice to the public and this fact helps to increase economic crime in the context of Nepal. This is still the main problem inside the investigation and also decision making process in Nepal.
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2. **Other Legal Texts**

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22. Annual reports of Transparency international, 2002-2004
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    NRB, June 29, 2007
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26. The special court decision quarterly report, November 2005
27. Strategic Plan of CIAA Magh 2059: Surya Nath Upadhyay, Chief Commissioner
    of CIAA, pp. 13-15
28. Case of Govinda Raj Joshi, case record register of 060-061 no 81 from CIAA

3. **Miscellanea**


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