

EFFECTIVE COUNTERMEASURES AGAINST ECONOMIC CRIME IN NEPAL

*Kedar Paudel**

I. INTRODUCTION

About a decade ago, economic crime was rather 'foreign' to the Nepalese people. However, during the past few years, the economic activities of different sectors of the economy have increased tremendously, completely changing the social life of the people. 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 which have contributed to new social problems, including economic crime. Due to the lack of understanding and limited expertise of criminal justice officials in this new sphere of crime, the problems are further aggravated. It is a challenge to the government and other criminal justice agencies to fight against such economic evil in society. Most enforcement agencies in the country are mainly concerned with conventional types of crime like murder, robbery, theft, rape, etc. Some countermeasures have also been adopted to combat and control economic crime, but these are seen as insufficient.

With the growth of commercial and banking activities, and emerging new technologies in various fields of telecommunications, international air ticketing, financial institutions, revenue administration etc, computers are widely utilized and a new problem of computer crime has emerged. This crime is

completely new to Nepal and a responsive legal framework, including what conduct should be criminalised, has not been developed. This paper will put forward some of the Nepalese experiences vis-a-vis the countermeasures adopted against economic crimes.

II. SITUATION OF ECONOMIC CRIME IN NEPAL

Several types of economic crime are committed in Nepal. With few exceptions, most of these crimes seem simple and direct, without any complication. However, with the globalization of various economic and commercial activities and illegal cross-border operations, these crimes are being complicated day by day. Economic crime is becoming a major public issue in the country, and the credibility of the government in general, and the investigating institutions in particular, is being questioned.

A. Nature of Economic Crimes

The nature of economic crimes which are committed in Nepal, can be categorized as follows:

- (i) Corruption and Bribery
- (ii) Tax evasion
- (iii) Non payment of customs/excise duties
- (iv) Crimes related to banking transactions (e.g. letters of credit, overdrafts, hypothecation, loan pledges, remittance, intrabranh/interbank suspense accounts etc.)
- (v) Forging of commercial documents
- (vi) Illicit drug trafficking
- (vii) Counterfeiting of legal documents

* Under Secretary (Judicial Service), Commission for the Investigation of Abuse of Authority, Nepal

- (viii) Foreign employment fraud
- (ix) Money laundering
- (x) Dubious real estate transactions
- (xi) Privatization of public owned corporations
- (xii) Export of timber
- (xiii) Tenant in *Guthi*-land land registration
- (xiv) Lottery
- (xv) Undue price fixing
- (xvi) Smuggling
- (xvii) Foreign currency irregularities
- (xviii) Revenue pilferage
- (xix) Other unexposed economic crimes

Some of the economic crimes experienced in Nepal are briefly summarized as follows.

B. Corruption and Bribery

Corruption and bribery are the major forms of economic crime in Nepal. Various economic crimes have been included within the meaning of corruption under the Prevention of Corruption Act, 1960. Corruption, in the global context, has adversely affected many societies. To combat corruption is quite a tough task and, therefore, corruption is spreading in all dimensions more and more rapidly. A developing country like Nepal has to bear the loss of a colossal percentage of its development expenditure through corruption, without any fruitful return. Reasonable investment towards development activities are in existence, but the level of output in terms of benefit is worsening. The people in Nepal have clearly recognized that there is corruption in both the government and private sectors, involving the whole spectrum of society (though empirical evidence has never been gathered or analyzed). There are problems in corruption investigation and prosecution. The lack of skilled manpower, limited resources and inadequate laws are a few of the major obstacles in this field. The types of corruption that exist in Nepal are of various forms. In the fiscal year

1996/97, 2019 complaints of corruption and improper conduct were registered and investigated by the Commission for the Investigation of Abuse of Authority (CIAA); out of which 11 cases of corruption were filed and 1 minister, 3 secretaries and various public officials, private individuals and businesses were prosecuted. A portion of the Seventh Annual Report (abridged) 1996/97 of CIAA states the cases filed in the courts as presented below:

- (a) The Secretary of the Ministry of Land reforms and Management was involved in making decisions on the transactions of tenantship of Royal *Guthi* land. This *Guthi* has an area of 106 *Ropanis* in Kathmandu Municipality, Baneshwor, and Mahadevsthan. As provided by the Law, transactions of tenantship of such *Guthi* land is authorised to the *Guthi Sansthan* only. Along with the recommendation to take necessary action for the protection and preservation of such *Guthi* lands to *Guthi Sansthan*, charge sheets were filed against public officials and other individuals, including the secretary and his relatives.
- (b) *Guthi Sansthan* administrator was found to be involved in registering the tenantship of the *Guthi* owned land of 4-14-1 *Ropani*, under *Shivalaya Guthi*, located at Bishnu Village Development Committee, ward No. 3(ka), cadastral No.133. The Steering Committee of the *Guthi Sansthan* is the only authority allowed to make decisions on the issue of registering tenantship of such *Guthi* lands. So, a total of RS. 3,912,500.00 and a fine of the same amount was claimed, as per the provision of sections 7(1), 8 and 29 of the Prevention of Corruption Act, 1960.

110TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

- (c) One person was arrested 'red-handed' while carrying illegal gold weighing around 14 kilograms. He could not produce any certificate for his source of income, to verify that the gold was produced by him. In that circumstance, the gold was subject to seizure by the Customs Office. However the Chief Customs Officer unlawfully decided to allow the person to import the gold. Hence, a total claim of RS. 6,414,600.60 was made and the Customs Officer and the illegal gold carrier were charged as per the provisions of the Prevention of Corruption Act, 1960.
- (d) The Commission filed suit against the Minister of Agriculture, along with the Secretary and members of the Board of Directors and other officials of the Agricultural Input Corporation (AIC), and with the suppliers and local agents in connection with corruption in the procurement of chemical fertilisers. The main charges for the following allegations were:

The Minister of Agriculture decided to open a letter of credit to procure 50,000 MT of urea fertiliser at the rate of US\$235 per MT, subject to the concurrence of the Board of Directors of AIC. This was not consistent with the regulations of the Corporation. Moreover, the original offer of US\$ 225 per MT was amended to US\$ 235 per MT for urea fertiliser. In addition to that, the performance bond was taken only for 12,500 MT instead of agreed quantity of 50,000 MT.

The claimed amount thus was calculated as the difference between the original offer rate and the amended offer rate, and the

unauthorised concession provided in accepting the performance bond. So, a charge sheet was filed against the Minister of Agriculture, the Secretary of Agriculture, General Manager of AIC, Joint Secretary of the Ministry of Finance, General Manager of the Agriculture Development Bank, Advisor to the Governor of Nepal Rashtra Bank, Peasant Representative of the Board, Procurement Officer of AIC, President of Semi-conductor Materials and local representative, claiming US\$ 940,625 (equivalent to NRs. 53,897,812.50).

- (e) Cases of corruption were filed in the court regarding the following letters of credit issued by the Rashtriya Banijya Bank, Bishalbazar, Kathmandu; which were found to be against the provisions of the Prevention of Corruption Act, 1960.

The concerned personnel, along with the Chairman of the Steering Committee and the General Manager of the Bank, were charged for their failure to monitor and take necessary actions against such irregularities, and for creating favorable conditions and opportunities for the escape of the accused. Similarly, the concerned authority was recommended to take departmental action against other various public officials for their negligence in signature verification, limit checking, denoting the margins and for the production of false documents to support the illegal issuance of the letters of credit. The Nepal Rashtra Bank was suggested to make necessary provisions for regular monitoring and follow up. The Department of Revenue Investigation was also suggested to take necessary actions regarding the

RESOURCE MATERIAL SERIES No. 55

misappropriation of foreign currency.

- (f) Bid proposals from landowners or registered companies was invited by the Nepal Oil Corporation for purchase of land to construct a depot. The proposal accepted was that of a person who was the attorney of some of the other persons. It was found upon investigation, that the real landowner received only RS. 3,000,000.00P, while the mediator (the attorney) illegally earned 4,639,862.50P. The purchased plot, upon site inspection, was also found not to complying the specifications and the plot was not suitable for the

corporation's objectives. So, the conveyor and members of the tender evaluation committee were charged as per sections 3 and 7(2) of the Prevention of Corruption Act, 1960. Similarly, the landowner, along with their attorney, were charged under the provisions of the section 16(a) of the same Act.

In all cases, the concerned authorities were recommended to take departmental actions against other various public officials for their negligence in failing to undertake an in-depth study of the issues and prevailing legal provisions before forwarding files to the decision-makers.

TABLE I

L/C No.	Amount claimed in USDollars
30/1730	165,0
30/2355	140,1
30/2356	151,2
30/2715	184,2
30/2829	189,7
30/2830	207,0
30/2831	210,7
30/2832	193,8
30/2833	215,6

Status: Guarantee limit exceeded, documents irresponsible.

C. Tax Evasion

Tax revenue is the major source of financing government expenditure in the country. Tax revenue and non-tax revenue is comprised of 80.4 percent and 19.6 percent shares respectively. However, the violation of customs and other various tax laws, as well as the smuggling of the goods, has largely affected the tax revenue of the country. The business community and other high-income groups mostly partake in tax evasion. Businessmen often do not

TABLE II

Tax Heading	RS in Millions 1995/96	RS in Millions 1996/97	RS in Millions 1997/98 (first 9 months)
Customs	7327.4	8309.1	5921.6
Consumption & Products	9684.7	10775.2	7507.9
Land Revenue & Registration	1066.6	1015.4	681.5
Property Profit & Income	3589.3	4324.6	3090.6
Total	21668	24424.3	17201.6

Some cases of tax evasion were investigated but data was not published and is not available.

110TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

declare goods at relevant entry points nor maintain or show real accounts for tax assessment. Statistics show that the volume of business transactions, as well as the tax base of the country is increasing; but revenue is decreasing. This situation worsened last year. Table II shows the status of the tax revenue in last three years.

D. Letter of Credit Scandal

The opening of Letters of Credit (L/C) in various commercial banks, and getting payment on the basis of forged documents (without importing goods), is a common misuse of foreign currency and a major source of economic crime in the country. A report submitted in 1996 by the Letter of Credit Investigation Commission, appointed by His Majesty's Government under the Inquiry Commission Act 1970, shows that when investigating misuse, Letters of Credit to the value of US\$50,000 were opened within the period between July 1994 to October 1995. The recorded foreign currency misuse for this period was US\$ 36,156,797. The banks involved in such scandals, and the corresponding amounts, are given table III.

TABLE III

Bank	US \$ Amount
Nepal S.B.I. Bank	78,04,100.00
Nepal Bangladesh Bank	77,38,038.38
Nepal Indosweez Bank	15,81,097.00
Himalayan Bank	3,13,652.45
Nepal Arab Bank	10,44,515.00
Restrain Banijya Bank	174,54,997.86
Nepal Bank Limited	2,20,396.49
Total	361,56,797.18

On the basis of this report, among the 92 parties involved in this scandal, the Revenue Investigation Department so far has filed 51 cases in court. The CIAA is also conducting investigations of the public

officials for separate charges of corruption.

E. Money Laundering

Money Laundering is a newly emerging economic crime in Nepal. The threat of money laundering has spread and national economic reforms such as liberalization, market economy, creation of favorable environments for foreign investors, and casino businesses, have provided ground for (and have intensified the possibility of) the commission of such crimes. However, such economic crime has yet to be identified, investigated and addressed in Nepal. There is still a lack of legislation making money laundering a criminal offence. The adoption of necessary measures for the identification, tracking, freezing, seizing and confiscation of instrumentalities and the proceeds of crime are yet to be realized.

F. Smuggling

Smuggling is another form of economic crime in the country. Violations of the Customs Act, the Foreign Exchange Act, and other related laws foster such crimes. Forged Letter of Credit documentation, as well as forged customs receipts and registration papers, are the common ways of smuggling goods and motor vehicles into Nepal. The illicit trafficking of narcotics, illegal import of gold and illegal export of timber, precious bones of scare animals like the tiger, rhinoceros, elephant etc, are other major smuggling items in the country,.

G. Illicit Drug Trafficking

Extensive international air links and the adoption of a liberal visa policy to promote tourism in the country has made it easy for criminals to misuse this facility to engage in drug trafficking. The nature of illicit drug trafficking in Nepal at present is as follows;

- Some of the seizures show that people from Mizoram and Burma smuggle drugs into Nepal via land following

the route of the Golden Triangle (West Bengal of India to Kathmandu Nepal)

- Heroin has been found to be smuggled into Nepal from Bangkok and Pakistan by air.
- A number of cases of hashish smuggled from Nepal have been intercepted and seized from carriers at Kathmandu Airport, destined for Hong Kong, Thailand, Singapore, India and other countries.
- Drug trafficking is also used for local consumption. Drugs are smuggled from neighboring countries into Nepal and are sold by peddlers.
- Lists of the seized quantity of narcotics and the persons involved in the transaction, sale and distribution of drugs, as well as the number of arrested persons, are given in annexure A.

III. COUNTERMEASURES TO COMBAT ECONOMIC CRIME

His Majesty's Government of Nepal has adopted various countermeasures to effectively combat the growing challenges posed by various economic crimes. To fight against such crime, a system based on laws and regulations has been set forth in the country. Various institutional efforts, as well as a series of legislation, have been designed and enforced. However, the countermeasures that are being undertaken may not prove adequate and more is required to be done. The following are some of the countermeasures adopted in the country:

A. Constitutional and Statutory Provisions

- The Constitution of the Kingdom of Nepal; Part 12 (1990)
- The Commission for the Investigation of Abuse of Authority Act, 1991
- The Prevention of Corruption Act,

1960

- The Custom Act, 2019 (1962)
- The Foreign Exchange (Regulation) Act, 2019 (1962)
- The Income Tax Act, 1975
- The Excise Duties Act, 1959
- The Value Added Tax Act, 2052 (1996)
- The Revenue Leakage (Investigation and Control) Act, 1996
- The Narcotic Drug (Control) Act, 1976
- The Nepal Rastra Bank Act, 1953
- The State Cases Act, 2049 (1993)
- The Extradition Act, 2045 (1989)

B. Institutional Efforts

Anti-Corruption Institutions

1. *Commission for the Investigation of Abuse of Authority (CIAA)*

The CIAA is a constitutional body established under Article 97 of the Constitution of the Kingdom of Nepal, 1990. The Commission investigates cases of abuse of authority in terms of corruption, or improper conduct (mal-administration) by any person holding any public office. In other words, the CIAA functions as an Ombudsman institution, as well as an anti-corruption institution. It has been given the power to admonish such persons, or forward recommendations to the concerned authorities for departmental or any other necessary actions, if it finds upon its inquiry or investigation that such persons have misused their authority by improper conduct. In cases of corruption, the CIAA may bring, or cause to be brought, an action against such persons, or any other person involved therein, in a court with jurisdiction in accordance with law. The Prime Minister, Ministers, Speaker of the House of Representatives, members of Parliament, and all bureaucrats are included within the jurisdiction of the commission. The CIAA is the sole body

110TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

that looks after cases of corruption in the country. However, it can delegate some of its power to other statutory or governmental organizations. The number of complaints received by the Commission and its disposal are presented in Annexure B.

2. *Special Police Department (SDP)*
The SDP was established under the Prevention of Corruption Act, 1960. It is the statutory body which exercises the power delegated by the CIAA for the investigation of cases of corruption in the three districts of Kathmandu valley.
3. *District Administration Office (DAO)*
The DAO is the main administrative agency of the government in the districts. The CIAA has delegated some of its power to the Chief District Officer of the DAO to investigate cases of corruption within the district.

Other Economic Crime Control Institutions

1. *Revenue Investigation Department (RID)*
The RID is responsible for investigating and prosecuting cases of revenue pilferage by any person in the sector of customs, excise duties, tax administration for non-payment of customs/excise duties, forging Letters of Credit, stealing motor vehicles and their illicit trafficking etc. The statistics of such crimes investigated and prosecuted by the RID have not been published in a compiled form.
2. *The District Administration Office (DAO)*
The DAO exercises the power to hear some cases of economic crime, like black marketing, undue price fixing etc, as a quasi judiciary body under various statutes.

3. *The Narcotic Drug Control Administration Division*

The Narcotic Drug Control Administration Division was established under the Ministry of Home Affairs. To control the cultivation, production, manufacture, sale, purchase, storage, traffic, consumption, export and import of narcotic drugs, the Narcotic Drugs (Control) Act 1976, was enacted in the country. This Act is in line with the Single Convention on Narcotic Drugs 1961, and the UN Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988, to which Nepal is a party. In addition to this, adoption of the SAARC Convention on Narcotic Drugs and Psychotropic Substances 1990, and the regular exchange of information with SAARC member countries (India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Maldives) through the SAARC Drugs Offences Monitoring Desk, represent other efforts to combat such crime.

Nepal has an extradition treaty with India, concluded on October 2, 1953. The Extradition Act 2045 (1989) of Nepal has also laid down the procedures to be adopted for requests of extradition, or for requesting punishment in cases where an offender has committed a crime in one country and absconded to another. These instruments may become useful to combat economic crime of a transnational nature.

IX. PROBLEMS IN THE INVESTIGATION AND PROSECUTION OF ECONOMIC CRIMES, AND REFORMS

The legal system of the country does not differentiate between economic crime and other crimes committed against the State. It is difficult, if not impossible, to specifically define economic crime. To

gather evidence in various white collar crimes, and to determine responsibility in a particular offense, is difficult. Moreover, to prove the intention to commit a crime, without detailed evidence, is rather impossible in such crimes. Most of the economic crimes have an international dimension. Their transnational character is very complex due to the methods of commissioning. Nepal, having opened its borders with India and China, and being sandwiched between these two giants, is subject to crimes that have illegal cross-boarder operations. Further, lack of political commitment to combat economic crimes, accountability in political parties, transparency in administration, proper education and an over-all lack of trained and motivated investigators, is a major problem for the combat of economic crime in Nepal. Therefore the following countermeasures to combat economic crimes are highly desirable in Nepal:

1. Establishment of a Special Court to deal with various economic crimes.
2. Burden of Proof should, in some instances, be shifted to accused.
3. Better staffing, training and incentives for investigation institutions.
4. Proper infrastructure and physical facilities in the investigative agencies.
5. Public awareness campaigns against economic crime activities.
6. Political commitment.
7. Code of Conduct for all public officials, including elected members.
8. Better co-ordination between government departments and investigation agencies.
9. Free, independent and impartial media.
10. International co-operation and mutual assistance.

V. CONCLUSION

With the expansion of development activities and the advent of new technology, the nature of the crime is changing and new types of crimes are emerging. The advancement of computer technology has invited various computer crimes, but such crimes are new to the investigation agencies and there are no countermeasures developed to combat them. However, various economic and computer crimes are costly to society, and the entire country is being penalized through inaction. The struggle against such crimes is the struggle against poverty, backwardness, and moral declination. It is therefore, essential that the criminal justice system should give priority to the detection and combatting of such crimes. International co-operation and technical support in this field would be highly beneficial to a developing country like Nepal.

110TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

ANNEXURE A

SEIZED QUANTITY OF NARCOTIC DRUGS IN THE FISCAL YEAR 1996/97

Drug Type	Marijuana	Hashish	Heroin	Morphine
Kilograms	2208	1251	10	—
Grams	867	742	794	739
Milligrams	50	252	185	—

ARRESTED PERSONS IN NARCOTIC DRUGS CASES

Fiscal Year	Foreigner		Resident/National	
	Male	Female	Male	Female
1994/95	641	40	104	8
1995/96	633	46	104	7
1996/97	534	18	58	—