

Nepal

Corruption Perceptions Index 2003 score: not surveyed

Bribe Payers Index 2002 score: not surveyed

Conventions:

UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

Legal and institutional changes

- The Commission for Investigation of Abuse of Authority (CIAA) Second Amendment Bill, signed into law in August 2002, and a CIAA regulation introduced in September 2002, give the CIAA full legal authority to undertake **investigations**. It can order the seizure of passports, arrest suspects, investigate and freeze bank accounts, confiscate property and search offices and residences in corruption cases. Critics say the CIAA could be used to target political opponents, though a number of local observers say it has helped to foster an environment of intolerance of corruption.
- An act related to **political organisations and political parties**, approved in September 2002, regulates their financing, development and operation. It specifies that they should not accept donations from international organisations or foreign governments, individuals or associations. Each party must include detailed election expenses in the annual reports that they must present to the election commission within six months of the close of a financial year. Auditors must be authorised by the auditor general's office. The names, addresses and occupations of individuals or organisations donating more than 25,000 rupees (US \$300) must be included.
- An **impeachment** act was introduced in September 2002 to remove the **immunity** that some public officials had enjoyed in the past. The provision that the CIAA can initiate an investigation into corruption allegations against any public official is the most significant new addition. Previously, the CIAA could not take action against the prime minister and needed approval from the speaker before it could begin investigating members of parliament. The CIAA still can't take action against judges.
- In January 2003, the CIAA created a planning division to expedite cases. A month later it boosted its staff from 128 to 205 and extended CIAA branches to all five regional development centres and the 10 districts considered most corrupt. In March 2003, the CIAA launched a five-year scheme to control corruption.
- The government-funded **National Vigilance Centre** was established in January 2003 to undertake preventive and awareness measures against corruption, administrative irregularities and excessive red tape. It has authority to look into affairs of government ministries, departments, offices and public officials.

Anti-corruption laws adopted, but compliance remains problematic

A ream of recent legislation and measures enacted by the executive aims to tackle the scourge of corruption by granting investigation and enforcement agencies greater powers and by raising awareness of the problem. But as important as the letter of the law and the intentions behind the legal and institutional changes, is whether they are actually enforced. Political instability and the fact that the state apparatus is focusing on fighting an insurgent movement, makes compliance difficult.

The first significant new piece of legislation was the amendment of the Corruption Prevention Act in June 2002,

important area to tackle as one of the reasons for the popular perception that the level of corruption in government is high is that several politicians and officials had been seen to buy houses and amass wealth shortly after taking office (see below).

Finally, the government took steps to raise awareness of corruption. The public services ordinance of November 2002 led to teams being deployed to regional development centres to supervise all public services, their distribution, operation and management for six months from January 2003. The teams looked into public grievances related to irregularities and corruption. The aim of the exercise was to make officials aware that they are accountable. The National Vigilance Centre, established in January 2003, shares the same aim.

It is too early to evaluate the impact of the changes. Implementation of some of them has been hampered by the institutional and political context. For instance the CIAA and other monitoring agencies faced difficulties making their reports public in 2002 and 2003.¹ The procedure for doing so is to submit them to the king, who then sends them to parliament; parliament has been vacant since being dissolved in May 2002, however, and so the reporting process could not be carried out.

Notwithstanding these difficulties, there have been some high-profile successes. Shortly after the new laws were enacted, the CIAA prosecuted three former ministers, Chiranjibi Wagle, Khum Bahadur Khadka and Jayaprakash Prasad Gupta, for alleged corruption, the first time senior Nepalese politicians have been indicted for the crime. Wagle faces charges of misappropriating more than 30 million rupees (US \$400,000) by using his political influence to bolster his son's travel and trekking business, and of declaring property falsely. Khadka was accused of taking a bribe from a contractor worth more than 110 million rupees (US \$1.5 million) in exchange for using his authority to provide a contract without tender for construction work near the river Bakraha. Gupta allegedly made more than 30

million rupees (US \$400,000) through illegal telecommunication deals, unlawful procurement of mobile phone sets and wrongful renewing of cinema licences. Wagle was once acting prime minister and deputy chairman of the Nepali Congress (Democratic) Party, while Khadka was secretary general of the same party. They were in power for most of the last decade until September 2002, when anti-corruption agencies took action against them. The three, who argue that they are being framed in a political vendetta, were released on bail pending the verdicts, which may take a long time being handed down.

Local analysts are confident the trials are serving to give a badly needed warning to other public officials, though some observers have cautioned of the danger that the CIAA could, indeed, be used to target political opponents as it lacks cross-party representation. In addition to investigating allegations of corruption by elected politicians, the CIAA is scrutinising possible acts of corruption by senior government employees, heads of state-owned companies and police officials.

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Judicial property inquiry provides a much-needed check on corruption by politicians

In March 2003, the Judicial Inquiry Commission on Property (JICP) presented a 600-page report to King Gyanendra Bir Bikram Shah Dev to demonstrate that the earnings of public officials will no longer remain beyond 'judicial audit' in the name of private property or under considerations of individual privacy.

The JICP was headed by Supreme Court Justice Bhairab Prasad Lamsal, with two former justices sitting as members. It was constituted in March 2002 during the administration of former prime minister Sher Bahadur Deuba to examine whether property owned by politicians and officials appointed after 1990 had been obtained legally. The JICP required 41,900 politicians and officials

to declare their property in writing – of whom 11,300 did not complete the forms. The final report contained an inventory of the property of the 30,500 people examined.

Several former ministers and government officials who served under Sher Bahadur Deuba were subsequently summoned to explain their wealth, which exceeded their lawful income.

The report was passed to the CIAA, which took immediate action against 40 politicians and bureaucrats. The commission summonsed a number of former ministers and officials to furnish details about their property, including former prime minister Girija Prasad Koirala, who is also president of the Nepali congress. Koirala filed for an injunction before the supreme court a few days later, arguing that the CIAA has no justification for summonsing him. At this writing, the case was under the procedural jurisdiction of the supreme court.

Many others who were summonsed did not show up, deeming the commission's

actions politically motivated since they coincided with a cross-party protest against the king's assumption of direct rule.² Politicians pressed the CIAA to make the JICP report public in order to allay fears of a witch-hunt along political-party lines. The CIAA has indicated that it will not make the report public.

Unlike past efforts to ensure that politicians account for their wealth, there are expectations that the JICP report will not be forgotten, and might actually reinvigorate some of the underperforming existing mechanisms for holding officials to account. The government has since ordered the department of civil service record keepers (Kitab Khana) to update the register of all the property records of public servants, which has been kept since the 1960s but whose requirement that property be declared periodically has been allowed to lapse. The interior ministry has been ordered to publicise the names of all politicians and public officials who failed to declare property.

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Further reading

Commission for Investigation of Abuse of Authority (CIAA), 'Investigation and Prosecution: Guidelines', 2003

CIAA, 'A Collection of Constitutional and Legal Provisions on Corruption and Principles Enshrined in Supreme Court Verdict', 2003

CIAA, 'Quarterly Bulletin', Kathmandu, www.akhtiyar.org.np [Nepali]

Hari Bahadur Thapa, *Anatomy of Corruption* (Kathmandu: ESP, 2002)

TI Nepal, 'A Household Survey on Corruption', South Asian Report, August 2002, www.tinepal.org

TI Nepal: www.tinepal.org

Notes

1. TI Nepal, 'Newsletter', April 2003.
2. The king dismissed the prime minister and his cabinet in October 2002 for 'incompetence' after they dissolved the parliament and were subsequently unable to hold elections because of the ongoing insurgency. The country is now governed by the king and his appointed cabinet until elections can be held at some unspecified future date.