

Tackling a Hard Reform Agenda in Developing Countries: The Case of Anti-Corruption Reforms in Nepal*

개발도상국가에서의 어려운 개혁과제 추진: 네팔의 반부패 개혁사례 연구

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국문초록

개발도상국에서 부패는 빈곤을 근절하고, 좋은 거버넌스 구축 및 유엔의 지속가능 개발목표(SDGs) 등을 실현하는 데 있어서 주요한 장애물 중의 하나가 되고 있다. 세계의 대부분 국가들이 반부패 개혁 조치와 함께 부패방지법과 부패방지관련기구들을 신설하는 노력을 기울였지만, 이러한 노력들이 실질적인 부패척결과 좋은 거버넌스 촉진 등에 있어서 효과적인 결과를 보였다고 보기 어렵다. 네팔 역시 예외가 아니다. 네팔정부는 사회도처에 만연한 부패를 줄이기 위해 부패방지기구를 신설하여 많은 노력을 기울였음에도 불구하고, 주목할만한 효과를 거두지 못했다. 이처럼 네팔 정부의 여러 가지 시도에도 불구하고, 오히려 부패는 지속적으로 확산되고 있는 경향을 보이고 있다. 따라서 이 연구의 목적은 네팔의 반부패 개혁사례를 분석함으로써, 네팔의 반부패개혁에 대한 교훈과 정책적 함의를 도출하는데 있다. 본 연구는 반부패개혁이 왜 실패하는가라는 근본적인 질문을 던지면서, 네팔의 부패척결을 위한 네팔의 권력남용조사위원회(CIAA)의 부패방지 성과 등을 분석하면서, 향후 반부패 개혁방향 등에 대해 조명하고자 한다.

주제어: 네팔, 부패, 개혁, 반부패, 반부패 개혁, 거버넌스

* This work was supported by the Ministry of Education of the Republic of Korea and the National Research Foundation of Korea (NRF-2016S1A5B8925203).

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I. Introduction

Jon Quah (2009) argues that corruption is a serious problem in the Asia-Pacific, judging from the rankings and scores of the Asia-Pacific countries included in the Corruption Perceptions Index (CPI) of Transparency International (TI). The governments in these countries have initiated various anti-corruption measures for many years, but, with few exceptions, have not been effective in curbing corruption. Nepal is no exception on this matter. Nepal is committed to fighting corruption at all levels as it has taken a no-tolerance policy against corruption with the enactment of various state legal provisions such as anti-corruption laws (Koirala et al., 2015). However, it has been suffering from chronic corruption despite formulating various state legal provisions that have criminalized corruption and its various forms including bribery, money laundering, and fraud, and a range of anti-corruption agencies have been put in place (Koirala et al., 2015:1).

The main agenda of Nepal is to combat corruption in all sections of society and government by initiating continuous reforms. Nepal has been strongly supporting regional and international anti-corruption instruments and activities (Panth, 2011). Nepal ratified the United Nations Convention against Corruption (UNCAC) in 2011.¹⁾ However, the attempts to tackle corruption have been ineffective, and corruption is widespread and continuously increasing. The recent data published by TI shows that in 2013, 85% of Nepalese respondents felt that public officials and civil servants were corrupt/extremely corrupt.²⁾ It also reveals that CPI 2015 gave Nepal a score of 27 out of 100 and placed the country 130th on a list of 168 countries (TI, 2015).³⁾ Nepal has been recognized as a corrupt state given its rampant and increasing level of corruption. The TI's corruption barometer report of 2013 stated that 57% of the respondents felt that corruption had increased greatly over the past two years; 90% felt that political parties were corrupt/extremely corrupt; 79% felt that the parliament/legislature was corrupt/extremely corrupt; and 80% felt that the police were corrupt/extremely corrupt (Hardoon and Heinrich, 2013).

Corruption has been at the center of the political agenda in Nepal since the

1) https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&clang=_en

2) <http://www.transparency.org/gcb2013/country/?country=nepal>

3) A lower score and a lower ranking indicate a higher degree of corruption, perceived or actual.

restoration of the multi-party democracy in 1990s. One of the main causes of underdevelopment of Nepal is the problem of corruption that is widespread in the both public and private sectors (Subedi, 2005). Various forms of corruption such as bribery, embezzlement, fraud, favoritism, and nepotism prevail in Nepal (Amundsen, 2000). For example, bribery is the most prevalent form of corruption in Nepal, especially in the public sector. Business people often bribe bureaucrats and politicians to win the contracts from the government, to escape paying taxes and to establish their businesses without following the government rules and regulations. The general publics are also the victim of bribery as the bureaucrats charge an additional amount or expect some return for providing the government services (Subedi, 2005). Higher ranked administrative bureaucrats and political elites are the main culprits who involve in embezzlement in Nepal. Higher ranked bureaucrats use their power, authority and their political relations to accumulate wealth illegally, to get the promotions and to favor their side businesses. Political elites use their political power through their contacts to establish, secure and expand their private businesses (Subedi, 2005). Dirty politics is also involved in fraud activities in Nepal. Some of the activities of fraud, as pointed out by Subedi (2005), are providing loans that are unlikely to be paid back, offer government contracts without competition, issuing licenses to manufacturing companies with poor performance records, selecting and promoting unqualified or corrupt persons to the government posts, while transferring qualified civil servants to other periphery government offices. Bureaucrats and politicians often engage in favoritism and nepotism by abusing their power in order to allocate resources in their areas and to secure their position by nominating their relatives in various agencies, committees, and important positions in the state apparatus respectively (Subedi, 2005).

The main objective of this study is to analyze the anti-corruption reform programs in Nepal and thereby draw lessons for the future. This study identifies the circumstances that made it necessary to initiate reforms, which are needed to understand the dynamics leading to the initiation and implementation of anti-corruption reforms in Nepal. This study is also to shed light on the approaches and features of anti-corruption reforms as well as to assess the outcome of the anti-corruption reforms. This study first argues that anti-corruption reforms are based on both the principal - agent problem and the collective action problem. These two approaches are explored more in the next section.

The next section explores the literature on corruption, understanding the anti-

corruption reforms through two approaches (i.e., the principal - agent problem and the collective action problem) and the nature of anti-corruption failures in developing countries. Research questions and the conceptual framework of this study follow this section. After that, this paper discusses the anti-corruption failure in Nepal starting with the initiation of anti-corruption reforms, motivation factors to initiate reforms, and the current situation of corruption in Nepal. The final section concludes with the possible policy implications of making the reform effective.

II. Understanding Corruption and Research Questions

Corruption can be termed as the immoral, unethical, unlawful acts by bureaucrats and politicians to gain monetary and/or nonmonetary transactions from the provision of public services. The UN Development Programme (UNDP) views corruption as related to the misuse of public power, office, or authority for private benefit - through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement (UNDP, 1999). Corruption involves misuse of power by position holders that can disturb and disrupt social norms and legal provisions or rule of law resulting in loss, nuisance, and deprivation to a person, society, and country. Corruption is focused on personalized transactions and systematically deep-rooted political problems (Disch et al., 2009). Therefore, corruption is one of the critical factors that affect socio-economic development in a negative way. It has been a major issue in the development agenda not only in national policies but also in international policies such as foreign aid.

Quah (1999) noted the causes of corruption by identifying the conditions under which corruption thrives, what factors induce individuals to commit corrupt acts, and how corruption can be prevented or discouraged. He argued that an individual is likely to commit a corrupt act if he or she (1) is paid a low salary, (2) is provided with the opportunities for corruption, and (3) perceives corruption to be a low-risk, high-reward activity (Quah, 1999: 72).

This study argues that corruption is both a “principal - agent problem” (Miller et al., 2001; Karklins, 2005; Miller, 2006) and a collective action problem (Persson et al., 2013). The logic of principal - agent theory (Andvig and Fjeldstad, 2001; Ivanov, 2007; Johnston, 2005; Lawson, 2009; Riley, 1998; Persson et al., 2013) has been followed by

developing countries to demonstrate the anti-corruption efforts. The principal - agent theory analyzes corruption on the basis of interaction and interrelations existing in public organizations with two assumptions: (1) that a goal conflict exists between so-called principals (who are typically assumed to embody the public interest) and agents (who are assumed to have a preference for corrupt transactions insofar as the benefits of such transactions outweigh the costs); and (2) that agents have more information than the principals, which results in an information asymmetry between the two groups of actors (Klitgaard, 1988; Rose-Ackerman, 1978; Williams, 1999; Persson et al., 2013). The principals are the normal citizens who seek service from the agents (i.e., public officers such as bureaucrats and elected politicians). The agents have the specific information in hand while delivering their services and do not share it with the principals, which makes the principals unaware of this information. This kind of information gap motivates agents to misuse their power to fulfill their own private interest.

Therefore, Persson et al. (2013: 452) state that corruption occurs when an agent betrays the principal's interest in the pursuit of his or her own self-interest. This framework assumes that the corruption exclusively lies with the agents (i.e., corruption is usually done by agents), while the principals are the watchdogs of such corruption in order to control corruption (Andvig and Fjeldstad, 2001; Galtung and Pope, 1999; Mungiu-Pippidi, 2006; Rauch and Evans, 2000; Persson et al., 2013). However, one limitation of this theory as argued by Andvig and Fjeldstad (2001) is that if both the principal and agent are corrupt, there will be no actors to monitor and punish corrupt behavior (Persson et al., 2013).

The international agencies and different scholars prescribe a holistic anti-corruption strategy (UNDP, 2004) in order to fight corruption through a large number of institutional reforms aimed at reducing the opportunities and incentives for corruption in line with the logic of the principal - agent framework. Rothstein (2011) criticizes principal - agent models that ignore the equilibrium qualities of corrupt systems. Rothstein and Teorell (2013) claim that even though the majority of corrupt nations have strong anti-corruption legal provisions, they fail to implement and turn those provisions into practice, creating more opportunities for more corrupt behavior and incentives. They argue that the principal - agent framework does not work if both principals and agents are involved in a corrupt system. These behaviors can be widely seen in corrupt countries. Instead of reporting and punishing corrupt behaviors of the

agents, principals tend to ignore these to get goods and services easily. Therefore, most citizens in developing nations are entangled in the very corrupt networks that have been there for a long time. Even though in some corrupt nations, citizens collectively protest against corruption, while getting individual service from the public officers, citizens fail to protest and engage in corrupt behavior (Rothstein and Teorell, 2013). Therefore, to understand the failure of anti-corruption reforms, one should incorporate the individual-level motives that can explain why individuals continue to engage in corrupt activities even though they often possess both the means and the information needed to act differently (Rothstein and Teorell, 2013).

Rothstein and Teorell (2013: 456) argue that anti-corruption reforms fail due to the “collective action problem of corruption” rather than the principal - agent problem. In this approach, citizens tend to choose corrupt alternatives due to the unwillingness or inability to bear the cost. In this approach, citizens tend to choose corrupt alternatives instead of non-corrupt ones due to the unwillingness or incapable to bear the cost of honesty (Rothstein 2005). This is because even though citizens know that the state provides most of the public goods and services such as health care, schools, social services with the tax received from the taxpayers, they are also aware that most of the bureaucrats and politicians are corrupt and cheat on citizens. Therefore, citizens think why they need to be loyal and honest to the state that is severely corrupt. Gunnar Myrdal (1968: 409, cited in Rothstein and Teorell, 2013: 457) in his work about what he labeled the “soft state” problem in Asia wrote that any self-interested actor would reason as follows: “if everybody seems corrupt, why shouldn’t I be corrupt?” The mechanisms to curb corruption in these corrupt nations are weak and ineffective. In these situations, all the actors believe that they can eradicate corruption if they act collectively, but the trust among actors varies or cannot be mutually confirmed, so all the actors are engaged in demanding or paying bribes (Rothstein and Teorell, 2013). In sum, under the collective action problem, actors are engaged in corrupt behaviors even though they do not morally support them and know the negative consequences for society at large because “as long as they expect everyone else to play foul, they perceive the short-term benefits of engaging in corrupt behavior to be greater than the costs” (Rothstein and Teorell, 2013: 457).

With “Why do anti-corruption reforms fail in Nepal?” as the core research question, this study formulated the following sub-research questions:

(1) Why did Nepal initiate anti-corruption reforms?

- (2) What kind of factors motivated Nepal to adopt anti-corruption reforms, and how did these factors contribute to shaping the design of reform and its implementation?
- (3) Did the reform fulfill the intended objectives? What are the outcomes and shortcomings?

The paper is prepared based on various sources from diverse literature. Sufficient literature is reviewed, and required data is gathered from the various relevant publications by government bodies, bilateral and multilateral development organizations, domestic NGOs, and international NGOs. Relevant anti-corruption literature (such as the government's anti-corruption-related rules, strategic plans, and policies) from Nepal is collected and analyzed. The study is qualitative in nature based on available secondary information from published and unpublished sources including from web searches.

III. Anti-Corruption Reforms in Nepal

The nature and characteristics of the political regime and governing institutions in the course of anti-corruption reform drives differed in the first (1985 to the 1990s) and second phases (1990s to the present). Unlike the autocratic regime during the first phase, democratic governance was in place during the second phase of reforms. Before the 1950s, the socio-economic structure in Nepal was feudal. Only the autocratic ruler and a handful of elites (high-caste groups) controlled everything from production to distribution. Hence, the feudal mode governed and dictated the socio-economic structure of the pre-democratic period (Khanal et al., 2005).

Nepal has been in a political transition phase since the ousting of the autocratic Rana regime in the 1950s. Since the 1950s, many efforts have been undertaken to improve Nepal's socio-economic situation. Various socio-economic reforms were launched after the abolishment of the autocratic regime in the 1950s. One such initiative was the establishment of the Corruption Control Commission in 1959. Despite the number of reform programs undertaken to improve Nepal's socio-economic status, reform initiatives have not been effective. The reform initiated in the mid-1980s was neither adequate nor effective in promoting and improving Nepal's socio-economic status where much of the focus was on simplification of rules and regulations (Khanal

et al., 2005). During this period, decision-making powers were still held by the rulers and top elites, resulting in favoritism and corruption (Cohen, 1995; Khanal et al., 2005). The legal system was traditional and unreliable; the administrative structure was highly inefficient and fragile; and rent-seeking was excessive, resulting in corruption (Dixit, 1995; Khanal et al., 2005). Despite legal provisions to curb the corruption, it has not been effective and efficient in reality. The policy makers and high-level bureaucrats themselves have engaged in corruption that has distorted the socio-economic status in Nepal.

The main motivating factors behind the second phase of reforms were restoration of democracy followed by formulation of a new democratic constitution, commitments of main political parties to expediting economic growth and poverty reduction, rising popular expectations, and pressure from the mushrooming civil society organizations for change (Khanal et al., 2005). However, most of the reforms initiated only remain on paper. These problems are both associated with the principal-agent problem (agents have all the information, but the principals are not aware of this information) and the collective action problem (no group of individuals complains, but all tend to follow the system as it was before). From a political economy viewpoint as argued by Dix (2011: 3), the crux of the problem is one of collective action: a lack of countervailing forces (within and outside government) able to change the existing incentive structure that is at odds with state building and breaking the status quo. Rent-seeking behavior inherited from the state-controlled economy before 1999 is the driving force to enact an anti-corruption legacy, and corruption has been escalating after the prolonged transitions since 2006 due to governance rather than rule of law being compromised (Koirala et al., 2015).

As in many poor developing countries, corruption and government inefficiency in Nepal have been the main reasons for low economic growth, a high level of poverty, and economic disparity. Corruption, nepotism, favoritism, and lack of opportunities for minorities exist in most manifestations and in spheres such as the public, political, and private sectors, frustrating Nepalese society and resulting in low socio-economic development. The cabinet, judiciary, civil service, politicians, police, army, non-governmental organizations, and the private sector are both the victims and perpetrators of corruption in Nepal.

Poudel (2011) claimed that justice is being exchanged for money. The criminal investigation, prosecution, and adjudication processes are deeply affected by corruption.

Nepal's low score in the CPI is evidence of the above-mentioned facts (Table 1). According to the TI's CPI, Nepal was ranked 126th in 2014 and 130th in 2015, which would indicate that corruption in Nepal is increasing and that it is the worst-performing country in South Asia. Other evidence of the above-mentioned fact can be seen in the Global Integrity Report (GIR) that evaluates both anti-corruption legal frameworks and the practical implementation and enforcement of those frameworks, and takes a close look at whether citizens can effectively access and use anti-corruption safeguards.⁴⁾

Table 1. Nepal's CPI Score from 2007 to 2015⁵⁾

Year	Score	Rank
2007	2.5	131
2008	2.7	121
2009	2.3	143
2010	2.2	146
2011	2.2	154
2012	27	139
2013	31	116
2014	29	126
2015	27	130

Source: Transparency International (2007 to 2015).

Table 2 shows Nepal's GIR from 2006 to 2009. Even though the overall legal framework has been improving (Nepal's score is 84 (strong)), the overall score and the actual implementation score have been very weak. The factors contributing to increasing corruption are political instability, weak enforcement of laws at the central as well as local level, and the absence of elected local bodies. Many efforts to curb corruption have been enforced by the anti-corruption agencies, but the problem of corruption is at a high level, where it is prevalent and institutionalized, and these efforts have not succeeded or have been unable to address the problems (Koirala et al., 2015). Koirala et al. (2015) argue that rampant corruption is high within the current administrative and political set-up and has been greatly affecting the confidence of

4) www.globalintegrity.org.

5) Note: From 2007 to 2011, CPI Score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). From 2012 onwards, as part of the update to the methodology used to calculate the CPI in 2012, TI established the new scale of 0–100.

investors, degrading the business climate in Nepal, and also undermining the rule of law.

Table 2. Global Integrity Report of Nepal

Global Integrity	Overall Score	Legal Framework Score	Actual Implementation Score
2006	50 Very Weak	62 Weak	38 Very Weak
2007	68 Weak	74 Moderate	46 Very Weak
2008	64 Weak	81 Strong	48 Very Weak
2009	67 Weak	84 Strong	50 Very weak

Source: Global Integrity Report (2006, 2007, 2008, 2009).

Nepal has been implementing anti-corruption activities for many decades. One of the famous statements by King Prithvi Narayan Shah (King of Gorkha in 1723 - 1775) during his tenure, about 230 years ago, still applies in the current period: those who take bribes and offer bribes are both enemies of the state (Panth, 2011). Several legal and institutional provisions have been practiced since then.

Some of the legal and institutional provisions include the Nepalese General Code of 1851; the Prevention of Corruption Act of 1952 and Corruption Prevention Rule of 1953; the establishment of the Special Police Department in 1960 amending the 1953 Act; the Corruption Control Act of 1961; the 1978 amendment to the then constitution that established the Commission for the Prevention of Abuse of Authority as a constitutional body; the CIAA Act in 1991, which established the CIAA right after the 1990 restoration of multi-party democracy; the adaptation of the first National Anti-corruption Strategy in 2008; the establishment of the National Vigilance Center (NVC) and the compulsory provision to declare property by public service holders; the Special Court, Organization and Regulation of Political Parties, and Impeachment Acts of 2002; the Right to Information Act of 2007 and Good Governance Act of 2008; and the formulation of a new Anti-corruption Strategy in April 2009.

Since 1952, the Government of Nepal has shown a high level of commitment to fight corruption by developing anti-corruption laws and agencies, and widening its scope and coverage. About 19 agencies have been established in Nepal to fight corruption. The CIAA is the leading organization with constitutional authority for investigation and prosecution. Other agencies that are established to curb corruption in Nepal include: the Office of Auditor General, the Office of the Attorney General, the Judicial

Council, the Supreme Court, the Special Court, the Administrative Court, the Revenue Tribunal, the Foreign Employment Tribunal, the Good Governance and Monitoring Committee, the Public Account Committee, the Army Court (under Army Act, 2006, the National Information Commission, the Department of Revenue Investigation, the Financial Comptroller General Office, the Financial Information Unit, and the Central Arrear Collection Office.

The relevant laws, regulations, and strategies of the Government of Nepal backed these organizations. Other non-governmental agencies such as Transparency International (TI) - Nepal Chapter, local non-governmental organization such as Pro-Public that is implementing anti-corruption and good governance programs supported by aid agencies and the Federation of Nepalese Chambers of Commerce and Industry (FNCCI) are active in Nepal's fight against corruption (Panth 2011).

The above discussion answers the three research questions mentioned in the Research Methodology section: why did Nepal initiate anti-corruption reforms, what factors motivated Nepal to adopt anti-corruption reforms, and how did these factors contribute to shaping the design of reform and its implementation? To answer the third question, this part discusses mainly the performance of the CIAA.

The CIAA is an apex constitutional body and distinctive anti-corruption agency in South Asia that aims to curb corruption in Nepal. It plays the role of an ombudsman, investigator, and prosecutor as well, and aims to crack down on corruption issues at a national level with a system-based approach as well as a focus on detection and punishment of corrupt acts on the one hand and social, cultural, and institutional reform on the other (Poudel, 2011:169).

The CIAA intensified its activities after the enactment of the anti-corruption law in 2002 by taking action against high-profile officials and senior political leaders, especially in the revenue, finance, and public work sectors. Therefore, the CIAA has continued to receive more complaints after 2002, and the trend is increasing. In fiscal year 2014/15, the CIAA received 31,092 complaints, out of which 21,627 cases were solved, and 8,291 were referred for detailed investigation and various actions such as referral to the Special Court, departmental action, giving suggestions, and warnings. Table 3 shows the increase in complaints received, number of complaints solved, and recommendations for other action by the CIAA.

Table 3. Corruption Complaints at the CIAA

Fiscal Year	Number of complaints lodged	Number of Complaints Resolved	Recommended for other actions
1990/91	564	–	–
1991/92	1,069	581	1
1992/93	1,050	618	5
1993/94	1,020	526	6
1994/95	1,003	636	1
1995/96	1,085	711	2
1996/97	1,501	750	22
1997/98	1,606	920	6
1998/99	1,313	861	12
1999/00	859	498	5
2000/01	1,261	698	26
2001/02	2,522	2,015	61
2002/03	3,966	2,481	147
2003/04	3,732	3,188	98
2004/05	4,759	3,709	113
2005/06	4,324	3,353	114
2006/07	3,564	2,976	115
2007/08	2,723	2,135	65
2008/09	4,149	3,303	47
2009/10	4,295	3,067	27
2010/11	6,145	3,904	67
2011/12	8,839	2,904	1,937
2012/13	11,298	6,672	183
2013/14	22,602	12,982	890
2014/15	31,092	21,627	8,219

Source: CIAA Annual Reports (1990 to 2014).

Solving the cases is a lengthy process, causing delay in the court issuing a final verdict. Some high-profile cases are shown in Table 4. The increasing number of complaints shows that public grievance is increasing even though the number of complaints is merely an indication (Koirala et al., 2015). The CIAA has some limitations to its jurisdiction and has some gaps in fighting corruption. Koirala et al. (2015:19) reviewed the past studies on corruption and anti-corruption in Nepal and stated that the increase in anti-corruption laws and agencies has resulted in lack of

coordination and some duplication among the corruption-fighting agencies, with overlapping functions and unclear jurisdiction causing poor performance within the anti-corruption and oversight agencies. Proper coordination mechanisms are lacking in Nepal due to the multiple-agency approach to fighting corruption. Powerful political actors, for their self-interest, influence the state of affairs to benefit from corruption and weak governmental oversight, such as by leaving the heads of government agencies vacant. Another corrupting influence is affected by the interest of political parties who want their cadre or party-affiliated government officers to be the chiefs of such government agencies. This is one of the hot issues in Nepal. The brief explanation regarding appointing and sacking the chief of the CIAA is presented below. This incident clearly calls into question the effectiveness of one of the core corruption-fighting agencies in Nepal.

Table 4. The CIAA's prosecution and conviction of high-profile cases

Corruption Cases	No. of Years to settle the case	Initial Charge (NRs in Millions)	Financial Conviction (NRs in millions)	Final Convictions (in %)
Completed prison punishment				
Minister- Wagle	11	33	20.3	61.52
Minister- Gupta	10	20.8	8.41	40.43
Minister- Khadka	9	23.7	9.47	39.96
Joint Secretary- Chaturbedi	9	77.1	13.9	18.02
Under Supreme Court review for final verdict				
IGP- Bohara	8	23.8	2.68	11.26
Minister- Joshi	9	39.4	21.6	54.82

Source: CIAA Annual Reports.

The appointment of Lokman Singh Karki was very controversial, and many people even protested against him. Lokman Singh Karki (Chief Commissioner of the Commission for Investigation of Abuse of Authority (CIAA), who was accused of suppressing the People's Movement II, was recommended by Rayamajhi Aayog for criminal proceedings, faced various allegations regarding gold smuggling, was charged informally by many civil servants with misusing his power, was charged with controlling and informally making decisions in health sectors and other sectors, and was controversially appointed as the Chief Commissioner of the CIAA on May 8, 2013,

by former President Rambaran Yadav.⁶⁾ Before taking charge of the CIAA, he was the chief secretary of the government under the direct rule of former king Gyanendra Shah,⁷⁾ and faced massive criticism from various civil society members, media, and political parties including the Nepali Congress and the Communist Party of Nepal (CPN – Unified Marxist-Leninist). Lokman Singh Karki assumed office in 2013, but was suspended from the CIAA post on October 21, 2016. On January 8, 2017, the Supreme Court disqualified him from his post.

Lokman Singh Karki was accused of occasionally interfering in the decision-making process in various sectors such as health and education for his personal benefit and that of his family, running a safe house to spy on people, interfering in the procurement process of the Nepalese Police, and even abusing his authority to influence officials to delay the delivery of a court summons against him and “obstructing judicial proceedings.”⁸⁾ This makes it clear how anti-corruption agencies are dealing with corruption. The public is undecided whether or not to believe the anti-corruption agencies of Nepal. How can people believe the CIAA when its chief is corrupt? How can people believe in political parties that recommended a corrupt officer in the anti-corruption agencies?

IV. Failure of Anti-Corruption Reforms in Nepal

Based on the literature and the discussion of anti-corruption measures in Nepal, anti-corruption reforms fail in Nepal due to both the principal - agent problem and the collective action problem. According to the first assumption of the principal - agent problem, a goal conflict exists between the so-called principals (who are typically assumed to embody the public interest) and agents (who are assumed to have a preference for corrupt transactions insofar as the benefits of such transactions outweigh the costs). The policy implication under the principal - agent framework is that the principal targets the agent's negative behaviors that motivate the agent to

6) <http://kathmandupost.ekantipur.com/news/2016-10-19/apex-court-notice-to-ciaa-chief-delivered.html>

7) <http://nepalireporter.com/lokman-singh-karki-is-new-ciaa-chief/>

8) <http://kathmandupost.ekantipur.com/printedition/news/2016-11-09/clarification-sought-from-karki-aides.html>

engage in corruption in order to curb corruption (Persson et al., 2013). This assumption fails to explain the anti-corruption reforms in Nepal because agents who are in government positions and political leaders create the anti-corruption framework, and the principal has no role in making those frameworks. One of the components of a democratic decision-making process is the citizen participation that provides private individuals an opportunity to influence public decisions and to improve accountability (Parker, 2002). Nevertheless, in Nepal, citizen participation can be seen in local governance but not in central policy making. Even many of the local representative institutions have failed due to the political crisis at the central level caused by the failure to conduct any local elections for over a decade, and local bodies have been governed by the appointed bureaucrats.⁹⁾ Therefore, Nepalese citizens do not have a role in the anti-corruption policy implication.

The second assumption of the principal - agent problem states that agents have more information than the principals, which results in an information asymmetry between the two groups of actors (Klitgaard, 1988; Rose-Ackerman, 1978; Williams, 1999; Persson et al., 2013). This holds true in the case of Nepal. Most of the acts enacted by the Government of Nepal have been used in a limited way in certain cases, i.e., only those groups of individuals or individuals who know about their provisions and the procedures to obtain information from different sectors have used them. Therefore, legal acts and provision are made for the public, most of whom are unaware of these provisions. The agents have all the information and are unable to share with the public or use these for their personal benefits, but the principal for whom the provisions are made lacks the knowledge of these provisions.

Many anti-corruption agencies have been established in Nepal to deal with corruption, but the public is facing problems in understanding the procedures regarding filing corruption cases. This could be a principal - agent problem that causes the anti-corruption reforms to fail. Another principal - agent problem that causes anti-corruption reforms to fail is that the agents (the anti-corruption agencies or government themselves) implement weak programs with unpredictable budgeting, confusing jurisdictions, ineffective oversight functions, unbalanced oversight structures, poor linkages with oversight agencies, weak institutional capacities, and frequent changes in the provisions. The principals (public) are unaware of these provisions and

9) <http://participedia.net/en/cases/participatory-planning-nepal>

frequent changes in programs and do not know what is going on inside the government agencies. Here, the exploration (review or analysis) of the CIAA becomes more valuable to discuss the principal-agent problem. With a few exceptions, principals (citizens) do not raise their voices against the government, the corruption-plagued CIAA, and the agents (like the chief of the CIAA) that are influencing all the sectors for their personal benefits. The information gap between principal and agent is encouraging the agents to be more corrupt. However, the public is taking this issue to express its anger and frustration in social media and everyday conversation but is not really ready to sue the corrupt organizations and its corrupt officers and rarely demands an explanation from the government. Most political leaders have a low level of education, are too old to use technology or social media, and are not sensitive to criticism.

At the same time, corruption is a collective action problem in Nepal. According to this problem, despite strong anti-corruption legal provisions, the majority of the corrupt nation fails to implement and turn those provisions into practice, creating more opportunities for corrupt behaviors and incentives, and both principal and agent participate in the corrupt behavior (Rothstein and Teorell, 2008).

Is corruption becoming socially acceptable in Nepal? It is difficult to answer this question. Either the Nepalese have a high capacity for tolerance of those in power, just do not care, or participate equally in the corruption. Even though corruption has hampered every aspect of Nepalese people's lives, they rarely raise a voice against corruption, nepotism, and incompetence. One can witness corruption as a normal phenomenon in Nepal because most members of the public are part of corruption chains, either directly or indirectly.¹⁰⁾ Work that requires just a day to finish takes weeks and months to get done in government institutions and, then, only after the giving of bribes. Nepotism is widespread in every sector, either private or public, and the Government of Nepal fails to take action or takes a lengthy process against corrupt high-level bureaucrats. Corruption has become a custom and part of Nepalese social lives that is not seen directly. The collective action problem can be clearly seen with the following cases extracted from the Nepalese national daily *The Rising Nepal*.

¹¹⁾ From these two cases, it can be assured that corruption prevails in all the agencies, and both principals and agents are involved in corruption.

¹⁰⁾ <http://thehimalayantimes.com/opinion/topics-corruption-custom/>

¹¹⁾ <http://therisingnepal.org.np/news/11370>

Case 1

One service seeker had to bribe an officer-level civil servant of the Land Revenue Office, Dilli Bazaar, when the latter denied a land ownership certificate to his sister-in-law. When the employees working there told him that they should visit the land owned by his sister-in-law and a lengthy process should be followed before issuing the certificate, he sought advice from a *Lekhandas* (the man who helps prepare documents relating to land and houses). The *Lekhandas* advised giving the officer Rs. 20,000. As his sister-in-law who had come to Kathmandu from Australia to obtain the certificate could not stay long in Kathmandu, she gave the money to the *Lekhandas*, and in an hour she got the certificate. When the corrupt officer got the money, there was no need to make any field visit as his sub-ordinates earlier had claimed.

Case 2

A man of Nepalese origin who was born and working in Assam, India, arrived in Jhapa to obtain a citizen certificate. However, he had no document to prove that he was a Nepalese citizen. He bribed a school headmaster to provide him with a certificate claiming that he was a former student of his school. A secretary of the Village Development Committee (VDC) wrote a recommendation letter stating that he was born in the VDC. All this was done by spending only Rs. 10,000 (equivalent to approximately USD 100). An administrative officer of the District Administration Office, Jhapa, was told the truth through a reliable channel (setting among the bureaucrats and the middle man) together with a token of a few thousand rupees (bribing some money to the bureaucrats). The citizen certificate was ready within a few days. While handing over the certificate to the Assam man, the administrative office asked him when his ticket to Assam was.

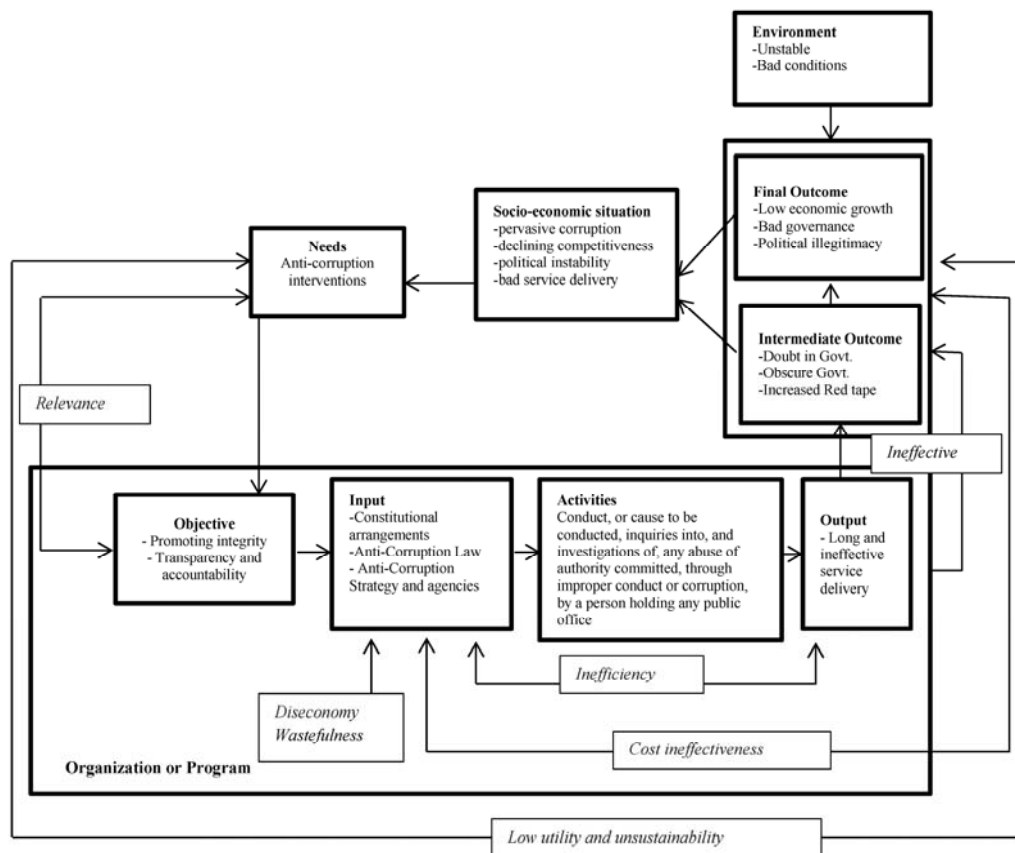
Some other reasons for the failure of anti-corruption reforms include the lack of significant changes even though the acts are repeatedly amended; a large number of anti-corruption laws and agencies resulting in a lack of coordination, unclear jurisdiction, and overlapping functions without a proper mechanism among those agencies; political instability resulting in delayed appointment of a chief in the anti-corruption agencies and pending corruption cases; and new agencies established after each change of government.

The failure of Nepal's anti-corruption reforms is illustrated using the performance conceptual framework as shown in Figure 1. This model is used on both macro and micro scales, such as by taking the entire apparatus of public administration as the unit of analysis on the macro scale, and public programs or individual institutions or organizations on the micro level (Pollitt & Bouckaert, 2011: 133 - 134). This paper mainly focuses on individual institutions like the Commission for the Investigation of Abuse of Authority (CIAA) and other related agencies. The following model gives a systematic view on the functioning of anti-corruption agencies in Nepal. Pollitt & Bouckaert (2011:134) state that "institutions and/or programs are set up to address some specific socio-economic need(s)··· establish objectives concerned with these needs, and acquire inputs (staff, buildings, resources) with which to conduct activities in pursuit of those objectives." The objectives of the institutions or programs should be relevant with the needs; the inputs should be economical; the relationship between inputs and outputs should be efficient; inputs should be cost effective to generate better outcomes; the outcomes generated should be sustainable; and finally outputs should be effective to achieve intermediate and final outcomes (Pollitt & Bouckaert, 2011).

The socio-economic situation in Nepal, particularly in public administration, is suffering from pervasive corruption, declining competitiveness, political instability and poor service delivery. To address these socio-economic problems, anti-corruption intervention is essential. Therefore, as an input, the Government of Nepal initiated many anti-corruption interventions such as constitutional arrangements by establishing anti-corruption agencies and formulating anti-corruption acts, and strategies to support the need to curb corruption with the objectives of promoting integrity, transparency and accountability. Activities are undertaken by the institutions and/or programs to generate outputs and these outputs interact with the environment leading to intermediate and then final outcomes (Pollitt & Bouckaert, 2011). The activities undertaken by the anti-corruption agencies are conducted in accordance with the laws, inquiring into, and investigations of, any abuse of authority committed, through improper conduct or corruption, by a person holding any public office in order to generate better outputs. However, the output of these agencies and their strategies are not satisfactory because of the increasing corruption in Nepal that leads to the ineffective and inefficient public service delivery system. The relationship between the input side and the output side is not efficient because the anti-corruption agencies fail

to fulfill their mandates. These outputs have generated both short-term and long-term outcomes. Short-term outcomes include negative opinions of the government as a whole. That is, the public now doubts the government because its activities are not transparent and accompanied by an increase in red tape. Furthermore, the public are so frustrated with the corruption in Nepal that it lowers their belief on the government and the political system. Long-term outputs are low economic growth, bad governance, and political illegitimacy. Therefore, cost effectiveness is negative between input and outcomes. The anti-corruption intervention is less utilized or unsustainable because the political environment of the country has not improved. These outcomes hamper the environment of Nepal by making the state unstable. In addition, the condition of Nepal is worsening as the gap between the poor and rich is widening, which makes it difficult for the public, especially the poor, to live in Nepal.

Figure 1. Performance: A conceptual framework of Nepal



Source: Modified by the authors from Pollitt and Bouckaert (2011).

V. Discussion and Conclusion

It is no surprise that anti-corruption reforms fail in Nepal because the Nepalese have seen much government failure since the restoration of democracy there in 1990. Corruption grows due to the failure of government. The political scenario is disappointing in Nepal as the political parties outside the government work very hard to get into the government and dissolve the incumbent government. Once politicians obtain power, their priority is to secure their own benefits, disregarding the good governance system. This vicious cycle is repeated after almost every change of government in Nepal. Politicians and top bureaucrats maintain such claims through their actions, and they are the most corrupt people in Nepal.¹²⁾

The *Republic Daily*, one of the national newspapers of Nepal, published an article titled “Why government fails” on February 16, 2016. One paragraph of this news story goes like this:

Former Chief Secretary of Government of Nepal, Leelamani Paudyal claims that the first thing politicians do while in power is to secure their future through foul means. They take undue advantage of their position. However, for him, bureaucracy is a sacrificial lamb of political malfunctioning. If bureaucrats do not work as politicians wish, they are rendered bhumikabihin (role-less), Paudyal explained. Why do bureaucrats not assert themselves and resist political pressure? Some of them do, Paudyal argues, but the problem starts right there when they confront many interest groups. Ultimately, assertive bureaucrats are either sidelined or demoted.

This study reveals that the anti-corruption reform fails in Nepal due to the collective action problem and partly due to the principal - agent problem. Persson et al. (2013: 463) argue that the overall failure of anticorruption reforms in highly corrupt countries can at least partly be understood as a consequence of that the problem of corruption in such contexts primarily resembles a collective action problem.

From the perspective of the principal - agent problem, Nepal's anti-corruption reform fails partly because agents have more information than the principals, which results in an information asymmetry between the two groups of actors. The first assumption of the principal - agent problem does not explain the failure of anti-corruption reform, as agents who are in government positions and political leaders create the anti-corruption

12) <http://admin.myrepublica.com/opinion/story/37052/why-governments-fail.html#sthash.8PNImLbt.dpuf>

framework, and the principal has no role in making those frameworks. The clearer explanation of this assumption is the recent decision of the Government of Nepal. The Government of Nepal is considering introducing a comprehensive anti-corruption National Public Integrity Policy to promote good governance in public offices, the private sector, and non-governmental organizations.¹³⁾ The two cases discussed above prove that the failure of anti-corruption reform in Nepal is also due to the collective action problem because Nepal has a strong anti-corruption legal provision and various anti-corruption agencies. However, they fail to implement and turn those provisions into practice, creating more opportunities for more corrupt behavior and incentives, and both principals and agents participate in corrupt behavior (Rothstein and Teorell, 2013). Figure 2 provides the clear picture of the failure of anti-corruption reform in Nepal.

The number of organizations, reports, academic journals, and conferences has suggested a wide range of policies and rules of law to fight corruption. Transparency International suggested three guiding principles to fight corruption: building partnerships, proceeding step-by-step, and staying non-confrontational.¹⁴⁾ UNDP (2004: 8) recommended a five-pronged anti-corruption reform strategy: (1) prevention, (2) enforcement, (3) public participation, and coalition building, (4) strengthening national integrity institutions, and (5) working with the international community. Langseth (1999:1) recommended economic and social progress, the rule of law under good governance, democratic values, and a strong civil society as some of the basic prerequisites to building the national integrity system to sustain the fight against corruption in various forms and at various levels. In the course of tackling anti-corruption reform in developing countries, a number of reform methods and strategies are available.

Corruption in developing countries cannot be eliminated simply applying anti-corruption strategies that work in developed countries. Developing countries should adopt anti-corruption policy implications that fit into their circumstances (Hana et al., 2011). Hana and her associates (2011) suggest the following recommendations: (1) combining monitoring and incentive policies that must align with all involved parties' incentives and local-specific market structures; (2) policy to punish corruption by the community; using the media for anti-corruption campaigns; (3) decentralization policy that can hold decision-makers and service providers accountable by the program

13) <http://kathmandupost.ekantipur.com/news/2016-11-27/broad-anti-graft-policy-in-the-making.html>

14) <http://www.transparency.org/what-is-corruption#fight-corruption>

recipient; and (4) provision of providing training and supervision and support implementation by locally trusted non-governmental organizations. Furthermore, the utilization of electronic government innovations (i.e., e-procurement, e-tax service, and others) that are difficult to be tampered with by humans in the government system can also help to minimize corruption in developing countries.

Accordingly, key problems in anti-corruption reforms are not about reform strategies or methods. Instead, a major problem or frustration is about a political will of the government or a lack of governability in the country. That is why Quah (2007: 73) emphasize the following preconditions. Anti-corruption agencies must: (1) be independent from the police and from political control; (2) be incorruptible; (3) be adequately staffed and funded; (4) be committed to curbing corruption in their countries; (5) have comprehensive anti-corruption legislation; and (6) enforce the anti-corruption laws impartially with a strong political will. Persson et al. (2013: 466) called for the factors to be identified that explain why some countries have been able to successfully establish institutions that benefit the larger society, while others seem to be more or less stuck with thoroughly corrupt systems of rule. In other words, it is clear that Nepal needs to have an independent and incorruptible anti-corruption agency with a strong political support from the public and political circle.

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투고일자 : 2017. 02. 23

수정일자 : 2017. 03. 30

게재일자 : 2017. 03. 31

<Abstract>

Tackling a Hard Reform Agenda in Developing Countries:
The Case of Anti-Corruption Reforms in Nepal

Prabin Maharjan · Kim, Pan Suk

Corruption is one of the major obstacles in eradicating severe poverty, promoting good governance, and accomplishing the Sustainable Development Goals set by the United Nations, especially in developing countries. Even though almost every nation has established some anti-corruption legal provisions and agencies along with anti-corruption reform measures, they have not been effective in eradicating corruption and promoting good governance. Nepal is no exception in this matter. Past attempts to tackle corruption have been ineffective, and corruption is widespread and continuously increasing in Nepal. The objective of this study is to analyze the anti-corruption reforms in Nepal and thereby draw lessons for the future. Raising the main question of why anti-corruption reforms fail in Nepal, various anti-corruption policies and agencies are discussed to answer the research question. In addition, the performance of the Commission for the Investigation of Abuse of Authority (CIAA) is analyzed for an overview of anti-corruption practice in Nepal as well as its failure in tackling corruption there.

Key words: corruption, reforms, anti-corruption, Nepal, anti-corruption reforms, governance