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Master's Thesis

Master's Degree in International Studies(International Area Studies)

**Effectiveness and Challenges of Anti-corruption  
Agency (CIAA) Nepal, Lessons Learned from  
Korean Anti-corruption Agency (ACRC)**  
*(A comparative study)*

**August, 2015**

Master in International Studies(International Area Studies)

Graduate School of International Studies

Seoul National University

**Govinda Prasad Ghimire**



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Agency (CIAA) Nepal, Lessons Learned from  
Korean Anti-corruption Agency (ACRC)**  
*(A comparative study)*

A thesis presented

By

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To

The Department of International Development Policy  
In partial fulfilment of the requirements for the Degree of  
Master of International Studies(International Area Studies)

**Graduate School of International Studies**

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Graduate School of International Studies

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## THESIS ACCEPTANCE CERTIFICATE

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**‘Effectiveness and Challenges of Anti-Corruption Agency  
(CIAA) Nepal, Lessons Learned From Korean  
Anticorruption Agency (ACRC) (*A comparative study*)’**

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## ABSTRACT

This research paper is a comparative study of different dimensions of anticorruption measure and strategy between Nepal and Korea. According to various indicators, regarding corruption, governance and socio-economy, produced by different international organizations, Nepal's status seems very critical. These indicators clearly show the picture of integrity, transparency and application of rule of law, which are very weak and vulnerable in Nepal. In the other hand, even though Korea, still, is not recognized as a fully clean country regarding application of rule of law, transparency and integrity, she has made a remarkable progress on this issue and far ahead compared to Nepal. Regarding corruption control she is relatively successful and therefore, of course, there are many lessons to be learnt from the experience of anti-corruption movement of Korea. This research is focused on implementation part of anti-corruption policy, laws, strategies, action plans and its frameworks in a comparative manner and analysing these finally try to find its strength, weakness, opportunity and threats or challenges. And also this research analyse the commonalities and differences between the two countries' anticorruption measures and finally concludes with some key suggestions on how to strengthen the Nepalese anti-corruption movement, to consolidate rule of law, to encourage integrity and build transparency.

**Key words:** Corruption, anti-corruption, Commission for the Investigation of Abuse of Authority, Anti-corruption and Civil Rights Commission, Nepal, Korea, anti-corruption agencies.

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## **ABBREVIATIONS AND ACRONYMS**

ACA	Anti-corruption agency
ACRC	Anti-corruption and Civil Rights Commission
ACRC Act	Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission
CIAA	Commission for the Investigation of Abuse of Authority
CPAA	Commission for the Prevention of Abuse of Authority
CPI	Corruption Perception Index
DFID	Department for International Development
DSP	Department of Special Police
GoN	Government of Nepal
HRD	Human resource development
IAPO	Integrity Assessment of Public Organizations
OECD	Organization for Economic Cooperation and Development
PO	Public Organization
POCA	Prevention of Corruption Act
PPP	Public Private Partnership
TI	Transparency International
UNDP	United Nations Development Programme
WB	World Bank

## CHAPTER ONE

### 1. INTRODUCTION

#### 1.1. Purpose and Background of the Study

Corruption is widespread and pervasive in developing countries than in the developed countries (Todaro and smith, 2011). It is multi-dimensional in nature and often occurs at the nexus of different actors and sectors. Byrne (2009) says that after being able to define what something is and its type and nature, then we can prevent it. So the big challenge is to diagnose it than to cure. Corruption leads to poor governance and poor governance survives in corruption which is pervasive in Nepal (Dhakal and Nirola, 2009). It is also prevalent in Korea too. Now the question raises that why the Korean ACA seems more effective and efficient but the Nepalese ACA is far behind? Why Korea is less corrupt and Nepal is more corrupt nation? How and what kinds anti-corruption measures they are applying? Is the legal ground and source of power is weak for Nepalese ACA compare to its Korean counterpart? Etc.

‘I can say it without hesitation that corruption is rampant at top political and bureaucratic levels and this is the most serious problem at present’. (Speech at Anti-Corruption Day, December 2012, P M Baburam Bhattarai - quoted in DFID’s *Anti-Corruption Strategy for Nepal* January 2013). "People have been arrested for minor acts of corruption while those involved in major corruption aren’t touched" Sushil Koirala, current prime minister - quoted by *My Republica daily* Published on Wednesday 15th October 2014, Kathmandu. From these quotes expressed by the then incumbent and current prime minister, we can get the general glances and the pervasiveness of corruption and effectiveness of anti-corruption agency in Nepal. In this study I will try to explore and to shed light on the strength, weakness, opportunities, threats and challenges of Nepali anti-corruption agency (ACA), Commission for the

Investigation of Abuse of Authority (CIAA) in compare to Anti-corruption and Civil Rights Commission (ACRC), the Korean anticorruption agency, in a general perspective. So, mainly this work is a comparative study of the two ACAs in order to draw lessons from relatively successful Korean anti-corruption history.

Corruption is in existence since the emergence of human civilization so it is as ancient as government (Mousavi and Pourkiani, 2013). For example, in Indian sub-continent, Tummala (2009) quotes Kautilya, a very famous Indian politician and economist in his work, we can see the pervasiveness of corruption even before 2300 years ago as:

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king’s revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).”

It proves, if there is state there is also an existence of corruption. It cannot be separated completely from the government as well as from the entire society. So the issue is how to minimize it rather than mitigate. According to Tummala (2009), the main difficulties to control corruption are inadequate and inefficient enforcement mechanisms, lack of political will, and more importantly the cultural context of social tolerance and easy forgiveness. These kinds of difficulties exist in most of the countries in the world. However, its type, depth and scale differ from country by country and by economic structure and the level of development. I think social values determine the level of corruption and also corruption, if its strength is high, can change the social value in its favour. As Mousavi and Pourkiani (2013) believe that corruption undermines beliefs and moral values in the society, increases costs of implementing projects and hampers the growth of

competitiveness. Nowadays, administrative and financial corruption poses a challenge to the international community. Afzali, (2011) supports the view and adds furthermore that corruption can undermine the rule of law, hamper development and cripple a nation's economy, and lead to other various threats to national security such as extra-national crimes. Corruption in Nepal has a long history, so it is also a historically transferred problem. For example, Prithvi Narayan Shah, the nation builder, has said in his Divyopadesh that 'Don't allow them (soldiers and peasants) to play favourites and seek bribes, but let them be loyal. ...Money collected in the courts must never be used for the palace...' (Stiller, 1989). "Both the giver and taker of the bribe is the enemy of the country"(Khanal et.al, 2007). It clearly shows the seriousness of corruption even in that period. Devendra Raj Pandey claims and puts that "There is no doubt that corruption is the main problem in Nepal" (Panday, 2005). DFID, (2009) identifies fraud and corruption as the key risks in Nepal and says corruption has been "endemic in Nepal for decades". Professor Moore also supports this fact and says "I have rarely seen as corrupt a country as Nepal". So historically, the seriousness of corruption in Nepal is accepted as a general truth. Panday, ([www.tinepal.org](http://www.tinepal.org)) further explores the depth of corruption in Nepal: 'Corruption is an old scourge in Nepal as anywhere else. *It poses a complex challenge to its people and their leaders*'. Corruption in any society is relative and is defined according to the value system of that society (Mousavi and Pourkiani, 2013).

Nepal is an agrarian country. More than 80% people belong to agriculture and the share of agriculture in Gross Domestic Product (GDP) is roughly 36%. According to Central Bureau of Statistics 2012 data 25.16% people are under poverty line and inequality measure, Gini Coefficient, is 0.328. By contrast, Korea is a newly industrialized country. Only less than 7% people belong to agriculture and the share of agriculture in Gross Domestic Product (GDP) is

roughly 2.6% (2012). 7.6% people are under poverty line and inequality measure, Gini Coefficient, is 41.9 and rank is 51st. Korea is one of the industrialized countries that still are struggling with the problem of corruption. Therefore, the nature of corruption differs in the two countries according as a very small agro economy Nepal and world's 11th largest industrial economy Korea. Nepal has long been ranked by corruption watchdogs such as Transparency International (TI) as one of the world's most corrupt countries. However, regarding Korea, still she is not recognized as least corrupt country but relatively it is far clean compare to Nepal.

**Table 1:** General statistics about Nepal and Korea

Indicator	Nepal	Korea	Indicator	Nep.	Kor.	Indicator	Nep.	Kor.
Population	26,494,504	50.22 Million (2013)	GDP per capita	\$ 735	\$25920 2013	Gini coefficient	0.328	0.419 (2011)
Literacy rate	65.9%	99%	Poverty HCR %	25.16 2012	7.6 1993	Corruption (CPI) 2013	31 (116/177)	55 46/177
Religious domination	81.3% Hindu	Buddhist Christian No	Unemployment	2.8% 2012	3.2% 2012	Salary and wage index	254.4	

Source: Central Bureau of statistics, Nepal 2011; TI, 2011; WB data for Korea 2012, 2013

**Table 2:** Nepal-Korea-other countries, position regarding corruption: year 2013

Relatively less corrupted			Relatively corrupted countries			SAARC countries		
Country	Rank / 177	Score / 100	Country	Rank / 177	Score / 100	Country	Rank / 177	Score / 100
Denmark	1	91	Somalia	175	08	Bhutan	31	93
New Zealand	1	91	N. Korea	175	08	Sri Lanka	91	37
Finland	3	89	Afghanista	175	08	India	94	36
Sweden	3	89	Sudan	174	11	<b>Nepal</b>	<b>116</b>	<b>31</b>
Norway	5	86	S. Sudan	173	14	Pakistan	127	28
Singapore	5	86	Libya	172	15	Banglades	136	27
Switzerlan	7	85	Iraq	171	16	<b>Korea</b>	<b>46</b>	<b>55</b>

Source: TI web site: <http://cpi.transparency.org>

Nepal is a multicultural, multi-ethnic, multilingual and multireligious nation. The reflection of these social grounds falls differently on corruption behaviour accordingly because of their different level of education, economic standard and level of perception. Therefore even within Nepal the policy, strategy and tools against corruption should be different according as the shape and effect of social structure over the offender. Prevention of corruption is taken as an obligation of the state by constitution: ‘To pursue a policy of taking severe action and punishing anyone who earns illicit wealth through corruption while holding a public office of profit.’ By constitution corruption control is in high priority, Commission for the Investigation of Abuse of Authority (CIAA), is founded on the legal ground of constitution. Still there is not enough ground to claim that CIAA is doing its best, rather it is doing its average performance.

**Table 3:** Corruption perception index and rank of last ten years

Year	CPI: score, rank				Control of corruption index	
	Nepal		Korea		Nepal	Korea
2004	2.8/10,	90/146	4.5/10,	47/146	22.0	
2005	2.5/10,	117/159	5.0/10,	40/139	32.2	
2006	2.5/10,	121/163	5.1/10,	42/163	30.2	
2007	2.5/10,	131/180	5.1/10,	43/180	25.2	
2008	2.7/10,	121/180	5.6/10,	40/180	26.2	
2009	2.3/10,	143/180	5.5/10,	39/180	28.7	
2010	2.2/10,	146/178	5.4/10,	39/178	30.0	69
2011	2.2/10,	154/183	5.4/10,	43/183	23.7	
2012	2.7/100,	139/176	5.6/100,	45/176	23.4	
2013	3.1/100,	116/177	4.6/100,	55/177		

Source: transparency international reports

Over its 23 years of history 2/3rd period for Nepal was transitional, CIAA faced many problems, the working environment was not comfortable enough and such conditions affected anti-corruption movement harshly and ultimately weakened CIAA and corruption rooted as a big challenge against economic and social development of the nation. So she puts it as:

‘Corruption is a social evil having pervasive nature. It is prevalent in various forms and dimensions. It has been deeply rooted in society as a ‘convention’, ‘tradition’, ‘psychological need’ and ‘necessity’ with a regular practice not only in

public service, but also in business transaction and other kinds of dealings as well. All strata of the society have been adversely affected by corruption. Corruption is also the issue of governance and effective management. Corruption control is the most urgent and imperative task to be accomplished in Nepal to establish a fair and transparent governance system' (CIAA, 2013).

**Table 4:** List of State-Level Anti-Corruption Agencies (ACA) in Nepal

<b>s.n.</b>	<b>ACAs</b>	<b>Type</b>	<b>Major Focus</b>
1	Commission for the Investigation of Abuse of Authority	Constitutional body	Investigation & prosecution of cases of corruption & improper conduct
2	National Vigilance Centre (NVC)	Prime Minister's Office	Awareness raising and corruption prevention
3	Special Court	Judiciary	Adjudication of corruption cases
4	Office of Attorney General	Constitutional	Public prosecutor
5	Judicial Council	Constitutional	Combating corruption in judiciary
6.	Revenue Investigation Department	Ministry of Finance	Detection of revenue leakage
7	Independent Review Committee	Under Public Procurement Act	Corruption related to public procurement over Rs30 million.
8	Central Arrear Collection Office	Finance Ministry	Collection of government dues and arrears
9	Parliamentary Committees	Parliament	Parliament oversight agencies
10	Office of Auditor General	Constitutional	Auditing of books of accounts
11	Offices of Regional Administrator (5 offices) Chief District Officer (75)	Home Ministry	Handling regional & district-level corruption cases remaining within the authorities delegated by CIAA
12	Office of Financial Comptroller	Finance Ministry	Government budgetary control

Source: Tek Nath Dhakal, Ratna Raj Nirola, Prevalence of Corruption and its Challenge for Improving Governance in Nepal, (2008). (Contents are simply modified)

Nepal has established various ACAs. Among them CIAA is the prominent ACA which has the right to conduct inquiries into, and investigations of, any abuse of authority committed, through improper conduct or corruption by any public officials. The CIAA is an apex constitutional body to curb corruption in the country. If the CIAA finds, upon inquiry and investigation regard to improper conduct, departmental action shall be taken, while in the case of corruption it files the case in the Special Court. The CIAA has the authority to suggest the government for improving or revisiting the existing policies, legal provisions, which help to curb corruption and contribute towards good governance. A special court is established to hear the cases which CIAA files



for adjudication. According to Dhakal and Nirola, (2008) ‘Nepal government, however, has made efforts to control corruption by creating various (*anti-corruption*) institutions (*working directly and indirectly*) and producing related legal instruments but still prevalence of corruption has been increasing’ and the interesting thing they found is economic, social, legal, and political factor are acting as major contributors for corruption.

Korea is a developed OECD country and a young democracy with a relatively effective governance structure. It is often described as a very successful case of state-led economic development and praised for the successful transition from an authoritarian “developmental state” to a consolidated democracy since the 1980s. ... Despite the substantial improvements in transparency, democratic accountability and prevention of corruption, many problems remain (Kalinowski and Kim, 2013). Corruption is increasingly acknowledged as a major problem in Korea so; it still has a long way to go in order to become a clean society with a fully accountable governance structure that is free of the abuse of power (Ibid). Talking on the historical perspective, the regime of then presidents Syngman Ree (1948-1960) and Park Chung-hee (1961-1979) was also regarded as corrupt regime (Amsden, 1989). But the Park regime was mainly ‘economic development friendly’. According to Wedman (1997) during authoritarian regime the type of corruption was functional for economic development. Therefore, even with existence of corruption the economic development at that period (1961-1987) was faster and sharp. Kang (2002) classify the corruption history of Korea as: ‘predatory’ during 1948-1960, ‘mutual hostage’ during 1961-1987 and ‘rent-seeking’ type after (1987) democratization. Even though, there had been several anti-corruption efforts over the second half of the 20th century, but still corruption in Korea remains as a big challenge for the nation because its forms, dimensions and technics are changed simultaneously with economic

and technological development of the nation. The then governments established different ACAs according to their ideology to fight corruption but big and big corruption scandals repeatedly occurred by the higher levels or VIPs.

The Korea Independent Commission Against Corruption (KICAC) was established on 25 January 2002, under the Anti-Corruption Act of Korea, to prevent corruption and promote transparency in Korean society. Its main tasks were to produce anti-corruption policies, to conduct preventive measures such as institutional improvement and educational programs, to detect corruption by investigative processes and receiving complaints from the public. By that time ACAs were fragmented into three different organizations: the Ombudsman of Korea, KICAC, and Administrative Appeals Commission. The Anti-Corruption & Civil Rights Commission (ACRC) is the prominent ACA which was established on February 29, 2008 by integrating the aforesaid three different anti-corruption bodies to provide convenient and efficient public service, resolve people's grievances, and spread a culture of integrity throughout the society to create a more advanced country where civil rights are fully respected and the rule of law is established. Its main functions are handling public complaints, adjudicating administrative appeals, fighting corruption, and improving unreasonable legal and institutional frameworks and systems, in order to build a clean society and protect people's rights through the administrative appeals system. The ACRC is founded on the legal ground of Act on Anti-Corruption and the Establishment and Operation of the ACRC (Act No. 8878) (ACRC Act). According ACRC Act article 1, ACRC is a means to attain the purpose of protection of people's basic rights and interests, secure administrative validity, and create a transparent public service and society by handling people's complaints and grievances,

improving unreasonable administrative systems, and preventing and efficiently regulating corruption.

## 1.2. Statement and Significance of the Problem

Over many years, various research have explored about depth, trends, cause and consequences and many other dimensions of corruption, basically in developing countries. The findings of these researches are mixed and the results vary by country. Why Nepalese ACA's efforts are relatively less effective than Korean? What are weakness, threats and impediments to effectively curb corruption in Nepal? To find the answer of these questions is very important in order to find the way of proper solution

**Table 5:** Complaint Handling and Performance of Nepalese and Korean ACAs

Year	Total Complaints		Resolved Complaints		Resolved %	
	Nepal	Korea	Nepal	Korea	Nepal	Korea
2008/09	4149	29572	3303	27461	79.60	92.86
2009/10	4295	31019	3067	30472	71.40	98.13
2010/11	6154	28058	3904	28923	63.43	103.08
2011/12	8839	25317	5466	24987	61.83	98.69
2012/13	11298	25571	6672	24405	59.05	95.44

Source: annual reports of CIAA, Nepal and ACRC, Korea- 2013

The number of complaints against corruption, in Nepal, is increasing sharply but the handling of these complaints is not increased enough, so public trust and image of and hope towards Nepalese ACA are not that much deep. Why this happen? Of course, it is because of its poor output or poor efficiency. In Korea, we see the much clearer picture of its performance. Nepal is a least developed country, and by definition, poor. The state and society both have to cope with available enormous natural resources on the one hand and socio-economic and political pressures, for example, instability, on the other hand. The wide income inequality and the condition of extreme poverty prove the significance to the prevalence of corruption. Even after restoration of democracy in 1991, because of political instability, condition was very

challenging for the nation. Therefore, the major efforts of the country were deviated towards other contemporary issues like politics. So corruption control was neither been seriously assimilated issue and therefore, nor the issue of priority for the state, willingly or unwillingly. Unless it established as an emergence issue for a nation the efforts of other institutions are more likely to be unsuccessful. That is why this research is a small effort which will, I hope, contribute to fill the gap remained between the state's anti-corruption initiations, corruption issue and non-state stakeholders and it opens the windows to see further over its various contemporary dimensions.

In Nepal there were two major anti-corruption agencies before 1991, Commission for the Prevention of Abuse of Authority (CPAA) and Department of Special Police (DSP). Among them the constitutional body, CPAA, was rather less active than the DSP, a dependent body under Home Ministry. But regarding rights CPAA was more powerful than DSP by law. CIAA was established after restoration of democracy in 1991 and over the beginning ten years it was not that active and effective in corruption control. After major amendment in CIAA Act and introduction of new Corruption Prevention Act in 2001, CIAA became more equipped and active as well. As a result the trend to file complaint against corrupt acts increased dramatically. Before 2001 usually most of the corruption cases didn't come to know in public. Therefore it was very difficult to presume the actual trend, figure, cause and effect of corruption. In academic circle also, in Nepal, corruption was taken as a less important issue and was not given that influential priority to control it. After 1991 the nation trapped in another armed conflict and the state devoted most of the time and its efforts to solve that political conflict. Therefore, the state couldn't pay sufficient attention toward corruption control and even this serious issue remained in low priority in practice. Thus because of political deadlock any action taken by the state against it couldn't produce

remarkable result. These political and social instability and economic poverty led toward legal and political gap and as a result, corruption emerged as a challenge against the stability and prosperity of the nation. Todaro and Smith, (2011) believe that development is directly associated with its elimination.

The prominent economists further put:

‘... Finally the effects of corruption fall disproportionately on the poor and a major restraint on their ability to escape from poverty. ... While the rich may pay large bribes under corrupt regimes, the poor generally pay much larger fraction of their incomes in bribes and other forms of extortion. In other corruption may be viewed as a regressive tax on the absolutely poor.’ (Todaro and Smith 2011)

Corruption primarily occurs due to weakness of an organization or its process. Scholars point out conflict of interest, monopoly of power, discretionary power, lack of transparency, impunity and low pay (Quah, 1987) induces people towards corruption. The causes, consequences and effects of corruption, and combat against it are the major issues that are increasingly remaining as the national and international agendas of policymakers and politicians as well. TI puts corruption as one of the greatest challenges of the contemporary world and defines it as: use of public office for private gain. So it can affect good governance, distort public policy, lead toward misuse and misallocation of resources and ultimately hurts the people who are poor. In recent decades, it has grown both in terms of geographic extent and intensity (TI, 2014). Corruption can be classified into petty and grand, petty corruption is known as a small scale corruption, usually occurs while implementing policy and directly related to day to day work of general people and is usual in lower level employees in developing countries. Grand corruption is mainly originates from power and it is more likely to be occurred when higher level power exercise is happening in top bureaucratic and political leadership level to making new or changing existing policy. This kind of corruption

commonly, is believed, occurs in dictatorial regime or in transitional state, like Nepal and even in developed countries as well. In the second type, they use and utilize policy and legal loophole, and mainly form new law and policy to make the private gain more comfortable and legal. So, this type of corruption is more serious in modern world and therefore, Nepal is vulnerable and in the prone zone of both petty and grand corruption. Therefore it is a critical issue for Nepal. It is very difficult to find the remarkable number of study and academic researches and investigations conducted on the topic corruption and the effectiveness and efficiency of anti-corruption measures applied in case of Nepal. A few international non-governmental organizations (INGOs) and some donor agencies have done such study and researches. Therefore, the real and actual picture and status of the nation, in terms of corruption, effectiveness of anti-corruption efforts and its different dimensions, is still unclear and ambiguous in a sense. So there are too many indistinctness, unclarity, difficulties and dilemmas in practice and principles as well to take proper action against it. After the comparative study of relatively more successful Korean ACA and its measures, of course, we can produce some key ideas and get some useful knowledge applicable even to Nepalese context because Korea may be a very interesting setting for comparative study with Nepalese ACA. This research, I think therefore, will make a tiny effort to explore some of the hidden facts and impediments of curbing corruption, so that the state can take proper action against it, to consolidate the younger democracy and to achieve economic prosperity in Nepal.

### **1.3. Literature Review**

Corruption assessment handbook, (2006 draft final report) published by USAID has categorized corruption dynamics into four major syndromes.

*Mature state corruption syndrome* is familiar to the countries where democracy is well settled and political and economic institutions are relatively strong. Countries in *Elite Network–State Corruption syndrome* usually have moderately strong institutions and reforming democracies and markets. Countries in *Weak Transitional States Corruption syndrome* have weak institutions, transitional democracies, and new market growth away from an informal economy. And finally Countries in *Weak Undemocratic States Corruption syndrome* typically have weak institutions, undemocratic regimes, and new market growth away from an informal economy. Basing on this

### **Box 1: Corruption Dynamics**

***Elite Network-State Corruption*** involves extended networks linking diverse elites who share a strong stake in the status quo and in resisting political and economic competitors. Such competition, in most cases, is intensifying at least gradually. Elites in the cartel may include politicians, party leaders, bureaucrats, media owners, military officers and business people—in both private and, often, parastatal sectors—in various combinations. Corruption will be moderate to extensive, but tightly controlled from above, with the spoils shared among (and binding together) members of the elite network. Leaders of nominally competing political parties may share corrupt benefits, and power, among themselves, again as a way of seeing off competitors. Elite cartel systems are often marked by ineffective legislatures, extensive state power (legal or otherwise) in the economy, politicization of development policy and banking, and a process of mutual “colonization” among business, political parties, and the bureaucracy. Elite Networks corruption underwrites a kind of de facto political stability and policy predictability, partially compensating for moderately weak official institutions; international investors may find the situation tolerable or even attractive. Elite Networks may be an attractive alternative to more disruptive kinds of corruption in the short to middle term, but it delays democratization and/or the growth of genuine political competition, while the shared interests of interlinked elites may make for inflexible policy and reduced adaptation, over the longer term. Elite Network corruption often features large and complex corrupt deals, frequently marked more by collusion than outright theft or violence, orchestrated from above, and closed to outsider elites.

***Weak Undemocratic States Corruption*** involves corrupt figures whose influence depends upon their ability to put state power to personal use, or upon the personal favor of top figures in a regime. Unlike *Mature States Corruption*, where wealth intrudes into state functions, this syndrome uses state power to intrude into the economy, including incoming flows of aid and investment. The exact extent of this corruption syndrome often depends upon the personalities and agendas of top leaders; some may be completely venal while others pursue more enlightened policies. Family networks may be particularly powerful in this syndrome. Where this type of syndrome is extensive, top political figures may form alliances with favored business interests or may colonize those interests on behalf of themselves and their friends. In smaller societies such networks may be relatively simple and tightly-focused upon top figures, family members, and personal favorites. In more complex countries, however, such networks may be more decentralized along sectoral or geographic lines, particularly where economies are changing, and creating new opportunities, at a faster pace than state institutions can manage. While some political liberalization may be in progress, countervailing political forces remain weak, both facilitating this syndrome of corruption and making opposition to corruption, and to the regime, potentially risky. Serious corruption in this syndrome can be extremely unpredictable, and can exact major costs in terms of democratization and open, orderly economic development.

Source: Corruption assessment handbook, (2006 draft final report) published by USAID categorization this report has placed Nepal in the Weak Undemocratic States Corruption syndrome and Korea is placed in Elite Network–State Corruption syndrome which contains far better condition regarding corruption in compare to the first category.

According to Jalilkhani, (2011) and Nosrati, (2011) relation between appropriate use of power and corruption is inversely proporsnal. For example, in transitional period, the political condition is unstable so usually the government is also unstable. The term of the government will not be fixed and the government cannot get full support of other political competitors so it cannot enjoy the full power, therefore corrupt behaviour may increase in such conditions, also ACAs cannot get sustainable political support, hence cannot work properly and vice versa. This fact is relevant to the both countries. The causes and effects of and the strategy to combat corruption, are the hottest issues that are increasingly being discussed on the national and international level forum between politicians, policymakers, sociologists, civil society and even general peoples. Gunnar Myrdal (1968) stresses that ‘the state in South Asia is even more soft than it was in the Western world at the time when the countries there began to develop rapidly. When the state becomes unnecessarily soft social and economic discipline is likely to be broken’ which affect effectiveness and efficiency of ACA directly. There is high probability of such state of affairs in developing countries like Nepal. Jon S.T. Quah (1987) claims presenting the experiences of combatting corruption of Hong-Kong and Singapore that it is possible to minimize or reduce the level of corruption in a country through the implementation of effective anti-corruption measures which are supported by the political leadership. In this regard the ACAs can convince the state and the political leadership itself, may



take initiation to produce anti-corruption strategies and measures with its active initiation that help fighting corruption.

The level of corruption in a country depends on strength and effectiveness of anticorruption measures because it is a relative term and the political elites behave according to the degree of strength and effectiveness of legal system. As Jain, (2001) explains: Reduced resources will make difficult for the legal system to combat corruption, thus allowing corruption to spread even more. Andvig and Moene (1990) agree with the aforesaid argument and further argue that the relative attractiveness of corruption for bureaucrats depends on the effectiveness of the legal system, and more specifically, the probability of being detected and being punished. Therefore the main actors in any society, crucial for corruption, are the political actors, bureaucratic actors and elites. Dickson et.al. (2001) claim that the ‘influence of individuals and that of organization over corruption have drastically different nature.’ I think organization itself may not be corrupt but the corrupt behaviour of the individuals can damage its credibility and it looks like a corrupt organization. Quah (1999) agree with the fact that the correct diagnosis of the nature, depth and strength of corruption is crucial to control it. He says: ‘the extent of corruption in Asian (and other) countries depend on two factors: (1) the nature of the causes of corruption in these countries; and (2) the degree of effectiveness of the measures initiated by political leaders to combat corruption.’ He explains anti-corruption strategies in a different matrix that depends on commitment of political leadership and anticorruption measures applied, simultaneously. If the commitment of political leadership is strong and anti-corruption measures applied are adequate that means the anti-corruption strategy is effective.

**A Matrix of Anti-corruption Strategies**

		Anticorruption Measure	
Commitment of		Adequate	Inadequate

political leadership	Strong	Effective strategy	Ineffective strategy 2
	Weak	Ineffective strategy 1	"Hopeless" state

Source: Quah, 1999, p. 485

If the commitment of political leadership is weak and still anti-corruption measures applied are adequate that means the anti-corruption strategy is ineffective 1. And so on. There can be several such combinations of the matrix of anti-corruption strategies. Now we can compare the two countries Korea and Nepal according as the matrix above. For example Hong-Kong and Singapore lies on the effective strategy zone, and Korea? Quah (1999) claims that Korea lies in the third cell (ineffective strategy 1) but I cannot be agreed with his claim because, yes, Korea, yet is not less corrupt country but in my view it is far upper than average which is clearly reflected on CPI rating. Its political commitment is strong and anticorruption measures are inclined toward adequate but still not adequate and not perfectly effective. So it lies on the upper transitional phase and similarly, Nepal in the lower transitional phase. Quah, (1987) quotes Joseph S. Nye's definition of corruption: "...behaviour which deviates from the normal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gain; or violates rules against the exercise of certain types of private regarding influence" which seems more relevant to chaebol-controlled Korean economy. Risk of detection is one of the major critical factors of corrupt act. It differs from society by society and also by type of agency. According to Quah (1987), in Singapore corruption regardless of the type of agency is as a high-risk and low-reward affair, in Hong Kong it is a low-risk affair in revenue spending agencies, but high risk for police officers, especially after the formation of the ICAC. He accepts this fact but his stress is concentrated only over monetary and other material aspect. But for effective prevention of corruption public awareness and the role of civil society are crucial which the moral backup are for ACAs and Korea is recently doing better in this regard.

Uphoff (2005) describes corruption in a different way he says: It is appropriate to view corruption as more than an individual matter, and not just a matter of breaking the law. It is embedded in economic, social, political, and cultural relationships so ACAs must consider such issues. Regarding causes of corruption, You and Khagram (2005) argue that income inequality increases the level of corruption. The wealthy have greater ability to engage in corruption, and their incentives for buying political influence increases as redistributive pressures grow with inequality. Also they can use the earning from corrupt act for their protection from legal action. They can buy corrupt - investigator or prosecutor or police or even judge with that wealth earned from corrupt act to make decisions on their favour. In the Philippines and South Korea, the 1997 financial crisis finally brought corruption into surface and put it in focus. It proves that corruption was coexisted with economic development before financial crisis in these countries. Corruption, by that time, also strengthened the political dominance of state elites: the executive, military, bureaucracy and security services. So it is clear that the ACA by that authoritative and infant democratic era was not indifferent, efficient and effective. Moran (1999) analyses the pervasiveness of corruption and non-functioning condition of ACA in Korea. He further puts the situation as:

‘Economic growth and foreign capital in the 1960s created a virtuous circle in which corruption played a lubricating role. ... Following democratization, corruption persisted as an important political and economic exchange mechanism between state elites and business. President Kim Young Sam attempted a genuine anti-corruption programme which focused on the armed forces, the bureaucracy and the political establishment. The Kim administration's reforms can be regarded as successful in that they inaugurated important legislative initiatives laid the groundwork for future reforms.’ (Moran 1999)

He describes the variables state ideology, state-society relations, state-business relations and the effect of international linkages as the coordinates of

corruption which provide a dynamic which shapes the context for current reform. When political parties criminalize politics and politicize crime, finally it helps to foster corrupt act and law maker become law breaker and also law breaker become law maker and the state remains in its vicious circle. Of course corruption, fundamentally, is a consequence of moral and social dysfunctionings. It is also related to ethical aspect of human beings, historical aspects and socio-cultural aspect as well. But its economic aspect is another most powerful one which mainly guides the person towards or against it. Corruption is a product of the combination of these non-material and material factors. Therefore we cannot prevent it by addressing one or some of its causes instead every aspects.

Lange, Donald (2008) gives deep details on multiple dimensions of organizational corruption control tools and says there should be symmetry between different corruption control measures if they are used simultaneously, because one measure, applied, can affect another's performance. Good system can help to produce good output and system itself is established by individual person but key thing to be considered is the dynamic trade-off between individual person and organizational system which is essential to make it successful. Herzfeld and Weiss (2003) have found the significant relationship between legal (in)effectiveness and various measures of corruption. Every country has its own different characteristics in terms of economy, culture and so on. So the effectiveness of a tool, applied, may not give the same result in different countries and in different society even within the same country. Institutional ineffectiveness and corruption are directly and positively related to each other. If legal effectiveness is high, degree of corruption will be lower and if corruption is higher it of course reduces the legal effectiveness. The combination of these two variables ultimately creates a vicious cycle of corrupt regime. Ineffectiveness fosters corruption and corruption fosters

ineffectiveness. So anti-corruption measure, organizational reform measure and bureaucratic reform measure all three should be applied parallelly to achieve the desired corruption control goal and Nepal is lacking this condition. Bureaucratic ineffectiveness is the departure point of organizational ineffectiveness and corruption is directly associated with them with positive relationship. So to see the relationship between organizational ineffectiveness and corruption, bureaucratic structure must be examined one at a time because it is the lifeline of the organization, so cannot be separated from it. According to Bardhan (1997) corruption actually delays administrative process and led toward more bribery because it has influence-power over effectiveness of an organization. In transitional period of decentralization corruption may increase because of the lack of strong control and monitoring mechanism and after settlement of economy it reduces eventually. Also corruption centralizes in autocratic regime and fragments in democratic regime, e.g. Indonesia in Suharto period and India today. Democracy has lower bargaining power to deal with bribers and autocratic government has more that power. The origin point of corruption is society and social environment and it decides the degree of corruption. So economic measures are not all enough for its control rather social measure simultaneously with economic measures may give remarkable success on its control and prevention.

A research done by Otis (2008) on the two luxurious hotels, placed in Beijing and Kunming, where the material environment was almost similar but managerial-behavioural aspects were different, explore some very important facts which are relevant to this research too. She found material factors alone cannot explain employees' receptivity to transformation and concluded that the intangible environment can affect the workers' performance, dignity and ultimately the image of the organization accordingly it is either friendly or opposite. Behave of top level management (material, moral and rational) can

create different environment in organization. She proved that according as the different dimensions of labour recruitment system, staff-management relations, and staff consumer relations the management can make a difference using the same inputs. I think there are similar differences between Nepalese and Korean ACAs. If there is corruption there is less trust and if there is less or no trust it eventually fosters corruption. Corruption and distrust create a vicious circle and enforce each other. Therefore to rebuild trust, corruption should be reduced and to reduce corruption efficiency and effectiveness of ACA must be increased and it can be possible when full support, material and non-material, of the state is attained. Societies like in Nepal may have traditional norms that make it difficult to draw distinctions between appropriate and inappropriate, acceptable and unacceptable, legal and illegal (Rose-Ackerman, 1999). For Nepal social norms are the determinants of the degree of corruption. So social norms can reduce its costs and push the society towards a high corruption-equilibrium. Acceptance of corruption reduces the cost of corruption and then it led toward further corruption (Truex, 2011).

Quah (1999) found three different patterns in Mongolia, India, The Philippines, Hong Kong and Singapore: anticorruption legislation with (1) no independent agency (Mongolia), (2) several agencies (India, Philippines) and (3) an independent agency (Hong Kong, Singapore). He argues the 'independent ACA' is the most efficient pattern. In Nepal there is one independent ACA but why it is not that much effective and efficient? An effective anti-corruption strategy must reduce opportunities for corruption, increase the risk of detection and punishment, and increase salaries for success (Quah, 1999). He mentions six important issues to be carefully applied to achieve a good success in the war against corruption: 'commitment of political leadership is crucial; comprehensive strategy is more effective; ACA must itself be incorruptible; ACA must be removed from police control;

reduce opportunity for corruption in vulnerable agencies and reduce corruption by raising salaries.’ We can find all six kinds of differences in the two countries, Nepal and Korea. According to palmer (1985) with few opportunities, good salaries, and effective policing, corruption will be minimal, and vice versa. In this regard Nepal is very weak and Korea is far better. Therefore Nepal is in the high risk of corruption and Korea in the low. Only the reporting of corruption is not the all but to address the report properly is the key thing which mainly depends on efficiency and effectiveness of ACA. If the ACA has sufficient power and support of political leaders with strong will together, that can improve its efficiency and effectiveness to curb corruption. For example in 2013 the Nepalese ACA handled just 59.05% of total complaints whereas its Korean counterpart resolved 95% of total. This example clearly shows the picture of efficiency which ultimately affects the effectiveness of the ACAs. Khan, (1998) attributes the clear picture of efficiency and effectiveness of the Bangladesh ACA in four major points which are more relevant to Nepalese context:

‘First, bureaucrats involved in corrupt practices in most cases do not lose their jobs. Very rarely they are dismissed from service on charges pertaining to corruption. Still rarely they are sent to prison for misusing public funds. They have never been compelled to return to the state their ill-gotten wealth. Second, the law-enforcing officials including police personnel are extremely corrupt. They are happy to share the booty with other corrupt bureaucrats. Third, the people have a tendency not only to tolerate corruption but to show respect to those bureaucrats who made fortunes through dubious means.... Fourth, it is easier for a citizen to get quick service because he has already "paid" the bureaucrat rather than wait for his turn.’ (Khan, 1998)

According to Quah (1999) it was because of the lack of commitment in Bangladesh's political leader. He shows an example:

‘A more important manifestation of the lack of political will in fighting corruption is the transfer of the director-general of the Bureau of Anti-

Corruption to the Ministry of Education because of his "crusade against corruption" and his unwillingness to stop the probe against four ministers, many members of Parliament, and several senior civil servants in May 1995.'

It proves that political will and commitment is crucial to improve efficiency and effectiveness of ACA which is weaker in Nepal and stronger in Korea. The Philippines ACA, the Presidential Commission on Good Government (PCGG) also charged of corruption, favoritism, and incompetence; by mid-1988, five PCGG agents faced graft charges and 13 more were under investigation (Quah, 1999). For Korea it doesn't look that much relevant but for Nepal there are several such kinds of questions raised in media and even on intellectual circle against CIAA. I have been working for the CIAA, Nepal since eleven years and I have seen such kinds of several complaints, written and oral, against the higher CIAA-officials. But Nepal has not those kinds of mechanism to check it and make correction. They all were dismissed. This is one of the main causes that are affecting its efficiency, effectiveness and public trust and also hurting the principle of transparency. We need freedom of information, active investigative media and civic groups, reasons for optimism appear to be minimal, (Tummala, 2009). Nepal is lacking these qualities so still these efforts are mainly rhetoric and result less therefore, not enough to curb and downsizing corruption.

Corruption can be classified into three types: legal and moral corruption, Individual and organizational corruption, and petty and grand corruption. The basic understanding, in my opinion, of the first type is based on rule of law and personal and individual ethics. So I think this classification is most important one and it can affect the entire society or whole nation in a long term perspective. The second type is basically being perceived as in terms of entire organizational system and every individual's action over it. In this type corrupt act is determined within organization but systems vary within



different organizations. This type of corruption, ultimately, led organization and individuals towards legal and moral corruption stage. So this type holds the mediator nature of corruption and therefore, rather less difficult to prevent or to control than systemic corruption. The third types of corruption, petty and grand corruption, in my opinion, is the output of these above mentioned types of corruption which is mainly translated into monetary term. Therefore, if the ACA is more careful on the above mentioned nature and dimensions of corruption, then it can make and apply proper policy and strategy to attack on its root which fosters its effectiveness and efficiency fighting corruption and vice versa. So strong political support, clear definition of corruption, clear legal provision, strong control mechanism over ACA employees and their economic and social protection, sound working environment, stabilized investigation system etc. are the crucial factors for the effectiveness and efficiency of ACA.

#### **1.4. Research Questions**

The general objective of the study is to identify the commonalities and differences between the two countries' ACAs, Commission for the Investigation of Abuse of Authority, Nepal and Anti-corruption and Civil Rights Commission, Korea. To fulfil the above objective of the research this study will be focused on the following basic research questions which I would like to address:

- What are the major similarities and differences in the two anticorruption agencies?
- Do the differences have made any remarkable influences on the performance of the originations?
- What are the strong and weak aspects of anti-corruption agency in Nepal?
- What are the major challenges and threats on detecting corrupt offences?
- Is it possible or suitable to apply Korean experiences in Nepal?

- What are the major factors that led ACRC toward success on fight against corruption?
- What are the major factors that create impediment on preventing corruption in Nepal?

### **1.5. Research Method and Data plan**

This research will conduct a comparative study between the Nepalese ACA, CIAA and the ACA in Korea, ACRC. Major source documents will be Legislations Related to CIAA Nepal and ACRC Korea; Government publications on good governance and anti-corruption of the both countries; Official publications of CIAA and ACRC; Working procedure and code of conduct of CIAA/ACRC; UNCAC publications on anti-corruption; Various documents about history, culture, society and economy of the both countries; and TI reports, United Nations Development Programme (UNDP) reports and World Bank (WB) and other reliable sources will back up the study as required. The comparison will be in terms of their legal base, anti-corruption policy/strategy, working procedure, organization structure, logistic support and political support and to suggest for the improvement of effectiveness and efficiency of Nepalese ACA. And finally I will try to prove the truth of effectiveness and efficiency giving some examples of their corresponding performance and indicators. To see it more clearly, I will do a comparative study of the data/information with different dimension in Nepalese and Korean context. So the research will be explanatory and descriptive in terms of its design. The Study is conducted on the following areas:

- Historical, political, economic and social overview of the both countries on the perspective of corruption prevention;
- constitutional and legal status and provision;
- Anti-corruption strategy, anti-corruption policy and government support;
- Performance of the organization;

- Organizational structure, human resource and HRD policy, budget;
- Administrative and investigation procedure and techniques;
- Public and international relations;
- Working environment and incentives (monetary and non-monetary), motivation factors and career development opportunity.

Using these legal documents and reports I will create comparative tables, lists, charts and then analyse the fact basing on the tables, lists, charts. This method enables me to compare the two anti-corruption agencies and which will discover new and better information, so that we can apply Korean experiences to fight corruption in Nepal.

The study is organized into five major chapters. The first chapter gives general picture of corruption with resent situation; its cause and consequences; major efforts, in general, made by government and other non-state actors and leading ACAs in Nepal, and in Korea; literature review and research questions. In chapter two, three and four, analytical and comparative explanation of fact of the two ACAs and its result will be presented. And finally, I will conclude the research work with my key findings and suggestions.

## CHAPTER TWO

### 2. COUNTRY ANALYSIS OF NEPAL WITH CORRUPTION PERSPECTIVE

#### 2.1. Nepal a Brief Review

Nepal, a mountainous country in south Asia, had been united by the then king Prithvi Narayan Shah during his reign, 1743-1775 AD. After his death his successors continued unification process and extended the boarder of the nation by 1816 until before the Sugauli Sandhi (a treaty with the then British India at the place named Sugauli). The Gorkha conquest in the late eighteenth century united into the kingdom of Nepal a number of petty Hindu principalities and semi-autonomous tribal groups (Caplan, 1971). In 1846 Jang Bahadur Rana took over the reign and his Rana successors ruled the nation by 1951 for 104 years as a family rule. In 1951 democracy was established in Nepal but because of political instability the then king Mahendra, in 1961, took over the democracy and deployed authoritarian Panchayat system. This reign continued for 29 years until restoration of constitutional monarchical democracy in 1990. In the beginning three years of democratic restoration the nation was relatively more stable and the economic and social performances better. After 4 years of restoration of democracy, Nepal again falls into the trap of political instability. The Maoist party declared armed civil war against the state in February, 1996 and also the unhealthy game to form and to drop down government was continued by April 2006 until the Maoist civil war stopped. During that extremely instable period several corrupt acts, for example, sell and buy of parliament member, were taken by political parties. Even though in that period three parliamentary and two local body elections were conducted, but because of lack of absolute majority of any party in parliament the government couldn't be stable. After assassination of King Birendra and his entire family on June 2001, Gyanendra

was crowned the king. He, then, dismissed government and the elected Parliament to wield absolute power. On April 2006, the second People's Movement was launched jointly by the parties focusing most energy in the capital city, Kathmandu, which led toward the restoration of democracy and compelled the King to step down and restore the Parliament. On November 21, 2006, the Comprehensive Peace Agreement was made between government and Maoist rebels committing to democracy and peace and Constituent Assembly (CA) election was held on April 10, 2008. On May 28, 2008, the elected CA declared Nepal a Federal Democratic Republic, abolishing the 240 year-old monarchy. Nepal today has a President as Head of State and a Prime Minister as an executive head of Government. The CA but it couldn't complete its mission even after it's repeatedly renovation. And now, recently a new CA election is held and new elected government is formed, but still it, politically, socially and economically, is not that stable.

## **2.2. Analysis of the Nepalese Anti-corruption Moves**

The seriousness of corruption in Nepalese society is clearly evident through researches conducted by many international organizations such as NORAD, DFID, TI, UNDP etc. The result of these researches demonstrates that Nepal falls far below the average level of competing countries. Global corruption Barometer (2013) showed 67% respondents think the effort made by Nepalese government against anti-corruption was ineffective, 82% people believe corruption is increased over the past two years, 69% people believe corruption as a serious problem in public sector in Nepal. Such results reveal a need of continuous effort against corruption and establishment of a system that will regulate anti-corruption in Nepal. Therefore rooting out corruption has been the big challenge and forcefully the first-priority task of Nepalese government. Corruption has deterred Nepal from building a transparent and

developed society. Entering into the 21st century, Nepalese's determination to address corruption allegations has become stronger than ever before. It is impossible for Nepal to become a developed nation while maintaining an environment that feeds corruption within the society. In Nepalese society, making efforts to find a way to control corruption and establish a permanent system to control corrupt act is not a new phenomenon, it has a long history of more than five decades. The Nepal government's efforts have not been translated as a success story and no remarkable development has been made so far. There could be many reasons for the unsuccess (or failure); yet major grounds could be attributable to lack of precise analysis on the rapidly changing reality and various anti-corruption policies that have been implemented as remedies without reflecting the ground reality of the country. The nature of corruption in Nepal is mainly characterised as bureaucratic corruption. Therefore Nepal lies in the high risk zone of corruption. According to Joon Oh Jang and Hae Sung Yoon, (2012) 'What is more worrisome regarding corruption of public officials is that it has characteristics of bureaucratic corruption which undermines an institution's capacity of supervising and monitoring corruption and has high risk of leading to systemic corruption.' So every governmental organization have equal obligations to make efforts using appropriate measures to respond to complex, systemic corruption and a clear understanding of its underlying characteristics. In spite of its more than half century long history, Nepal still lies in the beginning stage of anti-corruption journey, it is increasingly acknowledged as a major challenge to the nation, so she has a long way to go in order to become a clean and transparent society with a fully accountable governance structure that is free of abuse of power. There exist a few ranges of civil society organizations, which are engaged in the fight against corruption but in terms of effectiveness their presence is not that much

remarkable. Also most of the anti-corruption civil society activities are said to be guided by and affiliated with political parties and they are said to be not free and fair and honest to the agenda.

CIAA had to run without Chief Commissioner for seven years (2006-2013) and without any Commissioners for three years (2010-2013). Such condition not only helped to create corruption raj and uncertainties on the coordination for anti-corruption movement but also impeded the proactive role of the CIAA for anti-corruption endeavours (CIAA, 2013). Still CIAA has not got a full-fledged board with full members, there are only two members appointed. This shows that corruption control agenda is not on priority list of government. After appointment of two commissioners it has published its anti-corruption strategic plan for six years. The strategic plan document seeks to answer four major questions: where the CIAA has come from (history); where it is at the moment (present situation); where it is going to (destination or ultimate goal: ends); and how it is going to get there (policy and strategy: means). To achieve the goal CIAA has determined seven critical issues that need to be resolved when designing a new institutional strategy. These seven critical issues include: (re)determining the mandate of the CIAA; resolving the issue of flexible (seconded staff) vs. Stable (its own permanent) staff members; designing appropriate performance incentives and security for staff members; organizational restructuring; international collaboration and cooperation; institutional capacity development; and installing a performance based monitoring system in CIAA. To achieve the vision (to build corruption free Nepal), mission (establishments of good governance and rule of law through combating corruption and improper conduct in the public sector), and goals (By 2019, there will be perceptible decline in corruption and improper conduct in the governance) of the CIAA, six strategies has been suggested. These include three core strategies: punitive, preventive, and education

(promotional) measures, and three supporting strategies: institutional capacity development, internal coordination and collaboration, and building external linkages.

**Table 6:** Vision, Mission and Goal of CIAA

Vision	To help build corruption free Nepal
Mission	establishments of good governance and rule of law through combating corruption and improper conduct in the public sector
Goal	By 2019, there will be perceptible decline in corruption and improper conduct in the governance
Core strategy	Enforcing anti-corruption law; prevention of corruption and public awareness and education
Supporting strategy	CIAA capacity development; coordination of anti-corruption agencies and building regional and international linkage

Source: CIAA strategic plan (2014-2019)

According to UNDP (2005) one of the preconditions for managing a successful ACA is to have a coherent and holistic strategy that focuses on prevention, detection, and investigation of corruption and education and awareness raising programs against it. CIAA’s latest strategy paper has tried to address the almost issues rose by UNDP but, for Nepal lack of policy and law is not an obstacle, the main obstacle is commitment and continuity. CIAA, in its strategic plan (2014-2019), has acknowledged that:

“Corruption is not a new problem in Nepal. It is rooted in Nepal’s history. However, during different regimes, the form, structure, intensity, and density of corruption underwent significant changes. During the Rana regime (1847-1951), corruption was basically extractive. During the monarchy led party-less Panchayat system (1960-1990) it was distributive—that is, it was more about distribution of state resources to buy opponents and keep the supporters happy. During the parliamentary democratic system (1990-2006) corruption was democratized and decentralized. If political stability during monarchy (1960-1990) facilitated corruption in Nepal; political instability during multi-party regime (1990-2006) encouraged corruption.”

Why corruption in Nepal is rampant and spreading rapidly? It is a big question and not easy to answer in a few words. It has social-cultural and economic roots and several human-made causes. ‘With easy access to small



arms, and an unregulated open border with India, there is now a growing nexus between corruption and other crimes in Nepal. Nepal's penal system seems to be too relaxed and out-dated when dealing with corruption crimes' (CIAA, 2013); CIAA herself accepts this painful reality. There was some rejuvenation in 1996 when the Supreme Court restored the CIAA as a primary agency to fight corruption in the country. Earlier, there were confusions over the jurisdictions between the CIAA and the DSP (ibid) which was working parallelly on the same field and therefore CIAA was severely narrowed down by DSP's domination. Another big question never answered, is why CIAA became weak? After dismantling of Special Police Department and enactment of new 'The Prevention of Corruption Act, 2002' (POCA) in June 17, 2002 and a very important amendment of CIAA Act in August, 2002, CIAA started very important, hopeful and phenomenal move against corruption by hitting over one of the most corrupt zone in the country. Most of general people heartily admired CIAA for this risky and amazing move. Then CIAA worked very smoothly against corrupt act for next three years. When the head of CIAA retired from office in 2006 it had to run without Chief Commissioner for seven years and after January 2010, it had to function without constitutional leadership, but with bureaucratic leadership resulting another decline in the CIAA activities (ibid). During that period Nepal was trapped in country wide violence and the then King took over the reign and established another parallel anti-corruption agency, out of constitution. With the establishment of Royal Commission for Corruption Control in February 2005, and because of such chronological incidents, an unstable environment and clear setback emerged in the CIAA activities. 'The third phase (2006/7-2012/13) is marked by a state of confusion and uncertainty' (ibid) inside the CIAA because this period was pick period of political transition in the country. Still it has not got the opportunity to run full-fledged, from the

second half of 2013, CIAA has got only two commissioners including chief commissioner. That's one of the answers why CIAA is weak.

**Table 7:** Evolution of Nepalese Anti-corruption History

1775	Divyopadesh by Prithvi Narayan shah
1853	Muluki Act
NA	<i>Pajani</i> (sack of public officials); <i>Daudahaa</i> (action over guilty public officials on the spot) (mainly during Rana regime)
1956	Civil Service Act,
1957	Prevention of Corruption by Civil Servants and Public Authorities Act,
1960	Establishment of special Police Department
1967	Prevention of corruption act,
1977	Commission for the Prevention of Abuse of Authority Act; CPAA Established
Nov. 1991	Commission for the investigation of abuse of authority act, ; CIAA rules 2001
May. 1993	Civil service Act/Rules
Jun. 2002	Prevention of corruption act,
Mar. 2003	Judiciary Inquiry Commission on Property; UNCAC signed: Dec. 2003
Feb. 2005,	Royal Commission for Corruption Control (RCCC)
Jan. 2007	Interim constitution of Nepal,
2008	Strategy and Action Plan against Corruption, Government of Nepal
2009	National Anti-corruption strategy,
Mar. 2011	UNCAC ratified
2012	National Strategy and Action Plan to Implement UNCAC
Dec. 2013	Institutional Strategy of the CIAA (2014-2019)

Source: collected by author from various sources

Why CIAA is not so effective to curb wrongdoings? Another painful ground reality, not answered well. A study conducted by INLOGOS (2006) assessing the effectiveness of departmental actions by CIAA indicates a total failure. The study revealed that a departmental action is a small fraction taken by CIAA in the civil service so it cannot make that remarkable effect and contribution to anti-corruption war because the total number of actions taken was just 183 over a period of five years, which is from 2003 to 2007. The decision making system of CIAA is very tardy; sometimes it takes unbelievable long time to make decision and make the file pending for as many as 13 years. Such weakness of CIAA encourages bureaucrats and government ministries towards a general reluctance on the part of implementation of CIAA's directives and suggestions. The study found that the government implemented only 40% of departmental actions recommended by CIAA. According to its annual report, 2013 average percentage of

corruption complaints which was referred by CIAA, resolved by Regional Administrators is just 33% and for District Administrators it is only 24% and is pretty low compared to 75% resolution of total complaints by the CIAA.

### **2.2.1. Strength, Weakness, Opportunities and Threats of CIAA**

**Strength:** CIAA is an independent constituent body and leading ACA in Nepal, with adequate legal frameworks and bases as well as sufficient physical infrastructures and human resources, which is the first agency to be established in the SAARC region (CIAA, 2013) with such strong status. CIAA has the strong backing of law and it is a well-established ACA with rich experience in investigation and prosecution of corruption crimes and misuse of office. It has clear jurisdiction of its rights, duties and responsibilities and is accountable to people's representative body, parliament. Principally the Chief Commissioner and other Commissioners can enjoy institutional independence during investigation and decision making process because their appointment and tenure is fixed by constitution therefore, they must be free of political influence during their office. CIAA can depute any related experts to assist anti-corruption issues when necessary. Government has allocated adequate financial resources to run it fluently and all staff members are enjoying additional monetary incentives which help to keep them motivated. Working environment and physical environments are relatively far hygienic compare to other GoN organizations. Every employee is under code of ethics of its own and relatively transparent working procedures are in force. Every investigation division is well equipped with computer system and now it is to the way of fully automation. Transportation facility to the employees is provided of its best.

**Weaknesses:** legal mandate or jurisdiction of CIAA is limited to the public sector corruption and misuse of office. Judiciary, parliamentary committee,

council of minister, Nepal army and even in private sector and NGOs are out of its coverage. Some of emerging issues for example, money laundering, in corruption are not under coverage of existing laws. Still Nepal couldn't enforce whistle-blower's protection law and therefore, most of the serious cases do not come on surface. The weak protection of witness helps big offenders to hide their corrupt act by the backing of money, power and corruption network. Still working procedural of CIAA is mostly manual, and misplace of important document is highly possible because of poor recording system. Lack of institutional memory, weak database, weak monitoring and evaluation system and inadequate use of information technology are another weakness to be cured immediately. Delay in investigation which leads case weakening, is one of the chronic weaknesses of CIAA. The enforcement of CIAA decisions is not that satisfactory, they are not implemented for years. There is a lack of efficient technocrat investigator and laboratory facilities. It has not its own staff members; it is fully depended on deputed staff by the government. So because of lack of skilled human resources and proper training and development opportunities its performance is severely affected. Because of uneven work distribution and heavy work load whole investigation process is affected. CIAA is an ACA, so every member of this organization must be clean; to maintain this mandatory condition the adoption of its employee from the second organization is very sensitive and crucial for its good performance, and to save its image and reputation. Regarding this issue CIAA has not successfully maintained this standard and finally such weakness lead it toward controversy and uncertainty.

**Opportunities:** Corruption is such an issue which is not limited within a political or geographical boarder, every general people in any part of the world is suffered from it, so none can oppose anti-corruption agenda. CIAA can use this sentiment of general people as well as government and

international communities to curb corruption because there is no doubt, if CIAA created an appropriate environment, that they will feel happy to work with CIAA to achieve the common anti-corruption goal. CIAA can cash it as a very great opportunity. Anti-corruption laws in Nepal are relatively strong but the quantity or magnitude of punishment is not so fine so using promotional strategy it can create an environment of pressure from general public, media, civil society etc. to upgrade the law. TI, UNDP, WB, IMF and other donor agencies are also serious on this issue so in the environment of such growing international support and cooperation CIAA can utilize this opportunity on fighting corruption. CIAA is conducting investigation manually. Now a day there are several new technologies of investigations has been developed, she can apply appropriate one. Before, CIAA was located only in the capital city of Nepal but, after establishment of regional and liaison offices, now there are ten more local offices spread all over the country. So it is a strength as well as opportunity to her for anti-corruption war because now she can oversight the cases on the field which will be very helpful to discover the ground reality of corruption. Ratification of the UNCAC by the government is one of the most important opportunities for CIAA because, after its ratification the state must meet the minimal standard of UNCAC provisions. Therefore, the government has an obligation of creating and/or amending several laws to comply with convention provisions. So CIAA can take an active initiation to grab such a great opportunity to remove weakness and corruption causing factors from existing laws and to making new anti-corruption policy and legal provisions. Nepal government has allocated sufficient budget to run CIAA so she can conduct various survey and research on corruption and even on corrupt attitude of public officials and business houses.

**Threats:** Still political transition in Nepal has not been over, unless the politics of a country is on good track the corruption control dream remains as

dream which is like a real story according as current Nepalese experiences. Because of the lack of political commitment and unnecessary interferences over state organization, institutional integrity and trust has been seriously damaged. Institutionalization of corruption and unnatural rise of unionism and syndicate system are some of consequences of such malpractices. On the other hand because of insufficient punishment provision the offender is sentenced nominally which instead encourage offenders and therefore corrupt offences have been emerged as a big challenge. This kind of threat weakens CIAA and finally the whole nation. Another most dangerous provision in existing law is discount (20%) on sentence of corrupt offences. This is also a big challenge to successfully control corruption. To tackle this threat such impediment is another major threat for CIAA. After working for CIAA for a few periods, one usually doesn't like to stay more there and s/he seeks for transfer, thereby retaining skilled and experienced staff members in CIAA for a long is one of the big problems as well as challenge to be managed immediately. There is a lack of general knowledge about CIAA's jurisdiction on general people. Because of high expectation people complain every kind of offences to CIAA regardless of its jurisdiction. It often creates mismatch between public expectations and CIAA jurisdiction. So, public awareness against corruption and proper information about CIAA is to be promoted. Lack of consistency in the adjudication process; non-predictability of court outcomes; cooperation and coordination problems between the CIAA, government attorney and the court are also considered as major threats by CIAA (CIAA, 2013). CIAA staff members and witnesses usually seem to be reluctant to complain corruption offences because of Security threats, such condition is another impediment for fighting against corruption. There is a very famous saying in Nepalese society that 'crime is always one step ahead than law and police'. We are currently living in such a cruel reality because crime and corruption is advancing far

ahead of investigative and punitive measures and modern technologies are increasingly used to commit newer forms of crimes and finally corruption is spreading almost uncontrolled. According to CIAA (2013) there are two different opinions from people and bureaucrats/politicians: public opinion point out CIAA itself is - not transparent, not impartial, politically motivated and targets small fires and leaves big fishes; and second opinion point out - CIAA has dampened the zeal and spirit of the Nepalese bureaucracy, because of heavy intervention of CIAA, bureaucrats are shifting their responsibilities which led the Nepalese bureaucracy to further delays and sloth.

### 2.2.2. The Strategies of CIAA

CIAA has set its strategic issues which are focused on ‘to understand what it wants to do, what it can do, and what it must do to fight corruption in Nepal. There is a need to strike a balance and prioritize between investigation and prosecution, prevention, and promotional activities’. Staff management, incentives and security of the staff members and their family, organizational restructuring, capacity development of the institution and staffs, institutional coordination and international linkages and performance measurement and monitoring are its other major strategic issues (CIAA, 2013).

**Table 8:** Strategic Moves of CIAA

<b>From</b>	<b>To</b>
Emphasis: symptoms/corrupt people	Diagnose its root causes/corruption/
Measures used: Punitive, sanctions, reactive	Prevention, deterrence and proactive
Perception: Corruption as a legal problem	Very much an administrative or economic problem
Orientation: killing the temptation of the individuals	System reforming and reducing the opportunities for corruption
Focus: petty corruption, domestic corruption	Grand corruption, state capture, cross border corruption, money laundering
Weakness: Rumours and hearsay	Evidence-based data
Fighting corruption for the sake of fighting corruption	Public sector reform, good governance, integrity transparency, accountability & public participation

Source: CIAA strategic plan (2014-2019), contents are simply modified

## CHAPTER THREE

### 3. COUNTRY ANALYSIS OF KOREA WITH CORRUPTION PERSPECTIVE

#### 3.1. Republic of Korea a Brief Review

Korean history dates back to 2333 BC when, according to legend, the mythical figure Dan-gun founded Gojoseon as the first Korean Kingdom. And then it was splited as three different kingdoms Goguryeo, Baekje and Silla and finally unified as a strong kingdom namely Silla by 676-935. This kingdom promoted Buddhism, Buddhist culture and arts, and reached its popularity at the peak during this period. Later in the Goryeo Dynasty period which was established in 918 by King Wang Geon, Buddhism became the state religion, thereby politics and culture was greatly influenced by it. The Joseon Dynasty, founded by Goryeo General Lee Sung-gye at the end of the 14th century and designated Seoul as the capital, adopted Confucianism as the state ideology and exerted a massive influence over the whole Korean society. King Sejong, in 1443, invented the Korean alphabet Hangeul. From 1910 to 1945 Korea was colonized by Japan and under Japanese rule Koreans suffered severely in economic, social, cultural and inhumaniterian way until it liberated on August 15, 1945. The sorrow of Korea was not still been over; Koreans soon faced the tragic division of their motherland into North Korea and South Korea along the 38th Parallel line, by the military intervention of the United State and the then Soviet Union. From June 25, 1950 North Korea started to attack South Korea and the war continued over the next three years until coming to an end on July 27, 1953, with an armistice signed at Panmunjeom (<http://english.visitkorea.or.kr>) (Keuk, 2011). Thousands of peoples were killed and still missing and most of the physical infrastructures were totally destroyed during the war and South Korea become economically very weak.



After eight years of the end of Korean War Park, Chung-Hee, an army general, took power by a military coup on May 16, 1961 and started systematically to industrialize and modernize the country until he assassinated in 1979. Even though the ruling period of Park Chung-Hee is still politically controversial, but most of the Koreans accept the fact that Park Chung-Hee put the foundation of economic and social development and opened the door of industrialization and modernization in Korea. And therefore, Korea is now successful to make much more progress on economic development and political democratization and transform from aid receiver to aid donor country, enjoying honour of the higher income country status as well as an OECD member. By any standard, Korea in 1960 was one of the poorest countries in the world. ... The living standard around that time was not much higher than those in the world's many poorest countries now (Keuk, 2011). Corruption in Korea is still a serious challenge for stability and further development of the nation. Most of the corruption cases in the military government period didn't come into public, but after democratization of the country in 1989 many and big corruption scandals, in which high profiled politicians, even president and their relatives and elites were involved, came to surface. Kelly Olsen on *Washington Post* Thursday, July 7, 2011 in an article writes, which shows the status of corruption in Korea, as:

'Legacy of Corruption Still Exists in South Korea.' 'Allegations of multibillion-dollar fraud at banks and revelations by South Korea's top business conglomerate of shady dealings are forcing the country to grapple anew with a legacy of deep-seated corruption. ... Just last year, south Korea was basking in the global spotlight as the proud host of the Group of 20 economic summit, drawing praise for its journey from grinding poverty to affluence in six decades that included the Korean War and a transition from military rule to a boisterous democracy'.

### 3.2. Historical Analysis of Korean Anti-corruption Moves

I want to quote some words which prove the sincerity of the then ruler against corruption, even in the long time ago, and show historical background of anti-corruption movement in Korea:

‘About 600 years ago, the Ancient Joseon Dynasty had a system for ordinary people to file their complaints by beating a big drum, called “Shin-mun-go” located in front of the palace so that their king could listen to the sound, and help solve their problems. This system is the origin of the Korean government’s system to address people’s problem.’- *Efforts and Achievements of the ACRC Korea in Protecting Vulnerable Classes of the Society 2011.11. 12th AOA Conference*

Within one generation, Korea had transformed itself from a poor agrarian society to a modern industrial nation, a feat never seen before (Joon Oh Jang and Hae Sung Yoon, 2012) which is one of the rare examples occurred after World War II. The authors put the anticorruption achievement of Korea as:

‘While fighting rampant corruption, Korea has achieved phenomenal economic growth called the “Miracle on the Han River,” turned itself from one of the poorest nations into an economic power ... Korea still has a long way to go before being equal to the countries ranking high in the CPI, what Korea has achieved so far could be an example for developing countries.’

On the other hand in spite of it’s more than six decade long anti-corruption history the problem still is not in fully control. Even though its relatively successful anti-corruption efforts implies that Korea may be an ideal model for developing countries in order to fight and curb corruption successfully. Corruption has been a serious problem in South Korea since the sixteenth century, when the participation of the king's family in politics led to "increasing nepotism and corruption in administration" (Rahman, 1986: 119). So corruption, in Korea, is not a newly emerged problem but a legacy of its corrupt history. After independence there occurred several corruption scandals. As a result of continuation of such corruption scandals in recent

years, Korea has been described as ‘a ROTC (Republic of Total Corruption) by the people and mass media’ (Kim, 1994, 215). The fight against corruption began with President Park Chung Hee, who assumed office in May 1961 after ousting the government of Chang Myon because of its involvement in corruption, its inability to defend the country from communism, and its incompetence in initiating economic and social change (Han, 1989, 273). Park formed the Board of Audit and Inspection (BAI) in 1963 to act as a “direct check on the economic bureaucracy” (Hart-Landsberg, 1993, 54). So, the BAI was the first de-facto anti-corruption agency in Korea. In March 1975, Park introduced the Seojungshaeshin (General Administration Reform) Movement to curb corruption in the civil service (Oh, 1982, 324), the number of civil servants prosecuted for corruption increased from 21,919 in 1975 to 51,468 in 1976 (Rahman, 1986, 122). Park's assassination in October 1979 led to the assumption of power a year later by his successor, Chun Doo Hwan, who reaffirmed his government's anti-corruption stance by purging corrupt public officials and introducing ethics laws to reward honest officials and to enhance the structures for civil service reform (Jun, 1985). He, his two brothers, and his wife's family were accused of massive corruption, and on November 23, 1988, Chun and his wife apologized for their misbehaviour and returned ₩ 13.9 billion to the government.

However, president Roh himself was not immune: in October 1995 it was discovered that he had received almost \$600 million for his private political fund from individuals and major business conglomerates (Macdonald and Clark, 1996, 159-160). When Kim Young Sam assumed power in February 1993, he started a new and admirable move and example of transparency, he voluntarily declared his personal assets of 1.7 billion Won (US\$2.1 million). He issued a presidential decree in August 1993 that Koreans must use their

real names for all financial transactions, especially bank accounts. More importantly, Kim strengthened the BAI, which became the first de jure anti-corruption agency in South Korea. He created the Commission for the Prevention of Corruption, an advisory body of private citizens formed to assist

**Table 9:** Evolution of Korean Anti-corruption History:

Jul. 1948	Government Organization Act; Inspection Board;
Jan. 1949	Shimhyewon (audit) organization
Nov.1955	Inspection Commission
May.1963	Board of Audit and Inspection
NA	Act on the Disposal of Accumulation of Illegal Assets (by President Park)
Dec. 1980	Charter of Public Officials' Ethics
Dec. 1981	Public service ethics act; Society Purification Commission
Apr. 1993	Corruption Prevention Committee;
1995	The Act on Special Cases concerning Forfeiture for Offenses of Public Officials,
Dec.1997,	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD) to prevent unfair business transactions
Dec.1998,	Act on Preventing Bribery of Foreign Public Officials in International Business Transactions, to penalize those offering bribes to foreign officials
Sep. 1999	Presidential Commission on Anti-Corruption; Anti-Corruption Special Committee
Jul. 2001	Anti-Corruption Act
2002	Korea Anti-Corruption Commission (KACC), Korea Independent Commission Against Corruption (KICAC)
Feb. 2003	Code of Conduct for Public Officials
Mar.2005	Korean Pact on Anti-Corruption and Transparency (K-Pact) to enhance transparent and corruption-free society;
	Criminal act
Feb. 2008	Act on Anti-Corruption and the Establishment and Operation of the ACRC; Establishment of ACRC; Ratification of UN Convention against Corruption (UNCAC) in 2008; Presidential decree of ACRC Act (decree No. 20737)
Jul. 2009	Sentencing guideline on bribery charges
Sep. 2011	Act on the Protection of Public Interest Whistle-blowers
	Act on aggravated punishment etc. of specific crime
	Administrative Appeals Act
	Act on the Regulation and Punishment of Concealment of Gains from Crime

the BAI's chairman in fighting corruption. Kim's anti-corruption campaign confirmed that corruption is a way of life in Korea and exposed its pervasiveness in the country. Kim's son was arrested for bribery and tax evasion in the 'Hanbo loan scandal' and sentenced for three years' imprisonment. In this scandal he clearly demonstrated his commitment to

eliminating corruption by not obstructing the legal arrest and sentencing of his son. Nevertheless, this scandal seriously undermined his legitimacy and jeopardized the continued success of his anti-corruption drive. This is one of the big examples that why Korea's anti-corruption history is so important for developing countries. Of course Korea faced several big and striking corruption scandals which was mainly linked with top politicians, big business houses and high bureaucrats but the important thing is finally most of the scandals were detected and the offenders were severely punished thoroughly, even if s/he is either presidents or his own relatives. On the background of such glorious and successful anti-corruption history Lee Jae-Oh, (2010) the Chairman of ACRC, proudly puts that:

'Korea is one of the most successful countries in terms of industrialization and democratization after the World War II, among 140 countries which were liberated after the War. I think it is safe to say that Korea is the only country which made such a success after the World War II. And it is also true that since the Korean War the Korean government, along with the Korean people, made their utmost effort to rise from the ashes of the Korean War and overcome poverty. And also, there was a strong democratization movement to fight against the long military dictatorship. Some countries in Asia, including Malaysia, Thailand, Vietnam, Mongolia, Bhutan and Indonesia came to ACRC to learn our anti-corruption policies. So now, we are prepared to learn from our colleagues from the U.S. and the EU about their anti-corruption policies while sharing our experiences. Therefore I put in effort to change the traditional desktop administration to on-field administration. I have gone out to the fields where anxieties have been unresolved for decades. I reactivated the laws and institutions that have been malfunctioning. Before noon I work in the office but in the afternoon I always go out to fields where complaints are reported. I am determined to be where there are complaints. I have been to over 400 fields, which is unprecedented in the history of Korean public administration.'

There is general consensus that anti-corruption thinking and acting has become a yardstick of the high standards of living in most of the developed

countries. Anti-corruption and integrity is one of major determinants for national competitiveness. For Korea to become an advanced nation, it must achieve anti-corruption and integrity goal. In the international community, the value of a country is determined not by its wealth but by its level of integrity and anti-corruption moves (Lee Jae-Oh, 2010). Of course, the patterns of corruption between Nepal and Korea are basically different. The major determinant of the patterns of corruption is political condition (in/stability) and level of economic development of a country. Therefore, relationship between politicians and businessmen is crucial and for Nepal politicians and bureaucracy behave parallel with businessmen because politics is not stable and it is depended on bureaucracy so it has less bargain power and sometimes bureaucracy may overtake politicians. For Korea the relationship between politicians and businessmen is not a simple matter and can be developed to a holistic problem that includes corruption of both public official and politics (Joon Oh Jang and Hae Sung Yoon, 2012) which is the basic difference between the two countries. Bureaucracy in Korea is relatively far clean and effective than its Nepalese counterpart.

### **3.2.1. Chronological Anti-corruption History of Korea**

After Korea got liberation from Japanese rule, many corruption scandals during the period 1948 to 1961 came on the surface. For example, according to Joon Oh Jang and Hae Sung Yoon, (2012) political slush fund affair called the “tungsten dollar scandal” in 1952 and ”cotton scandal” in 1956 where raw cotton provided for military was sold in the market to raise political funds. In this period the government introduced State Public Officials Act, to manage public officials’ duties, status, discipline, punishment, etc. In 1948 The Inspection Board was established as a very powerful ACA with special right to deliberate punishment for high-ranking officials including the president,

vice-president, prime minister, ministers, head of Shimgyewon, and judges. It was in-charge of inspecting public officials' illegal acts and irregularities in non-accounting issues which were not covered by Shimgyewon. This ACA, in Korean anti-corruption history, was the most powerful agency. During the ruling period of President Park, Chung-hee, remarkable corruption scandals did not come on the surface. His administration considered the root cause of corruption to be in the "corrupt bureaucracy" and lack of ethics on the part of 'venal officials'. In Joon Oh Jang and Hae Sung Yoon, (2012)'s word President Park's way to fight corruption was "dispensation of justice both to services and crimes" because in that time the scope of then ACA, the Inspection Board, was made limited. Park enacted Act on the Disposal of Accumulation of Illegal Assets which was the first full-fledged anti-corruption legislation in Korea. Later in 1963 the Board of Audit and Inspection was enacted with a much wider scope which included "public officials' work itself" into the range of inspection. In the period of 1975 to 1979 some new starting against corruption were taken place. The government intended toward elimination of corrupt and incompetent officials and protection of hardworking and competent officials with more extensive approach. In the period of 1980 to 1987 anti-corruption target was defined more scientifically and clean society goal became a national agenda thereby priority was placed on cracking down corrupt officials on the back force of strong political commitment of the then 11th president, who stressed that "... I will not tolerate corruption committed by me as well as by people around me. I will place my focus on dispelling distrust of the people by continuing eradicating corruption by all public officials." From the beginning year of the 1988 to 1992 period applying the "democratic and autonomous corrective inspection" policy the government made more efforts to strengthen morality and accountability on public officials by "establishment of law and order through

governmental authority” (ibid). Therefore in this period the focus of government was to injecting democratic and responsive moral into public officials which would be more effective to fight corruption.

After democratization (1993 to 1997) the government determined the two major factors: cozy relations between politics and business; and defect in regulations and administrative rules as the root cause of corruption and irregularities in Korean society. The government declared ‘Korean disease’ (corruption) as impediment of building ‘New Korea’ and focused policies to “rooting out corruption,” “invigorating the economy,” and “tightening discipline of the nation.” President Kim Young-sam launched a very extensive and strong reform movement centered on anti-corruption. This government started various reform works, revised various laws, and introduced new anti-corruption policies, supportive anti-corruption laws like related to politics and public officials’ purification to achieve the corruption prevention goal (ibid). The government (1998 to 2002) also regarded corruption as major Korean disease and started its effort with comprehensive anti-corruption measures putting it at the top of agenda. This government enacted anticorruption act which also mentioned about the code of conduct of public officials. In the period of 2003 to 2007 the government focused on making and implementing anti-corruption policies and applying state reform measures like autonomy, transparency, fairness and trust etc. and also revised anti-corruption law. The successor government (2008-2012) introduced new and internationally well-known anti-corruption measures like social inspection and protection of public interest whistleblowers as well as reformed anti-corruption legislation and ACA. This government enacted new anti-corruption law which founded comprehensive ACA, ACRC, in 2008. And now the Korean government is applying international standard measures to fight corruption.



### **3.2.2. Korean Anti-corruption approach**

Even though there had been made several efforts to establish anti-corruption system, ‘Some irregularities and expedients happened during rapid economic growth period (1948 to the early 1990s)’. During few years of democratization to the early 2000s some remarkable institutional and legal foundation for anti-corruption system, for example, enactment of the Anti-corruption Act in 2001 and establishment of an ACA: KICAC in 2002, was set up which enforced social and national movements to raise transparency in society at home and abroad (Keychang Chung 2011). The corruption control issue in Korea has been made an national agenda which is focused on to “build a fair society” by raising integrity level of the whole Korean society.

From 2002 to 2007 it was widening the targets of anti-corruption policies and further activated its anti-corruption activities. Also at the national level comprehensive & long-term anti-corruption strategies has been established. By improving and reforming anti-corruption policies and practices, punishment against corrupt acts is made extra stringent and concurrently by reform of public attitudes and developing zero tolerant culture against corruption was put on focus, also improvement of laws and institutions with corruption risks and promoting governance based on public-private partnership (Keychang Chung, 2011) was another main focus. Korea has been now introduced new anti-corruption system from 2008 which is, according to Keychang Chung (2011), said to be as:

‘connected with protection of people’s rights. In this regard more than 1,500 cases of unreasonable administrative rules and regulations had been dealt with for its revision which lay burdens on people and businesses. This system mainly insists on partnership & international cooperation against corruption. Korean government enforced pan-governmental anti-corruption basic plan which established mid- to long-term anti-corruption measures, provided anti-corruption

policy guidelines for public agencies under a strong monitoring and evaluating anti-corruption initiatives of public agencies.’

The ACRC started to conduct corruption impact assessment in 2006 and now it has been introduced to local government, public companies and central government agencies. Also anti-corruption initiative assessment, integrity assessment, corruption perception survey and integrity consultancy service are being conducted which is very useful to upgrade and improve existing policy. The rate of enforcement of recommendations produced from the results is over 80%. Code of conduct is another main measure fighting corruption. Its enactment for public officials is very crucial to setting up their ethical standards and one of the main instruments to encourage them to implement the standards. There are separate code of conduct for central governments, local governments, and public service agencies of their own implemented. It is also enacted for local councilmen since 2010. The ACRC runs various educational/promotional activities which have been helpful on implementing code of conduct and investigation and monitoring activities on its violations. It has significantly contributed to enhancing integrity and transparency of public offices, as a result corrupt behaviors in daily lives have been reduced while work ethics among public officials has been strengthened (ibid).

Another anti-corruption measure, the ACRC has been applying, is reactive measure which is one of the most successful measures. E.g. more than 70% of referred cases are detected as corruption cases (ACRC annual report 2013). In this regard the role of whistle-blower is remarkable who had reported corrupt cases with accurate information. Korea has powerful and effective whistle-blower protection law, which offers guarantee of whistleblower’s confidentiality, physical safety and even of his/her whole family, employment status, mitigation of culpability and reward-award. The ACRC has been conducting integrity education and training program for general people,

students and public officials as well. Another main policy measure applied against corruption is public private partnership (PPP) by working with NGOs through the theme ‘Policy Council for Transparent Society’. It has been supporting to enhance corporate ethics capacity and developed “Ethics Management Model for Public Corporations,” “Corporate Transparency Self-Assessment Model” and “Ethics Management Report Standards” in order to promote business ethics (ibid). The Korean anti-corruption policy is mainly focused on controlling grand corruption which lies in a powerful triangular trap constructed by the strong combinations of politicians, big business houses and high-level public officials. And the main tools to break that vicious triangle used are promoting a system of checks and balances, transparent and fair decision-making process, and public monitoring which is rather effective. Corruption is a byproduct of ill culture. According to ACRC Korea, its another effort is focused toward changing ill and corruption tolerant culture by introducing the ‘Solicitation Declaration System’ and conducting public-private campaign to eradicate undue solicitation practices which is a new approach in this field. ACRC has accepted the fact that business ethics, yet, in Korea have not met the global standards so Korean companies should make more efforts to improve their business ethics practices. To address this issue, from September 30, 2011 Korea enforced the Act on the Protection of the Public Interest Whistleblowers to protect the reporter of violation of the public interest issue such as the health and safety of the public, the environment, and fair competition. As a result it has contributed to increase transparency in Korea. To improve citizens’ sense of integrity across the Korean society ACRC has encouraged establishing ‘Anti-corruption Employee Clubs’ (ibid). Therefore we can say that Korean ACA is now mainly focused on changing ill mentality of general people, bureaucrats,

businessman and politicians as well toward corruption by promoting ‘Integrity, ethics, and transparency’.

A new trend against corruption in Korea has been started and the public service providing agencies voluntarily have started to create and implement various promotional anti-corruption policy measures accordingly in their organizations. For example, Yeonggwang-gun in Jeollanam-do’s corruption-free organizational culture; Gangwon-do’s web site, ‘Code of conduct & Corruption Report Center’; Kwang-ju Metropolitan City Office of Education’s ‘audit right before their retirement’; Korean Railroad Corporation’s efforts to strengthen its internal audit capacity and so on (Joon Oh Jang and Hae Sung Yoon, 2012). According to Joon Oh Jang and Hae Sung Yoon, (2012):

‘The ACRC is aimed at establishing a quick and reliable one-stop service system by combining the functions of addressing public complaints, preventing corruption and settling administrative appeals. The ACRC roles to designing and governing comprehensive anti-corruption measures at national level, assisting concerned government agencies to implement a measure to asses integrity levels of high-ranking public officials and a code of conduct to prevent corruption, and protecting and rewarding those who have reported suspected corruption by legislating the Whistleblower Protection Act.’

**Box 2: Efforts recently made by Korean government and ACRC against corruption**

- ◇ Code of conduct for public service providing organizations ...
- ◇ Joint anti-corruption movement with NGOs
- ◇ Anti-corruption educational programs for students and public officials
- ◇ Monitoring corruption and enactment of impartial punishment system
- ◇ Enforcing disciplinary measures against judges and public prosecutors who has been offender of corrupt act. And so on.

Source: author’s collection from various sources

## CHAPTER FOUR

### 4. COMPARATIVE ANALYSIS OF THE TWO ACAs

#### 4.1. Constitutional and Legal Provisions for CIAA, Nepal and ACRC, Korea

Korean leading ACA, ACRC established in 2008, even though, is under prime minister's office but is fully independent and free in its works and decision making process which is guaranteed by law. Unlike ACRC, the Nepalese leading ACA, CIAA was established under constitution of Nepal, 1991 and continued by the interim constitution, 2007. So there is a clear difference in legal base of those ACAs. CIAA is an independent constituent body and can perform its duties and make any legal decisions independently which is guaranteed by constitution. Regarding conduction of anticorruption activities CIAA is powered by constitution, CIAA Act and POCA too. CIAA is solely responsible for conducting anti-corruption activities. ACRC is powered by ACRC and other supporting laws. Including chief commissioner, in CIAA there can be other commissioners (generally 5) as per required. All commissioners are appointed by President on the recommendation of constituent assembly for six year term of office. They can be reappointed once more. Unlikely ACRC consist a total of fifteen commissioners including chairperson of minister level, three vice-chairpersons of vice-minister level, three standing commissioners and eight non-standing commissioners for a three years term of office and only once more may be reappointed. Both ACAs can pass any resolutions by the majorities of the present board members. For general complaint handling CIAA has created a committee of two commissioners and ACRC for the same purpose has created a three member committee to see the cases. Both ACAs can appoint outside expert for special advice in specific issue. For efficient performance ACRC has created sub-committees but CIAA lacks this instead, it has created technical

committees of professionals available within CIAA for technical advice on complex technical issue.

CIAA commissioners as well as any investigation officer may not see the case if that is linked with his/her relatives or previously closed person. For ACRC it is some more clearly specified and they may not see the case of immediate relatives, the issue s/he engaged before appointed, the issue s/he participated as an agent of a petitioner or on request of any interest party. For both ACA if one is a political party member immediately before, cannot appointed as commission member therefore both ACA members are free of political affiliation, hence they are expected free and fair of any interventions/affection in decision making and investigation process. Qualification and disqualifications of CIAA commissioners are clearly fixed by constitution. Any people of the age over 45 to under 65 with minimum of bachelor's degree and twenty years of experience in the field of either accounting, law, revenue, engineering, development or research and distinguished on the field may be appointed as a commissioner. For ACRC the qualifications are a little flexible. Experience is expected eight years or more for associate professor or higher, ten years or higher for judge, public prosecutor, attorney-at-law, engineer or financial expert. Also any reputed people recommended by NGOs can be appointed for. There is a big difference on the criteria of removal of the two ACA board members. In Nepalese case only if the parliament passed impeachment resolution by its two-third majorities they can be removed. This means the commissioners must be accountable to legislature ultimately to the people in principle. In Korean ACA case ACRC has been enjoying more power in this regard because they can be removed in case a member holds two public posts, the President or the Prime Minister may dismiss or decommission him/her on the chairperson's recommendation after a resolution thereof has been passed with the consent of not less than two thirds

of the total ACRC members. The functions and duties of both ACAs are almost similar, both handle and investigate complaints against public officials, but the basic difference is CIAA is final investigator and prosecutor itself and

**Table 10:** Constitutional and legal provisions for CIAA, Nepal and ACRC, Korea

events	CIAA, Nepal	ACRC, Korea
Established under	Constitution of Nepal, 2007, Article 119	Act On Anti-Corruption & The Establishment & Operation Of The ACRC, 2008
Legal status	Indifferent constituent bod	Established under Prime Minister's
Power status	Independent & Guarantee of Position	Independence & Guarantee of Position
Enforced by	CIAA Act ,1991	ACRC Act, 2008
No of commissioners	One chief commissioner, commissioners as required	One chief commissioner, total 15 commissioners
Appointment by	The president on the recommendation of constituent assembly, then after shall not be eligible for appointment in any other government service	Chairperson & vice chair: President on Prime Minister's recommendation; Standing commissioner: on chairperson's recommendation by president; Non-standing commissioner: by president. Among non-standing commissioners, two on the recommendation of the National Assembly and chief justice
resolution pass by	Present member's majority	By majority of those present members
small committee	Compose of two members (to handle complaints)	Compose of three members (to handle complaints)
Outside Expert	Yes may appoint	Yes may appoint
Subcommittees	no Subcommittees	For efficient performance
Exclusion & Evasion of Member	Case of: immediate relative,	Case of: immediate relative; issue engaged before appointed; issue participated as an agent of petitioner; on request of any interest party
Term of office	6 yrs., can be reappointed	Three years, can be re-appointed
Political	Mayn't be a party member	May not be a party member
Removals of Chief Commissioner /Commissioner	may be removed from his or her office if motion of impeachment is passed by the Legislature	If a member holds two public posts President or PM shall remove him on recommendation of chairperson after a resolution passed with consent of at least two thirds of the total members.
Experiences needed to be Chief Commissioner or a Commissioner	has at least twenty years of experience in the field of either accounting, law, development revenue, engineering, or research and is a distinguished person; At least bachelor's degree holder; Age 45-65 yrs. (for 6 yrs.)	term of service as: 1.associate professor or higher eight years or more; 2.judge, public prosecutor or attorney-at-law: ten years or more; 3.Grade III public official or higher;4.certified architect, tax accountant, public accountant, engineer or patent attorney: ten years or more; 5.member of any Local Ombudsman: four years or more; 6. Reputed, with administrative knowledge, recommended by NGO

Functions, duties and powers	-Formulating & implement policies to combat corruption -Investigating complaints- improve administrative systems	Address public complaints & improve related unreasonable systems; Build clean society by preventing & deterring corruption in public sector; Protect people's rights from illegal/unfair administrative practices through administrative appeals system & investigation for its improvement -Making & implementing anti-corruption policies & plans; evaluate anti-corruption efforts
Limitations	cannot investigate the collective decision of cabinet, parliamentary committee as well as judges, army and officials of the constitutional body while they are in office	complaint requiring high political decision or related to state secret; courts; election commission; National Assembly; Board of Audit & Inspection; local council; issue related to criminal investigation; related to personnel administration; procedure under any other Act in progress; related to the <u>relationship of rights and duties</u> ;

Source: interim constitution of Nepal, 2007; POCA, 2002 and ACRC Act

ACRC has not been enjoying that right instead it forwards such cases for further investigation to the related investigating agencies and public prosecutor's office for prosecution. In this regard CIAA looks much more powerful in compare to ACRC. Both ACAs can address public complaints, working to improve unreasonable systems in law, keep aim of building a clean society by preventing and deterring corruption in the public sector and formulating and implementing anti-corruption policies and plans to combat corruption. Moreover, ACRC is overwhelmingly engaged in investigating and evaluating the results of complaints and improvement of administrative systems and working together with anti-corruption activists and organizations with a sharp concentration, on which CIAA is far back, is the one of the major difference between the two ACAs. The rights of the both ACAs are limited to some extent; CIAA cannot investigate the collective decision of cabinet, parliamentary committee as well as judges, army and officials of the constitutional body. ACRC cannot handle complaint which requiring high political decision or is related to state secret; related to National Assembly, Courts, Election Commission, Board of Audit and Inspection, Local Council



and the issue related to criminal investigation and the issue on which procedure under any other act in progress, issue related to the relationship of rights and duties and related to personnel administration. CIAA can delegate any of its functions, duties and powers relating to the inquiry and investigation or filing of cases to the Chief Commissioner, a Commissioner or any employee of the Government of Nepal to be exercised and complied with subject to the specified conditions. CIAA submits its annual report to the president and he refers it to the parliament but ACRC submits its annual report to the president and to the parliament simultaneously.

#### **4.2. How Corruption is Defined According to Nepalese and Korean law?**

Before 2002 Nepal had 40 years old anti-corruption law in practice. Its coverage and definitions were relatively narrow and contents were complex but after 2002 Nepal is now practicing a new and relatively broad-clear anti-corruption legislation. According as POCA, 2002 the purpose of enforcing of this law is: 'to make timely legal provisions relating to prevention of corruption with a view to maintaining peace, convenience, financial discipline, morality and good conduct among general public' which is applicable to all Nepalese citizens, public servants residing anywhere outside Nepal and to non-Nepalese citizens residing in foreign countries. The purpose of enforcing Korean anti-corruption law is: 'to protect people's basic rights and interests, secure administrative validity, and create a transparent public service and society by handling people's complaints and grievances, improving unreasonable administrative systems, and preventing and efficiently regulating corruption' which is further clear, specific and broad too and applicable for . Corruption, in POCA, is defined in micro level and is tried to make it very specific according as the degree, depth and nature of corruption. The interpretation of law in Nepal usually becomes an issue of

controversy. Still this law is not free of criticism because there are several discretionary provisions on fine and conviction part. The general level of integrity and transparency in Nepal is always in debate so such provision is very risky and it can directly affect the performance of ACA. POCA has divided corrupt act into more than one dozen part. Unlikely in Korean anti-corruption act it is divided into three broad and major categories. Likely to Nepalese anti-corruption act, the punishment provisions are still discretionary in Korean anti-corruption law too (see table).

**Table 11:** How corruption is defined

	<b>Anti-corruption law in Nepal</b>	<b>Anti-corruption law in Korea</b>
applicable to	All Nepalese citizens, public servants residing anywhere & non- Nepalese citizens residing in foreign countries	Not clearly specified, mainly public officials
Corrupt acts definition	Give & take of graft; Accepting goods or service free of cost or at lower prices; Taking gift, present, award or donation without a prior approval of GoN; Leaking revenue; Taking commission; Getting illegal benefit or causing illegal loss; Preparing false documents; False translating of documents; Tempering government documents; Damage to government or public documents; Disclosing secrecy of question papers or altering the result; Engaging in illegal trade or business; Claiming false designation; Giving false particulars; Giving false report; Damaging public property; Exerting illegal pressures; Property deemed to be acquired illegally; Committing attempts accomplices	act of corruption means the act of wrongdoing falls into any of the following The act of a public organization employee to seek illegitimate gains for himself/herself or for any third party by abusing his/her position or authority, or violating Acts and subordinate statutes in connection with his/her duties The act of causing financial damage to a public organization in violation of Acts and subordinate statutes, when it is in the process of executing its budget, or acquiring, managing or disposing of its property, or entering into and executing a contract to which it is a party The act of forcing, recommending, suggesting or encouraging someone to engage in or conceal the acts provided for by the above subparagraphs Negligence
purpose	To make timely legal provisions relating to prevention of corruption with a view to maintaining peace, convenience, financial discipline, morality and good conduct among general public	Protect people's basic rights & interests, secure administrative validity, create a transparent public service & society by handling people's complaints & grievances, improving unreasonable administrative systems, & preventing & efficiently regulating corruption

Source: POCA, 2002 and ACRC Act

### **4.3. Organizational Structure, Manpower and General Comparison of CIAA and ACRC**

By constitution CIAA is the sole authority responsible to conduct all kinds of anti-corruption activities against any wrong doings committed by public officials. Even though there are several other anti-corruption natured organizations. They are mainly supportive and therefore cannot be minimized their importance. This organization in compare to other public organizations in Nepal is the most advancedly equipped and systematized organization in terms of physical infrastructure, human resources and its management, working procedure, transparency and various other friendly environmental aspects. Sufficient space and building, furnishing, clean and hygienic environment tempts everyone to work for this organization. The main attraction of the organization is its rights, duties and functions so most of the people's perception toward CIAA is more respectful and hopeful as well.

The chief commissioner and commissioners are assisted by 410 civil servants in the central office and by 390 more civil servants in the field offices, seconded by Nepal government, to prevent corruption and misuse of offices. Chief Commissioner keeps the right to allocate works to other commissioners. For administrative purpose there is a secretariat under the command of secretary (second top position in Nepalese civil service) who is responsible for entire administration of the CIAA. In central office there are eight core investigation divisions, to investigate sectorial complaints, under the command of class I officer (which is the 3<sup>rd</sup> highest post in Nepal Civil Service) who is each assisted by specialist subordinates. CIAA has created prosecution division to file cases in the court, advocacy division to fight and advocate its cases filed, and appeal division to appeal the case on which CIAA is unsatisfied with the decision of primary court. Monitoring division is created to regularly monitor the implementation process of its decisions which

CIAA directs to follow to other public offices. Also it is supported by police division to assist investigation process, under the command of deputy inspector general. For daily administration and human resources management provision there is established an administrative division under the command of class I officer. To make and revise anti-corruption policies, plan and strategy; to conduct CIAA's human resources development program; to conduct new research in anti-corruption fields and to expand and strengthen international relation, a separate planning division is created. So in this regard, physically, we can say that CIAA central office is almost perfectly equipped and also all ten field offices are likely equipped as central office.

The ACRC, Korea keeps right to handle complaint and to order public organizations and investigative agencies to further investigate and report and to implement its decisions. Also it can direct prosecutor's office to file a case with accusation in court. The ACRC Chairperson and Commissioners are assisted by 482 staffs and officials of its own to conduct various anti-corruption activities. So ACRC is fully independent in terms of employee allocation. It is divided into various bureaus under the command of each vice-chairperson and also a secretariat, under the command of general secretary, is established to perform general administrative task. The Ombudsman Bureau deals with different sectorial complaints deliberation. The Anti-corruption Bureau works for report inspection and it conducts anti-corruption survey and evaluation, performs corruption impact assessment, monitors code of conduct and works for petitioner's and whistleblower's protection and reward. The Administrative Appeal Bureau works for administrative appeals and deals with different appeal related to land, environment, treasury, social welfare etc. There is institutional improvement bureau created too for complaint analysis which mainly deals with economic and social institutional improvements as well as complaints information, analysis, counseling and e-people. To deal

**Table 12:** General information in comparison

	<b>CIAA</b>	<b>ACRC</b>
Establishment	1992/02/11	2008/02/29
secretariat	Secretary for general administration, appointed by the Nepal government	Secretary General for general administration, appointed by Chairperson among vicechairperson
advisory organs	Committees for special advice on specific issue	Permanently to advise on matters necessary to perform duties
Employee arrangements	By Nepal government; No special provisions established regarding qualifications	Appoints persons with required expertise, integrity & morality for handling of complaints
Function allotment	by the Chief Commissioner	
Layers	Single: with Regional Offices	Double: ACRC & Local Ombudsman
Code of conduct	Yes	Yes
Established status	Independent constituent body	under the Prime Minister's Office
annual report	to the President then he sends to the Parliament	to the President and the National Assembly
Who can file complaint	Any person including an alien residing in Nepal	Any person including an alien residing in Korea
How file complaint	Written, electronically or oral	Written, electronically or oral
Agent	No such provisions	petitioner may appoint
Complainant's detail	Not necessary	It is the must
Referral of Complaint	Yes to concerned agency for investigation	Yes to concerned agency for investigation
On-site inspection	Yes, only for observation	Yes; may decisions too
Compromise	No such provisions	Recommendation for compromise to those who are involved
May conciliate upon request or ex-officio initiate	No such provisions	In order to ensure the rapid & impartial resolution of any complaint related to many persons or having far-reaching social effects
Rectification of decision	After relevant opinions on matters	After relevant opinions on matters
Notification	Provisions existed but not applicable in that extent	Notification of interaction with implementing entity to petitioner
Investigative agency/organization	CIAA itself, may refer to other entity	Refers if found corruption for further investigation
Who files accusation	CIAA itself for every case	ACRC may
whistle-blower's public position's guarantee	No such provisions	Guaranteed for in order to duty
Personal protection of co-operator, informant, & complainant	prohibited to disclose identity of informant & his family, relatives or cohabitant	prohibited to disclose identity of informant, his family, relatives or cohabitant & their protection ensured
Financial Reward & Compensation to reporter	Yes but, not much applicable	Guaranteed by law as a resolution passed by Reward Deliberation Board
Amendment of existing law, systems	By parliament	By parliament
Education/Promotion	Yes but less effective	Yes effective
Employment restriction on public organization to employees dismissed for corruption	Forever in public organization and no ban for private enterprise employment	for 3 to 5 years in public organization and other private enterprise

Source: CIAA act; ACRC Act; ACRC brochure 20140616 etc.

with international relations, NGOs, administrative management, Planning and Coordination Office is established.

Any person including an alien residing in can accordingly file complaint in written, electronically or orally. ACRC allows petitioner to appoint his agent unlikely CIAA has no such provisions. Regarding complainant's detail CIAA entertains any complaint even if not mentioned it on complaint and for ACRC it is the must and important clause to accept the complaint. Both ACAs may refer complaints to concerned agency for investigation but the basic difference is CIAA refers complaints if it deemed a general and investigates itself if complaint deemed serious; unlikely ACRC refers complaints to specified investigative agency if deemed it needs to investigate further. Both ACAs are practicing on-site inspection of the act according as complaint. Petitioner cannot give back petition if once it is filed in CIAA and there is no provision of recommendation for compromise to those who are involved but such practice for ACRC is common. In order to ensure the rapid and impartial resolution of any complaint related to many persons or having far-reaching social effects ACRC may conciliate upon request or ex-officio initiate, which is so far impossible for Nepal. ACRC notify any remarkable development to the petitioner but for CIAA it notifies only after finalization of investigation and it is not that much usual in practice. ACRC has guaranteed of public position, working conditions or no any disciplinary action or discrimination to informant or whistle-blower, if taken ACRC can suspend such action and provide recovery of financial disadvantage too and also it has established reward-award systems which are new thing for CIAA. Nepal has not enacted whistle-blower's protection act so far. In Nepal/Korea, if a person reports corrupt acts which results in the detection of a crime committed by him/her, CIAA/ACRC may mitigate or remit punishment for the crime. According to Korean anti-corruption law, any public organization employee who rightly

resigns, or has been dismissed or removed from office for committing an act of corruption in connection with his/her duties are prohibited from landing a job in any public organization and other private enterprise, for 3 and 5 years respectively but according to Nepalese anti-corruption law such offender may not resign from the post, he will be dismissed and never in future may join public organization and no restrictions for private sector employment.

#### **4.4. Anti-corruption Policy and Strategy of Nepal and Korea**

Basing on the theme concept of ‘winning the minds and hearts of people’ CIAA, recently, has enforced six year strategic anti-corruption plan which is mainly focused on implementation of anti-corruption strategies. ‘Unlike many other countries where a leading responsibility to draft, implement or monitor and evaluate national anti-corruption strategies are normally taken by ACA, in case of Nepal this responsibility has been taken up by the Office of the Prime Minister and Council of Ministers. ... In all these strategies and work plans, the GoN has made CIAA the primary agency to implement various components of the national anti-corruption strategies and work plans (CIAA, 2013).’ In the first 3 year phase of the plan CIAA basically apply priority focus on punitive measure and concurrently focus on 7 fundamental areas like legal and institutional improvements of entire organizations, coordination, policies researches, complaint handling system, public awareness etc. and in the second phase it has planned to be focused on preventive measures and capacity building, coordination and collaboration with international anti-corruption actors.

The both countries have been applying zero tolerances policy. Nepal is giving first priority to punitive measures followed by preventive and promotional with second and contrastly Korea is adopting preventive and promotional measure with first priority and punitive then with second. ACRC is far ahead

in coordination with national and international actors than its Nepalese counterpart. The anti-corruption strategies are back forced by code of conducts in Korea to achieve the goal of enhancing integrity, improving ethics and transparency in public as well as in private sector but in Nepal still private sector is not within the coverage of CIAA.

**Table 13:** Anticorruption policy and strategy:

<b>CIAA</b>	<b>ACRC</b>
Zero tolerance	Zero tolerance
punitive, preventive, promotional, capacity development, coordination of ACAs, building regional and international linkages	preventive, promotional, punitive, coordination of ACAs-CSOs-NGOs, building regional & international linkages & cooperation as <b>strategies</b>
Established & enforced a code of conduct for its employees, expert, & commissioners Monitoring compliance with & investigates violations of these codes	Established, enforced & enhance a code of ethics for its employees, expert members & public service officials. Monitors compliance with & investigates violations of these codes
Public organization employee's obligation to report corruption	Public organization employee's obligation to report corruption
<b>1. Enhancing integrity in public sector</b>	<b>1. Enhancing integrity in public sector</b>
Reinforced Process of Exposure of and Punishment for Corrupt Officials	Reinforced process of exposure of and punishment for corrupt officials
IAPO in Nepal is still in beginning stage, & not started yet for high ranking officials	Integrity assessment of public organizations ( <b>IAPO</b> ) and high-ranking officials
Integrity edu.: public officials, students	Integrity education for public officials, students
Ambiguous	Improved transparency in public finance management
Not started yet	Efforts to enact the Act on the Prevention of Illegal Solicitations and Conflicts of Interest
<b>2. Improving ethics in the private sector</b>	<b>2. Improving ethics in the private sector</b>
Not yet enforced the Whistle-blowers' Protection Act	Implementation of the Act on the Protection of Public Interest Whistle-blowers
Private sectors are not in coverage of CIAA	Prevention of undue influence exercised by former Public officials
Moderate penalty for corrupt entrepreneurs	Heavy penalty for corrupt entrepreneurs
No formal anti-corruption practices with private sector	Mutual cooperation amongst small, medium and large companies
<b>3. Promoting PPP &amp; Cooperation with International Community</b>	<b>3. Promoting PPP &amp; Cooperation with International Community</b>
PPP concept is not implemented intensively	Supported voluntary anti-corruption projects organized by civil society groups.
Such practice is not in force actively; CSOs are being supported to a limited extent	To provide assistance for businesses in their activities to promote ethical management.
Participates global fight against corruption	participating global fight against corruption
Making efforts to meet global standards including UNCAC Convention,	striving further to meet global standards including UNCAC & OECD Anti-Bribery Convention,
Very brief training programme for domestic public officials	Intensive anti-corruption training program for public officials of developing countries.

Source: The Anti-Corruption Policy of Korea and Efforts to Enhance Integrity-Korea, a country of integrity, ACRC, 2012; CIAA, 2013; CIAA Act; ACRC Act



ACRC has been regularly conducting integrity assessment survey but CIAA has not doing it regularly. PPP concept in anti-corruption sector in Nepal is a new concept and for Korea it is a regular practice. International relation, cooperation and coordination are very important and extending enough for ACRC and for Nepal it is still in the very beginning stage. Even UNCAC provisions are not entirely implemented in Nepal. Korea is conducting intensive national and international training programs for ACA employees and for public officials of developing countries but its Nepalese counterpart is conducting short term and orientation type training for public employees.

GoN has prepared and enforced strategy and action plan against corruption, 2008 and Institution-wise action Plan, 2010. 'Out of 105 listed anti-corruption activities in the institution-wise national anti-corruption strategies and work plans of 2012, 34 activities (around one-third) have been planned to be implemented by the CIAA' (CIAA, 2013). CIAA is the prominent and the others are supportive ACAs but in reality 'there is also a situation of anomaly with regard to ACAs' (CIAA, 2013) because of coordination problem. 'Nepal's ACAs and oversight agencies are centralized while corruption is realized of being gradually decentralized at national level' (ibid). East Asian countries like Korea, Malaysia and Indonesia, have fixed target values to measure the success of implementing anti-corruption strategies (CIAA,2013), but for Nepal it is too difficult to determine it because Nepal till today is in the very beginning stage and has less experiences in this regard.

#### **4.5. Power and Strength of CIAA and ACRC**

The ACRC has been reviewing corruption-causing factors in any laws and takes actions to improve them because she is focusing on source or cause of corruption rather than its effect which is fundamentally different to its Nepalese counterpart, who is focusing her eyes on effects, rather than cause or

source. Except CIAA and ACRC other oversighting and regulatory ACAs play supportive role and endeavor from their ground. While talking about power, CIAA does all process itself (from investigation to prosecution) but ACRC just handle and regulate complaints. CIAA can keep accused in detention, can interrogate, can put accused in date, can order to submit documents, can suspend accused from his post and anything required while investigating. Both ACAs may commute of sentence partly or wholly if accused helps investigation. Investigation officer may enjoy power vested in CIAA while working as an investigation officer. This is one of the important differences between the two ACAs. CIAA and ACRC may avail service of expert or specialized agency. CIAA can apply several restrictive measures against the accused while investigating, this is another major difference. CIAA itself files cases in special court against corruption but ACRC files cases against higher officials only and may appeal with the court because generally public prosecutor files a lawsuit in the court. The ACRC may reject (may not see) a complaint or transfer it to any other relevant entity if it requires high political decision or is related to state or official secret; or is related to National Assembly, any court, Election Commission, Board of Audit and Inspection, or local council; or is related to criminal investigation and execution of a sentence whose handling by the competent entity is regarded as appropriate or in connection with which the Board of Audit and Inspection initiates an audit and inspection; or complaint with respect to which is already in procedure under any other Act in progress; or is related to the relationship of rights and duties; or related to personnel administration etc. Its Nepalese counterpart can reject the complaint which is under progress in any court; related to council of minister, judiciary, army, parliamentary committee etc. The personal protection of informant or whistle-blower or any cooperator, in Korean case, is guaranteed by law and is prohibited to disclose

their identity without his/her consent and s/he or his/her family are protected from pressure, retaliation or fear but in Nepalese case this provision is not implemented effectively.

**Table 14:** CIAA Act and ACRC Act – power and strength

<b>CIAA Act</b>	<b>AC &amp; EO ACRC Act</b>
<b>Public organizations (PO):</b> Wholly or partly owned or controlled by government; run by gov't or receiving full or partial gov't grants; local bodies; organizations invested by above mentioned organizations	<b>Public organizations :</b> Agencies under Government Organization Act; local bodies; National Assembly; Courts; Election Commissions; Board of Audit and inspection; Organizations related to public service
<b>Public officials:</b> those who work for the above mentioned public organization	<b>Public officials:</b> persons under State POs Act & Local POs Act; those who are recognized by other acts as POs
Abuse of Authority: 1. Improper Action 2. Corruption	Act of corruption: Generally a corruption case- reported refers to investigative agency
May keep accused in detention while investigating	No such provision for ACRC
Ipsa Facto suspension while in detention	No such provision for ACRC
May order investigation officer or other concerned agency or office to file a case at appropriate court	May request investigative agency for investigation & may request public prosecutor for prosecution
May order to submit relevant documents, or materials to CIAA within a specific time limit	PO may sincerely comply with requests, if found difficult to do so, explaining why
May interrogate the accused person	
May order police - arrest & produce in CIAA	No such provision for ACRC
May order to appear before CIAA at required time, or put him on date	Yes
May write to suspend accused from his post	No such provision for ACRC
May demand collateral from accused, if not provided, may keep in detention	No such provision for ACRC
If not furnish document or material within time limit, may direct to take departmental action or may fine	No such provision for ACRC
conduct or direct the search of any place	Yes ACRC also may
Accused, who helps in investigations, may present in court as witness & may appeal for commutation of the sentence, partly or wholly	Accused, who helps in investigations, may present in court as witness & may appeal for commutation of the sentence, partly or wholly
May appoint any commissioner/employee as investigation officer to conduct investigations	Just handles complaints
Investigation officer may exercise the powers vested in the CIAA	Just handles complaints
May avail the services of any expert of concerned subject or of a specialized agency	May avail the services of any expert of concerned subject or of a specialized agency
May acquire statement or freeze transaction	No such provision for ACRC
May order to ban issuance of passport or put it on hold	No such provision for ACRC
May restrict accused to leave place	No such provision for ACRC
May punish for obstruction	May punish for obstruction
May punish for making false complaints	Yes ACRC also may
No case to be initiated against CIAA, commissioners or its employees –in respect to any action taken with bonafide intentions	ACRC employees are fully secured during their office

Case may initiate against retired persons too	No clear provision for ACRC
No obstruction in proceeding & finalization of case even if the accused or defendant dies before or after filing of the case	No clear provision for ACRC
Any property if proved to have been earned through corruption, kept in the name of anybody shall be confiscated	Yes in Korea too
May order to freeze property of a foreigner	No clear provision for ACRC
Any person holding a public post must disclose property details yearly	No clear provision for ACRC
May regulate its working procedure itself	Yes ACRC also may
Special court as adjudicating authority	High court as adjudicating authority
Gov't as plaintiff in charges of corruption	Yes Korea government too
If any person, under its jurisdiction, regardless of position or hierarchy, found to have committed an offence of corruption the CIAA itself files a lawsuit	senior public official corruption case- ACRC files accusation with prosecution against him/her in its name

Source: CIAA act, ACRC Act, CPA Nepal, Presidential decree Korea etc.

#### **4.6. Complaint Handling and Investigation Procedure of CIAA and ACRC** (source: CIAA Act, ACRC Act and presidential decree CIAA working procedure etc.)

According to Korean anti-corruption law any person including alien may file complaint with ACRC and without delay she investigates the complaint. While conducting an investigation she may request concerned agency- to give explanation or submit relevant materials and documents; to any related or reference person of interest to present him/herself and submit his/her opinions; to inspect any place or facility deemed relevant to matters subject to investigation on an on-site basis; to commission any other entity to make an appraisal. The head of the agency, concerned, may comply with a request or inspection made by ACRC and cooperate her in a bona fide manner. ACRC can also play a role of Conciliator when both parties compromise in the matter of conciliation to ensure rapid and impartial resolution of any complaint related to many persons or having far-reaching social effects, the ACRC may, upon request or ex officio, initiate the conciliation procedure if deemed necessary. To raise belief, trust and respect of people toward ACRC and to encourage not tolerating corrupt acts ACRC notify the concerned petitioner and the agency head, of a decision on a complaint. The concerned agency

after receiving a recommendation or opinion notifies ACRC of the results of the handling those recommendation or opinion within 30 days after receipt. If, in the course of investigating or handling found any employee acting illegally and unjustifiably by intention or in gross negligence, the ACRC may request the BAI and the concerned entity to conduct an audit and inspection. After confirming details from the complainant or whistle-blower like - name, address, occupation and the detail purport of report, the ACRC may ask them to submit necessary materials. If a case deemed corrupt offences ACRC refers it to the BAI, an investigative agency or an agency in charge of supervising relevant public organization for further investigation. If a person suspected of committing corruption on which the ACRC has received a report is a senior public official like- Vice Minister or higher rank official; metropolitan Mayor or provincial Governor; Superintendent General of police or higher official; Judge or Public Prosecutor; General of military or National Assembly are needed for an investigation for criminal punishment and an institution of public prosecution, the ACRC itself files an accusation with prosecution against him/her in its name. The ACRC and investigative organization complete or handle a corruption case within 60 days of when it receives and if there are justifiable grounds then it may extend for no longer than 30 days. The investigative agency have to notify ACRC of the findings of inspection, investigation, or examination within 10 days of its completion, the ACRC relay a summary of the findings to the concerned person. When ACRC deemed the conclusion of inspection, investigation or examination conducted by the investigative agency inadequate, she may ask the agency to again inspect, investigate or examine within 30 days. Also any informant, complainant or whistle-blower may formally raise objections to the findings. The ACRC itself or by advisory group conducts Corruption Impact Assessment, and use the results as a means of assessing and reviewing

regulations and communicate the matter to the Ministry of Government Legislation to use the results in legal works. ACRC applies award and reward process when it results institutional improvement, action against corrupt person, contributes to preventing economic costs, contributing to increasing or recovering public revenues. The complainant may withdraw complaint any time before the ACRC make a decision. ACRC has started on-site complaint inspection system to listen from the complainant and to finalise it on the spot which helps to make the decision making process faster. Korea has established local ombudsman (local ACA) in each local government to investigate and handle complaints against concerned local bodies and to make recommendation, improve relevant administrative systems, provide guidance and counselling, conduct educational and publicity, extend international cooperation and relation etc. The ACRC and each Local ACA can independently perform their duties and enjoy power as well. Additionally ACRC actively supports each of the Local Ombudsman to perform their duties and responsibilities.

**Table 15:** Complaint handling (working procedure)

<b>CIAA</b>	<b>ACRC</b>
<b>1. Addressing complaints</b>	<b>1. Addressing civil complaints</b>
1. receiving, investigating any complaints 2. preliminary investigation 3. postponement or detailed investigation 4. acquaintance or prosecution Monitoring and detecting corrupt practices	Investigating & handling civil complaints a. Counselling & Application b. Investigation, deliberation, decision-making d. Notification e. one step service, monitoring and detecting
Such a scheme not launched yet Language not specified	Auto classification, proceed, investigation; multilingual service provided in 12 languages including Nepali; ( <a href="http://www.epeople.go.kr">www.epeople.go.kr</a> )
Free call service: 16600122233; a. No counselling and guidance service to citizens about civil service; b. no call back system	Integrated Government Call Centre (#110) Counselling and guidance service to citizens about civil service; Call back system
<b>2. Provisions regarding corruption</b>	<b>2. fighting corruption</b>
Coordinating National Anti-Corruption Policies Newly started but results ambiguous	Coordinating national anti-corruption policies & initiatives; Assessing integrity of POs; Formulates national anti-corruption policies
Not at all	Integrity survey & evaluation of anti-corruption initiatives taken by POs on a regular basis; Encourage POs to make voluntary efforts to tackle corruption
Very minimal practices are being done but	Closing legal & regulatory loopholes: Helps

not in a regular and systematic manner	gov't agencies to review & amend corruption-causing laws; Monitors the implementation of ACRC-recommendations
Not in force	Conducts corruption impact assessment: Identify & remove corruption causing factors in laws & regulations.
	Encouraging voluntary partnerships
Yes but not systematic and regularity	Raising public awareness on corruption issues; Encourage citizen's cooperation & participation; Raise awareness of the risks of corruption
If found committed an offence of corruption CIAA itself files a lawsuit; May order reinvestigation when initial investigation deemed inadequate; May file an appeal for adjudication with the supreme court	Receiving corruption reports: Files accusation with prosecution against "high-ranking" public officials; Files an appeal for adjudication with the high court; May request reinvestigation when the initial investigation is deemed inadequate
Procedure of public interest complaints: Fact-finding investigations; May refer due cases to investigative agencies; Notifies the reporter of the final investigation result	Procedure of public interest reports: undertakes fact-finding investigation within 60 days; Refers the case to investigative agencies; Notifies the reporter of the investigation result
Whistle-blower protection law not enacted: May reward any person who helps CIAA in investigation; Personal confidentiality	Protection of whistle-blowers: Personal safety & confidentiality; rewards & relief money; prohibition of disadvantageous measures
<b>3. Handling complaints/appeals</b>	<b>3. Handling administrative appeals</b>
Notwithstanding no one filing a complaint, may conduct an inquiry or investigation and take necessary action with regard to it	Whose legal rights have been violated or; Who have experienced any form of injustice; -by government administrative agencies
<b>4. Procedure</b>	<b>4. Procedure</b>
Application Submission by personal visit, mail, or internet; May refer complaint to concerned body for action; Inform CIAA & complainant about action & decision taken; Procure any relevant file/document of evidence & information. For departmental action: concerned authority may propose appropriate sentence & must inform CIAA within 3 months of taking departmental action. Other necessary action: Make up losses incurred or take any other necessary action; Must inform the Commission. Issue an order for rectifying bad results	Application Submission by personal visit, mail, or internet Answer Submission Disposition agency answers within ten days to ACRC ACRC sends the answer to the appellants <b>Deliberation &amp; Adjudication</b> Thoroughly examines statements of both sides sets the date for deliberation After deliberating whether the appealed case is illegal or unfair, it notifies the results to the disposition agency & the appellant with a written document
<b>Recommend for institutional improvement:</b> Interactions with concerned; Suggestion, resolution & recommendation; Monitoring & feedback; Analyses corrupt acts; figures out corruption-prone or complaint-causing areas; May offer suggestion: To amend impracticable law, decision, order or action; To remain vigilant on any issue, or take any action; To correct such defects and solve problems	<b>Recommend for institutional improvements</b> Interactions with concerned; Suggestion, resolution & recommendation; Monitoring & feedback Analyses corruption acts & current trends of civil petitions, Figures out corruption-prone or complaint-causing areas Recommends public organizations to improve unreasonable laws & institutions.
	Signed anti-corruption MOUs with Indonesia, Thailand, Vietnam & Mongolia to build their anticorruption capacity by offering technical assistance like Integrity Assessment

<p><b>4. international cooperation</b> Nepal: committed to global initiatives to combat corruption; Carry out investigation &amp; develop process to prevent corruption or improper actions; Maintaining coordination with national or international institutions; carry out promotional activities; Implements of international anti-corruption conventions in progress, UNCAC ratified</p>	<p><b>4. international cooperation</b> Korea: committed to global initiatives to combat corruption; G20 Anti-Corruption Working Group; APEC Anti-Corruption &amp; Transparency (ACT) Working Group; Serves as the Secretariat of the ACA Forum; Implements international anti-corruption conventions; UNCAC ratified OECD Anti-Bribery Convention; Member of International Ombudsman Institute (IOI)</p>
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Source: ACRC brochure 20140616; CIAA act, rules and working procedure

Comparing with her Korean counterpart, CIAA’s working procedure is almost similar. But ‘e-people’, multilingual complaint services are new for Nepal. Korea has clearly specified the duties of people, public organizations, political parties, PO employees and private enterprises and endeavouring to make responsible toward country from their own ground.

**Table 16:** Duties of concerned

<b>Duties of</b>	<b>In Nepal</b>	<b>In Korea</b>
Public Organization (PO)	Institutional freedom; discipline maintain; integrity; equal treat; take responsibility to prevent corruption; promote international cooperation & exchanges to prevent corruption; raise awareness of employees & citizens	raise awareness of ethic in society; take responsibility to prevent corruption; eliminate institutional, administrative, legal, inconsistencies; raise employee & citizen awareness against corruption; promote international cooperation & exchanges to prevent corruption
Political Parties	endeavour to create a culture of clean & transparent politics	endeavour to create a culture of clean and transparent politics
Private Enterprises	Establish sound trading order and business ethics	Take necessary steps to prevent corruption; Establish sound trading order & business ethics.
Citizens	Not specified	Fully cooperate POs to implement anti-corruption policies & programs
PO Employees	Equal treat, integrity, discipline maintain	Maintain Integrity (Obligation)

Source: CIAA code of conduct, ACRC act/code of conduct, (Nepal) civil service act/rules etc.

Regarding monitoring and notification/call-back system, it is not well established in Nepal. Also integrity survey and evaluation of anti-corruption initiative, anti-corruption policy coordination and legislation review are not started yet. Another important thing corruption impact assessment has not been doing on a regular basis. International relation is limited to UNCAC and few countries. “Ombudsman Outreach Program,” is such a service to the Korean people launched by the ACRC on which the Chairperson himself



visits the people who is suffered from undue administrative measures taken by any public agencies, and makes first hand counsel to petitioners with the concerned agency in attendance, and solves the problem, providing one-stop service, which is totally new approach for its Nepalese counterpart.

#### 4.7. Prosecution and Punishment to Corrupt Offenders

There is a vast difference between the two countries in the regard of prosecution and punishment to corrupt offenders. CIAA after investigation, if found corruption can file prosecution claiming with accusation in the court but ACRC usually doesn't do this job because by law she is not an investigator and prosecutor rather her main job is to handle complaint and get other jobs done by related investigative agencies and prosecutor's office. ACRC ask other agencies for further investigation and prosecutes only against high officials. Korean legal provisions against corrupt offences are quite severe and strict; the court may sentence up to lifelong (20 yrs.) imprisonment concurrently with up to five fold of fine of accepted amount to the offender. Nepalese legal provisions are very weak in this regard and any offender may be sentenced from minimum 3 months up to 10 years with equal up to 2 fold of fine of accepted amount. Also there is a provision of 20% discount on sentence if the accused surrender right after adjudication.

**Table 17:** Punishment against corrupt offences

<b>Nepal</b>	<b>Korea</b>
Imprisonment: maximum: 10 years, minimum: 3 month	Imprisonment: Maximum: lifelong (20 years), minimum: 5 years
Fine: maximum 2 times to equal of committed amount concurrently with imprisonment and/or one of any	Fine: not less than 2 times and not more than 5 times of the excepted amount concurrently with imprisonment
For high level officials: 3 year additional imprisonment	For high level officials: no additional provision

Source: POCA, 2002 (Nepal); Joon Oh Jang and Hae Sung Yoon, (2012); ACRC Act

#### 4.8. Comparative Performance of the Two ACAs

As I mentioned on table 5, the CIAA complaint resolve rate over last five year is lower and continuously decreasing. It was 79.6% in 2008/9, 74.1% in 2009/10, 63.43% in 2010/11, 61.83 in 2011/12 and 59.05 in 2012/13 but that of ACRC on the same period was 92.86%, 98.13%, 103.08%, 98.69% and 92.86 respectively which is stable and quite high in compare to its Nepalese counterpart. The quantitative growth in the CIAA activities masks the qualitative dimensions of its performance. The numbers of complaints have been increased but the credible complaints leading to detailed investigations amount to only 7%. From 2004/5 to 2011/12, the conviction rate was 75 per cent (CIAA, 2013). According to the data presented on the table 18, the ratio of staff and complaint for CIAA is 30.11 complaints per staff which is quite lower but that for per ACRC staffs is 71.26 in the same year 2012. The total complaint handling rate of ACRC is 68.96 per staff and that for its Nepalese counterpart is just 18.59 in year 2012. ACRC generally spend 15 days to completely handle one complaint and for the similar job CIAA spends more than three months. The ratio of CIAA staff and the public officials it covered is roughly 1700 per CIAA staff and that for ACRC is roughly 2700 which is quite higher in compare to CIAA staff. ACRC has assessed approximately

**Table 18:** General performances comparisons: 2012

Description	Nepal	Korea
Total staff	294	482
Total cases filed	8839	34347
Total cases handled	5466 (61.84%)	33242 (96.78%)
Average handled cases per staff	18.59	68.96
Handling period (average)	3 month by law	15 days
Corruption cases detection rate	NA	80%
Whistle-blower's protection & reward	law not enforced yet	27 cases: monetary reward
Refer for further investigation	Investigator/prosecutor	74
CPI rank and score	116/177, 31	46/177, 55
Officials/employees covered	Roughly 0.5 million	Around 1.3 million
No. of government organizations		1,227
Ethnicity, language, culture	heterogeneous	homogeneous

Source: CIAA annual report, ACRC annual report, ACRC brochure and their web sites

6,000 enacted or revised legislative provisos whether the legislations had any possibility to cause corruption. As a result, about 1,100 legislations were found to cause corruption and they were reported to the government organizations relevant to the legislations. This may be a new lesson for Nepal because CIAA, till today, has not started these types of exercise intensively.

**Table 19:** Previous studies on CIAA performance

Study and year	Conducted by	Findings summary
Strategic Review of Performance of CIAA & OAG, 1999	Pro-Public	Action over small & weak; ineffective
Control of Corruption & the Role of CIAA 2000	TI	Inefficient; non-transparent; weak & ineffective investigation/prosecution
Need Assessment for Strengthening CIAA, 2001	NASC/DFID	improving the effectiveness
The CIAA Staff Training Needs Assessment, 2005	ODC	Needs of specific training for specific division
Institution Building for Controlling Corruption: Case Study on Effectiveness of CIAA & NVC in Nepal, 2007	IPRAD/SANEI	CIAA is less effective because of non-supportive attitude of the courts.
Study on Implementation & Effectiveness of Departmental Actions by the CIAA, 2007	INLOGOS/ Pro-Public	Deny or delay on implementation of CIAA recommendation (40% implemented) by government
Study on the Effectiveness of the CIAA Performance, 2007	KFA/USAID	CIAA: biased toward rich/powerful; less effective; people expect to combat policy level corruption
Political Intervention in the CIAA (yet to be published), 2013	TAF/Bhadra Sharma Based	Government intervention in the workings of the CIAA

Source: CIAA, 2013, *contents are simply modified*

The previous studies, on the performances of CIAA, did by various national and international organizations have raised several questions over her performance, efficiency and effectiveness. The results of these studies explore the weakness of CIAA while performing her job. Mainly they pointed out its biasness over small and weak; inefficient and non-transparent; inefficient manpower; government intervention etc. But for the same indicator ACRC's performance looks very smart. Result of Integrity Assessment and the general integrity in Korea looks really high (table 21, 22) which in general level is 7.86 for the year 2013, and the another index, overall integrity level of public organizations in 2012 is 7.86 out of 10 which shows far better picture in compare to its Nepalese counterpart. If we see corruption related indicators of

the two countries there seems a vast gap between Nepal and Korea. Korea looks far better according as CPI, control of corruption index, doing business index, global competitive index and rule of law index, produced by various reputed international organizations.

**Table 20:** Corruption related indicators

Indicators and score	Baseline values		Data source
	Nepal	Korea	
CPI (100)	31 (2013)	55 (2013)	TI
Control of Corruption	23.4/100 (2012)	69/100 (2013)	WB
Doing Business Index (global ranking)	105 <sup>th</sup> (2014) <i>(1<sup>st</sup> = most fair)</i>	7 <sup>th</sup> (2013) <i>(1<sup>st</sup> = most fair)</i>	WB
Global Competitiveness Index	Score: 3.66 ; rank: 117 <i>(score out of 7)</i>	Score: 5.01; rank:25 <i>(score out of 7)</i>	WEF(2013-14)
Rule of Law Index (1.00)	Score: 0.56 ; rank:45	Score: 0.76 ; rank:16	World Justice Project

#### **4.9. Is Korea a Successful Example of Anti-corruption Effort and Can it be Roll Model for Nepal?**

Nepal's economic and social development indicators are below average and Korea is with higher economic and social development, but still there exist reminder of its under-developed near-history, and also, still the socio-cultural values are not changed drastically. Therefore, Nepal can learn more from the Korean experiences of anti-corruption moves. Anti-corruption practices being done by ACRC is very advanced and relatively successful in compare to Nepal, so that its success rate is really high and its anti-corruption efforts is highly appreciated by reputed international organizations. Korea's administrative system is one of the worlds efficient and transparent system, it is because of unrest and continuous efforts of Korean ACAs, government and people. Within the period of less than one decade one of the ACRC program namely 'e-people' is producing a good example of its success story and which has won various international awards consecutively.

According to Integrity Assessment Results conducted annually by ACRC, we can see the clear picture of anti-corruption moves and its effect on public organizations and general public service seekers. Table 21, 22, itself are

perfect to explain it. The general integrity level is really high (7.86 out of 10) even though it is lower than that of previous years and rate of providing bribe is really lower which is 0.3%, negligible in Nepalese context.

**Table 21:** Integrity Assessment Results, Korea

year	2009	2010	2011	2012	2013
General integrity level	8.51	8.44	8.43	7.86	7.86
Rate of providing bribe %	0.3	0.4	0.3	0.3	0.3

Source: ACRC Brochure (20140616)

If we compare this figure with international organization data we find that the ACRC survey result is near to fact. According to WB, 2012 data, which supports the success story, Korea compares favorably with the regional average in Asia and receives a top rank of 84.2 out of 100 in the category of government effectiveness. In the field of rule of law and regulatory quality, she compares also favorably above the mean. In control of corruption, she scores 70.3 out of 100 (WB, 2013). These figures prove the success of Korean anti-corruption moves towards transparency, effectiveness and efficiency. Another success story that is according to the TI's CPI, Korea ranked 45<sup>th</sup> out of 176 countries in 2012. In 2013 the score was 46/100, and rank was 55/177. Another indicator, It scored 56 out of 100 with 100 representing a perfectly clean governance system. Again Korea ranked 13 (TI, 2013) out of 28 countries in the TI' Bribe Payers Index (BPI) in 2011. On the other hand the results of the 2012 public organization integrity assessment conducted by the ACRC, evaluate the integrity level of public organizations substantially higher at a score of 7.86 out of 10 compared to the TI report. So the level of integrity varies by source of data.

**Table 22:** The integrity level of public organizations

	Average Assessment by, (out of 10)			Overall Average Assessment
	Citizens	Staff Member	Policy Customers	
Integrity level	8.1	7.85	6.86	7.86/10
Respondents	160,854	66,552	15,491	242,897

Source: Anti-Corruption and Civil Rights Commission (2012)

A social and cultural aspect between the two countries whose basic situations are different but in practice they are almost similar is correctly explained by Kalinowski, Thomas and Soeun Kim (2012). They say about Korean context that ‘historically, a hierarchical thinking is very deeply entrenched and is still difficult for younger or lower ranked colleagues to criticize elders or their superiors. Cultural factors such as Confucianism are often used to explain this stability of hierarchies in Korea’. Nepal has almost similar kinds of social order. So it is another reason that Korean experience can be very useful even in Nepalese context.

**Box 3: Major Awards Won by e-People, Korea**

- Ranked 1<sup>st</sup> at the E-Participation Index of UN E-Government Survey two times in a row (2010, 2012)
- UN Public Service Awards (June 2011)
- Passed the 1<sup>st</sup> Evaluation of the Reinhard Mohn 2011 (August 2010)
- Exhibition at the CeBIT Australia 2009 (May 2009)
- Best Demonstration Stand at e-Challenge 2008 (European e-Gov and IT Conference) (October 2008)
- Best Practice at the E-government’s Five-year Performance Competition, the Prime Minister Award (September 2007)
- “International Certified Brand” Prize at the Government Innovative Brand Competition (November 2006)
- Asia’s Best Practice by the IOI (October 2006)
- Top 10 at the World e-Gov Forum in France (October 2006)

Source: ACRC annual report, 2013

The anti-corruption movement of Korea is a sum and combination of various anti-corruption packages of government, CSOs, NGOs etc. In Korea the long-term trend of the quality of governance and control of corruption looks clearly positive. Civil society groups play a crucial role in Korea and are highly respected. According to the Edelman Trust Barometer in 2011 (Edelman 2011), ‘NGOs reach a level of 62% and are trusted much more than other institutions such as businesses (46%), the government (50%) and media organizations (53%). Some NGOs such as the Citizens’ Coalition for Economic Justice (CCEJ) and the People’s Solidarity for Participatory Democracy (PSPD) are very influential in shaping public opinion’ (Kalinowski, Thomas and Soeun Kim, 2012). Another important example

according to Kim (2006) ‘NGOs played three major roles against corruption in Korean anti-corruption movement: blacklist campaign against corrupt and incompetent politicians in general elections; intervening influential role in policy process; and web-based civic activism’. Active CSOs and NGOs are, therefore, very important for Korean anti-corruption efforts that played very sustainable role to lead Korea on today’s condition. Isn’t it a perfect proof for Nepal to follow Korean model but in Nepalese context? ‘Korea has often been praised for its efficient bureaucracy; state capacity and relative state autonomy’ (Kalinowski, Thomas and Soeun Kim, 2012). Korea has a permanent merit-based bureaucracy, highly skilled and is well trained and well paid. Table 23 shows the effectiveness and efficiency of ACRC and Korean bureaucracy.

**Table 23:** Implementation of ACRC Corrective Recommendation

Section		Total	2009	2010	2011	2012	2013
Total		2,026	635	450	333	325	283
accepted	Sub-total	1,847	606	409	313	300	219
	Rate %	91.2	95.4	90.9	94.0	92.3	77.4
Non-accepted	Sub-total	123	27	37	18	21	20
	Rate %	6.1	4.3	8.2	5.4	6.5	7.1
Undecided		56	2	4	2	4	44

Source: ACRC annual report, 2013

Even though some of the Korean anti-corruption practices in the anti-corruption history of Korea have been said to be failed, for example, Society Purification Movement, New Order New Life Movement, War on Corruption”

**Table 24:** Korean efforts and practices against corruption:

Best practices	Failed practices
Anti-corruption Policies	Renovation of Public Office
Integrity Assessment	Society Purification Movement
Institutional Improvement to Make the Political Sector Transparent	New Order, New Life Movement
Reward/Award for Corruption Informants	Weakening of KICAC Functions
Curbing Cozy Relations between Politics & Business	Controversy over the Effectiveness of Anti-corruption Measures for Judicial Officers
Upper Water Clean Campaign (Those in High Places Lead by Example)	“War on Corruption”, 1994,
internal review system to prevent trial and errors	

etc. but most of the anti-corruption affords are accepted as successful practices. So in my view Korea is one of the relatively successful countries on anti-corruption effort.

So not by following in a broken or by replication of whole or only a part of anti-corruption efforts or practices made by Korea but applying after a realistic analysis of the entire circumstances and political, social, cultural, economic aspect of the country we can achieve the anti-corruption goal and can create a transparent nation



## CHAPTER FIVE

### 5. MAJOR FINDINGS AND LESSONS LEARNED

From the comprehensive study of the various facts described above I found several fundamental differences between CIAA and ACRC which are directly and indirectly related to and affecting their efficiency and performance. CIAA is a constituent body and its power, duty and functions and other various terms and conditions are secured by constitution which are supported by POCA and CIAA act again. For ACRC its legal base is a very brief ACRC act. She is just managing and handling complaints and CIAA, by law, is as an investigating and prosecuting agency. According to Nepal's anticorruption policy CIAA as well as Nepal government is focused on controlling corruption and its mitigation but for Korea, the policy emphasizes on its total eradication, therefore, Korea is mainly applying preventive and promotional measures with higher priority rather than punitive. Unlikely, Nepal is mainly applying punitive measures with high priority and then other measures with less priority which means Nepalese ACA is focused on consequences and Korean ACA by contrast on cause or sources of corruption. Industrialized country Korea is under high risk of grand corruption but agrarian country Nepal whose economic activities are limited, therefore, is on the risk of both petty and grand corruption. ACRC is running by its own employees and they are enjoying fully independent status in practice and can work independently therefore, fewer possibilities of political and bureaucratic interventions and influences. CIAA is fully dependent in terms of employee on Nepal government. So the in-and-out of employee has affected its performance, which is regular and general thing and totally opposite to Korean experiences. Such Nepalese experience has created an environment of instability in the organization.

**Table 25:** Fundamental differences between CIAA and ACRC

Differences	ACRC	CIAA
Status	Under prime minister's office	Independent constituent body
Commitment	Strong political commitment	Weak political commitment
Policy focus	Corruption eradication	Corruption control and minimize
AC Policy formation	By ACRC in coordination with government	By government with general coordination with CIAA
Coverage	All POs & indirectly private too	Most of POs, not private sectors
Priority measures	Preventive & promotional in the 1 <sup>st</sup> priority then Punitive	Punitive measure in the 1 <sup>st</sup> priority then Preventive and promotional
Stage	Full-fledged running	Establishment stage
Manpower	ACRC's own employee	GoN. Employee working for CIAA
Duty/right	Managing & handling complaints	Inquiry, investigation & prosecution
Evaluation	Regularly conducted impact evl'n	Minimal practice of impact evaluation
Working	Innovative & research oriented	In the very beginning stage
Legal base	Strong, powerful, strong enforcement	Very strong & powerful, weak enforcement
Punishment	Maximum fine & imprisonment; no compromise at all	Minimal fine/imprisonment; 20% discount
Working procedure	Automated & very fast track procedure	Manual and slow
Relation	Strong public & int'l relation	Weak public & international relation
Security	Guarantee of livelihood & security of employee & his/her family	No guarantee of livelihood & security of employee & his/her family in practice
Whistle-blowing	Actively implemented & whistle-blower's protection, reward & award provision	No legal provision of whistle-blower's protection, reward & award so far
Focus on	Balanced toward both aspects: cause or source and effects of corruption; Monetary as well as on ethical/spiritual aspect of corruption.; Grand corruption; integrity; code of ethics	More on spiritual aspect & less on monetary aspect of employee/ corruption; More focus on effects rather than on cause or source of corruption; Petty corruption
Coordination	Harmonized coordination between anti-corruption measures, tools & ACAs	Lack of coordination & sometimes contradiction between two anti-corruption measure, tools & ACAs
Anticorruption as	Right of people & obligation of state	Obligation of state
Accountable	To President/Prime Minister	To Legislature
PPP	Successfully implemented	Approach not started yet

Source: author's collection from various related documents, aforesaid

In terms of public and international relation, Korea is far ahead than Nepal. Various kinds of assessment and survey as well as interactions with people are found to be conducted regularly in national level. Parallel active participation on various international anti-corruption activities are some of the major functions of ACRC. For Nepal she is actively participating in various international anti-corruption functions but regarding nationwide programs she is too weak. This fact implies a very important meaning. The weak relation

with people means the base of the organization is weak and people's active participation is also weak which ultimately makes the organization weak. Weak organization cannot fight corruption determinately which is one of the core weaknesses of the CIAA. ACRC and the Korean government are determinant in terms of her employee's personal and their whole family's physical security as well as guarantee of their livelihood which means they don't need to think anything further more about except their duty. This is a very important and determinant factor to avoid corruption in the public sector but in Nepalese context the picture is pitiful and painful. Korea has enacted whistleblower's protection act and reward-award system is applied with high priority. Nepal has not yet enforced such act so most of the corrupt acts do not come on to the light which is a very big challenge for her. Another major difference between the two countries is the punishment practice. For Korea if corrupt offender is severely punished regardless of position and influence with up to lifelong in imprisonment and concurrently a heavy fine but for Nepal the story is totally different, the maximum imprisonment is of ten years and a fine up to double of accepted amount, and the strange thing is the offenders are enjoying a 20% discount of the sentenced imprisonment and fine by law. There are two major parts of Korean or ACRC anti-corruption efforts: the first one is investigation and handling of complaints and policy, rule and regulation enforcement and the second one is integrated management and analysis of complaints (ACRC annual report, 2013) and review of corruption causing legislation but, Nepal is currently doing only the first practice. Another new practice being done by ACRC in Korea is 'Onsite Complaint-Consultations' in presence of publics, and mediation of public conflicts through cooperation with the concerned agencies. The ACRC actively encourages people using 'settlement by agreement' method to handle complaints which are win-win strategy that satisfies both complainants and respondents. This method is

particularly being practiced and effective for handling a public conflict (ACRC annual report, 2013). This is another new and probably very useful measure being practiced in Korea and can be relevant for Nepalese context to create clean and transparent society.

### **5.1. Conclusion and Suggestions**

Corruption is a multi-faced problem requiring cooperation and collaboration from multiple agencies, both inside and outside the government. So, why Korea may be an ideal example for anti-corruption war? Because it has achieved a great economic development within one generation and that kinds of economic development only can be achieved on the foundation of appropriate anti-corruption policy and legal framework and its strong implementation which finally can contribute to create a healthy and transparent society and ultimately lead toward economic development. Changes to the political culture and process that we can see in Korea, became important in reducing the context of corruption which is more relevant as Werner (1983) argues ‘corruption may be controlled through alterations of its character but, most importantly, not destroyed.’ Now a days corruption has become international and high-tech. it is one of those problems that has no restrict for national boundaries. Why is corruption growing as a more serious problem in some countries and why not in some other countries? One of the major causes is effectiveness and efficiency of anticorruption agency and measures it applied which mainly depends on mutual international cooperation and collective efforts. According to Tummalla (2009) ‘the need seems to be a serious effort to develop sound norms by changing the societal culture, which places the premium on the shoulders of political parties’ but without active public or other social actors’ support politics or state alone cannot manage this issue well.

At last, I expect the study will achieve some result that will provide useful lessons to fight corruption in Nepal. As Quah(1987) sums up:

‘Singapore has succeeded in minimizing the problem of corruption because its anti-corruption strategy is characterized by the features: (1) *Commitment by the political leaders*, especially Prime Minister Lee Kuan Yew, towards the elimination of corruption both within and outside the public bureaucracy; (2) *Adoption of comprehensive anti-corruption measures* designed to reduce both the opportunities and need for corruption; and (3) *Creation and maintenance of an incorrupt anti-corruption agency* which has honest and competent personnel to investigate corruption cases and to enforce the anti-corruption laws.’

In my view Korea is following Singaporean model with its own ground reality and being gradually successful, this may be the lesson for Nepal too.

Tummala (2009) argues that in diversified society it is very difficult to find the general solution to prevent corruption because of different characteristics according as different society. So one fits to all theory cannot work in diversified society like India and Nepal. But in spite of these complexity media and civil society can play important role against corruption creating pressure by using public sentiment on the government to take action against corruption. Corruption is the consequence of need and greed and eventually greed becomes attitude. So creation of favourable social climate against it is the only way to get success on the war against corruption. And follow of law strictly in their spirit is the additional must condition to prevent it. So anti-corruption measure, organizational reform measure and bureaucratic reform measure all three should be applied parallel to achieve the desired corruption control goal. The origin point of corruption is society and social environment and it determines the degree of corruption. So economic measures are not all enough for its control rather social measure simultaneously with economic measures may give remarkable success on its control and prevention. When once corruption happens then it works as a cause for another corrupt act and this led toward a continuous and rarely ending vicious cycle of corruption.

The most important and crucial requirement for any anti-corruption agency while fighting corruption is to maintain political neutrality and investigative independence because ministers or businessmen or high-ranking officials are in the critical zone, who may influence anti-corruption investigators. ACRC focused its targets to raise people's participation in anti-corruption movement which contributed to promote it in administrative processes, to implement a code of conduct of public officials and promoting a sense of ethics among publics, and to conduct joint anti-corruption movement with NGOs which has brought significant changes in the Korean society. As Joon Oh Jang and Hae Sung Yoon, (2012) accepted the KACC, the KICAC, and the ACRC have greatly contributed to laying the framework for anti-corruption efforts in Korea. Therefore we can conclude that a committed anti-corruption agency can make a remarkable change by its continuous and planned efforts on preventing corruption. CIAA has sufficient legal grounds to punish corrupt offenders; she also has dedicated anti-corruption organizations to investigate corruption cases. But the high-ranking officials implicated in corruption scandals could get away from corruption charges even though anti-corruption legislations are in force. It causes the public to doubt the government's as well as ACA's willingness to fight corruption, and it results the whole responsible state bodies trapped in a vicious circle of corruption and losing the hearts and minds of the public. Korea adopted zero tolerance policy against corruption which is proved in practice that she has severely punished any corrupt offender regardless of their position, post and status, e.g. two former Presidents (Chun Doo-hwan and Roh Tae-woo) were imprisoned for embezzlement and former President Kim Young-sam's son was also imprisoned for taking bribe in exchange for personal benefits. Anti-corruption movement is a long-run war. Korea's anti-corruption efforts prove that curbing corruption requires experience and long-term passions. In developing

countries like Nepal, systems are not established well. So there are high risks of deviation even in the anti-corruption actors. Therefore, in every step of the anti-corruption war like policy implementation, inquiry-investigation and prosecution the leadership should be more careful to keep thing under legal grip to successfully curb chronic corruption system.

In any corruption cases in Korea usually, the prosecution process starts when National Tax Service, the Board of Audit and Inspection, Public Official Ethics Committee or other institutions detect suspicions of corruption and report (Joon Oh Jang and Hae Sung Yoon, 2012). Thus only after conformation, verification and study of the offence the final investigation start which is one of the main causes to get success on the corruption case filed into court. The integrity and independence of the prosecution have great impact on the criminal trial system, which is very weak in Nepalese context. As Khanal et.al, (2007) claim, 'anti-corruption initiative of the CIAA is less effective. ... its more important reason was the non-supportive attitude of the courts. ... The initiatives taken by the CIAA to punish ex-ministers were also halted by the Supreme Court as it not only released all on bail but it also made no decisions for long. This is circumscribing the possibilities of controlling corruption at the highest political level which is regarded to a breeding ground for corruption.' Actually this condition is totally contrasted to Korean anti-corruption experiences.

There is a need to give a right to CIAA to appoint its employees itself and fixation of terms and conditions of their services. Establishment of vigilance and surveillance wing in the CIAA, appointment of informers in different corruption prone sectors is essential. Enforcement of Whistle blower's protection laws, code of conduct for political parties, and extension of scope, and mainly to keep higher focus on cause than on consequences of corruption can be the better solution.

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