



USAID | NEPAL
FROM THE AMERICAN PEOPLE

TRIP REPORT: INSTITUTIONALIZING A CRIMINAL LEGAL AID, OR “PUBLIC DEFENDER” SYSTEM IN NEPAL

28 AUGUST 2006-20 SEPTEMBER 2006

7 November 2006

This publication was produced for review by the United States Agency for International Development. It was prepared by Stephen MacKenzie, Consultant

Prepared for the United States Agency for International Development, USAID Contract Number 367-C-00-04-00097-00, Strengthened Rule of Law and Respect for Human Rights in Nepal. This Trip Report is submitted in accordance with the requirements of ARD, Inc.'s contract and covers activities set forth in the ARD Work Plan for the period of 1 October 2005 to 30 September 2006.

Frederick G. Yeager
Chief of Party

Implemented by:

ARD, Inc.
P.O. Box 1397
Burlington, VT 05402



STRENGTHENED RULE OF LAW AND RESPECT FOR HUMAN RIGHTS IN NEPAL

**TRIP REPORT: INSTITUTIONALIZING A
CRIMINAL LEGAL AID, OR “PUBLIC
DEFENDER” SYSTEM IN NEPAL**

28 August 2006-20 September 2006

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

INTRODUCTION

This report, and the accompanying Implementation Plan and future Work-Plans were researched and prepared in Kathmandu, Nepal during the above noted dates. Primary invaluable assistance was provided by Govind Shrestha of ARD's Rule of Law office Nepal whose knowledge of both statutory law and general practices helped put this project in its proper perspective. Badri Bhandari also assisted with many practical comments and suggestions. Finally, Supreme Court Registrar, Dr. Timalsena provided necessary support and realistic suggestions for the implementation of the pilot public defender program in the Kathmandu Valley Area. Without his support and involvement, this project will not go forward.

EXECUTIVE SUMMARY

The purpose of this trip was to follow up on the recommendations made in a report by the undersigned on 6-26-06. The specific goals were to:

1. Establish a plan to implement a pilot public defender system in the Kathmandu Valley region, with provisions to expand it nationwide if successful.

This was accomplished. Over several days, meetings were held with the various court registrars, regional bar association representatives and the stipendiary lawyers, who will be the first public defenders, and an implementation plan was developed. (See Attachment 7) This was a collaborative effort, with the plan going through several drafts, in both Nepali and English. This plan consists of three phases, with phase one commencing November 1, 2006. The specifics of each phase will be discussed in detail later in this document.

As part of the implementation plan, several forms were developed,

- Application for Public Defender Services, (See Attachment 1)
- Procedures for Court Registrars (See Attachment 2)
- Overview of the Organisation and Structure of Public Systems in the United States (See Attachment 3)
- Amendments to the Court rules, which authorise and regulate the assignment of counsel. (See Attachment 4)

2. Establish a Public Defender Commission

This was accomplished. Due to the local connotation of the word "commission" the organisation's name is the "Public Defender Board". This Board shall oversee the Public Defender Pilot Program, ensure that the *implementation plan* is followed, and will make changes to the plan as circumstances dictate.

3. Establish a certification program for new public defenders

It is anticipated that the undersigned will return to Nepal in March of 2007 to assist in the presentation of the first Public Defender Certification program. This will be presented in conjunction with the Nepal Judicial Academy. This program will be designed to be presentable by the academy without further assistance in the future, and will be based on the *Code of Conduct and Procedures for Public Defenders Nepal Pilot Public Defender Program*. (See Attachment 5)

4. Establish a code of conduct and rules of procedure for public defenders

This was accomplished. This document will be the basis for the Public Defender Certification Program, which will be developed jointly by the ARD consultant, ARD Nepal and the Nepal Judicial Council. It is highly recommended that the Board, the Nepal Bar, and the Judicial Academy hold yearly trainings for all public defenders on topics of interest as determined. These should be in addition to the Certification program and mandatory for all public defenders.

SUMMARY OF MEETINGS

AUGUST 31, 2006

On this date, two important meetings were held. First, a meeting was held with the consultant and deputy chief of party Govind Shrestha to set an agenda for the trip. We determined that securing both the support and involvement of Dr. Timalsena; the Nepal Supreme Court Registrar was essential. His institutional memory and acumen are invaluable. We also determined that it would be important to work closely with both the appellate and district court registrars with special emphasis being placed on the district court registrars. Virtually all cases originate in the district courts, and the Kathmandu District Court is the busiest court in the country. At present, there is only one stipendiary lawyer working in this court. We felt that this is insufficient, and agreed to ensure that at least two lawyers would be assigned to this court if the program goes forward.

A meeting was to be set with the district court registrars as soon as possible.¹ We also discussed the importance of maintaining support from the bar organisations. During the visit in May/June Mr. Madhab Banskota, general secretary of the Nepal Bar Association expressed his support for the concept, and wished to be kept involved with the project. We decided to approach the local bar units first, as the pilot program would be in the Kathmandu Valley Region, and work with the Nepal Bar as the project expands on a national basis.

During the time between trips, a policy decision had been made to designate the stipendiary lawyers² in the Kathmandu Valley to serve as interim public defenders for a short period of time while the certification program was being developed, the assignment of counsel procedures worked out and the public defenders office was organised. We decided that a chief public defender should be hired, someone who is a more senior lawyer³. As a result of this decision, we determined that it would be appropriate to keep the stipendiary lawyers as involved with the development of the project as possible, as they will be the people actually working the system. At this time, I gave Mr. Govind Shrestha copies of the rough draft documents which had been prepared prior to the trip for his review and comment. We would work on these drafts many times over the duration of the trip, and ultimately have them translated into Nepali.

Later this day I attended a meeting at the USAID to discuss this project, and other ARD/USAID business. USAID Chief of Mission attended, as well as Ambassador Moriarty and other Embassy staff. Only a brief portion of the meeting focused on this project. I presented an overview of activities to date, and explained what the hopes were going forward. Ambassador Moriarty expressed his support for the project, however he questioned if/how the present Maoist insurgency might negatively impact the project. I explained that to date it had not been an issue, however if the

¹ The district court registrars offices will most likely be the most important link in the system as they will be responsible for assigning cases to the public defenders offices in the first instance, and making sure they receive all necessary papers, filings and the like

² For a discussion on the history and function of the stipendiary lawyers in Nepal, see trip report, June 26, 2006 Stephen H Mackenzie

³ The term "senior lawyer" has special connotations in Nepal, and is not appropriate here

Maoists attempt to institute “peoples courts” in the Kathmandu area, as they have in other parts of the country, it could be a problem. Additionally, the Maoists have been targeting specific government agencies for shutdowns and to demand “taxes” and if this were to occur in the pilot program area, it could become a problem. The Ambassador also underscored the need to publicise the new system using as many media outlets as possible. The balance of the discussion concerned ARD’s mediation project.

September 1, 2006

During the course of meetings over the day with Deputy Chief of Party Shrestha, we developed a plan with the various court registrars⁴ for office space for the public defenders. Supreme court Registrar Timalseña has secured space in the Supreme Court building for the central public defenders office, and an additional room for the Kathmandu Public Defenders.⁵ We discussed needed equipment, and are hopeful to be able to furnish these rooms, and provide the central office with a computer and printer, and possibly a copier. The registrars in both Lalitpur and Bhaktapur have agreed to provide suitable space for each public defender within their specific court buildings.

September 7, 2006

Deputy Chief of Party Shrestha and I met with Supreme Court Registrar to discuss directly his thoughts on the project, and to review the draft implementation plan and various procedures, which had been developed so far. We discussed the minimum qualifications to be set for public defenders, and agreed that admission to the Nepal Bar, and three years experience were a reasonable minimum criteria to set for phase two of the implementation plan, when hiring will be on a competitive basis. During phase one, the qualifications of the stipendiary lawyers will not be considered. Given they have already been hired by the Court and are doing the work, their qualifications are adequate.

At the outset, it was anticipated that the public defender system would handle only criminal cases, and that civil matters would need to be otherwise placed. Dr. Timalseña recommended, and we agreed, that a better practice would be, given the stipendiary lawyers were not going to be replaced, to continue to have the public defenders accept civil assignments, however work to transition civil cases either to other agencies such as the Nepal Bar association, AJAR, Advocacy Forum and the like, and to establish, by court rules, a roster of attorneys who will take civil cases on a pro bono basis.

We also discussed the concept of “plea bargaining” which is not utilised in Nepalese practice. At this time, it was decided to eliminate any and all references to this practice due to many cultural and traditional and standard local practice considerations.⁶

The salary level needed to bring the public defenders on par with public prosecutors was then discussed. It was agreed that NRs 10,000 per month would be appropriate. Dr. Timalseña agreed to pledge to the program all funds presently being used to support the stipendiary lawyers, NPs 2000 per month per attorney, plus any additional funding marked for administrative expenses. He further agreed to seek additional funding from the national government in the event that this program ran

⁴ Nepal Supreme Court, Patan Court of Appeals, Kathmandu, Lalitpur and Bhaktapur District Courts

⁵ Unfortunately, due to the extremely high volume of cases, and limited space, this was not feasible in the Kathmandu District Court building itself.

⁶ In the future, due consideration should be given to presenting a training to prosecutors and defence attorneys on the concept and practice of plea-bargaining. It could well have a significant, positive on case loads and backlogs

into any shortfalls. We agreed to set a meeting with as many court registrars who could attend early the following Week.⁷

September 8, 2006

A meeting was held at Kathmandu District Court with the new registrar. As he was not in office during the undersigned's last trip to Nepal, he was unfamiliar with the project. We explained to him the general concept of a public defender system, and stressed the importance of both his support and his role in the development thereof. He was provided with documentary information which explained both the history and application of the public defender system in the U.S., and the general application anticipated in Nepal. (See Attachment 3) He was also given a draft set of procedures for court registrars to follow to ensure the efficient appointment of counsel. (See Attachment 2) When discussing the application of the system here, he questioned what provisions would be made for civil cases where a party could not afford their own counsel. He indicated that it would be a significant problem for the Kathmandu District Court and the civil litigants represented the stipendiary lawyers. He estimated that the civil case load of the stipendiary lawyer in Kathmandu was 30 or so open files. We discussed the possibility having the stipendiary lawyers continue to handle civil matters until a specific alternative could be developed, and he felt that this would be the best course of action.

After the courts closed for the day, a meeting was held at the ARD office with the stipendiary lawyers from the 5 involved courts. We explained the process and program and asked for their opinion of the program. All of these attorneys were very much interested in becoming involved. We explained that with the increased salary they would be receiving came increased responsibility. They would be expected to represent their appointed clients with the same level of services that they would a retained client, and would have to manage their caseloads in such a manner that public defence cases were their first priority.

We then discussed their appointed caseloads. The lawyer from Lalitpur indicated that he had only 5 cases open at present, and his predecessor had closed about 30 cases the previous year. He had no civil cases pending. The lawyer from the Kathmandu District Court had a much different experience. He had handled over 150 cases year to date, 25-30 of them civil, and had about 35 open appointed criminal cases at present. It was clear that an additional trial lawyer was needed in Kathmandu. The lawyers from the other jurisdictions seemed to be comfortable with their caseloads. They all, however, indicated that it was difficult to serve as a stipendiary lawyer due to the very low pay. They all agreed that the salary we proposed was reasonable, and that they felt that they could provide the level of services expected if they were paid an amount similar to the public prosecutors. One logistical hurdle which was identified was the fact that each of the stipendiary lawyers had a different end date for their present contract.⁸ We discussed the need for better coordination between trial and appellate counsel when a case is appealed. I explained that a procedures manual is being developed (and translated) which will provide valuable assistance in that regard, and we are organising a training/certification to be tentatively presented in March 2007, which will also address this issue in detail.

⁷ Presently, the Bhaktapur District Court is without a registrar, and is being managed on an interim basis by a deputy

⁸ At present, the plan, subject to availability of funds, is to hire these attorneys effective November 1, 2006 at the rate of 10,000 NRs per month until the end of the present fiscal year, July 15, 2007

September 12, 2006

After conferring at the ARD office, Deputy Chief of Party and myself went to the Nepal Supreme Court for a meeting with the Supreme Court Registrar, and the registrars from the Kathmandu District Court, Patan Appellate Court and the Lalitpur District Court.⁹ We discussed the first draft of the proposed court rules relating to the public defender system. As a matter of procedure, it was discussed that a separate document will be necessary for each court participating in the program. We agreed upon a target start date for phase one to be early November.¹⁰ The registrars all agreed to contribute their budgets for stipendiary lawyers to the program. An appropriate Memorandum of Understanding will be drafted in due course. It was further decided that phase one should in fact run until the end of the fiscal year, July 2007. The accounting benefits to doing so outweigh any benefit of moving to phase two in April as was originally contemplated. We then discussed the certification process, the consensus at that time was that it should be developed jointly by ARD and the Nepal Judicial Academy, however other organisations may be considered before a final decision on this is reached.

When reviewing the proposed rules, several registrars noted the confusion and difficulty in getting cases to the stipendiary lawyers. Many cases “fall through the cracks.” We discussed the importance of the registrars following the procedures which have been proposed, however noted that each registrar should develop local practices which are appropriate to their particular circumstances. We also discussed the issue of continuity of representation when a case is appealed versus having different lawyers at each level, and it was agreed that in the big picture having specific lawyers at each Court would be preferable.

The issue of civil cases was again discussed. As indicated previously, the program, when in its earlier formative stage, envisioned the public defenders handling criminal matters exclusively, and only those where a person was at risk of going to jail. The group was very concerned about abruptly terminating representation in civil matters, and decided to develop a phase out plan over two years, which would entail the bar associations establishing a program of pro bono lawyers to handle these cases. In a similar vein, initially, and as is usual and customary in the U.S., representation was going to be further limited to only those cases where the defendant was at risk of going to jail. The group decided to scrap that provision, and allow services in all criminal cases where the person qualified financially.

Financial eligibility standards were discussed. At present, the eligibility limit for court appointed counsel is NRs 40,000 per year. It has already been established that this is too low, and allows many people to go without counsel, even though they cannot afford to pay for representation. The forum agreed that a maximum income of NRs 60,000 p.a. for a person with no dependants, and 90,000 for someone with dependants is appropriate for the pilot program.¹¹

As has been detailed previously, Nepali law mandates that a person detained by the police be brought before a court within 24 hours of arrest, however this law is infrequently followed. All present agreed that some form of sanction should be imposed in cases where it is violated. We discussed

⁹ As previously noted, the Bhaktapur District Court is without a registrar at present, all efforts will be made to ensure that when one is appointed, he or she will be brought up to speed on the process in a timely manner, and that the present acting registrar will also be trained in the assignment procedure etc.

¹⁰ A simplified time line is attached hereto

¹¹ Dr. Timalsona felt that it would be too complicated to further delineate income levels based upon the number of dependants an applicant has, additionally, it was clear to the group that these income levels are applicable only to the Kathmandu Valley region, and different, area specific standards must be set for outlying areas, based upon local conditions.

some possibilities, which ranged from automatic bail to dismissal of the case. This issue is one that needs to be addressed through legislation, and is beyond the scope of this project. It is noted herein as something for future consideration.¹²

Finally, public awareness of the program was discussed. It is well ingrained in the American national conscious that “if you cannot afford an attorney, one will be appointed to represent you at no cost”. This is not the case in Nepal. Both the present Nepal Constitution, and the State Cases Act¹³ mandate this, however due to lax application, it simply has not become a common thought to Nepalis.

After this meeting, we met with the President of the District Bar Association, and other interested bar members. These gentlemen had been consulted during the formative phase of the project last May, and had provided substantial useful input. They identified two significant concerns, which merit discussion. First is the attorney client relationship. They stated that all too frequently attorneys can be assigned to a case, only to not follow through with the representation. At present, there is little monitoring or follow up after a case is assigned.¹⁴

Another concern, collateral to the first, is the general effectiveness of the stipendiary lawyers. Given the extremely low pay, many bar members at this meeting expressed concern that these lawyers didn't take their appointed cases seriously, and simply could not afford to do so. They all felt that the increased pay would remedy this situation, as well as the Cle/certification program. As we had discussed amongst ourselves, the members present all felt that the training should be conducted in Nepali. I assured them that that was our intention, and that the training would be based upon the prepared Public Defender Code of Conduct and Rules of Procedure.

September 15, 2006

This morning I met with Deputy Chief of Party Shrestha who had prepared a draft budget. We reviewed the same, and made appropriate preliminary modifications thereto. I then met with our contracting officer to price out durable equipment necessary for the new Public Defenders Office. The intent is to provide them with the same equipment public prosecutors enjoy. Govind and I then made final adjustments to the budget. A copy of which is attached hereto. (See Attachment 6)

Sept 18, 2006

This was the final workday in Kathmandu. Govind and I met with Chief of Party Yeager to discuss the goals and results of the trip. All goals were met, and we are cautiously optimistic that the pilot program will go on-line by November 1. We discussed the next steps. During January, the undersigned will stay in contact with Govind to organise a training and certification program, which will be presented in March. We tentatively agreed that I would return to Kathmandu on March 5, 2007. This trip will cover the following areas:

Training of Trainers. The Nepal Judicial Academy or other suitable local legal educational institution will be identified to provide training to the initial public defenders (stipendiary lawyers).

¹² Perhaps in conjunction with a rewrite of the Rules of Criminal Procedure, which is very much needed, and new Rules of Evidence, as none exists

¹³ The source of criminal law and procedure in Nepal, I have requested a copy of this act to be translated into English. I am still awaiting the same.

¹⁴ Case Reporting forms, and monthly case statistics will be required of all public defenders under the new system

ARD staff and the consultant will work with the local trainers to develop a program consistent with the Public Defenders Code of Conduct and Rules of Procedure. We will endeavour to establish a program that can be taught in the future without the need for the consultant to be present each time. The consultant will be present and assist the trainers the first training session, which will be presented shortly after the training of trainers is complete.

Pilot Program Evaluation: The next objective of the March trip will be a through evaluation of the pilot program to date, and revisions suggestions for more effective operation will be made.

Planning: Finally, we will involve the appropriate branches of the national Government for future planning purposes. It is important that they become involved in the program at this time, see its success, and be prepared to make a financial commitment to bring the Public Defenders system into the National Budget. We will need to discuss enabling legislation, expanding the program beyond the Kathmandu Valley and develop a long-term national implementation plan.

ACCOMPLISHMENTS, CONCLUSIONS AND ACTIVITIES FOR FOLLOW-UP

Accomplishments:

A majority of the stakeholders in the criminal justice system now have a much better understand of how the public defender system will work, and are prepared to support it.

During the course of this trip, I had the opportunity to meet again with many of the major stakeholders in the delivery of legal services to the needy. It is now necessary to better acquaint a wider audience with this program. A series of public service announcements, using various medium, will be established to educate the public, and create a “national consciousness” of people’s rights to counsel, and due process.¹⁵

A work plan was established for the transition to a centralised public defender system for the Kathmandu Valley area, which includes a clear timetable for implementation, training and certification, and funding.¹⁶

This work-plan provides a clear and realistic mechanism for the establishment of the anticipated pilot program. It is comprehensive, and covers all necessary elements to start the program.

An awareness of the need for a national program was initiated, and steps taken to integrate the same into the pilot program were developed.

This works towards the long-term goal of establishing a National Public Defender System.¹⁷ The groundwork has been set. Absent any unforeseen major events, ARD and the Public Defender Board can go forward with this project as planned.

¹⁵ Again, it is highly recommended that this project consider assisting in developing a codified “rules of criminal procedure” and “rules of evidence” as both are lacking, and are necessary components of a developed judicial system

¹⁶ Funding has been identified to support the program from November 1, 2006 until May 30, 2006 through ARD, any further funding through this project is contingent upon renewal/extension of ARD’s contract with USAID, or its successor continuing this project.

Conclusions

The establishment of a public defender system will greatly enhance the delivery of legal representation to those who have been accused of a crime, but cannot afford a private attorney. To that end, this goal is well on the way to being met.

The pilot program will be commenced by court rules. The present stipendiary lawyers will transition to the initial public defenders, and competitive hiring will take place at the beginning of the next fiscal year, provided funding is available.¹⁸ As the pilot program progresses, a study will be done to determine the optimal way to establish this system nationwide, in a manner substantially similar to the national system for public prosecutors.

Necessary forms have been developed to ensure smooth processing of assignment of counsel, case tracking and management, and accountability. ARD and the Public Defender Board will monitor cash flow. A proposed Code of Conduct and Rules of Procedure for Public Defenders has been prepared and reviewed. (See Attachment 5) It is in the process of being translated, and final changes will be made once the Nepali version has been reviewed by the Board.

Follow Up Activities

1. From home office, liaise with the Public Defender Commission, and ARD Nepal staff on amendments to the Public Defenders Code of Conduct and Public Defenders Procedures Manual.
2. Develop the curriculum for the certification program to be held tentatively in March 2007. Have the same translated so final changes can be made efficiently upon arrival in Kathmandu.
3. Return to Nepal in March 2007¹⁹ to assess the progress of the Commission, finalise the Public Defenders Code of Conduct, the Public Defenders Procedures Manual, and in conjunction with the appropriate local legal educational organisation conduct the certification program described herein. During this same trip, assess the progress of the program and make suggestions as needed and start the process of involving the national government in the long term development and expansion of the program nationwide; if appropriate, commence work on enabling legislation to facilitate the same.
4. Return to Nepal late 2007 early 2008, to assess the success of the pilot program, and to commence the implementation of the program nationwide. Meet with appropriate legislators to discuss the program, and the introduction of legislation that would establish a national public defender system. Assist in the preparation of draft legislation.

¹⁷ All prospective accomplishments are predicated upon stability in the National Government. At present, this remains to be seen. Elections have been discussed, yet no date has been set. The Maoists have established a strong position, and will be a factor in any long-term stability for Nepal.

¹⁸ In the unfortunate event that ARD funding is not available at this time, the pilot program will still have set the groundwork for any successor, including the national government to take the project forward.

¹⁹ Tentatively scheduled for departure March 5, 2007

ANNEX

No non-USAID related business was conducted during this fully funded visit.

ATTACHMENT 1

Application for Public Defender Services

1. Name
2. Address
3. Telephone
4. Person to Contact, i.e. Wife, Parent Husband
5. Number of dependants
6. Employment-Name of employer
 - a. Salary per month
 - b. Other source of income

Total income

Net per month_____

Signed under penalty of perjury

Approved
Court Registrar

Denied

In addition to any criminal prosecution filed, any false state made herein shall subject the applicant to all costs and expenses incurred by the Public Defender including reimbursement for fair market value of the services rendered as determined by a District Court Judge

ATTACHMENT 2
Procedures for Court Registrars

(this document shall be placed in conspicuous places throughout the court registrars office all staff should read and become familiar with these procedures. /Registrar

1. Upon receiving a new filed prosecution from the Public Prosecutors office, the Court Registrar's office shall determine if an application for public defender services has been provided to the defendant, and if not will ensure that one is provided prior to the defendant's first appearance before the Court.
2. Prior to an applicant's first appearance before the Court, the Court Registrar shall review the application and make a determination if the defendant is eligible for public defender services. If the Registrar determines that an individual is not eligible for public defender services, the defendant may appeal that decision to the presiding Judge. The Judges decision in the mater shall be final.
3. If the defendant qualifies for Public Defender services, the Registrar shall provide the Public Defender's office with a copy of the case file, and note their appearance on behalf of the defendant.
4. No court hearings shall be held concerning the defendant without the Public Defender appearing on behalf of the defendant
5. Each court registrar shall develop a process for ensuring that the public defender assigned to that court receives the initial case file, and copies of any subsequent filings in a timely manner.
6. Each court Registrar shall ensure that information concerning the availability of public defender services is conspicuously posted throughout the courthouse, and that applications for public defender services are readily available to the public.

ATTACHMENT 3

Overview of the Organisation and Structure of Public Defender Systems in the United States, and preliminary draft for a Public Defender System in Nepal

The United States Constitution established the right of persons accused of a crime to be represented by counsel, and if they could not afford counsel, an attorney would be appointed to represent them at government expense. The United States government uses a public defender system, as do most of the individual states, a specific group of lawyers, paid by the national government, whose job is to represent indigent persons accused of federal crimes. A Defender General, who is appointed by the President, generally heads the programs. The defender general is the chief public defender for the country, and is on a similar pay scale to the attorney general.

Each judicial district has a central federal public defenders office, with a chief public defender managing the office. There are several staff attorneys working in each office. There is also a Board, appointed by the Chief administrative Judge that provides oversight. The Defender General reports to the board. Public Defenders are distinguished from Legal Aid lawyers in that legal aid focuses on civil cases, divorce, property and the like, but not criminal cases, where a litigant cannot afford counsel.

When a person is charged with a crime, usually by filing what is called an information-similar to the public prosecutor registering the charge sheet with the District Court in Nepal- the accused is asked if he/she can afford to hire an attorney. If they say no, they are given a form to fill out which inquires of their financial status. If they qualify, and most do, copies of all appropriate documents are provided by the court clerk (in Nepal registrar) to the public defenders office, and they now represent the accused. The chief public defender of each office develops a procedure for assigning cases to specific attorneys. Public defenders generally work either exclusively or almost exclusively for the public defenders office. They are salaried government employees. They cannot accept paying criminal cases, and can do civil cases only to the extent that it does not interfere with their public defense work. These lawyers are paid a similar pay scale to the United States attorneys, or public prosecutors. The US courts have repeatedly held that it is a violation of due process and equal protection to pay defense lawyers less than prosecutors.

Additionally, there is a roster of private attorneys who handle occasional cases when the public defenders office cannot. A separate budget is managed by the Courts to hire these occasional lawyers, and they are paid on an hourly basis.

This system is very effective. Although the caseloads are large, the public defenders develop a high level of expertise in criminal law because it is their primary area of practise.

Public Defender System in Nepal

The USAID/ARD program currently under development will start with a pilot program in the Kathmandu valley area, and for the first 6 months will involve making the stipendiary lawyers public defenders. They will be responsible for all new criminal cases coming from the Kathmandu, Lalitpur and Bhaktapur District Courts, the Patan Court of Appeals and the Nepal Supreme Court²⁰. An

²⁰ Although these lawyers will not receive any new civil cases from the commencement of the public defender system forward, they will be required to either finish any existing

office or room will be made available to them at each court-house, and a central office will be rented for them by ARD. Additionally, 2 new lawyers will be hired, one a more senior lawyer who will be the temporary Chief Public Defender. This lawyer will be responsible for ensuring that the system is working, and that the lawyers are attending to their cases. The Chief Public Defender shall also provide representation in the most serious cases. Another lawyer will be hired to work out of the Kathmandu District Court due to its caseload. A Public Defender Board will provide oversight to the entire project, and the Chief Public Defender will report to the board. This time period is phase one of the program.

The stipendiary lawyers, now public defenders will report to the chief public defender, and will be paid a rate similar to public prosecutors. They shall be paid through the Court system, with a grant from ARD. During phase one, a certification process will be established for lawyers who would like to be hired as public defenders both now and in the future. From the beginning of phase two forward, all attorneys who want to work as public defenders shall have completed this program, and the Supreme Court Registrar shall ensure that this program is presented as needed. During phase one, the Board will set minimum qualifications for public defenders. All attorneys hired after phase one must meet the minimum qualifications, and the hiring process will be competitive. Near the end of phase one, a certification and training program shall be held for all prospective public defenders and interested members of the Bar.

The Registrars of the various courts will be responsible determining if a person is eligible for public defender services, and if so, ensuring that the appropriate papers are transmitted to the public defenders office. A draft set of procedures for Court Registrars has been prepared. The Board will establish financial criteria for determining eligibility, which take into account the prevailing income levels for each particular district.

After one year, with the pilot program well under way, this program can be taken to other districts. It is anticipated that everywhere there is a public prosecutor, there will be a public defender. A transition from AID/NGO funding to Nepal government funding will be developed. The national Government will appoint a Defender General, who, from Kathmandu, will be in charge of the program. He/She will hire Chief public defenders for each district office, and oversee their administration.

civil cases, or find those clients new attorneys. Legal aid in non criminal matters will be the responsibility of the District Legal Aid Offices, the Nepal Bar Association, and other NGO providers

ATTACHMENT 4

Nepal Supreme Court (_____ Amendment) Rules 2006

The Supreme Court has made these Rules by exercising the Power given by section 11 of the Supreme Court Act, 1991, as it is necessary to amend the Supreme Court Rules as follows:

1. **Brief name and Commencement:**

These rules shall be called “Supreme Court (_____Amendment) Rules, 2006” “Rules for the establishment and implementation of a pilot public defender program in the Kathmandu Valley”

(a) These Rules shall come into force as set forth herein, and shall continue in force until terminated or modified by the Court, upon recommendation by the Board.

(b) These Rules shall apply to cases brought in the District Courts of Kathmandu, Lalitpur and Bhaktapur, the Patan Appellate Court, and the Nepal Supreme Court

2. **Definitions:**

- a. Public Defender means an attorney employed under these Rules, who is responsible for the provision of legal services in criminal cases as directed by the Court Registrar in the court where he or she is assigned.
- b. “Criminal Case” means any case registered by a Public Prosecutor where an individual is at risk of being deprived of their liberty. (jail)

3. **Public Defender Board**

There is hereby established a Public Defender Board. The Board shall be responsible for oversight and review of the Public Defender Pilot Program, and shall have the authority to make changes to these rules as circumstances dictate. The Board shall serve without compensation other than needed expenses to fulfil their duties. The Board shall consist of the following members:

- I. Registrar, Nepal Supreme Court Chairman
- II. Joint registrar, Writs and Litigation co- Chair
- III. Joint Attorney, Office of the Attorney General
- IV. President, Nepal Bar Association
- V. Registrars, Appellate Court, Patan
- VI. Joint Secretary, Ministry of law, Justice, and parliamentary Affairs
- VII. Srestedars of Kathmandu, Lalitpur and Bhaktapur district Courts
- VIII. DEputh Director, Writs and Litigation
- IX. Representative, ex officio ARDINC

4. **Public Defender Pilot Program fund**

A fund shall be established which shall be used to cover all costs, including but not limited to salaries, office rental, equipment and other items needed to effectively implement these rules. For the first (2 phases? 18 months?) 75% of the funds necessary to administer this program shall come from ARDINC, with the Supreme Court providing the balance. If the Pilot Program is successful, a transitional plan shall be formulated to transfer funding responsibility to the national government

5. Eligibility for Services, Right to representation, services and facilities

A needy person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is entitled:

(i) To be represented by an attorney to the same extent as a person having his own counsel;
and

(ii) To be provided with the necessary services and facilities of representation. Any such necessary services and facilities of representation that exceed ??? per item must receive prior approval from the court after a hearing involving the parties. The court may conduct the hearing outside the presence of the public prosecutor, but only to the extent necessary to preserve privileged or confidential information.

(iii) the board shall establish maximum income levels for persons requesting public defender services, which shall be progressive in nature, considering such factors as number of dependants, and the defendant's realistic ability to retain counsel at his own cost.

6. Notice of rights; representation provided

(a) If a person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officer, Court Registrar or court concerned shall:

(b) Clearly inform him of the right of a person to be represented by an attorney and of a needy person to be represented at public expense; and

(c) If the person detained or charged does not have an attorney and does not knowingly, voluntarily and intelligently waive his right to have an attorney when detained or charged, notify the charged individual of his right to have an attorney at government expense, and provide the accused with the form to request a public defender.

(d) Prior to an applicant's first appearance before the Court, the Court Registrar shall review the application and make a determination if the defendant is eligible for public defender services. If the Registrar determines that an individual is not eligible for public defender services, the defendant may appeal that decision to the presiding Judge. The Judge's decision in the matter shall be final.

(e) If the defendant qualifies for Public Defender services, the Registrar shall provide the Public Defender's office with a copy of the case file, and note their appearance on behalf of the defendant.

(f) No court hearings shall be held concerning the defendant without the Public Defender appearing on behalf of the defendant

(g) Each court registrar shall develop a process for ensuring that the public defender assigned to that court receives the initial case file, and copies of any subsequent filings in a timely manner.

(h) Each court Registrar shall ensure that information concerning the availability of public defender services is conspicuously posted throughout the courthouse, and that applications for public defender services are readily available to the public.

7. Implementation

The Public Defender Pilot Program shall be implemented in phases, subject to change by the Board as circumstances dictate.

A. PHASE ONE- anticipated duration???(6-9 months?)

(1) The stipendiary lawyers in the Kathmandu valley region, presently 5, will assume temporary duties of Public Defenders. Two additional attorneys will also be hired by the Board, one to provide representation in the Kathmandu District Court, the other, a more senior attorney to act as chief Public Defender. All contracts during phase one shall be for a duration of ? months +/-

(2) The Chief Public Defender (hereinafter CPD) shall manage the Public Defenders office, provide assistance to PD's as needed, and liaise with the Public Defender Board. The lawyers shall be compensated at a level similar to that of Public Prosecutors with similar backgrounds and experience.

(3) During Phase one, The Public Defender Board (PDB) shall establish minimum qualifications for PD's to be hired in Phase two.

B. Phase 2 Anticipated duration one year

(1) At the beginning of phase 2, qualified attorneys shall be hired with one-year contracts to serve as Public Defenders pursuant to these Rules. The hiring process shall be competitive, and managed by the PDB

(2) The Board shall arrange for a certification and training program for all Public Defenders.

(3) The Board shall prepare a report summarising the effectiveness of the program, and make appropriate recommendations for improvement.

ATTACHMENT 5

Code of Conduct and Procedures for Public Defenders Nepal Pilot Public Defender Program

I. Representation [Standards for Counsel Representing Individuals in District Courts](#)

II [REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY](#)

Standards for Counsel Representing Individuals Pursuant to the Nepal Pilot Public Defender Act

Procedures, Conduct and Best Practices

I. INTRODUCTION

A. Purpose:

These standards are intended to encourage and allow attorneys representing indigent and all other persons entitled to representation at government expense to perform to a high standard of representation and to promote excellence and professionalism in the representation of those persons. The following standards are adopted to foster a legal representation system in which:

1. The public legal representation function, including the selection, funding, and payment of counsel for indigent clients, is as independent from political influence and judicial supervision as possible given the geographic and demographic diversity of the Country of Nepal;
2. Those persons entitled to public legal representation are adequately represented through a legal services delivery system consisting of defender offices, the active participation of the private bar, or both;
3. Applicants requesting legal services based upon indigence are screened for eligibility based upon uniform standards, then assigned and notified of an appointment as soon as is practically possible;
4. Counsel has sufficient time, confidential space, and confidential electronic communications to converse with the client;
5. Counsel's workload matches counsel's capability;
6. Counsel's ability, training, and experience match the complexity of the case;
7. To the extent possible, the same attorney continuously represents the client until completion of the case;
8. Counsel for a client entitled to legal representation at public expense has parity of resources with opposing counsel and is included as an equal partner in the justice system; and,
9. Counsel is required to obtain continuing legal education and training.

B. Application:

1. These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of counsel to determine the effectiveness of representation. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.
2. These standards apply generally to all counsel who represent persons at government expense pursuant to the Nepal pilot Public Defender program or any subsequent Public Defender Program. In cases where these standards conflict with or contradict the standards established for representation in certain specific types of cases, the more specific standards shall apply. The standards and procedures set forth herein shall form the basis for the Public Defender Certification Training Program.

C. Discrimination:

No attorney providing services under this pilot program shall discriminate on the grounds of race, color, religion, national origin, caste age, marital status, sex, sexual orientation or disability.

II. CASE SELECTION

A. Nature of Case:

1. Counsel may be assigned to represent persons in all criminal cases where the defendant is subject incarceration, and meets the specified income requirements.

B. Publicizing of Services:

1. The availability of public defender services should be publicized by the Public Defender's Office, the Public Defender Board, and with the assistance of ARD. Reasonable efforts should be made to ensure that notices containing information about public defender services and how to access those services are posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

III. THE ATTORNEY/CLIENT RELATIONSHIP

A. Nature of Representation:

Goal: The paramount obligation of counsel is to provide quality representation and diligent advocacy for the client at all stages of the representation.

1. To provide quality representation and diligent advocacy, counsel must preserve, protect, and promote the client's rights and interests, and be loyal to the client.
2. Public Defenders, shall provide services to all clients in a professional, skilled manner.

B. Initial Contact:

Goal: Counsel shall be made available to indigent defendants at the earliest opportunity.

1. Effective representation should be available to an eligible person, upon request of the person or someone acting on the person's behalf, to a court, or a public defender office, as soon as the person is, arrested, or charged with a criminal offense.
2. A person, not in custody, shall be advised of the right to representation, if eligible, at the person's first appearance before a judicial officer and offered the services of counsel. Assigned counsel shall make an appointment at counsel's earliest

convenience, before the next court appearance, to personally meet with any prospective client. A person in custody who is not represented by retained counsel shall be entitled to consult with a public defender for not less than fifteen minutes before his or her first court appearance. If feasible, counsel should offer representation for the initial appearance for the purposes of making a bail argument. When a court incarcerates a person who appears before it and that person requests indigent representation, counsel shall make personal contact with the person within three working days if possible.

3. When it is determined that a person is ineligible for publicly provided representation, counsel should decline the case and advise the person of how to appeal the determination of ineligibility. However, should immediate service be necessary to protect that person's interest, such service should be rendered until the person has had the opportunity to retain counsel. In that event, the Public Defender's Office shall be reimbursed for counsel's services at the current hourly rate for similar counsel.

C. Duration of Representation:

Goal: Once a case is assigned to an attorney, continuous and uninterrupted representation by the same attorney in a specific Court, is the most effective method of representation.

1. Counsel shall provide continuous and uninterrupted representation to eligible clients from time of entry into the case through final disposition in the trial court.
2. In the event the counsel is no longer employed by a public defender office, new counsel shall be assigned.

D. Conflicts of Interest:

Goal: The duty of loyalty to the client is paramount.

1. *Examination for Potential Conflicts of Interest:* Early detection of a potential conflict of interest is crucial to its appropriate resolution. As soon as is practicable following appointment to represent a client, a public defender office examine its records to determine whether it may have a conflict of interest involving another current client, a former client, or otherwise.

Clients and potential witnesses may also have information that will assist in uncovering possible conflicts of interest. Accordingly, each local public defender office should use standard questions for its client intake interviews and witness interviews that are designed to uncover conflicts on forms developed by the Public Defender's Office.

2. *Policy and Guidance on Potential Conflicts of Interest:* It is the policy of the Public Defender pilot program that all public defenders will comply with all legal requirements and ethical guidelines relating to conflicts of interest in the representation of clients.

A. Attorney-Client Communication:

Goal: Regular and confidential communication between attorneys and clients is a necessary part of effective representation.

1. Effective representation of an accused requires prompt and effective communication with the client. This communication includes personal and telephone contacts with a client in custody.

2. To ensure the privacy essential for confidential communication between counsel, public defender staff, and client, adequate facilities should be available for private discussions between counsel, or public defender staff and clients in jails, prisons, courthouses, healthcare facilities, and other places where accused persons must confer with counsel.
3. Personnel of jails, prisons, custodial institutions, and health care facilities should be prohibited from examining or otherwise interfering with any communication or correspondence between client, defense counsel, or public defender staff relating to legal action arising out of charges or incarceration. If necessary, Public defenders should take steps to ensure that this is done.
4. To the extent reasonably possible, each jail or detention facility should make available an unmonitored and unrecorded toll-free phone for purposes of allowing indigent clients to contact and confer with counsel and public defender staff on at least a daily basis. Counsel should be allowed personal contact with an incarcerated client at any time upon counsel's request. If such communication facility is not available, counsel should make reasonable efforts to meet in person with his/her client.

B. Delivery of Services:

Goal: Counsel shall strive for excellence in the representation of the indigent.

1. Counsel representing indigent clients should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of counsel for specific cases should not be made by the judiciary, but should be arranged for by the chief public defender.
2. The Chief Defender and staff should be compensated at a rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in public prosecutors office.
4. Contracts for legal defense services should be awarded for 6 months, initially, and for terms of 1 year if the program continues thereafter.. Removal of the contracting counsel short of the agreed term should be for good cause only. The contract shall define "good cause" as: "a failure by contracting counsel to comply with the terms of the contract that impairs the delivery of services to clients, or a willful disregard by contracting counsel of the rights and best interest of clients".
6. The Chief Public Defender and Regional Public Defenders shall provide for contract oversight and enforcement to assure compliance with these standards and applicable laws and Statutes

CASELOADS

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

A. Governing Principle:

Counsel caseloads should be governed by the following:

1. Individual Counsel. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment that the acceptance of additional cases or continued representation in previously accepted cases will lead to furnishing representation lacking in quality or to the breach of professional obligations the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Defender. The Chief Defender will then inform the Public Defender Board.

2. Chief Defender. Whenever the chief public defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to furnishing representation lacking in quality or to the breach of professional obligations, the chief public defender is required to inform the Public Defender Board who shall take all reasonable steps to alleviate, including but not limited to seeking funding to hire additional attorneys as needed.

B. Caseload Evaluation:

1. The caseload of counsel should allow each counsel to give each client the time and effort necessary to ensure effective representation. Assigned counsel should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

2. A “case” consists of all charges against a single defendant arising out of a single event, transaction or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing), and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

3. Caseload should not exceed the following:

- a. **150 Felony (serious) cases per attorney per year; or,**
 - b. **300 Misdemeanor Cases per attorney per year; or,**
 - c. **250 Misdemeanor Juvenile Offender Cases per attorney per year; or,**
- the above are US standards, they should be revised to be consistent with Nepali laws*

4. The standard applicable to each category of cases is not a suggestion or guideline, but is intended to be a maximum limitation on the average annual case loads of each lawyer employed as a public defender. These limits are not intended to be cumulative or aggregated. Caseloads for attorneys practicing in rural areas may need to be reduced due to substantial required travel.

5. The Public Defender Boards shall review this Standard as soon as it is able to accumulate reliable statistical data that reflects the actual case loads (both numerical and hourly) of public defenders employed

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training. These standards shall come into effect at the expiration of the contracts of the initial stipendiary lawyers who are brought into the pilot program

1. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing representation at public expense should meet the following minimum professional qualifications:

- a. Satisfy the minimum requirements for practicing law in Nepal as determined by the Nepal Supreme Court;

b. Complete the Public Defender Certification Program

c. Have been admitted to the Bar of Nepal for a minimum of 3 years. (this provision shall not apply to any stipendiary lawyer hired for the initial phase of the pilot program provided they exercise their duties competently, and have approval of the Public Defender Board.)

d. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in Nepal. Counsel has a continuing obligation to stay abreast of changes and developments in the law;

3. Counsel should only request or accept an assignment if counsel is able to provide quality representation and diligent advocacy for the client.

A. General Duties of Defense Counsel:

1. Before agreeing to act as counsel, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge, and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

2. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

3. Counsel has the obligation to keep the client informed of the progress of the case.

4. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Rules of Conduct and Court.

B. Obligations of Counsel Regarding Pretrial Release:

1. Counsel has an obligation to meet with incarcerated defendants as stated Standard above, and shall take other prompt action necessary to provide quality representation including:

a. Counsel shall invoke the protections of appropriate constitutional provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the State and court.

b. Counsel has an obligation to attempt to secure the pretrial release of the client.

C. Counsel's Interview with Client:

1. Preparing for the Interview. Prior to conducting the initial interview after being assigned to a case the attorney should, where possible:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and, obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that

might be available. In addition, where the client is incarcerated, the attorney should:

- i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
- ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and,
- iii. be familiar with any procedures available for reviewing the bail determination.

2. Conducting the Interview:

a. The purpose of the initial interview is to acquire information from the client concerning the case, the client and pretrial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, disability, or different cultural backgrounds, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

b. Counsel shall complete the interview form provided by the Public Defender's Board for use at the initial interview. Information that should be acquired from the client, includes, but is not limited to:

- i. The client's version of arrest, ; whether client was searched and if anything was seized,
- ii, whether client was interrogated and if so, was a statement given; client's physical and mental status at the time the statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or body fluids;
- iii. The names and custodial status of all codefendants and the name of counsel for codefendants (if counsel has been appointed or retained);
- iv. The names and locating information of any witnesses to the crime and/or the arrest; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the public prosecutor (when appropriate, counsel should take steps to insure this evidence is preserved);
- v. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status (if applicable), employment record and history
- vi. The client's physical and mental health, educational, vocational and armed services history;
- vii. The client's immediate medical needs including the need for medication, detoxification programs and/or substance abuse treatment;
- viii. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court

appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation or parole and the client's past or present performance under supervision;

viii. The names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals);

ix. The ability of the client to meet any financial conditions of release (for clients who are incarcerated); and

x. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or developmental disability;

xi. The client's citizenship status.

3. Information to be provided to the client, includes, but is not limited to:

a. a general overview of the procedural progression of the case, where possible;

b. an explanation of the charges and the potential penalties;

c. an explanation of the attorney client privilege and instructions not to talk to anyone, including prisoners, about the facts of the case without first consulting with the attorney;

d. the names of any other persons who may be contacting the client on behalf of counsel;

For clients who are incarcerated:

e. an explanation of the procedures that will be followed in setting the conditions of pretrial release;

f. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;

g. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

4. Counsel must be alert to a potential issues concerning the client's incompetency, mental illness or developmental disability

a. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals information that presents genuine issues of competency;

b. Where appropriate, counsel should advise the client of the potential consequences of raising questions of competency, the defense of mental disease and defect both as it relates to guilt and to sentencing. Prior to any proceeding, counsel should consider interviewing any professional, who has evaluated the client, should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate.

Counsel has an issue to raise legitimate issues of competency even over the objection of the client.

5. If special conditions of release have been or other orders restricting the client's conduct have been entered (e.g. a nocontact order), the client should be advised of the legal consequences of failure to comply with such conditions. In the event the Court orders routine contact with the attorney is a condition of release, the attorney shall not waive attorney/client privilege as to contact with the client.

D. Counsel's Duty in Pretrial Release Proceedings:

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

2. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

3. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

4. The decision as to whether or not the client should testify at any bond hearing shall be made after consultation between counsel and the client. In the event that the client and counsel decided that it would be in the best interests of the client to testify regarding bond, counsel should instruct his/her client not to answer any questions that do not pertain strictly to the issue of bond.

E. Counsel's Duties at Preliminary Hearing:

1. Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

2. In preparing for the preliminary hearing, the attorney should become familiar with:

- a. the elements of each of the offenses alleged;
- b. the law of the jurisdiction for establishing probable cause;
- c. factual information which is available concerning probable cause;
- d. the process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings; and,
- e. the potential impact on the admissibility of any witness' testimony if they are later unavailable at trial.

F. Duty of Counsel to Conduct Investigation:

1. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, insure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.

2. Sources of investigative information may include the following:

a. Arrest warrant, accusation, complaint and/or information along with any supporting documents used to establish probable cause should be obtained and examined to determine the specific charges that have been brought against the accused;

b. The relevant statutes and precedents should be examined to identify:

- i. the elements of the offense(s) with which the accused is charged;
- ii. the defenses, ordinary and affirmative, that may be available;
- iii. any lesser included offenses that may be available; and,
- iv. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

c. Interviewing witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview.

d. The police and prosecution reports and documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports.

e. Physical evidence. Where appropriate, counsel should make a prompt request for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

f. The scene of the incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

g. Securing the assistance of experts. **(this is an issue to discuss, should funds be made available to PD's for experts, investigators etc. this is the practice in the US,)** Counsel should secure the assistance

of experts where it is necessary or appropriate to:

- i. the preparation of the defense;
- ii. adequate understanding of the prosecution's case; or
- iii. rebut the prosecution's case.

G. Formal and Informal Discovery:

1. Counsel should consider seeking discovery, at a minimum, of the following items by written motion or request:

- a. Potential exculpatory information;
- b. Potential mitigating information;
- c. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
- d. All oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;

- e. The prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;
- f. All books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
- g. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
- h. Statements of codefendants;
- i. All investigative reports by all law enforcement and other agencies involved in the case;
- j. All records of evidence collection and retained by law enforcement; and,
- k. Counsel shall file with the court a receipt of all materials received.

H. Development of a Theory of the Case:

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case. Counsel, during the investigatory stages of the case preparation must understand and develop strategies for advancing the appropriate defenses on behalf of the client.

I. The Duty to File Pretrial Motions:

1. Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.
2. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.
3. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default.
4. Counsel should consider the advisability of disqualifying or substituting the presiding judge. This consideration should include any information about the judge's history in aligning himself with the prosecution on bail issues, motion rulings, and trial rulings; any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other public defenders, or public defenders in general
 - a. Prior to filing a motion to disqualify or substitute the judge, counsel shall consult with the Chief attorney in his office.
 - b. The decision to disqualify a judge shall only be made when it is a reasoned, strategic decision and in the best interest of the client. The final decision rests with counsel.

J. Preparing, Filing, and Arguing Pretrial Motions:

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.
2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

- a. investigation, discovery and research relevant to the claim advanced;
- b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
- c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
- d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

3. In every case, counsel should examine whether it is appropriate to file a motion to suppress evidence or statements.

4. In every case that proceeds to trial, counsel should file timely and appropriate motions to exclude any improper evidence or prosecutorial practices.

K. Continuing Duty to File Pretrial Motions:

1. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

1. The Decision to Enter a Plea of Guilty:

- 1. The decision to enter a plea of guilty rests solely with the client, and counsel should not tempt to unduly influence that decision.
- 2. If client is a juvenile, being prosecuted as an adult, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

M. Counsel's Duty of Trial Preparation:

1. The decision to proceed to trial rests solely with the client after consultation with counsel. Counsel should discuss the relevant strategic considerations of this decision with the client, and maintain a record of the advice provided to the client and the client's decision concerning trial.

2. Where appropriate, counsel should have the following materials available at the time of trial:

- a. copies of all relevant documents filed in the case;
- b. relevant documents prepared by investigators;
- c. outline or draft of opening statement;
- d. cross-examination plans for all possible prosecution witnesses;
- e. direct examination plans for all prospective defense witnesses;
- f. copies of defense subpoenas;
- g. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;
- h. prior statements of all defense witnesses;
- i. reports from defense experts;
- j. a list of all defense exhibits, and the witnesses through whom they will be

introduced;

- k. originals and copies of all documentary exhibits;
 - l. outline or draft of closing argument.
3. Counsel should be fully informed as to the rules of evidence, court rules and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.
 4. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.
 5. Throughout the trial process counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.
 6. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor.
 7. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.
 8. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

N. Opening Statement

1. Prior to delivering an opening statement Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.
2. Counsel's objective in making an opening statement may include the following:
 - a. to provide an overview of the defense case;
 - b. to identify the weaknesses of the prosecution's case;
 - c. to emphasize the prosecution's burden of proof;
 - d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case;
 - e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
5. Counsel should consider incorporating the promises of proof the prosecutor makes during opening statement in the defense summation.

O. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.
2. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents

subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

3. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information;

c. anticipate those witnesses the prosecutor might call in its case in chief or in rebuttal;

d. consider a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies in a witness' testimony;

f. be alert to possible variations in witness' testimony;

g. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

h. be alert to issues relating to witness credibility, including bias and motive for testifying; and,

i. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

5. Before beginning cross-examination,

counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should consider making appropriate motions or sanctions and at a minimum, request adequate time to review these documents before commencing cross-examination.

P. Presenting the Defendant's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its burden of proving each element of the charge.

2. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

3. Counsel should be aware of the elements of any affirmative defense.

4. In preparing for presentation of a defense case, counsel should, where appropriate:

a. develop a plan for direct examination of each potential defense witness;

b. determine the implications that the order of witnesses may have on the defense case;

c. determine what facts necessary for the defense case can be elicited

t hrough the cross-examination of the prosecution's witnesses;

d. consider the possible use of character witnesses;

- e. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
 - f. review all documentary evidence that must be presented; and,
 - g. review all tangible evidence that must be presented.
5. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
6. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
7. Counsel should conduct redirect examination as appropriate.
8. At the close of the defense case, counsel should renew the motion for a verdict of acquittal on each charged count.

Q. Preparation of the Closing Argument

1. Counsel should be familiar with the substantive limits on both prosecution and defense summation.
2. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
3. In developing closing argument, counsel's argument should reflect counsel's theory of the case. Counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:
- a. highlighting weaknesses in the prosecution's case;
 - b. describing favorable inferences to be drawn from the evidence;
 - c. incorporating into the argument:
 - i. helpful testimony from direct and cross-examinations;
 - ii. responses to anticipated prosecution arguments;
 - d. and the effects of the defense argument on the prosecutor's rebuttal argument.
4. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, and request dismissal of the charges

R. Obligations of Counsel at Sentencing Hearing

1. Among counsel's obligations in the sentencing process are:
- a. where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial and collateral implications;
 - b. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
 - c. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;
 - d. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and

circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

S. Sentencing Options, Consequences and Procedures

1. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:
 - a. any minimum sentences and any exceptions;
 - b. deferred sentences, suspended sentences, and diversionary programs;
 - c. the effect of confidential criminal justice information;
 - d. probation or suspension of sentence and permissible conditions of probation;
 - e. the potential of recidivist sentencing;
 - f. fines, associated fees, court costs;
 - g. victim restitution;
 - h. reimbursement of attorneys' fees;
 - i. imprisonment including any mandatory minimum requirements;

2. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:
 - a. credit for pretrial detention and credit against fines imposed;
 - b. deportation and other immigration consequences;
 - c. loss of civil rights;
 - d. impact of a fine or restitution and any resulting civil liability;
 - e. Loss of property o

3. Counsel should be familiar with the sentencing procedures, including:
 - a. the effect that plea negotiations may have upon the sentencing discretion of the court;
 - b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
 - c. the use of "Victim Impact" evidence at any sentencing hearing;
 - d. the right of the defendant to speak prior to being sentenced;
 - e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
 - f. the use of any minimum sentences;

T. Preparation for Sentencing

1. In preparing for sentencing, counsel should consider the need to:
 - a. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
 - b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
 - c. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, family obligations, and obtain from the client sources through which the information provided can be corroborated;
 - d. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the

court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;
e. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;

U. The Prosecution's Sentencing Position

1. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

V. The Sentencing Process:

1. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.
2. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.
3. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.
4. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.
5. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.
6. Where appropriate, counsel should prepare the client to personally address the court.

W. A Motion for a New Trial:

1. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.
2. When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:
 - a. The likelihood of success of the motion, given the nature of the error or errors that can be raised; and,
 - b. The effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

X. The Defendant's Right to an Appeal:

1. Following conviction at trial, counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal.
2. Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

FACILITIES AND SUPPORT SERVICES:

1. Defender offices should have a budget for operating expenses that provides for a professional quality office, library, and equipment comparable to the prosecutor's office.
2. Defender office budgets should include funds for procurement of experts and consultants, and for the procurement of other necessary services.
3. In all assigned cases, reasonable compensation for expert witnesses necessary to preparation and presentation of the case shall be provided, subject to prior approval by the Chief Public Defender
4. All public defender offices, shall make arrangements to maintain the confidentiality of client information. This includes physical security for confidential documents, exhibits, and electronic communications.

REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY

Goal: To actively and effectively represent clients in the appellate process by presenting for appellate review all legal issues that have a reasonable probability of resulting in reversal of the client's conviction or commitment or improving his or her legal position. Attorneys representing appellants shall comply with the general standards for public defenders as well as these specific standards.

I. TRAINING.

1. The attorney will receive a minimum of Twenty (20) hours of training specific to the Rules of Appellate Procedure including acceptable pleadings, deadlines, and citations to the record and authority, procedural and substantive legal issues and applicable rules of professional conduct.
2. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.
3. Counsel shall participate in regular training events as directed by the Public Defender Board.

II. HANDLING THE CASE 1

1. As soon as feasible after conviction, or commitment appellate counsel should confer personally with the Appellant to discuss the case. Counsel should explain the meaning and consequences of the court's judgment as well as the right to an appeal and a general outline of the appellate process.
2. Counsel shall, within the time frame set forth in the Rules of Appellate Procedure, request all transcripts and case records.

3. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel.
4. After reviewing the record, counsel should confer with the appellant and trial counsel to discuss, whether in his or her professional judgment, there are meritorious grounds for appeal and the probable results of an appeal. Counsel should explain the advantages and disadvantages of an appeal. The decision whether to proceed with the appeal must be the defendant's own.
5. Counsel shall be diligent in expediting the timely submission of the appeal and shall comply with all applicable rules regarding conduct, pleadings, deadlines, and citations to authority.
6. Counsel shall not abandon an appeal solely on the basis of his or her own determination that the appeal lacks merit, but rather should advance any sound basis for changing the law.
7. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, and those facts appear on the record, he or she should seek appellate relief for the client on that ground. If counsel is satisfied that a prior attorney did not provide effective assistance and the facts do not appear on the record, counsel should advise the client regarding postconviction rights and, if the appeal is not successful, file the appropriate post conviction petitions.
8. After exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.
9. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.
10. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion. If oral argument is granted, counsel should prepare appropriately, including participating in a moot court session.
11. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.
12. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies – including the right to post conviction relief – and the scope of further representation. This information, with particular emphasis on applicable deadlines, should be memorialized in a letter to the client.
14. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the records, transcripts, files, and other information pertinent to post conviction proceedings.

ATTACHMENT 6
Proposed Budget Public Defender Pilot Program
Kathmandu Valley Courts

PHASE ONE- NOVEMBER 2006-JULY 2007

Salaries

- | | |
|---|-------------|
| 1. Stipendiary Lawyers (new PD's) 7 hires at NRP 10,000 per month x 7 months | NRP 490,000 |
| 2. Chief Public Defender 1 hire at NRP 13,000 per month x 7 Months | NRP 91,000 |
| 3. Paralegal 1 hire at NRP 6500 per month x 7 months | NRP 45,500 |
| 4. Support Staff 1 hire at NRP 5000 per month x 7 months | NRP 35,000 |

Total local salaries NPR 661,000

@ NRP .73.25= \$1.00 \$9023

OTHER

- | | |
|--|--------|
| 1. Non-reoccurring fixed costs –Equipment - See attached breakdown | \$9098 |
| 2. Chief Public Defenders discretionary fund (at-court copying fees etc) | \$1000 |

Total Local Expenses \$19, 121

Local contribution Per Supreme court Registrar NRP 14,000 \$191.00

Total local Costs for Phase One **\$18,930**

ATTACHMENT 7

Implementation of the Public Defender Pilot Program in the Kathmandu Valley and future activities

With the Public Defender board in its formative stages, it is now time to begin implementing the Action Plan previously submitted to this end. The program will provide assistance to indigent defendants charged in the Kathmandu, Lalitpur and Bakhtipur District Courts, and appeals generated therefrom to the Patan Court of Appeals and the Nepal Supreme Courts

PHASE ONE NOVEMBER 2006-JULY 2007

The Stipendiary lawyers in the Kathmandu Valley region, presently 5 will assume temporary duties as Public Defenders. Two additional lawyers will also be hired by the Board, one to provide representation in the Kathmandu District Court, the other, a more senior attorney with management experience, to serve as Chief Public Defender. All contracts during this phase shall expire at the end of the fiscal year, July 15. The Chief Public Defender shall manage the public defenders office, provide assistance to the public defenders as needed, and liaise with the board. Lawyers shall be compensated at a level similar to that of Public Prosecutors with similar backgrounds and experience. The Public Defender Board shall establish minimum qualifications for the Public Defenders to be hired in Phase Two.

During Phase one, the primary objectives shall be as follows:

1. Create mechanisms to educate both the public at large, and those accused of crimes of the availability of public defender services to those of limited means.²¹ This will entail printed materials being placed in prominent places at jails, police stations, public prosecutors offices, and the Courts. Additionally, print, radio, and television should be utilised for public service announcements to the maximum extent possible.
2. Establish working mechanisms for the assignment of counsel. Each Court Registrar shall ensure that appropriate cases are assigned the public defenders office in their respective court as soon as is practicable, and in no event later than the initial Court appearance. Counsel should be afforded sufficient time to meet with his/her client to prepare for the initial appearance hearing. The Registrars shall ensure that copies of all registered case materials are provided to the public defenders as soon as practicable after their filing.
3. Open a central Public Defenders Office, and satellite offices in each Court. ARD shall provide needed office equipment as funding allows.

²¹ Annual salary of NPS 60,000 for a person with no dependants, NPR 90,000 for those with dependants

4. In February 2007, begin advertising and recruiting qualified attorneys for one-year contracts as Public Defenders as set forth in phase two. The PDB shall meet as necessary to discuss the progress of the pilot program, and make changes as needed.

5. In March of 2007, or at such other time as the Board and ARD deem appropriate, ARD shall arrange for a certification and training program to be held in conjunction with the Nepal Judicial Academy. The consultant shall work with local ARD staff, and the PDB to organise a three-day training program based upon the “Public Defenders Rules of Procedure and Code of Conduct”²² (PDRCC) This training shall be mandatory for all new PD hires, both for the pilot program, and all future contract public defenders and open to any criminal defense attorney who may wish to become a public defender at a later date. At the conclusion of training, the consultant, ARD staff and the participants should discuss topics for future continuing legal education programs, and future public defender certification programs.

6. Concurrent with the training set forth above, the consultant shall conduct a thorough survey of the effectiveness of the Public Defender System to date, and make a written report to the Board, outlining successes to date, and making specific recommendations for improvement.

Phase Two July 2007 July 2008

1. At the beginning of phase 2, qualified attorneys shall be hired with one-year contracts. The hiring process shall be competitive, and managed by the PDB. All contracts entered into from the beginning of phase two forward shall be for a term of one year, and should be renewable at the attorney’s discretion provided the attorney provides satisfactory services to the clients and the Court.

2. When determined appropriate by the Public Defender Board, contact shall be made with appropriate legislators and executive branch officials to show the success of the pilot program, and explain the need for National government participation in the Public Defender program. Enabling legislation should be discussed, as well as funding to ensure the longevity of the program.

3. Near the End of Phase two, the Public Defender Board, working with ARD staff and the consultant as necessary shall identify the next districts for implementation of Public Defender services; ARD staff and the consultant shall visit these areas as necessary to assess the needs, make specific recommendations, and establish the program therein.

Phase Three

²² The actual training shall be conducted in Nepali, the consultant shall work with the presenters to ensure a thorough understanding of the PDRCC and assist as needed at the training sessions

Working with the legislature, (CA) and the National government, ARD staff and the consultant shall prepare draft legislation to establish the Public Defender system nation-wide. ARD staff and the consultant shall provide all necessary assistance to the CA and other branches of government to understand the nature functions and need for such a system.

ARD staff and the consultant shall provide a draft plan to implement the Public defender System nation-wide, giving due consideration to the logistical and cultural challenges presented.²³

3. ARD staff and the consultant shall work with the National Government and representatives of the CA to develop a transitional funding plan which utilises both ARD/USAID funds, and other grants and the like, with the goal of turning funding responsibility over to the Nepal government over a reasonable period of time.

²³ The general concept should be that in every area where there is a public prosecutor, there should be a corresponding public defender

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov