



TRIP REPORT:

**ACTIVITIES SUPPORTING MORE  
TRANSPARENT,  
ACCOUNTABLE & EFFECTIVE  
GOVERNANCE**

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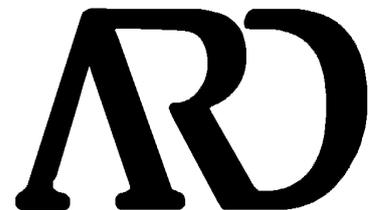
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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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## **LIST OF ABBREVIATIONS**

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<b>ACCF</b>	<b>Anti-Corruption Coordinating Forum</b>
<b>AG</b>	<b>Office of the Attorney General</b>
<b>ARD</b>	<b>Associates in Rural Development, Inc.</b>
<b>ARD-ROL</b>	<b>ARD, Inc. Nepal Rule of Law Project</b>
<b>CIAA</b>	<b>Commission for the Investigation of Abuse of Authority</b>
<b>COP</b>	<b>Chief of Party (ARD-ROL Project)</b>
<b>CTO</b>	<b>Cognizant Technical Officer (USAID)</b>
<b>DFID</b>	<b>The Department for International Development (UK)</b>
<b>NGO</b>	<b>NON-Governmental Organization</b>
<b>NVC</b>	<b>National Vigilance Centre</b>
<b>RACC</b>	<b>Royal Anti-Corruption Commission</b>
<b>USAID</b>	<b>United States Agency for International Development</b>

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# TRIP REPORT

## 1. Executive Summary

Progress has been made in a number of areas. With regard to the CIAA, development of a manual on anti-corruption investigation and trial techniques was approved. Voluminous materials have been both gathered and generated to form the basis of such a manual. Courses relating to investigation of the corruption case have been developed by the CIAA. A heavily attended two-day seminar on “Investigation and Trial of the Corruption Case” was presented for both members of the CIAA and the AG.

The Special Court judges have requested training in the area of anti-corruption and investigation for themselves and for additional appellate court judges. Because of concerns with human rights violations, a Criminal Filing Intake Form has been developed for use by the AG to assist in identifying and rectifying human rights issues, including bail determinations, custodial history, and witness and investigator contact information. As well, the form requires explanation if the defendant was not filed on/charged within the 26 day mandated period required by law.

Development of a Strategic Master Plan for the AG’s office was started. This development is to include a proposed Legal Policies and Procedures Manual, which will further attack the problem of Human Rights violations, and a Procedures Manual. Extensive materials for this purpose were developed and provided to the AG’s office. A schedule for a human resource development program was also provided. Further, an interim training program was outlined for the AG, with the establishment of merit based hiring and promotions discussed, as well as other substantive trainings on legal issues of concern to the office.

A potential “train the trainers” program was identified, and considered for the AG’s office, the program to be based primarily on using internal staff. Potential topics for the program were considered with the AG’s staff on developing a topic list for the program. As well, discussions also took place, at the AG’s request, relating to the possible development and funding of the prototype of a computer network within the AG’s office.

Identification of needed legal reference material for the AG’ Office began, with AG personnel supplying ARD with the first group of reference materials that they wished purchased for their library.

Communication between anti-corruption agencies was encouraged, with a proposal put forth for the establishment of a countrywide Anti-Corruption Coordinating Forum, the forum to be made up of all relevant anti-corruption agencies. This proposal is now being discussed with the agencies.

## 2. Progress and Observations

Despite the continuing government crisis in Nepal, a number of the programs moved forward, in conjunction with CIAA commissioners a seminar was planned on corruption investigation and trial. The planning culminated in a two-day seminar on relevant issues, which included the following topics:

- role of the prosecutor in suppressing corruption
- evidentiary issues

- dealing with uncooperative witnesses
- tactics in the investigation process
- obtaining public cooperation in corruption suppression
- undercover techniques
- general principals in both overt and covert investigations
- following the “grey” money
- dealing with informants and other witnesses
- conducting the financial investigation
- accounting techniques and identifying assets
- charging decisions

The police corruption case was examined with a presentation from a senior police officer from England who is currently with DFID. The subject matter included:

- dealing with the corruption case
- investigation
- problems with the investigative process
- taking advantage of opportunities
- legal requirements
- the consequences of actions
- tactics
- dealing with witnesses
- arrest and post arrest
- decision making

Problem solving in group breakout sessions was done, with both local issues and practices and other nations’ approaches discussed. Needed programs, techniques and laws which might be established in Nepal were also examined. Written materials were provided for the conference and PowerPoint presentations developed and utilized during the conference.

Preparation of a manual on the subject of anti-corruption investigation and prosecution trial techniques was discussed and approved by the CIAA commissioners. A panel of CIAA personnel was identified to work on the project. Voluminous source material was provided to the panel by the consultant for this purpose, including drafts of other like documents to use as possible subject matter in compiling the manual. Three types of investigation course outlines have now been developed by the CIAA. These include a basic course for junior staff, an advanced course for senior staff and a specialized crime investigation course. They have requested logistics and organizational support from ARD and an allowance for a resource person(s) for this program.

Meetings took place with the Special Court judges on what they felt were needed to improve the quality of the corruption cases that were presented to them by the CIAA/AG. These suggestions were conveyed to the CIAA/AG, with a number of them incorporated in the seminar (see above). An agreement was reached with the Special Court to provide training on anti-corruption investigation and trial practices for approximately 15 of the appellate court judges so that they could more adequately try a corruption case (and to make sure that trained replacement judges were available when the current Special Court judges are rotated out of their present positions). The judges also felt that training should be provided to them on cyber/computer crime because of its relevancy to their area of jurisdiction.

Conversations with DFID personnel, judges, NGO members, government attorneys and others have revealed substantial shortfalls in police practices, particularly in the area of human rights. To assist the government attorneys in identifying and rectifying these problems (particularly with non-trial long term custody issues) a Criminal Filing Intake Form was developed and presented to AG executive personnel.

Adoption of the Criminal Filing Intake Form by the AG and the police has the potential to create great change in the criminal justice system. The prototype form will require the following:

- review and recording of bail issues
- recording of custodial history
- witness statements
- existence of recordings
- witness identification/contact information
- arresting, investigating and supervising investigator identification and contact information.

This same form also requires an explanation as to why a defendant was not filed on/charged within the 26 day statutory time required by law. Because of the absence of the Attorney General (who resigned during the recent government “restructuring”) and the gap in time before another Attorney General was appointed, the newly appointed Attorney General has not yet presented the form to the Justice Coordinating Committee for its approval, and police concurrence, on a beginning usage date.

Development of a Strategic Master Plan has started in the AG’s office. A committee responsible for the development of this plan was appointed by the present Attorney General. To assist this committee several documents were developed. This included a master calendar/time line document to cover the activities of the committee. This document also presented the proposed goals and activities of the plan, including:

- particulars of the needed diagnostic study
- workshop plan
- program for the legal policies and procedures system development (including a proposed Legal Policies and Procedures Manual)
- schedule for human resource development, including recruitment, training and research plan development
- infrastructure needs
- budgeting and finance process recommendations and
- ongoing committee review

To jump start a number of the items required under the proposed master plan, a table of objectives for the master plan and a table of contents of the main objectives for the proposed personnel manual were developed and presented for consideration by the AG committee assigned to the develop the manual program. As well, a table of contents/outline for the proposed Legal Policies and Procedures Manual was developed and presented to the same committee. Contents proposed for the manual included human rights issues such as establishing basic criteria for charging and an outline of improper basis for charging. Burden of proof issues will be discussed. The area relating to the discretion not to charge and using alternatives to criminal prosecution was included. The concept of speedy trial will be set out, and the area relating to conflicts of interest will be outlined.

An interim plan was developed and presented to the AG which, while encompassing the above information, included proposals for training for the prosecutors in the following subjects:

- penal procedure/evidence code
- trial skills enhancement
- establishment of a permanent training committee
- establishment of a “train the trainers” program
- merit based hiring and promotion
- reviewing the ethics code for possible recommendations and/or revisions
- specialized training such as computer skills, forensic evidence, cyber crime/internet crime, crime scene investigation

To begin the “train the trainers” program Kathmandu School of Law and Nepal Law Campus academics were consulted. They indicated that their law schools had the capacity to give an initial course on “train the trainers” in the field of trial advocacy for selected government attorneys.

The AG has requested that we provide four computers and access to the internet for these computers. We indicated to the AG that we would consider such a request, but needed a written justification which substantiated the need for the computers and their internet access. As well, future financial responsibility for the upkeep expense required for the equipment had to be demonstrated to us. The AG personnel have agreed to supply this justification in the near future.

The identification of legal reference materials for library purchase was discussed with AG personnel. A book list was developed by ARD and given to the AG for its use in selecting reference materials. Currently, we are waiting for this selection process to be completed.

### **3. Significant Issues**

The Nepali governmental organizations are clearly affected by the present state of the government. However, it must be noted, for the record, that the King has placed a high priority on anti-corruption practices, making it second only to the prosecution of the war against the Maoists.

The CIAA continues to function, doing effective work in the field. As well, there is finally some stirring in the National Vigilance Center with the NVC in the process of reorganizing and establishing a three year master plan which, at this admittedly early stage, seems to have substance. A Royal Anti-Corruption Commission (RACC) has also been established. However, there appears to be an overlap of its jurisdiction with the CIAA, Special Court, and the NVC. Unless resolved, the issue of jurisdiction, and related uncertainties associated with jurisdiction, could reduce or, in other aspects, affect the activities of these three agencies – and the interactive programs we have planned with them. As well, there is a problem with the lack of perjury laws in Nepal. Their absence will continue to affect the integrity of the trial process, with witnesses allowed to testify to facts without concern for truth because of the absence of sanctions for providing false testimony. Note: A complete set of perjury laws has been provided to the CIAA and the AG for their consideration in regard to forwarding legislation in this area once conditions allow for the passage of legislation.

### **4. Follow on Activities**

Pursuant to IR 7.4.2 (More Transparent, Accountable and Effective Governance) and its sub-requirements of Strengthened Government Integrity Planning and Implementation (7.4.2.1), Improved performance of Anti-Corruption Systems and Other Selected Institutions Contributing to Good Governance (7.4.2.2), Improved Legal Frameworks and Practices for Good Governance Reform (7.4.2.3) and Non-Partisan Anti-Corruption Coalition is Formed, Free and Active (7.4.2.4), the following work for the immediate future is suggested.

Improved performance of the individual components of the justice system that are presently combating aspects of corruption can be enhanced with the formation of a country-wide Anti-Corruption Coordinating Forum (an “informal” as opposed to officially recognized government committee). Complaints have been received from agencies about the lack of interaction, communication and shared aspects of programs of one agency with another. That synergy can be created with the establishment of the ACCF on a national level. This subject has been broached with several agencies and some encouragement for the process is present. However, much has to be done by way of encouraging the process and getting at least one of the major agencies to champion the program

CIAA has been taking the lead in generating regional forums. However, there must be an ongoing forum (informal, if not formal) which encompasses the country-wide problems on a national basis. This forum would be made up primarily of anti-corruption agencies and/or law enforcement components which are engaged in anti-corruption processes and would facilitate needed dialogue and mutual awareness and review and progress of each other's programs and information.

Training in corruption investigation, case preparation and trial should continue. However, care must be taken as to the form in which that program should be carried forward. The program should be geared to workshops rather than seminar formats. It should involve selected subjects, work problems developed prior to the workshops, small scale workshops and participants chosen from a group of selected personal who are concerned with the problems developed and prepared for the program.

The individuals selected to prepare the manual on anti-corruption trial techniques have been selected within the CIAA. However, steps relating to its goals and objectives and its future work agenda and time lines have to be developed. Materials have to be accumulated for inclusion in the manual. A large amount of material has already been developed by ARD's international consultant and staff personnel in Nepal. However, there must be a "buy-in" by the Manual Committee and the accumulated materials integrated into those developed by the Nepalis.

The CIAA and the AG's office need training in:

- frauds
- financial crime
- procurement fraud
- tax evasion
- money laundering investigation
- cyber crime
- case preparation and trial

As well, the CIAA has asked for help from ARD personnel in setting up/planning their own internal training processes. This should be carried forward with separate meetings between the appropriate individuals identified within both agencies, these individuals to select topics/needs identified within their agencies, the method of training identified and time lines for the trainings established. The scope of ARD's involvement, beyond assistance in setting up the programs within these agencies, should be established during the early planning process, particularly the need for foreign consultants and or expenditures which are requested for the processes to carry forward. If manuals are to be developed internally or externally for any of these areas, their need must be identified and the participation of ARD assessed.

Because of the Human Rights issues relating to the incarceration of individuals as well as for the creation of country-wide uniform practices in the charging of individuals by the AG's office the Criminal Filing Intake Form should adopted for use by the police and the AG. The form has been developed, modified (in part, by AG personnel) and presented to the Attorney General. Although approved by other members of his office, this form still awaits his approval. In turn, his office must be "pushed" to present the form to the AG-chaired coordination group of law enforcement agencies for its approval and recommended adoption by the police. If any resistance develops in that process, aid should be sought from other agencies to support the adoption of the form. Note: If the police adopt this procedure, the CIAA should also be required to utilize the form in its intake process. It investigates and files cases, and the same human rights needs, which are dealt with by the form, affect CIAA issues and filings.

The library of books which is to be supplied to the AG remains to be identified and then purchased. Construction of the shelving must be done. A small library of books is to be

purchased for the CIAA. Consideration should be given, at this time, to the identification and purchase of such a library, along with the construction of appropriate shelving.

There is a need for NGOs to be included in the anti-corruption process, on a larger basis. There is also a need for the CIAA to be informed of the areas in which the NGOs specialize, and of the NGO's perceived problem areas and subjects (which they have taken particular note of, or are involved in with some aspect of their activities, such as political activities, government practices, army, police, etc.) The CIAA should be sounded-out for the training of selected personnel in the targeted areas the NGOs are interested in. Some of these areas of mutual need and/or instruction may include human rights, areas of police practices which are perceived as corrupt, etc.

A planning process to improve the Attorney General's office has been initiated by providing the AG with selected materials relating to the development of a Strategic Master Plan. Individuals have been identified for the purpose of developing this plan within the AG. Future activities should include:

- diagnosis study,
- personnel system development,
- legal policies and procedures system development (including a Legal Policies and Procedures Manual production)
- human resource development, including a training plan, recruitment policy review, etc.,
- drafting of a three to five year strategic plan
- identification of infrastructure needs
- budgeting
- finance needs
- recommendations

Judicial training in anti-corruption techniques and procedures, fraud and money laundering investigation, and trial procedures should be given (in conjunction with the CIAA and AG training, if that is agreeable to the courts). As well, cyber/computer crime training should be given to the courts in conjunction with the AG and CIAA training (if agreed to by the judges).

The Special Court has specifically requested training in a special seminar for 12-15 appellate judges on the investigation and trial of the corruption case. This group would include the sitting members of the Court and a group of appellate judges who would become the pool of judges that would eventually be drawn from to take the place of the special court judges as replacements when their terms on the Special Court were over.

Human rights training must be provided for prosecutors. This can be conducted by the local NGOs. I would also suggest that an international expert be utilized for training on the role of the prosecutor on basic human rights and the role of the prosecutor in this process. In conjunction with this training, a local NGO should be selected for a grant leading to the production and distribution of a manual on human rights and the responsibilities of a prosecutor in protecting him. That manual should include international and other national standards and should be specifically geared to international treaty requirement to which Nepal is a signatory.

The new Attorney General should again be approached for his agreement on development of a Trial Manual. World Bank sources should be contacted to determine if and when they are going to provide resources for this project and/or whether they believe ARD should go forward with the project.

An internal training program should be developed within the AG (see above, with reference to the CIAA training, and possible joint programs) this training to include cyber crime investigation, trial preparation, frauds, money laundering, etc. Again, as in other programs, involvement of ARD beyond the planning stage should be outlined at the inception of the plan.

The two large law schools, Kathmandu School of Law and the Nepali Law Campus, have been approached about organizing a trial advocacy course for the AG and about organizing “Train the Trainers” with trainees from the first course trained as trainers so that the AG may later carry forward with training its own personnel, not only on trial advocacy, but in other subject areas.

NVC should be encouraged to participate in the proposed country wide Anti-Corruption Coordinating Forum (ACCF, see above). It is currently involved on a regional basis but needs to take part in a forum which has a general overview of the country wide programs and the country-wide needs.

Despite the absence of a parliament to enact legislation, NGOs and government agencies willing to participate with them should continue their development of a Freedom of Information Act and a Whistleblower statute for Nepal. Plans for campaigning for their statutory adoption by the government should be laid.

Training for judges and prosecutors on environmental crimes should be given. As well, a manual on environmental laws and prosecution processes for the enforcement and prosecution of these laws should be developed. NGOs should be considered for possible involvement in this process (if the judges and the AG agree). In relation to this program, consideration for the creation of a permanent special unit within the AG’s office to investigate and prosecute these crimes should be raised by ARD (and possibly the NGOs) with the AG.

Because of the large backlog of cases now pending judgment in the Special Court, assistance is needed in case briefing to accelerate final decisions in these cases. Consideration should be given to training agreed-upon individuals (such as law professors, senior law school honor students, selected members of the private bar, and others) in skills which will allow them to brief case facts and evidence for judges to use as the basis for their final written decisions.

As indicated in the work plan, sponsorship of a national anti-corruption conference (developed perhaps by and/or through regional conferences) with the purpose of encouraging participation by citizens, state agencies, business, government agencies, and NGOs in the battle against corruption. An agenda fostering both anti-corruption prevention and enforcement should be developed. Co-sponsorship and media support should be sought.

The training of civil society on issues of corruption should be sought (see above). This should be followed-up with the printing and distribution of a tool kit on anti-corruption activity and practices which should be distributed to the public.

Training must be given to NVC and CIAA staffs in the procedures which must be utilized in monitoring financial assets and practices of the public authorities.

Training should be given to the Judicial Council and the interested members of the Supreme Court on the investigation of corruption to allow them to investigate judges who are accused of corruption. Note: They are the only body charged constitutionally with the investigation of corrupt judicial practices.

## 5. Contacts

*The following contacts were made during my visit:*

Members of USAID, including the Chief of Party and the CTO.

Appellate Judges of the Special Court, Mr. Govinda Prasad Parajuli (Chairman),

Mr. Bhoop Dhoj Adhikari, Mr. Rana Bahadur Bam

Registrar of the Special Court, Lohit Chandra Shah

Chief Judge of the Patan Appeals Court, Top Bahadur Magar

Commissioners of the CIAA: Hon. Surya Nath Upadhyay, Mr. Basudev Lamichane,

Mr. Lalit Bahadur Limbu, Mr. Indra Kumar Shrestha, Mr. Bed Prasad Shivakoti

Chief of the Planning Division for the CIAA, Mr. Ratna Kaji Bajracharya

Secretary of the CIAA, Mr. Rewati Raj Kafle

Most of the attorneys and investigators of the CIAA.

Attorney General Hon. Pawan Kumar Ojha

Executive staff of the Attorney General (Deputy AG's) Mr. Dron Raj Regmi and

Mr. Narendra Pathak

The committee which will formulate the three year master plan for the office –

Mr. Yubraj Subedi, Mr. Rishikesh Wagle and Mr. Revati Raj Tripathy

A large number of government attorneys were also contacted and issues were discussed with them.

I met several members of the NVC technical staff.

Dean of the Kathmandu School of Law, Mr. Yubraj Sangroula

Professor, Nepal Law Campus, Dr Rajit Bhakt Pradhananj

DFID consultant, Mr. Richard Miles

Director of the Customs Department, Mr. Krishna Hari Baskota

## **ANNEX**

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

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