



TRIP REPORT:

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

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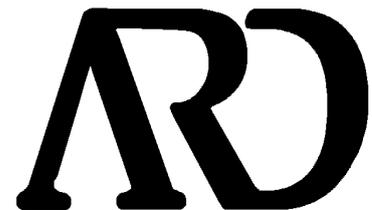
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TRIP REPORT

Nepal Strengthened Rule of Law and Respect for Human Rights
Anti-corruption Component
Michael Genelin, September 2005

1. Executive Summary

Progress has been made in a number of areas:

- CIAA development of a manual on anti-corruption investigation and trial techniques was approved. Voluminous materials have been gathered and generated to form the basis of such a manual.
- The CIAA has developed courses relating to investigating corruption cases. A two-day seminar on investigating and trying corruption cases was heavily attended by members of the CIAA and the AG.
- The Special Courts have requested anti-corruption training for themselves and for additional appellate court judges.
- To address concerns relating to human rights violations, a Criminal Filing Intake Form has been developed for use by the AG on issues related to bail determinations, custodial history, and witness and investigator contact information. The form requires explanation if a defendant is not charged within the 26-day period required by law.
- A Strategic Master Plan for the AG's office is under development. This will include provisions for development of a Legal Policies and Procedures Manual (which will further address 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. Finally, the establishment of merit-based hiring and promotions was discussed, as well as an interim training program on selected substantive law topics.
- Progress on building the capacity of the AG's office received considerable attention. A potential "train the trainer's" program was identified, and discussions took place on the improving the computer and communication capacity of the AG's office, including internet access. Identification of needed legal reference material began, with the initial selection of books made by AG personnel, to be followed up by the final selections in 10 days.
- Communication between the agencies was encouraged, with a proposal put forth for establishing a countrywide Anti-Corruption Coordinating Forum. This proposal is now being discussed among the major anti-corruption parties in Nepal.

2. Progress and Observations

A number of the programs have moved forward over the last six months, despite the continuing government crisis in Nepal. 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: the 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 principles in both overt and covert investigations, following the "gray" money, dealing with informants and other witnesses,

conducting the financial investigation, accounting techniques and identifying assets were reviewed as were charging decisions, defenses, etc.

As part of this seminar, a police corruption case was examined by using a senior police officer from England (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, etc. Problem solving in group breakout sessions proved effective, with both local issues and practices and other nations' approaches discussed. Participants discussed needed programs, techniques and laws which might be established in Nepal. Written materials were provided for the conference, and power point presentations were developed and utilized during the conference.

To further assist the CIAA staff, preparation of a manual on 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, and materials began to be compiled. Voluminous initial source material was provided by the consultant, including drafts of similar documents from other settings to help shape content and format for the manual. It is important to note that 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 to carry this program forward.

Meetings took place with the Special Court judges to discuss what they felt was 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 being incorporated in the two-day seminar described 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. This will enable the judges to try corruption cases with greater expertise and to make sure that replacement judges are trained when the current Special Court members are rotated out of their present positions. Training will also be given on cyber/computer crime.

Conversations with DFID personnel, judges, NGO members, government attorneys and others 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.

These forms now require review and recording of bail issues, recording of custodial history, witness statements, existence of recordings, basic witness identification/contact information, and arresting, investigating and supervising investigator identification and contact information. This same form also requires an explanation in the event that a defendant is not filed on/charged with the 26-day statutory time required by law. Due to the gap in time caused by the resignation of the AG after the recent government "restructuring," this form has not yet been approved and implemented by the justice coordinating committee.

The AG's office had begun its Strategic Master Plan development. A committee responsible for developing the plan was appointed by the current AG. To assist this committee, several documents were developed, including a master calendar/time line document to cover the

activities of the committee. This document also includes the proposed goals and activities of the plan, including the 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), a 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 strategic master plan, a table of objectives of the main objectives of the personnel manual were developed and presented for consideration by the AG committee assigned to the develop the manual program. Also, 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 include 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, as will be the issue relating to the discretion not to charge and using alternatives to criminal prosecution. The concept of a 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 that included proposals for training on the penal Procedure/Evidence Code, trial skills enhancement training, establishment of a permanent training committee and a “train the trainers” program, merit based hiring and promotion, reviewing the ethics code for possible revisions, specialized training such as computer skills, forensic evidence, cyber crime/internet crime, crime scene investigation, etc.

To begin the “train the trainers” program, representatives of the University of Kathmandu School of Law and the Nepal Law Campus were consulted. They indicated that their law schools have the capacity to give an initial course on “train the trainers” in the field of trial advocacy.

The AG has requested that ARD provide four computers and access to the internet for these computers. We indicated we would consider such a request, but needed a written justification for the need as well as a plan for financial responsibility for the upkeep expense. The AG’s office agreed to supply this justification in the near future.

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

3. Significant Issues

The Nepali governmental organizations are clearly affected by the issues presented by the King’s recent retreat from democracy. They appear hesitant to accept change, perhaps fearful of criticism; things progress, but at a slow pace. There appears to be a lack of trust in other organizations, including other governmental organizations. There also appears to be a competitive aspect in their dealing with other organizations, including an unwillingness to share and/or exchange perceptions, organizational processes, and a perceived need for change in operational facets of their interaction. There are also fears that one person or governmental department may take advantage of another to “get ahead,” or may conspire to take another as a subordinate. There are fears of some perceived taint that may result from association with other organizations. There is a Nepali “pride” that makes it difficult to listen to external

sources in both inter-governmental programs and external (foreign) sources. 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. 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. Unfortunately, the jurisdictional area within which this group is to operate and the operational methods it will use are not clear, and it may intrude on the practices and jurisdiction of other anti-corruption groups when it begins to exercise its mandate. The strong rumor is that the RACC has been created by the King to control his political opponents, particularly former prime ministers and ministers, who support a constitutional monarchy and are against any active role of the monarch in the governance process. There are other problems about the RACC raised by many Nepali lawyers who are skeptical about the legality of the powers given to the RACC. The Commission has the powers of investigation, prosecution and adjudication, combining the roles of the executive and judiciary on one body. This is seen, as it should be, as a violation of any concept of separation of powers. Even the judiciary can be investigated and charged by the RACC with their recommendations going to the King for his “appropriate” action, including punishment. The tensions created by the King’s actions (including his stance on human rights) will continue to affect institutional activities in Nepal for some time to come.

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 initiation 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. *Note:* 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, review and progress of each others programs and information.
- Training in corruption investigation, case preparation and trial should continue. However, care must be taken as to the form in which the program should be carried

forward. The program should be geared to workshops rather than seminar formats. It should involve selected subjects, with work problems developed prior to the workshops and the workshops smaller in scale with 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 remain to be developed. Materials must 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 materials integrated into those developed by the Nepalese, and as well, more closely focused on the needs perceived by the Nepalese.
- The CIAA and the AG's office need training in frauds, financial crime, procurement fraud, tax evasion, money laundering investigation, cyber crime and case preparation and trial. The CIAA has asked for help from ARD personnel in setting up and planning their own internal training processes. This should be carried forward with separate meetings between the appropriate individuals identified within both agencies. Training plans must be developed, including the selected topics/needs identified within these agencies, the method of trainings, and time lines for them. 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 related expenditures. If manuals are to be developed internally, or externally, their need in any of these technical areas must be identified and the participation of ARD assessed.
- Because of the human rights issues relating to the incarceration and detention of individuals, the Criminal Filing Intake Form should continue to be developed and subsequently adopted for use by the police and the AG. An initial form has been developed, modified and presented to the AG. In turn, his office must be "pushed" to further develop the form to their own standard and then presented to the AG for approval and adoption. 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 their intake process.
- The library of books which is to be supplied for the AG has been selected, in part, with the remainder of the publications to be identified within ten days. They will then be purchased (using appropriate procedures) by ARD staff. Construction of the shelving remains to 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 scale. There is also a need for the CIAA to be informed of the areas in which the NGOs specialize, and of the NGOs' 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.

- Strategic planning for the improvement of the Attorney General's office should be carried forward. This process has already begun, with the presentation of selected materials on the development of a Strategic Master Plan presented for consideration to the AG. A group has been identified for the purpose of developing this plan within the AG. The future activities should include a diagnostic study, personnel system development, legal policies and procedures system development (including a Legal Policies and Procedures Manual), human resource development, including a training plan, recruitment policy review, the drafting of a three- to five-year strategic plan, and identification of infrastructure needs and budgeting and finance needs and recommendations.
- Judicial training in anti-corruption techniques and procedures, fraud and money laundering investigation, trial procedures, etc. should be provided (in conjunction with the CIAA and AG training, if that is agreeable to the courts). Also, 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 Courts have 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 Special Courts 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 expire.
- Human rights training must be provided for prosecutors. This can be conducted by the local NGOs. We 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. This manual should include international, and other national, standards, specifically gearing the manual to international treaty requirements to which Nepal is a signatory.
- The new AG 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 should include Cyber crime investigation, trial preparation, frauds, money laundering, etc. Again, as in other programs, involvement beyond the planning stage should be outlined at the inception of the plan. *Note:* the two large law schools (Kathmandu School of Law and the Nepali Law Campus) have been approached with setting up a Trial Advocacy course for the AG and a subsequent "Train the Trainers" capacity
- NVC should be encouraged to participate in the proposed country-wide Anti-

Corruption Coordinating Forum (ACCF, see above). They are currently involved on a regional basis but need to take part in a forum that has country-wide programs responding to country-wide needs.

- Despite the absence of a parliament to enact legislation, NGOs (and government agencies willing to participate with these agencies) should begin their development of a Freedom of Information Act and a Whistleblower statute for Nepal. Plans for campaigning for their adoption by the government should be prepared.
- Training for judges and prosecutors on environmental crimes should be provided. 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 brought up by ARD (and possibly the NGOs) with the AG.
- Because of the large backlog of cases now pending judgment within the Special Courts assistance is needed in case briefing to accelerate final decisions and judgments. Consideration should be given to train agreed upon individuals (such as law professors, senior law school honor students, selected members of the private bar, etc) which will allow them to brief cases for judgments.
- As indicated in the work plan, we should sponsor a national anti-corruption conference (developed perhaps by 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 activities and practices for distribution to the public.
- Training must be given to NVC and CIAA staffs in the procedures that 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 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
- All members of the Special Court
- Chief Judge of the Patan Appeals Court
- All Commissioners of the CIAA

- The Chief of Training for the CIA
- Both the new and old secretaries of the CIAA
- Most of the attorneys and investigators of the CIAA
- The Attorney General (both the present AG and the immediate past AG)
- The executive staff of the Attorney General
- The committee which will formulate the three year master plan for the office.
- A large number of government attorneys were also contacted and issues were discussed with them
- Several members of the NVC technical staff
- Dean of the Kathmandu School of Law
- A Professor of the Nepal Law Campus
- Richard Miles of DFID on corruption issues
- Director of the Customs Department

ANNEX

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

Note: There are no attachments to this document.