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Customs Integrity Awareness Program
Development and Implementation

Trip Report
Customs Integrity Awareness Program
May 04, 2005 to May 28, 2005
Prepared by
John T. Kelly

Background

In March 2005 the Customs Integrity Awareness Program: Development and Implementation Strategy for Nepal Department of Customs, Katmandu, Nepal (referred to in this document as “the plan”) was submitted to USAID and approved for delivery.

This rather comprehensive document, prepared by Robert L. Holler with the assistance of John T. Kelly, conveyed in great detail the step by step processes necessary to implement a comprehensive change in the culture and operation of Nepal Customs with regard to integrity and ethics issues.

“The plan”, which included several phases of implementation, not only called for extensive changes but provided the enabling model directives, press releases, model disciplinary codes and internal control checklists vital to enable this change with only editing and country specific modification needed to bring the material into line with internationally accepted standards. In effect the approach, an innovative one not previously attempted, presented a step by step self implementation guide for the country to put the mechanisms in place to address a reputation and history of corruption within the Nepal Department of Customs.

One crucial area of the plan was the institution and staffing of an Internal Inspections Unit. In essence an Internal Affairs mechanism to investigate, reactively and proactively, incidents of corrupt practices and violation of internal regulations under the direct authority of the Director General Mr. Krishna Hari Baskota . As designed, this inquiry mechanism would inspect and investigate Nepal Customs offices and individuals, oversee ethics training and make referrals to other government agencies when investigative circumstances warrant.

The purpose of this trip, by the Advisor John T. Kelly, was to augment and implement the changes recommended in the report by providing subject matter assistance as described in “ the plan” as Phase II of the project as follows:

“Phase 2:

1. *Prepare a strategy for assisting Nepal Customs with further implementation of the recommended Nepal Customs Integrity Program.*
2. *Prepare material for assisting with the organization and procedures of an Internal Affairs Section and for training the staff of the new office.*
3. *In coordination with the USAID Rule of Law (ROL) Project, provide on-site assistance with further implementation of the Nepal Customs Integrity Program, including: application of position descriptions; implementation of organization changes, functional statements and internal directives; review and refinement of the code of conduct, standards of professionalism, and public outreach and disciplinary procedures; and, when appropriate, the development of press releases.*
4. *Provide basic training on internal control and investigative techniques to officers identified to be part of the new Internal Affairs Section.”*

Mr. Kelly was assisted for the period May 06, 2005 to May 12, 2005 by Mr. Robert L. Holler, author of “the plan” and previously assigned to assess the capabilities of the Nepal Department of Customs in July 2005. This was essential to any clear understanding of what actions and agreements had been taken previously and without Mr. Holler’s help and knowledge disaster would have struck early on in this mission.

This report summarizes the findings and actions of Mr. Holler and Mr. Kelly and the training and assistance provided by Mr. Kelly subsequent to Mr. Holler’s departure.

The basic precursors to implement Phase II were relayed “the plan” of March 2005. Both Mr. Kelly and Mr. Holler believed these to have been put in place prior to their arrival in May, 2005. In fact they were not. Those essentials as laid out in “the plan” included among others:

“Conduct and Discipline

- *A rewrite of the Code of Conduct in a more positive manner identifying the behavior Customs officers.*
- *The Code of Conduct would then be supplemented with two additional, related documents: a Directive on Officer/Employee Conduct and Responsibility and a Code of Discipline.*

- *The Director General must establish a formal Disciplinary Review Committee and appoint a chairperson and members.*

The Internal Investigations Unit

- ***Approval.*** *In order to establish the internal capability to investigate allegations of corruption, the Department of Customs must obtain the authority to do so, whether through delegation of authority from the CIAA, through a cooperative arrangement under a memorandum of understanding, through new legislation or by other means*
- ***Set-up.*** *The following (additional) tasks (reference the Internal Inspections Unit) will need to be accomplished prior to Phase 2 :*
 - *Establish budget; acquire office space and resources:*
 - *Security and control of access to facility space is essential.*
 - *Security of investigative files and other related administrative records is also essential. Locking file cabinets and a safe are required.*
 - *Desktop computers and printer are vital for processing and maintaining investigative reports and other documents and for conducting research.*
 - *Dedicated vehicles are essential to the unit's ability to perform field investigations.*
 - *Communications capabilities are essential: radio, mobile telephone, preferably both.*
 - *Tape recorders, still and motion video cameras are needed.*
 - *Determine whether those officers conducting criminal investigations will be authorized to carry firearms.*
 - *Prepare supporting documentation:*
 - *Write a functional statement describing the duties and responsibilities of the new unit. Attachment 8 provides an example.*
 - *Determine the number and types of positions necessary to staff the new unit and write a functional description of work for each position.*
 - *Determine desired qualifications for various types of positions. People should be of good character, possess good knowledge of Customs laws and procedures, and have corruption-free backgrounds.*

- *Write a directive announcing the formation of the Internal Inspections Unit and outlining its authority and responsibilities. Attachment 9 provides an example.*
- *Recruit and select Internal Inspection Unit staff*
 - *Issue a written notice announcing the new positions and desired qualifications and invite all employees to submit written applications (in accordance with existing human resource management requirements and practices).*
 - *Form a small selection committee to screen and select names; recommend a review of personnel folders to screen for desired training and conflicts of interest.*
 - *The selection committee should interview prospective candidates in confidentiality with interviewee given an overview of the prospective job and an opportunity to ask questions.*
- *Appoint and install Unit Manager and subordinate employees*
- *Enact Non-Disclosure Policy*
 - *When officers and other employees are selected, it is recommended that they be required to sign a legally binding non-disclosure statement not to communicate any information about matters being investigated to outside entities: media, the public or other government employees outside the Internal Inspections Unit.*
 - *The Disciplinary Review Committee should also sign non-disclosure statements to ensure and/or affirm that all communication and information about official investigations are conducted strictly on a “need to know” basis.”*

Such are the parameters of the “Set Up “phase for preparation before the launch of Phase II of “the plan” on site in Kathmandu, Nepal.

Scope of Work

The following were the designated Phase II project goals for this mission as noted in pages 18 and 19 of “ the plan”:

- *“Deployment. Once the Department has substantially completed the Set-up Phase, technical support will be required in order to train and deploy the Internal Inspections Unit staff. Training will be provided by an experienced criminal*

investigator with in-depth experience both in conducting internal inspections and investigations and in managing internal inspections organizations. The initial training will include, but is not limited to:

- *Ethics;*
- *Code of Conduct;*
- *Conduct and Officer/Employee Responsibilities Directive;*
- *Code of Discipline;*
- *Internal Inspection Unit Mission and Role of Employees;*
- *Interview and Interrogation;*
- *Design and Implementation of Internal Controls;*
- *Investigative Methods;*
- *Principles of Accounting;*
- *Law Enforcement Authority;*
- *Confidential Sources/Informants;*
- *Case Management;*
- *Rules of Evidence;*
- *Rules of Criminal Procedures for Court;*
- *Graduation and Deployment of Personnel.*
- *Formal classroom training will be supplemented with informal mentoring.*

The Phase 2 Training/Mentoring advisor will require the following on his arrival:

- *A full and detailed briefing by the CIAA as to the present process of internal investigation and a detailed discussion of how the mutually supporting roles of the CIAA and the Customs Internal Inspections Unit can best be coordinated;*
 - *A full and detailed briefing of how the office of the prosecutor views the corruption problem in the Department of Customs and potential techniques and solutions that may be applied under current legislation to address both the perceived and actual corruption problem; and*
 - *A full and detailed briefing by the Public Service Commission as to the present process of appointment, rules of conduct, discipline and dismissal procedures.*
- ***Oversight.*** *The Phase 2 Training/Mentoring advisor will work with the Disciplinary Review Committee to familiarize the committee members with the committee's oversight and coordination responsibilities."*

On Site Arrival and Evaluation

Mr. Kelly arrived on site on May 06, 2005. Mr. Holler had arrived the previous day. They met briefly on May 6th and for several hours on May 07 to discuss the implementation plan for Phase II of the program.

From meetings on May 09, 2005 with USAID and Director General Baskota of Nepal Customs it became quite evident that almost none of the “setup” steps of the program had been accomplished.

While Nepal Customs currently has an Inspection unit in place it has neither the authority nor the structure to act as an internal investigations unit as designed in the overall plan.

May 09 to May 14th were spent by Mr. Kelly and Mr. Holler educating the Directors and senior staff of the Nepal Customs as to the need to have the Internal Inspections Unit directly under the control of the Director General and the necessity of having a Program Management Staff to oversee programs under his direct control. Additionally restructuring of the presently under consideration by the Ministry of Finance “organogram” to include these changes was necessary to begin Phase II of the program.

Participation of CIAA

On May 11, 2005 a joint meeting was held at the Nepalese Commission for the Investigation of the Abuse of Authority (CIAA) which is charged with the primary investigation of official corruption in Nepal.

Attending were Mr. Kelly and Mr. Holler, Customs Director General Baskota, USAID Economic Growth Officer Naren Chanmugam, Mr. A.V.B. Millard, Team Leader for Democracy and Governance at USAID Nepal, Mr. Frederick Yeagher, Chief of Party, ARD Inc. Rule of Law Project, as well as the Director of the CIAA and Director of the National Vigilance Group (NVG), a preventative watchdog agency against corruption. Other staff and officials also attended.

In an effort to create cohesiveness and cooperation between the soon to be formed Internal Inspection Unit of Nepal Customs and these other agencies it was agreed that several investigators from CIAA and NVG staff as well as investigators from the Revenue Investigations Department would attend the training to open a communication link between them and to find common areas where they might have overlapping jurisdiction in future cases. In this way the potential for an informal task force approach against corruption would be formed and all of the agencies would benefit.

Also agreed was that the formal class room training would be structured to two hours daily for the joint group and that the remainder of the day would be “customs only” training/mentoring by Mr. Kelly. That would enable the CIAA and others to return to their work and enable them to attend the entire course. Additionally it was agreed that Mr. Kelly would restructure the entire originally planned basic very basic course of instruction to a more sophisticated technical approach because of the level of the new cadre of participants.

In fact this approach was only partially successful. While the Nepalese Customs and National Vigilance Group and Revenue Investigators attended the training the CIAA

officers, a key group for this type of coordination, failed to attend any session after the first day. No reason was given for their departure and efforts to secure a reason for their failure to attend by DG Baskota or his Directors were apparently unsuccessful. In effect this means that the element from which Nepal Customs would logically seek derivative authority for their investigations disregarded this training. Additionally the reorganization of the presentation could have been avoided as the level of skill of those actually participating could have been approached at the basic level.

Class Room Training and Customs Mentoring

A schedule of training and mentoring as described below was prepared and performed in accordance with the goals of the mission:

<u>Monday, May 16, 2005 10:30 A.M. to 12: 30 P.M.</u>	<u>AFTERNOON</u>
Opening Speaker: Mr. H.K. Baskota, Director General, Customs Department of Nepal	Meetings with USAID/Nepal
Topics: Corruption in Customs and Revenue Departments Staffing of Internal Investigations Units	
<u>Tuesday, May 17,2005 10:30 A.M. to 12: 30 P.M.</u>	Review procedures at Nepal Customs Seized Property Site with Internal Investigations Staff
Topics: The Investigative Process; assessing, target selection, separation, opening and conduct of internal investigations.	
<u>Wednesday, May 18,2005 10:30 A.M. to 12: 30 P.M.</u>	Review controls and procedures at Nepal Passenger Terminal Cargo and duty collection point with Internal Inspection Staff
Topics: The Internal Investigation crime scene; Collection, evaluation and storage Customs testimonial and physical evidence.	
Direct vs Circumstantial Evidence	
<u>Thursday, May 19,2005 10:30 A.M. to 12: 30 P.M.</u>	Visit National Academy of Science Forensic Laboratory with Internal Investigations Staff
Topics: Interviewing techniques in Internal Investigations The Model Code Of Conduct	
<u>Friday, May 20,2005 10:30 A.M. to 12: 30 P.M</u>	Detailed Review of Entire Integrity Plan With Nepal Customs Directors.
Topics: Sources of Information in trade and internal investigations of corruption and fraud.	

<u>Saturday, May 21,2005 10:30 A.M. to 12: 30 P.M.</u> No Training- Nepal Day of Rest	N/A
<u>Sunday May 22,2005 10:30 A.M. to 12: 30 P.M</u> Topics: Sources of Information (continued)	Detailed discussion of Model Code of Conduct And Disciplinary Review Committee Role with Nepal Customs Directors
<u>Monday May 23,2005 10:30 A.M. to 12: 30 P.M</u> No Training-Nepal National Holiday	N/A
<u>Tuesday May 24, 2005 10:30 A.M. to 12: 30 P.M</u> Topics: Specialized Investigative Techniques; Task Forces, Controlled Deliveries	Discussion of U.S. Customs Enforcement Techniques with Nepal Customs Directors and Internal Investigative Staff Meeting with the Director General of Revenue Investigations re Coordination with Future Nepal Customs Internal Cases
<u>Wednesday May 25,2005 10:30 A.M. to 15: 30 P.M.</u> Topics: Specialized Investigative Techniques; Integrity Testing, Passport Analysis, Investigative Analysis, Mail Analysis Financial Investigative Techniques, Electronic and digital evidence; collection, safeguarding and verification of computer and related digital evidence Investigative files and reporting procedures	
Closing Ceremony: Mr. H.K. Baskota, Director General Presentation of Certificates	
<u>Thursday May 26, 2005 10:30 A.M. to 12: 30 P.M (cancelled)</u>	
<u>Friday May 27,2005 10:30 A.M. to 12: 30 P.M. (cancelled)</u>	

On the evening of Tuesday, May 24, 2005, resultant from guidance of Mr. Chanmugam USAID, NEPAL and Director General Baskota it was decided to consolidate the training scheduled for Thursday May 26 and Friday May 27 into one extended session on May 25,2005.

That was accomplished and closing ceremonies were held at 5:00 P.M at Nepal Customs Headquarters. Participants from Nepal Customs, the National Vigilance Group of Nepal and the Revenue Investigations Department received certificates of completion and were praised by the Director General for their efforts.

Training Synopsis:

The participants in this course received a basic and as comprehensive as time allowed course in the initiation, conduct and techniques of criminal and internal investigation. All of the training material, and substantially more research material, was provided to the officers in the form of Power Point presentations and literature distributed to each participant on a CD Rom disk at the conclusion of the course. Both the participants and Director General Baskota were appreciative and very complimentary of the material and delivery of the course throughout.

Though curtailed, primarily because of the failure of the CIAA officers to attend the presentations, substantial technical and procedural knowledge was delivered to the participants through class room training and relayed as the results of meetings and mentoring sessions during the mission.

The officers of the future Internal Inspections Unit have been given the basic tools and material to pursue their responsibilities once the unit has formally been formed, staffed, housed, announced,given the additional necessary authority and directed in it's mission by Mr. Baskota or subsequent Director Generals. If these aspects can be achieved in the near future the unit can begin to function under the universally recognized standards of the World Customs Organization (WCO) and other internationally recognized anticorruption groups to address individual and systemic corruption issues within the Nepal Department of Customs.

Present Assessment of Steps Taken to Implement the Internal Inspections Unit

Organization and Support

- The Internal Inspections Unit proposed in the plan approved in March 2005 is, at present, a theoretical concept. While director General Baskota has altered his prior "organogram" now incorporating Mr. Holler's and Mr. Kelly's recommendations for a separate and autonomous unit directly responsible to the Director General this awaits approval and implementation authority from the

Secretary and Minister from the Ministry of Finance. No time frame has been provided for a decision on this matter.

- The unit currently consists, in fact, of two officers and a Director and not the originally envisioned several investigators and auditors recommended in the plan of March 2005. The Director General has proposed a third officer and one position to be held vacant pending approval of the plan and funding by the Ministry of Finance.
- As the unit does not formally exist the supporting mechanisms or separate space, secure storage, a specialized reporting system, communications equipment and investigative equipment (cameras, tape recorders and the like) are also future based propositions. No plans for such support mechanisms are currently in the works and no detailed proposals for securing these items were made known to Mr. Kelly during the mission.

Code of Conduct and Integrity Training for field Officers

- Nepal Customs has an in place Code of Conduct for it's officers along with a pocket sized copy which has been widely distributed. The code, issued in 2004, is well written and quite comprehensive in scope. However the code poses issues in terms of "should" and "should not" directions to officers without any scale of penalty or, for the most part prohibitions or action. It is an excellent first step.
- The Model Code of Conduct has only recently been proposed to the Director of Administration of Nepal Customs. It awaits his review and structuring prior to issuance with a table of offenses and penalties not present in the code now in force.
- The directives, press release and other implementing documents for the model Code of Conduct have not been issued and no plans for issuance have been formulated as of this date.
- While the lesson plan for implementation of Ethics Training is included in the implementation plan no preparation or arrangements deliver this training has been set in motion at this time.

Authority

- No additional authority for the conduct of integrity or corruption investigations has been sought or secured by the Nepal Department of Customs at this time.
- While legislatively secured authority remains a quandary , the parliament having been suspended by the King hence obviating new legislation, another method exists. Several officers have stated that independent authority can (and has been to other agencies) be delegated to any future Internal Inspections Unit by the Commission to Investigate thr Abuse of Authority.
- At present, notwithstanding the excellent relationship of Director General Baskota with the leadership of CIAA no efforts to secure such delegation have taken place.
- Those staff currently assigned to the Inspection Unit (as opposed to the Internal Inspection Unit awaiting approval) have no special status to investigate corruption issues and must refer all allegations of corruption to CIAA. Current authority is

strictly administrative in nature and without statutory or delegated law enforcement status.

Disciplinary Review Committee

- At this time no action has been taken to form or staff a Disciplinary Review committee. No plans to implement this body were mentioned or brought to discussion during the course of the mission.

Integrity Self Inspection Progress

- A copy of the most recent draft of the Integrity Self Assessment has been received from the Directors of Nepal Customs.
- At the request of Nepal customs Mr. Kelly provided commentary on the draft and supplied that to the staff conducting the assessment.
- A copy of that most recent draft is appended to this report.

OBSERVATIONS AND RECOMMENDATIONS

The state of affairs in Nepal, with regard to governmental activity, can easily be characterized as paralyzed. The King's dissolution of the government coupled with the Maoist insurgency has lead most governmental agencies to grind to a halt awaiting what is going to happen in the larger sphere of the country's political environment. As a result every governmental action in Nepal, never reputed to be fast under the most ideal of circumstances, takes additional time and consideration in lieu of the present conditions.

One agency that has not found itself quiet so frozen is Nepal Customs, particularly due to the leadership of Director Krishna Hari Baskota and the directors has assembled around him at Nepal Customs Headquarters. Though even they have felt the effects of the overall malaise of the national government.

Aggressively pursuing world standards in the areas of classification and value as well as other areas of trade supervision the Department of Customs is pursuing numerous projects often with very impressive results.

This project, while a vital one is only a part of the overall strategy of Nepal Customs and one that may require substantially more change in culture and approach than any of the other programs under restructuring and modernization.

This project received approval for implementation of Phase II in March of 2005 with planned implementation in May 2005. To successfully make this happen it required a number of major structural changes with significant secondary and tertiary approvals, (creating, recruiting and engendering the support and authority mechanisms) that present major road blocks to success.

In retrospect this timeline for the implementation of Phase II may have been overly ambitious, particularly in light of the times and political climate in Nepal. A more reasonable timeline would have probably been the late fall of 2005 which would have allowed five to six months for these major changes to be put in place instead of the less than sixty days allowed in this instance.

The timing clearly demonstrated strong U.S. support for the program by the swift provision of a technical advisor. However the arrival of the advisor prior to the groundwork steps being in place yielded a product that less successful than had it taken place when the Nepal Customs Service was more prepared for this assistance.

Nepal, like all emerging countries faces similar challenges with regard to the potential corruption of public officials, none more so than Customs. The average salary for Customs officers is about \$100.00 monthly which is while not poverty level a very low wage. Suggestions to raise this wage have been rejected in the past on that basis that to do so would require raising all of the wages of public employees. This is by no means a practical solution. As long as this situation continues, regardless of the ethics training and pronouncements the inherent basis for corruption will remain active, not necessarily greed but the desire to provide a living wage for one's family and children.

Further Training and Assistance

Given the constraints imposed on this advisory mission by circumstance and the state of readiness of Nepal Customs future potential training should be considered. When all, or most of the aspects of the "set up" sequence have been completed, and verified by perhaps a direct specific message from Nepal Customs or by verification by USAID, Nepal then a similar, perhaps reduced version of this mission should be contemplated. With those structures in place some repeat, coupled with new additional, investigative training could be very valuable and greatly enhance the effectiveness of the Internal Inspections unit.

By way of equipment for such a mission a simple evidence gathering kit (easily found in the catalogues of the Sirchie Fingerprint Supply Company or like vendors) a digital camera or two and some inexpensive tape recorders would be invaluable to this project. Additionally a small database program for organizing files and cases (there is nothing in place at the present time) and a charting program (which is very inexpensive) would advance the program light years from its present state.

All of the above could be achieved for far less than \$2500.00 An investment worth ten times its cost in potential results.

CONCLUSION

This mission can be classified, in spite of the inherent limitations placed upon it by the state of affairs awaiting Mr. Holler and Mr. Kelly upon their arrival, in Nepal a qualified success. Had all of the preparatory ground work been done it would have been considerably more so. But even absent that it received both praise and congratulations from participants, Directors and the Director General of Nepal Customs.

Additionally the Director General and participants also expressed their pride and appreciation for the course conduct and content. The information conveyed covered broad scope of material and substantial investigative technique.

The original “plan” with its substantial supply of model documents, press releases and directives provides a well mapped path to implement this program if its guidelines are followed by Nepal Customs and the Internal Inspections Unit.

What remains is for this information to be put to use by Nepal Customs.

The Directors and staff of Nepal Customs are bright, educated people, some holding two or three advanced degrees from Europe and other countries in Asia. If properly approached, with the reorganization, authority, resources and time necessary to implement this program there is no reason why the Nepal Customs Integrity Awareness Plan cannot provide an effective anti corruption program and a model organization for the Nepal Department of Customs and sister services of the area and throughout the region.

Attachments:

Class Photograph of the Internal Investigations Seminar Participants
Sample Certificate of Completion, Internal Investigations Seminar
Draft of Integrity Self Assessment conducted by Nepal Customs