



USAID | **NEPAL**
FROM THE AMERICAN PEOPLE

Study of the Current Legal Aid System in Nepal

02 September, 2005
Law Associates Nepal

Strengthen Rule of Law and Respect for Human Rights in Nepal
USAID Contract Number: 367-C-00-04-00097-00
Contractor: ARD, Inc
Man Bhawan, Lalitpur-20, Nepal
Tel: 977-1-555-5557/8/9
Frederick G. Yeager
Chief of Party



Study of the Current Legal Aid System in Nepal

**02 September, 2005
Surendra Bhandari & Buddhi Karki,
Consultants
Law Associates Nepal**

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.

Final Report
on
Study of the Current Legal Aid System in Nepal

Submitted to
ARD ROL Manbhawan
Lalitpur, Nepal

Prepared and Submitted by
Surendra Bhandari
&
Buddhi Karki
Law Associates Nepal
Himalayan Heights
21 "A" Soaltee Mode
Kathmandu, Nepal

02 September, 2005

Preface

This study is carried out by Law Associates Nepal in partnership with ARD ROL with a view to assess the current practices of legal aid in Nepal including its sources, strengths and weaknesses and also to know the scope for public defender system in the country.

Primary data and information were collected from Kathmandu, Lalitpur, Bhaktapur, Morang, Rajbiraj and Banke. Six District Courts - Kathmandu, Lalitpur, Bhaktapur, Morang, Rajbiraj and Banke; four Appellate Courts - Appellate Court Patan, Appellate Court Biratnagar, Appellate Court Rajbiraj and Appellate Court Nepalgunj and the Supreme Court of Nepal have been surveyed for collection of primary data and information. In this regard, altogether, including the legal aid providers and recipients eighty two respondents have been interviewed.

This study has come to the conclusion that still legal aid has not been developed as an institution in the country and therefore a wider section of the targeted group has not been able to use legal aid in place. In this context, it has also come to the conclusion that the Public Defender System needs to be introduced and institutionalized in the country.

Law Associates Nepal (LAN) feels pleasure for having opportunity to carry out this study. We are satisfied that this study has been successfully completed in time. In this regard, I would like to appreciate the efforts and perseverance taken by my colleagues Mr. Buddhi Karki, Mr. Mukunda Poudyal, Mr. Bal Chandara Shrestha and Mr. Kiran Bhandari.

LAN is thankful to ARD ROL for entrusting it to carry out this study. More specifically, we are thankful to Mr. Frederick G. Yeager, Chief of the Party and Mr. Govinda Das Shrestha, Deputy Chief of the Party for their regular inputs and feedbacks.

Surendra Bhandari, Ph.D.
Executive Director
Law Associates Nepal

Acronyms

CDO	Chief District Officer
CeLRRd	Centre for legal Research and Resource Development
CLAC	Central Legal Aid Committee
CSOs	Civil Society Organizations
CVICT	Centre for Victim of Torture
CWIN	
CWLAC	Central Women Legal Aid Committee
DANIDA	Danish International Development Assistance
DLAC	District Legal Aid Committee
EU	European Union
HMG	His Majesty Government of Nepal
IDPs	Internally Displaced People
INGOs	International Non-Governmental Organizations
LAAC	Legal Aid Consultancy Centre
LAN	Law Associates Nepal
LAP	Legal Aid Project of Bar
MGEP	Mainstream Gender and Equity Program
MoLJPA	Ministry of Law Justice and Parliamentary Affairs
MoWCSW	Ministry of Women Children and Social Welfare
NBA	Nepal Bar Association
NEDA	Netherlands Development Assistance Program
NGOs	Non-Governmental Organizations
SC	Supreme Court
TCA	Torture Compensation Act
UNDP	United Nations Development Program
USAID	United States Assistance for International Development
VDC	Village Development Committee

Table of Contents

		Pages
	Preface	1
	Acronyms	2
	Executive Summary	5-6
Section 1	Background	7 - 9
	1.1 Statement of the Study	7
	1.2 Objectives of the Study	7
	1.3 Scope and Limitation of the Study	8
	1.4 Methodology	8
	1.5 Organization of the Study	9
Section 2	Sources of Legal Assistance in Nepal	10 - 16
	2.1 Sources of Legal Aid in Nepal	10
	2.2 Objectives of Legal Aid in Nepal	11
	2.3 Basic Characteristics of Legal Aid in Nepal	12
	2.4 State of Legal Aid in Nepal	14
Section 3	Legal Aid Provided by the Courts: Strengths, Weaknesses and Effectiveness	17 - 21
	3.1 Legal Aid by the Court	17
	3.2 Legal Provisions on Legal Aid by the Court	18
	3.3 Strengths of the Legal Aid by the Court	19
	3.4 Weaknesses of the Legal Aid by the Court	20
Section 4	Legal Aid Provided by His Majesty's Government: Strengths, Weaknesses and Effectiveness	22 - 26
	4.1 The Mechanism of Legal Aid by the Government	22
	4.2 The Targeted Group for Legal Aid	23
	4.3 The Central and District Legal Aid Committees	23
	4.4 The Strengths of the Legal Aid by the Government	24
	4.5 The Weaknesses of the Legal Aid by the Government	24
	4.6 A Case Study of Rajbiraj Prison	25

Section 5	Legal Aid Provided by Bar: Strengths, Weaknesses and Effectiveness	27 30	-
	5.1 Nature of Legal Aid by the Bar	27	
	5.2 Supporting Implementation of the Legal Aid Act	28	
	5.3 Carrying Legal Aid Independently	29	
	5.4 Strengths of the Legal Aid by the Bar	30	
	5.5 Weaknesses of the Legal Aid by the Bar	30	
Section 6	Legal Aid Provided by the Civil Society Organizations: Strengths, Weaknesses and Effectiveness	31 37	-
	6.1 Nature of Legal Aid by Civil Society Organizations	31	
	6.2 Major Civil Society Organizations Providing Legal Aid	32	
	6.3 Strengths of Legal Aid by Civil Society Organizations	35	
	6.4 Weaknesses of the Legal Aid by Civil Society	36	
Section 7	Possible Future Funding Sources of Legal Aid in Nepal	38 39	-
	7.1 Funding Sources of Legal Aid in Nepal	38	
	7.2 Possible Future Funding Sources of Legal Aid in Nepal	38	
Section 8	Recipients' Perspective on Legal Aid	40 41	-
	8.1 Lack of Information about Legal Aid	40	
	8.2 Half-way Legal Aid	40	
	8.3 Questions on Credibility and Quality	40	
	8.4 Expectation of the Recipient	40	
	8.5 Client Lawyer Relation	41	
	8.6 Cliental Dissatisfaction	41	
Section 9	Public Defender System in Nepal	42 45	-
	9.1 Nature of the Public Defender System	42	
	9.2 Public Defender System in Nepal	42	
	9.3 Possible Options for Public Defender System in Nepal	43	

Section	Conclusion and Recommendations	46	-
10		50	
	10.1 Conclusion	46	
	10.2 Recommendations	46	

Executive Summary

This study is carried out by Law Associates Nepal in partnership with ARD ROL with a view to assess the current legal aid practices in Nepal including its sources, strengths and weaknesses and also to know the scope for public defending system in the country.

Primary data and information were collected from Kathmandu, Lalitpur, Bhaktapur, Morang, Rajbiraj and Banke. Six District Courts - Kathmandu, Lalitpur, Bhaktapur, Morang, Rajbiraj and Banke; four Appellate Courts - Appellate Court Patan, Appellate Court Biratnagar, Appellate Court Rajbiraj and Appellate Court Nepalgunj and the Supreme Court of Nepal have been surveyed for collection of primary data and information. In this regard, altogether, including the legal aid providers and recipients eighty two respondents have been interviewed.

Generally, there are four sources of legal aid in the country - Court, Legal Aid Committee, Bar and NGOs. Among them some are providing legal aid since five decades. But, still legal aid in the country has not yet been firmly institutionalized.

The first source of legal aid is the Court, which provides the service through a stipendiary lawyer appointed by the court itself. There are 75 District Courts, 16 Appellate Courts and Supreme Court in the country. In each of these courts, one stipendiary lawyer is appointed by the courts for a period of one year. However, in the Supreme Court, normally there are two stipendiary lawyers. The Courts have provided legal aid throughout the country but despite this strength the legal aid provided by the court is less effective and far from being satisfactorily. The strengths and weaknesses of the legal aid by the courts are discussed in section 3 of this Report.

Another source of legal aid in Nepal is the Central and District Legal Aid Committees (DLAC). There is a District Legal Aid Committee in each District where the Legal Aid Act, 1997 has been implemented. Presently the Act has been implemented in 33 Districts. In each of these Districts, a DLAC has been formed that has a single room office with one staff of His Majesty's Government (HMG). Statutory back up is one of the most important strengths of this type of legal aid but it is available only in limited Districts. Because it does not have its own lawyer(s) for providing legal aid, it depends on Bar for the legal aid lawyers. Bar assigns lawyers to provide legal aid but the lawyers are paid very low. The fund provided by the Government for legal aid is very nominal. Therefore, it is not being able to create tangible impacts. The strengths and weaknesses of the legal aid under the Act are discussed in section 4 of this Report.

Nepal Bar Association is another source of legal aid in the country. It provides legal aid through different Bar Units. It has a Unit in the Supreme Court and each Unit in all of the Appellate Courts. It has District Units in most of the District Courts as well. It also has a Women's Cell in each of the Unit that provides legal aid to women only. But one of the most acute weaknesses of the Bar is that it does not have its own funding for the legal aid. It depends on various donors for the fund. Currently the Bar is providing legal aid with the assistance of two major donors i.e. the Norwegian Bar and the European Union. The strengths and weaknesses of the legal aid by the Bar are discussed in section 5 of this Report.

The fourth source of legal aid is the civil society organizations i.e. local and International NGOs. The legal aid they provide seems more effective than other sources of legal aid. However, they have also some weaknesses. One of the major weaknesses is that all of them are donor led and the financial transactions are not transparent. They provide legal aid as long as the donors support them. The day the project ends the legal aid also ends because the legal aid projects are mostly one to three years projects. Some times the projects are also extended. So the legal aid provided by NGOs is not sustainable. Another weakness of this component is that these organizations are present only in a very few convenient districts. Their geographical coverage is the least one among the legal aid providers. The strengths

and weaknesses of the legal aid provided by the Civil Society Organizations are discussed in section 5 of this Report.

In short, the existing legal aid in Nepal has not yet been widely used by the targeted groups, especially by the poor, marginalized, disenfranchised, minors and women. In most of the cases, the targeted groups are not aware or informed about the legal aid in place. On the other hand, who are informed and aware about the legal aid in place have no high confidence to it and therefore do not resort to it. One of the reasons of this is that legal aid in Nepal is not effective. Therefore, in most of the cases, legal aid is not a best choice for justice seekers.

Similarly, there is no coordination and mutual support between the legal aid providers. The legal aid providers neither share experiences with each other nor enter into coordinated efforts to make the legal aid more effective rather they consider each other as unhelpful actors. This sense of latent rivalry is especially among the NGOs.

After assessing all the sources and practices of legal aid in Nepal the Report has come to the conclusion that the legal aid in Nepal is fraught with many problems relating to institutionalization, system building, coordination, sustainability, effectiveness, credibility, easy access and optimal use by the targeted groups and others.

And, with a view to address these problems and also for achieving the basic objects of legal aid, this Report has recommended for institutionalization of Public Defender System in Nepal. More specifically, it has given three options. First, improvement in the existing legal aid system through merging legal aid provided by the court and under the Legal Aid Act, 1997; second, harmonization of all the sources of legal aid in the country and crediting the Bar as focal institution for providing legal aid and third, establishment of Public Defender Commission as an independent institution. Among these three options, this Report has observed the third option – Public Defender Commission as the most appropriate one

Section 1: Background

1.1 Statement of the Study

Legal aid is one of the important features of a legal system that helps those who are not able to have access to justice due to their economical, social and communicative conditions. Since the decade of 1960 the Nepalese legal system has been providing legal aid to the poor, marginalized and disenfranchised groups in the society. Especially, after 1990 the legal aid has somehow grown and more stakeholders have come in the forefront to provide legal aid including the Civil Society Organizations (CSOs).

Legal aid is a tool for access to justice to those who cannot approach the court for seeking justice. In absence of legal aid in a society where about 35 percent people live below the poverty line and almost 70 percent people earn less than 2 dollars a day, the role and importance of legal aid is incredibly stupendous.

The Constitution of the Kingdom of Nepal, 1990 has also provided that the right to consult and to be defended by a lawyer is a fundamental right.¹ However, the poor, marginalized and disenfranchised people can exercise this right only when there is a system of legal aid in place in the country.

Mere formal existence of legal aid in the country cannot bring about the desired outcomes. It needs to be accessible, effective and efficient. Recognizing this fact, the Supreme Court of Nepal, Appellate Courts, District Courts, Nepal Bar Association and Civil Society Organizations are providing legal aid in different parts of the country.

In this backdrop, Law Associates Nepal and ARD ROL entered into partnership in June 2005 to carry out a study to know the sources of legal aid and their accessibility, efficiency and effectiveness with a view to help promote legal aid in the country.

1.2 Objectives of the Study

In June, 2005 ARD Inc. Rule of Law Project and Law Associates Nepal (LAN) entered into a partnership to carry out a feasibility study of the current legal aid in the Kingdom of Nepal. The objectives of the study follow:

- i. Look at the current system in the Courts and the strengths, weaknesses and effectiveness of the Nepali Legal Aid Programs.
- ii. Identify sources of legal assistance in Nepal, e.g. Courts, Nepal Bar Association etc.
- iii. Look at the legal assistance provided by local NGOs and International NGOs and strengths, weaknesses and effectiveness of their programs.
- iv. Analyze and identify the existing and future funding sources for the above.

1.3 Scope and Limitation of the Study

This study has been carried out in six District Courts i.e. Banke, Morang, Saptari, Kathmandu, Lalitpur and Bhaktapur; four Appellate Courts i.e. Nepalgunj, Biratnagar, Rajbiraj and Patan; and the Supreme Court of Nepal, Kathmandu. Altogether, eleven courts have been studied. Similarly the offices of various legal aid providers in these six districts such as Nepal Bar Association, the Bar Units, District Legal Aid Committees, and Civil Society Organizations have been consulted regarding the legal aid service they have been providing. Likewise various prisons

¹ Article 14 (5) of the Constitution of the Kingdom of Nepal, 1990 provides that, "No person who is arrested shall be . . . denied the right to consult and be defended by a legal practitioner of his choice."

have also been visited to be familiar with the use of the current legal aid by the prisoners in criminal cases.

Further, this study is carried out in a limited period of time i. e. three months time.

1.4 Methodology

Following methodologies were employed to accomplish the study:

- i. Sources of primary data identified: Judges, judicial officials, lawyers, Nepal Bar Association, different Bar Units, Women Cells of the Bar Units, District Legal Aid Committees, Civil Society Organizations, Prisoners, and Litigants were purposively identified as the sample units and were further stratified among the diverse disciplines and professions as the sources of the primary data. Primary data have been collected from 11 courts, 6 District Legal Aid Committees, Nepal Bar Association, 8 judges and 7 court officials, 16 lawyers, 11 personnel from NGOs and 24 prisoners and litigants. Altogether, primary data have been collected from 82 respondents the details is given in annex I of this Report.
- ii. Interview and interaction: Primary data have been collected soliciting the opinion and information of the respondents through interview based on designed questionnaire. The questionnaire was developed in consultation with ARD ROL. Face to face interactions were also carried out to be more familiar on the state of legal aid. The list of the questionnaire is reproduced in the annex II of this Report.
- iii. Gender balance: While collecting primary data the concern on gender balance was taken into consideration. Therefore, in this study more than 25 percent of the respondents are female.
- iv. Tabulation, classification and analysis of data: After collection of the primary data the data are tabulated, classified and analyzed. The data analyzed are reproduced in a tabular form and interpreted in the report.
- v. Interpretation of the data: The data have been interpreted in different parts of this Report. However, the work of interpretation of data has not yet been accomplished and it is continuing. It will be accomplished by producing the Draft Report.
- vi. Collection of secondary data: Secondary data, especially on the state of legal aid provided by different stakeholders have been collected from courts, Bar, NGOs and Prisons. The secondary data have been used in this Report to test and verify the objectives of this study.
- vii. Survey and analysis of laws: Existing laws relating to the legal aid system in Nepal have been surveyed and analyzed to know the gaps and strengths of the laws and practices.
- viii. Preliminary Report: After accomplishing the above-mentioned activities this Preliminary Report has been prepared and submitted to ARD ROL for inputs and suggestions.
- ix. Draft Report: A Draft Report will be prepared incorporating the inputs and suggestions from ARD. It will be submitted to the ARD for further inputs and suggestions.
- x. Final Report: A Final Report will be prepared after incorporating the inputs and suggestions from ARD and submitted to ARD.

1.5 Organization of the study

This study is organized in eight different sections. The first section, the background, provides on the rationale, objectives and methodology of the study. The second section briefly explains the different sources of legal aid in Nepal that are examined and analyzed in other sections as well. Section three analyzes the legal aid provided by the courts and examines the strengths and weaknesses of the legal aid provided by the courts.

Section four analyzes the legal aid provided by His Majesty's Government under the Legal Aid Act, 1997 and examines the strengths and weaknesses of the legal aid provided by the government. Section five analyzes the legal aid provided by Nepal Bar Association and its different units and also examines its strengths and weaknesses. Similarly, section six analyzes the legal aid provided by the civil society organizations and examines its strengths and weaknesses.

Section seven assesses the possible future funding sources for effective legal aid in Nepal. Section eight analyses the recipients' perspective on legal aid. Section nine discusses on public defender system and finally section ten concludes with some specific recommendations for future interventions.

Section 2: Sources of Legal Aid in Nepal

2.1 Sources of Legal Aid in Nepal

There are mainly four basic sources of legal aid in Nepal, namely they are:

- **Courts:** There are three tiers of courts in Nepal, they are: Supreme Court, Appellate Courts and District Courts. Supreme Court of Nepal is the apex court having jurisdiction as the court of record. Below the Supreme Court, there are sixteen Appellate Courts in different parts of the country. The number of the Appellate Courts is not fixed. It can be increased or decreased by the decision of the government.² There are seventy five district courts, which are the lowest ones and the trail courts in most of the cases. Courts provide legal aid through stipendiary lawyer (*vaitanik okil*).
- **His Majesty's Government:** His Majesty's Government is also one of the sources of providing legal aid in Nepal. District Legal Aid Committees (DLACs) established under the Legal Aid Act, 1997 are instrumental in providing legal aid in the country. Yet, the Act is not implemented throughout the country. Currently, it is implemented in 33 districts of Nepal.³
- **Nepal Bar Association:** Nepal Bar Association is another important source of legal aid in Nepal. It has its organizations in all the courts of Nepal and provides legal aid in support of different partners such as Norwegian Bar Association and European Commission funded legal aid projects.
- **Civil Society Organizations:** There are different civil society organizations that have been providing legal aid in different parts of the country, especially in support and partnership of various donor agencies. All these four sources of legal aid are discussed in the following sections, whereas, in this chapter some of the basic characteristics of the legal aid system in Nepal is discussed and analyzed.

Individual lawyers have also been providing legal aid to the poor, vulnerable, marginalized, minors and women in their personal capacity. Not all lawyers but only few of them are providing free legal aid, which is an appreciable initiative. Moreover, legal aid by private lawyers is completely subject to their wish and pleasure. If they please to provide free legal aid to someone they can, it is their personal decision. Besides, being a good initiative, it has not yet developed as a part of a system. Because, the private lawyers have not yet developed any objective standards for providing legal aid to any persons who would fall within those standards. The Bar has also not developed any code of conduct and objective standards that would require or encourage the private lawyers for providing legal aid on their own initiatives. However, there is a possibility that the legal aid by private lawyers be developed as an independent source of legal aid in Nepal in future but at present it has not yet developed as an independent source.

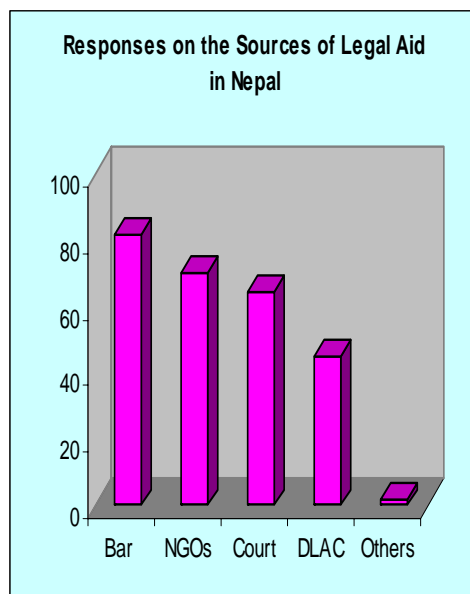
All the respondents have knowledge about the four different sources of legal aid in Nepal. Out of the different legal aid sources they are more familiar with the legal aid

2 See Art. 89 of the Constitution of the Kingdom of Nepal that provides, "The establishment, management and jurisdiction of the Appellate Courts, District Courts and other courts subordinate to the Supreme Court shall be determined by law subject to this Constitution." See also, Section 5 of the Judicial Administration Act, 1991 that provides "The Appellate Courts in the Kingdom of Nepal shall remain in the number as specified by His Majesty in consultation with the Council of Ministers but Council of Ministers shall obtain recommendation of the Judicial Council before to submit its recommendation before His Majesty' the King."

3 Darchula, Kailali, Kanchanpur, Doti, Dang, Surkhet, Banke, Bardia, Kapilwastu, Gulmi, Palpa, Syangja, Kaski, Rupandhei, Tanahu, Dhading, Makawanpur, Dolakha, Bara, Parsa, Kavre, Rautahat, Sarlahi, Mahottari, Dhanusha, Siraha, Dhankuta, Saptari, Sunsari, Morang, Jhapa, Illam, Sindhupalchok,

provided by the Bar as 82.4 percent respondents express their familiarity with the legal aid provided by the Bar. Similarly, 70.6 percent respondents are familiar with the legal aid by the NGOs which gives an impression that the legal aid by the NGOs been getting popularity in short period of time. However, only 64.3 percent of the respondents give importance to the legal aid by the court which indicates that being the pioneer institution in providing legal aid in the country, the impression of legal aid by the court is behind the legal aid of the Bar and the NGOs. Only the 45 percent of the respondents give importance to the legal aid by the DLAC, which indicates that the legal aid by the DLAC is not still popular among the respondents as to the other sources. One of the reasons for this is the fact that the DLACs are present only in the districts where the Legal Aid Act, 1997 has come into force. Lawyers are also providing legal aid in their individual capacity but it is quite negligible.

Chart I⁴



2.2 Objectives of Legal Aid in Nepal

The objective of legal aid in Nepal is to provide free legal service to the poor, disenfranchised, marginalized, minors and women. However, originally the objective of the legal aid was limited only to provide legal services in the *sub judiced* cases, especially for advocacy before a Bench.

Originally, the scope of legal aid was very limited. Today, at least theoretically its scope is expanded. But in real practice the legal aid needs to cover both preventive and remedial services including counseling, community settlement of disputes through alternative dispute settlement mechanism, preparation of legal documents, representation before the court as well as before the administrative agencies, filing a case before the court, defense of the case before a Bench, appeal of the case before concerned Appellate Court and the Supreme Court and help implementation of the decision.

In this context, different laws of Nepal have incorporated specific objectives of the legal aid in the country that follow:

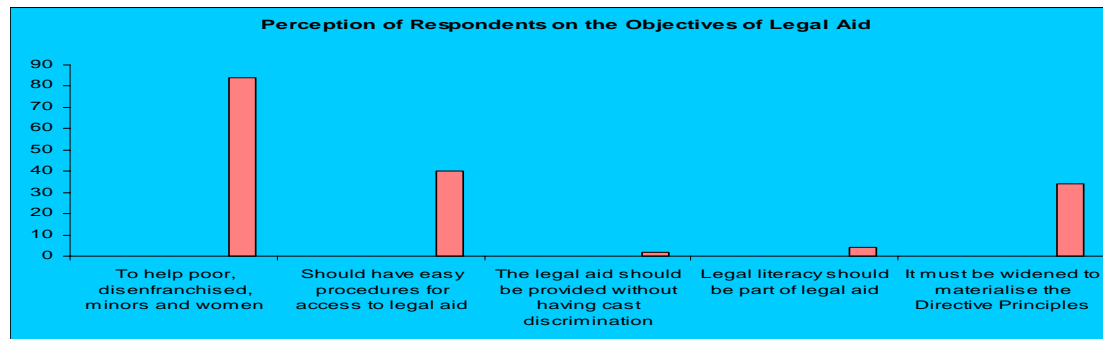
- The objective of the Legal Aid Act, 1997 is to provide legal aid to the persons who are unable to protect their legal rights due to being financially and socially weak.

⁴ The percentage total exceeds 100 due to multiple responses. Altogether 51 respondents (lawyers from women cells of the Bar, Bar officials, stipendiary lawyers, court officials, officials of DLAC, jailors, public prosecutors, judges and NGO persons) have given their opinion.

- The objective of the Supreme Court Rules, Appellate Court Rules and the District Court Rules is to provide legal aid to those persons who are helpless, disabled, minors, poor or prisoners.
- The objective of the Bar is also to provide legal aid to the poor, disenfranchised, underprivileged, marginalized, minors and women.
- The objective of the legal aid of the NGOs is also to provide legal aid similar to the objective of the Bar. Further, their objectives are more specific based on the nature of the projects that they are carrying.

The perception of the respondents also verifies the objectives of legal aid incorporated in the different legal instruments. For example, more than 80 percent respondents view that legal aid should have clear objective for providing free legal services to the poor, disenfranchised, minors and women. Some have expressed their concerns on the process, 40 percent of the respondents viewed that the process for obtaining legal aid should be clear, transparent and easy. Most, remarkably, however the number of the respondents is small but their concern is genuine that 2 percent respondents said that the legal aid must not discriminate based on caste. This reminds that people are still feeling discrimination based on cast while obtaining legal aid. Further the respondent view that the legal aid needs to be carried to fulfill the state policies incorporated in the directive principles of the 1990 constitution - Chart II.

Chart II⁵



2.3 Basic Characteristics of Legal Aid in Nepal

The Nepalese legal system in different ways has guaranteed and protected the rights of people. The Constitution of the Kingdom of Nepal, 1990 is the highest law of the land and provides most important rights - fundamental rights. Broadly speaking, under the Nepalese legal system, there are three types of rights: Fundamental Rights, Constitutional Rights and Legal Rights. There are also many strengths and weaknesses of the Nepalese legal system, especially in protecting and guarantee of the rights. But, whatever rights are provided by the law they are also guaranteed with remedial measures. In short, the substantial rights are backed up by procedural rights to seek justice in case of violation of the rights.

Right to justice is a basic right but it cannot be realized unless the case is defended effectively before the concerned courts. The 1990 Constitution has provided right to defense as fundamental right. But the poor, marginalized, disenfranchised and women in many instances cannot have access before the judiciary and in rare cases, if they have access they cannot defend their case by an efficient lawyer. It is because, they cannot afford hiring a lawyer to prepare their case and defend it before a court.

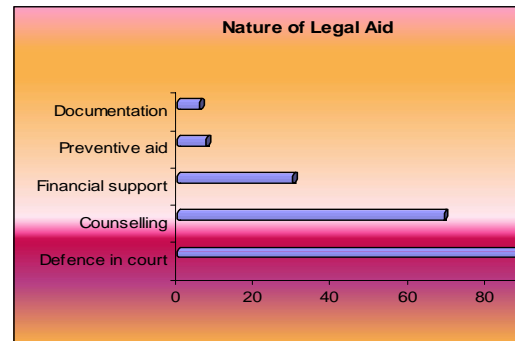
Besides this fact, the concept of legal representation does not have a long history in the Nepalese legal system. When *Pradhan Nayalaya* was established as an apex court in 1953, legal representation was accepted in the cases filed before it. First time, the Civil Rights Act, 1955 recognized the right to consult a lawyer of choice

⁵ The percentage total exceeds 100 due to multiple responses. Altogether 50 respondents (lawyers from women cell of the Bar, Bar officials, stipendiary lawyers, court officials, officials of DLAC, jailors, public prosecutors, judges and NGO persons) have given their opinion.

and be representation before the courts by lawyer introduced the right to defense in Nepalese legal system.⁶ After the promulgation of the Supreme Court Act, 1956, the Supreme Court in *Mathbar Singh v. Anti-Corruption Court* case held that the rights to consult a lawyer of choice and representation before a court by a lawyer is a fundamental right⁷ that helped institutionalize the right to defense in Nepalese legal regime.

Chart III shows that the legal aid in Nepal is still confined in defending the cases before the Bench and counseling. Generally, the legal aid by the court and DLAC are confined in defending the cases before a Bench, whereas the legal aid provided by the NGOs and Bar also include counseling. Moreover, the NGOs are involved not only in counseling and defending the case before a Bench but they are also using preventive approach.

Chart III⁸



However, this was not enough. A vast majority of the people were poor, marginalized, uneducated and disenfranchised. In this context, they could not exercise the right to defense merely by the declaration of the right by the Civil Rights Act and the decision of the Supreme Court. On this backdrop, the

Supreme Court introduced legal aid in Nepal in 1958. However the legal aid was only confined to the Supreme Court alone as the lawyers appointed for the legal aid were available only in the Supreme Court.

From 1970s the free legal aid was extended to the Regional and Zonal Courts with the appointment of the legal aid lawyers in these courts. In the 1980s the lawyers started being appointed in the District Courts as well in the priority basis. Free legal aid service was extended to the District Courts in three phases. Legal Aid lawyers were appointed in 25 District Courts in each phase.

The Norwegian Bar started to support Nepal Bar Association for the legal aid from 1988. This helped to institutionalize the concept of the legal aid in Nepal. In the beginning legal aid was provided in this project through officials appointed. But legal aid provided by the appointed official was felt not efficient and efficient. So the system of providing legal aid through the Bar Units opted to make legal aid more efficient.

The Constitution of the Kingdom of Nepal, 1990 provided right to defense as fundamental rights but right to legal aid as part of the Directive Principles and Policies of the State (part four of the Constitution).⁹ However, the government took initiation to provide legal aid by enacting the Legal Aid Act, 1997 and Legal Aid

6 See Section 15 (1) (B) of the Civil Rights Act, 1955 that provides "No person shall be deprived of to consult and to be defended by a lawyer or legal representative of his / her choice."

7 Bishal Khanal, *Right to Counsel in Nepalese law: A Brief Review*, 111 NAYADOOT, at 53 (Jestha, Ashad, 2056)

8 The percentage total exceeds 100 due to multiple responses. Altogether 54 respondents (lawyers from womrn cell of the Bar, Bar officials, stipendiary lawyers, court officials, officials of DLAC, jailors, public prosecutors, judges and NGO persons) have given their opinion.

9 Art. 26 (14) provides, "The state shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law."

Regulation, 1998 which has been presently implemented in 33 districts¹⁰ and 10 more districts¹¹ are in the line for the implementation of this Act in the near future. Also, various non governmental organizations are providing legal aid service in different parts of Nepal.

On these backdrops, it can be said that despite having a half a century's history of legal aid in Nepal it has not yet been developed as a comprehensive system. Following are some of the basic characteristics of the legal aid in Nepal:

- The legal aid provided by the court is confined only in the hearing of the case before a bench.
- The legal aid provided by His Majesty's Government is not extensive. First, it is limited to only few districts. Second, the fund allocated by the government for legal aid is mere formal and extremely nominal.
- The legal aid provided by the Bar is basically supported by donors and still has not developed a sustainable base.
- The legal aid provided by the Civil Society Organizations is also based on the support of donors and they have no base for sustainability. Further, there is only a minimum level of cooperation between the civil society organizations providing legal aid.
- Due to many factors including information, effective communication, financial constrains lack of coordination among various legal aid provider institutions and regulation mechanism and others the legal aid is still used in an ad hoc basis by the targeted groups.

2.4 State of Legal Aid in Nepal

The legal aid in Nepal is still not effective due to its limited reach to the targeted groups and limited coverage of services. The targeted groups are also not able to use the existing legal aid available in the country due to lack of information, extensive formalities under the Legal Aid Act including recommendation from the local bodies and lack of confidence to the legal aid providers.

The responses of the legal aid recipients and the key stakeholders including the legal aid providers give an impression about the state of the legal aid in the country, especially focusing on the status of achieving its objectives - Chart IV and Chart V.

10 See *supra* note 3.

11 Panchthar, Udayapur, Baglung, Arghakhachi, Nawalparasi, Sindhuli, Chitwan, Parwat, Pyuthan, Dadeldhura

Chart IV

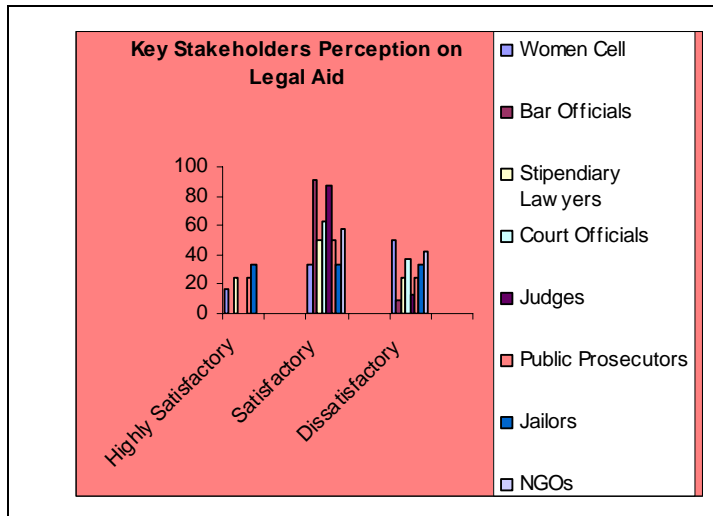


Chart V

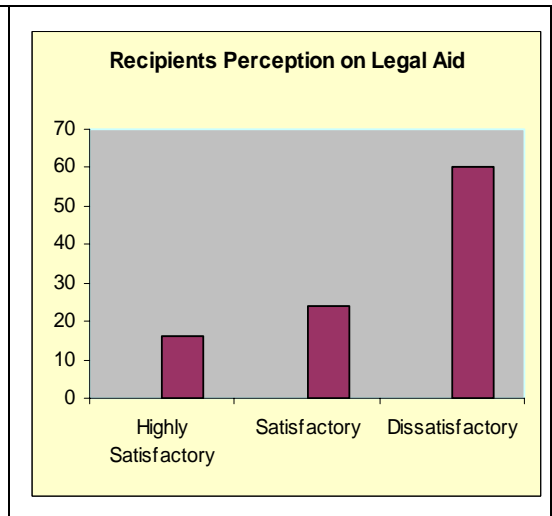


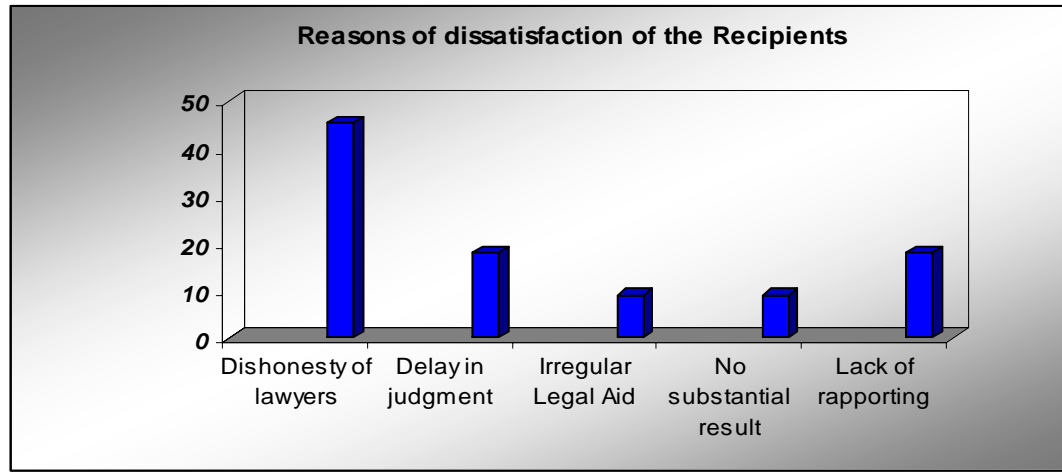
Chart IV shows that out of the respondents from the Women Cells of the Bar 16.7 percent express that the legal aid is highly satisfactory, 33.3 percent express that the legal aid is satisfactory and 50 percent say that the legal aid is dissatisfactory. Similarly, out of the respondents from the Bar no one has viewed the legal aid as highly satisfactory but 90.9 percent observe that the legal aid is satisfactory, and 9.1 percent say that the legal aid is dissatisfactory. Similarly, 25 percent of the stipendiary lawyers have found the legal aid highly satisfactory, 50 percent of them have found it satisfactory and 25 percent have found it dissatisfactory. No court officials have found the legal aid highly satisfactory, 62.5 percent of them observe it satisfactory and 37.5 percent view it as dissatisfactory. Likely, no judges have found legal aid highly satisfactory, 87.5 percent of them have found it satisfactory and rest 12.5 percent have found it dissatisfactory. NGOs also have not found legal aid highly satisfactory, 58.3 percent of the respondents from the NGOs found legal aid satisfactory and rest of them i. e. 41.7 have found dissatisfactory. Exceptionally, the District Legal Aid Committee personnel are highly satisfied in 100 percent cases in which they have provided legal aid.

Except the observation of the DLAC other legal aid providers and the legal aid recipients do confirm each other. For example, 50 percent respondents from the women cell, 37.5 percent respondents from the courts and 41.7 percent respondents from the NGOs are dissatisfied with the current legal aid in the country. On the other hand, out of the respondents 60 percent of the legal aid recipients are dissatisfied with the current legal aid in the country.

Further, the level of satisfaction of the legal aid providers is in average about 60 percent whereas the level of satisfaction of legal aid recipients is below 25 percent. This indicates there is a gap between the recipients and providers about the current state of legal aid.

The following chart shows the reasons of dissatisfaction of the recipients of legal aid. More than 45 percent of the respondents say that they were never comfortable with their lawyers. Their lawyers had neither informed them about the progress of the case nor had honestly provided services. In most of the instances, the lawyers beyond the code of conduct had asked money with the clients, especially by the lawyers provided by the DLAC. They do have also grudges that the legal aid is not systematic, sometime legal aid is provided on similar cases and other times it is not provided for the same cases. They are also exasperated with the delay in imparting justice by the court.

Chart VI



Besides the recipient of legal aid the key stakeholders have also pointed out many weaknesses in the existing legal aid system in Nepal. Most strikingly, 55.3 percent respondents point out that the targeted groups are not aware about the legal aid providers therefore the absolutely needy people have in real terms are not being beneficiary of the legal aid in place. Similarly, 36.8 percent say that in most of the cases the legal aid is confined to defending a case before a Bench that has seriously reduced the effectiveness of the legal aid in the country. Further, 21 percent respondents observe that the legal aid is irregular because of the various limitations of the legal aid providers due to those factors they are not able to regularize their services.

Overall they have pointed out following as the shortcomings of the legal aid in Nepal:

- Irregular services by service providers
- Lack of awareness and information to the targeted groups about legal aid
- Lack of rapport between lawyer and client
- In practice the legal aid is confined only in defending a case before a Bench
- Limited facilities to the stipendiary lawyer
- Lack of coordination between and among the legal aid providers
- Populist nature of legal aid by the NGOs rather than for real service
- Lack of proper monitoring and evaluation
- Gender insensitiveness
- Reluctance of lawyers
- Sense of insecurity in the clients and witness.

In short, these facts indicate that the current state of legal aid in Nepal needs serious improvements including on the various aspects as pointed out above by the key stakeholders and recipient of legal aid.

Section 3: Legal Aid by the Court

Strengths & Weaknesses

3.1 Legal Aid by the Court

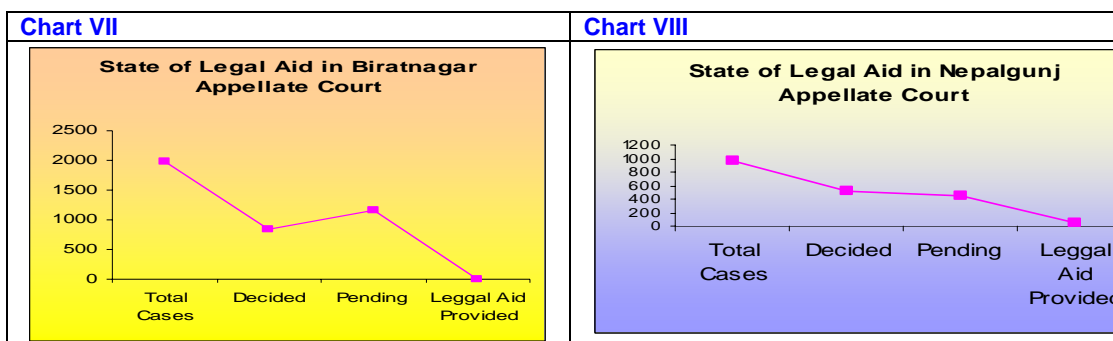
The Supreme Court, Appellate Courts and District Courts provide legal aid through appointing a lawyer called *Vaitanik Okil*. The Stipendiary Lawyer (*Vaitanik Okil*) is a practicing private lawyer. He / she continue private practice as well as work as officer of the court and provide legal aid services on the cases assigned by the court for legal aid. The courts provide legal aid at the stage of hearing of a case by a Bench and the legal aid does not involve in supporting the client from the stage of preparation of a case, collection of evidence, assessment and examination of evidence and others. In many instances, the *Vaitanik Okil* presents before the court and pleads the case before a Bench even without having any interaction with the client. Often, the client and the lawyer do not meet each other.

The system of legal aid through a stipendiary lawyer was created by the Supreme Court of Nepal in 1958 by an administrative decision. In fact, the history of legal aid in Nepal starts from the 1958 administrative decision of the Supreme Court.¹² From this decision lawyers were appointed at the Supreme Court to provide legal aid in the cases in which the parties of the cases could not afford lawyers. These lawyers were considered as court officials and were kept under the administrative control of the court and they were paid 100.00 NRs. per month. The system of appointing the stipendiary lawyer was extended to the Regional and Zonal Courts in the 1970s. In the 1980s the District Courts also started to appoint stipendiary lawyers to provide

12 Kalyan Shrestha, *The Concept of Legal Aid and its Practice in Nepal*, 25 KANOON, at 47

legal aid. The stipendiary lawyers were appointed in the District Courts in three phases and in each phase, lawyers were appointed in 25 Districts. Now, all the courts in the Kingdom of Nepal have stipendiary lawyers who provide legal aid. This way the Supreme Court can be considered as the pioneering institution for initiating and institutionalizing the legal aid in Nepal.

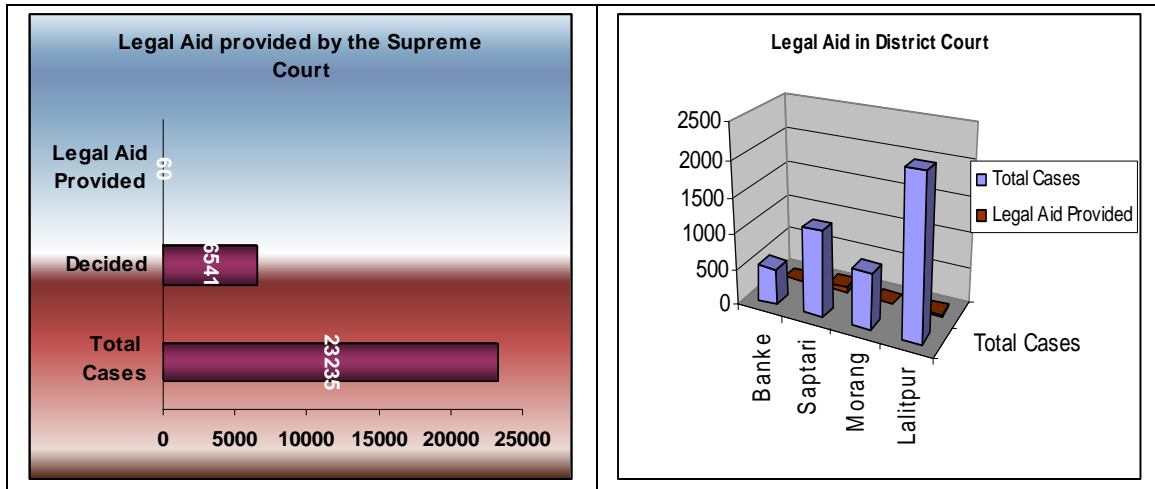
Currently the courts are providing legal aid in both the civil and criminal cases. However, the number of the cases in which legal aid is provided by the court is extremely low. For example, in financial year 2061 - 2062 B. S. there were almost 2000 cases in the Biratnagar Appellate Court but out of them legal aid was provided by the court in only 8 cases (Chart VII). Similarly, there were 2246 cases in the Appellate Court Rajbiraj, out of them 1240 cases have been decided and 1005 cases are pending. But the Rajbiraj Appellate Court has no record about the cases in which it has provided or is providing legal aid. There were 959 cases in the Nepalgunj Appellate Court, out of them 510 cases were decided and 449 are pending. Legal aid was provided in about 50 cases (Chart VIII).



The Supreme Court of Nepal had 23235 cases in total in the FY of 2061/62. Out of them it decided 6541. It provided legal aid only to about 60 cases (Chart IX).

In the financial year 2061/62 the Morang District Court provided legal aid in 8 cases out of total 788 cases. Banke District court provided legal aid in 12 cases out of total 513 cases. Saptari District Court provided legal aid in 77 cases out of 1198 cases. Lalitpur District Court provided legal aid in 27 cases for prisoners out of total 2233 cases (Chart X). Kathmandu District Court and the Bhaktapur District courts have no records of the cases in which they have provided legal aid.

Chart IX	Chart X
----------	---------



In average, the state of legal aid provided by different courts is less than 1 percent of the total number of cases that they are handling. This fact indicates that the legal aid provided by the court is merely a formal and far from achieving the objectives of the legal aid in the country. It is no doubt that judiciary keeps immense strengths but it has been completely underused. The courts need to define their roles and target goals for providing legal aid each year. And, at the end of the year they also need to monitor and assess their roles, learn from the past and build strategy for future intervention. When the courts improve in these lines, it can be expected that the judiciary can continue to be the main institution providing legal aid effectively in the country.

3.2 Legal Provisions on Legal Aid by the Court

The provisions related to the Stipendiary lawyer are incorporated in the Rules of various courts, for example in the Supreme Court Rules, 1992, Appellate Court Rules, 1991 and District Court Rules, 1995.

Rule 111(A) of the Supreme Court Rules, 1992 provides on legal aid. It has authorized the Registrar of the Supreme Court of Nepal to appoint a stipendiary lawyer from among the advocates through a fair competition. The stipendiary lawyer is required to work in the legal aid section of the Supreme Court of Nepal.

The Supreme Court provides legal aid in the cases in which the party of a case is helpless, unable, children, poor or prisoner who is not able to afford a private lawyer. The decision on providing legal aid in a case is taken either by the Chief Justice, concerned Bench or by the Registrar. When a litigant applies either before the Chief Justice or concerned Bench or the Registrar, each of them can take decision at his / her satisfaction that there is a need to provide legal aid to the applicant. In such cases, the stipendiary lawyers provide legal aid including preparation of necessary legal documents and pleading before the Bench.

The stipendiary lawyer is expected to fulfill all the rules of the code of conduct applicable to other practicing lawyers. He / she is provided salary as prescribed by His Majesty's Government. At present, the stipendiary lawyer gets 2000.00 NRs salary per month. The stipendiary lawyer is appointed for a period of one year. However, he / she can be reappointed.

Generally the office of the Registrar of the Supreme Court publishes a notice in the Notice Board of the Supreme Court and the Nepal Bar Association and calls for the application for the post of the Stipendiary from the interested persons holding a

license of Advocate. Seniority and the less working load of the applicant are considered the most important criteria for the appointment of the Stipendiary. Generally women applicants are given preference while appointing the Stipendiary in practice. The Stipendiary has to submit the report of his/her work along with the difficulties he/she faced while providing legal aid and his/her recommendations if any to the court every month. But this rule has not been applied in most of the cases.

There are similar provisions on the stipendiary lawyer in Appellate Court Rules and District Court Rules. Rules 105(A) of the Appellate Court Rules, 1991 and Rules 95 (A) of the District Court Rules, 1995 provide similar provisions to the Supreme Court Rules on legal aid. As prescribed by the Rules, both the District Courts and Appellate Courts have a legal aid section in each court. Both Rules prescribe that the stipendiary lawyer will be appointed among the applicant advocates available. If advocates are not available in such situation stipendiary lawyer will be appointed among the applicant pleaders.

The conditions for providing legal aid under the Supreme Court Rules and the District Court and Appellate Court Rules are similar. Under the Appellate Court Rules the decision will be taken either by the Chief Judge, concerned Bench or by the Registrar. In the District Court either a Judge or the Chief Judicial Officer (*Shrestedar*) decides on providing legal aid.

Presently there are two stipendiary lawyers in the Supreme Court, one stipendiary lawyer in each Appellate Court and one in each District Court. At the beginning the stipendiary lawyers were paid 100.00 NRs. and this remuneration was equal to the Section Officer. Later, the remuneration was increased to 400.00 NRs, which was also equal to the Section Officer. Until Aug. 1999 they were paid 1000.00 NRs, which was increased to 2000.00 NRs then. Today a Section Officer's remuneration is more than 8000.00 NRs, per month but the stipendiary lawyer gets only 2000.00 NRs per month.

The duty of the stipendiary lawyer according to these various Rules is to provide legal aid to the helpless, unable, poor, children and prisoner litigants as directed or prescribed by the court. However the Rules have not defined and also developed standards so that the helpless, unable and poor persons who are litigant in a case could be objectively identified and need legal aid could be provided to them. So, generally the courts reach to a decision on legal aid on the basis of their satisfaction.

Also, there is no uniform and established system and practice on appointment of the stipendiary lawyer. In some courts, the stipendiary lawyer is appointed on the recommendation of Bar Association, in some courts he / she is appointed through an open competition including carrying written examination and interview and in some cases he / she is appointed merely by the decision of the concerned authority.

3.3 Strengths of the Legal Aid by the Court

There are some important strengths of the legal aid provided by the courts that follow:

- **Institutionalized:** The legal aid provided by the court has been institutionalized. Supreme Court is the pioneer institution in introducing legal aid in the Nepalese legal system almost five decades back. Since then the Supreme Court is continuously providing legal aid to the targeted clients. The Supreme Court Rules, 1992; Appellate Court Rules, 1991 and District Court Rules, 1995 have given legal back up to the legal aid system under the courts. Each court has its own legal aid section in which the stipendiary lawyer works. The stipendiary lawyer is required to report before the court on the state of legal aid provided that has facilitated monitoring and opportunity for future intervention. Therefore, one of the major strengths of the legal aid by the courts is its institutionalized form and character.
- **Sustainable:** Another important strength of the legal aid provided by the courts is its sustainability. The courts appoint stipendiary lawyer. They have authority to decide the cases in which legal aid needs to be provided. When

they decide that legal aid is to be provided, the job of a stipendiary lawyer begins. The stipendiary lawyer is paid by the courts in a monthly basis and the required budget is allocated by His Majesty's Government. When the courts are providing legal aid since decades and the inbuilt mechanism is supportive, the sustainability of the legal aid by the courts seems reliable.

- **Accessible:** Any party to a case who is helpless, unable, poor, minor, and prisoner can ask before the court for providing legal aid. As a matter of practice, the courts have hardly rejected any application filed for legal aid. It evidences that the legal aid by the court is easily accessible to a party of a case.
- **Coverage:** Legal aid by the court is the only system that is providing legal aid throughout the country. It has a mechanism to provide legal aid in all tiers of the courts: Supreme Court of Nepal, Sixteen Appellate Courts and Seventy Five District Courts. Altogether, there are 93 stipendiary lawyers, 2 in the Supreme Court and 1 in each Appellate and District Court.

3.4 Weaknesses of the Legal Aid by the Court

Despite the above mentioned strengths of the legal aid provided by the courts, there are also serious weaknesses in the system that follows:

- **Quality of the service:** The courts pay 2000.00 NRs to a stipendiary lawyer. It is very hard for an efficient professional lawyer to work for 2000.00 NRs per month. This extremely low amount of the salary is one of the serious setbacks in making legal aid provided by the court efficient. In most of the cases, the stipendiary lawyers are young, inexperienced and beginners. The quality of service always depends on the quality of the service provider i.e. the stipendiary lawyer. Therefore, despite their willingness the courts cannot appoint an efficient person as a stipendiary lawyer to provide legal aid that affects the quality of legal aid.
- **Inadequate preparation:** In most of the cases the stipendiary lawyer are referred the cases by the court only few days before the date of hearing of the case. In many instances the stipendiary lawyer is informed about the case in the day of the hearing. Due to short notice the stipendiary lawyer cannot arrange time for study and analysis of the facts in issue and facts in law, which results in a weak defense of case. Further, in most of the case the courts do not provide copies of all required documents to the stipendiary lawyer. Because of the lack of the availability of required documents the stipendiary lawyers cannot be prepared on the different aspects of the case and cannot make the case stronger one. Therefore, inadequate preparation is one of the major weaknesses of the legal aid by the court.
- **Detached relation:** Except in rare occasion the stipendiary lawyer and the client having legal aid don't have any interaction and discussion on the case. Often the client does not know the lawyer and vice versa. They have a detached relation. In legal representation, it is considered that interaction between a lawyer and the client is must for getting clarity on the facts in issues and invoking appropriate laws and remedies.
- **Formal relation:** The relation between the court and the stipendiary is also very formal. The Rules provide that the stipendiary lawyer shall work in the legal aid section of the concerned courts. But in practice, the stipendiary lawyer is hardly presents in the legal aid section. The judges, court officials and the stipendiary lawyers hardly interact about the state of legal aid and future courses for any improvement. Both the courts and stipendiary lawyers seem disinterested for making the legal aid effective tolls for imparting justice to the targeted groups.
- **Lack of monitoring of the work:** The work carried out by the stipendiary is hardly monitored by the courts. Neither the courts have monitoring planning

nor have they monitored the works of the stipendiary lawyer. Neither the courts are interested to improve the legal aid system with specific commitments nor are the stipendiary lawyers committed to provide quality service.

Section 4: Legal Aid by the Government

4.1 The Mechanism of Legal Aid by the Government

Since 1997 His Majesty's Government has been involved in providing legal aid in Nepal. It provides legal aid through the mechanism established under the Legal Aid Act, 1997. Central Legal Aid Committee and District Legal Aid Committees are the backbones of this system. The Legal Aid Act 1997 is prepared to give effect to the aspiration of the Article 26(14) of the Constitution of the Kingdom of Nepal, 1990.¹³

This is the first and only exclusive law related to the legal aid in Nepal. The Act was prepared in the initiation of the Nepal Bar Association and enacted in 1997. Yet it has not been implemented all over Nepal. In the beginning this Act was implemented in 5 districts only.¹⁴ Presently it is implemented in 33 districts.¹⁵ In near future it is further going to be implemented in 10 more districts.

The coverage of legal aid is wider under the Act. It defines legal aid including counseling, preparation of legal documents, presentation and defense before the court and all other necessary activities relating to legal process.¹⁶

The Act has also established a Legal Aid Fund accounted from His Majesty's Government, donors and any other sources. The Fund is operated in districts by the District Legal Aid Committee and at centre by the Central legal Aid Committee.

However, the key stakeholders consider that the efficiency of the DLAC is moderate in providing legal aid, the recipient respond that it is the second largest legal aid providers in the country where the Act is enforced (Chart XI and XII).

Chart XI

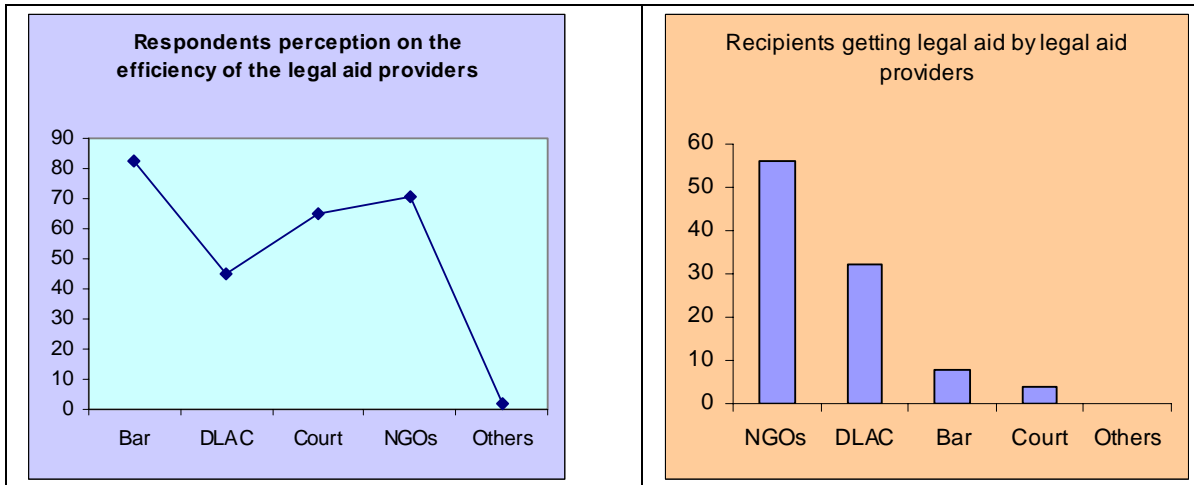
Chart XII

13 Art. 26 (14) of the Constitution of the Kingdom of Nepal provides that "The State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law."

14 Banke, Bara, Palpa, Dolkha and Sunsari

15 See *supra* note 8.

16 See Section 2 (a) of the Legal Aid Act, 1997.



4.2 The Targeted Group for Legal Aid

Under the Act legal aid is provided to helpless persons.¹⁷ However, the Act has not defined about who is a helpless person. When we compare the provisions of the Supreme Court Rules, Appellate Court Rules and the District Court Rules with section 2 (a) of the Legal Aid Act the earlier are broader in their scope than the later as the earlier cover helpless, unable, minor, poor and prisoner as targeted groups for providing legal aid.

Legally speaking, the scope of the section 2 (a) of the Legal Aid Act is confined only to the helpless persons but in practice helpless, unable, minor, poor and prisoner are also getting legal aid under the Act.

Section 3 of the Act and Rule 6 of the Legal Aid Rules, 1998 provide that legal aid will not be provided to those who do have more than 40,000.00 NRs annual income. The District Legal Aid Committee verifies the income of the applicant on the basis of the recommendation of the local bodies.¹⁸

The persons desirous for obtaining legal aid is required to apply before the District Legal Aid Committee including with the recommendation of the local bodies and other necessary supporting document, especially to verify the income status.

Following parties to the cases might have annual income below than forty thousand Nepalese Rupees but they were denied for legal aid under the Rule 6 of the Legal Aid Rules.

- Parties of a case under the Espionage Act, 1962
- Parties of a case under the Human Trafficking Act, 1987
- Parties of a case under Ancient Monument Protection Act, 1966
- Parties of a rape case under the Muluki Ain, 1964
- Parties of a case under Anti-Corruption Act and CIAA Act
- Parties of a case under Revenue Evasion Control Act, 1995
- Parties of a case under Narcotic Drugs Control Act, 1977, and
- Parties of a case specified by the Central Legal Aid Committee.

¹⁷ *Id.*

¹⁸ See Rule 3 of the Legal Aid Rules, 1998.

But the Supreme Court of Nepal in a decision has declared the Rule 6 of the Legal Aid Rules as unconstitutional and therefore ultra vires.¹⁹ After this decision all the persons accused under a criminal charge can get legal aid.

4.3 The Central & District Legal Aid Committees

This Act has established a Central Legal Aid Committee under the Chairmanship of the Minister of Law, Justice and Parliamentary Affairs and three other members i. e. the President of the Bar Council, President of Nepal bar Association and a Jurist appointed by the Central Legal Aid Committee. The Secretary of the Nepal bar Association is the member Secretary of this Committee. Its functions, duties and the authorities are:

- To determine policy and program related to legal aid,
- To monitor, control and give necessary direction to the District Legal Aid Committee,
- To provide grant to the District Legal Aid Committee,
- To manage necessary fund for the legal aid,
- To prepare a list of the legal aid lawyers for providing legal aid in the Supreme Court, and
- To prepare, publish and disseminate booklets, posters, pamphlets and other related documents for providing basic information about the legal aid to general public and conduct research about it, etc.

A District legal Aid Committee (DLAC) has been established in each district where the Legal Aid Act has been implemented. The chairman of the DLAC is the Public Prosecutor (the Government Attorney of the Appellate Office of the Attorney General's Office, where there is an Appellate Court and the District Government Attorney, where there is only District Court). Other members are the president of the higher Bar Unit of the district and two lawyers nominated by the District Legal Aid Committee. The Secretary of the higher Bar Unit of the District is the member secretary of the Committee.

After a year the government promulgated the Legal Aid Regulation, 1998 that provided the criteria for getting legal aid through the DLAC. This regulation puts the ceiling of 40,000.00 annual income and prohibits legal aid for the people who have more than 40,000.00 NRs annual income. It also makes a recommendation from the chairman or a member or the secretary of the VDC or the Ward Chairman of the Municipality along with an application mandatory for anyone expecting the legal aid from the DLAC. After an application is received, the member secretary of the Committee examines all required documents and tables it in the meeting of the DLAC. The Committee decides whether to provide legal aid or not on the basis of the Legal Aid Act, Legal Aid Regulation and the guidelines determined by the Central Legal Aid Committee. Within 35 days of the application, the committee should give the decision whether to provide legal aid or not. The regulation provides that if the party getting legal aid through the committee gets any property or economic benefit after the case being decided, the party should reimburse the amount spent by the Committee while providing legal aid. But while reimbursing the amount from the party, it should not exceed 10% of the property or the economic benefit received by the party.

The DLAC prepares a list of the lawyers in coordination with the Bar Units to provide legal aid. A lawyer from the list is assigned to provide legal aid and the lawyer is compensated by the Committee for providing legal aid. There is a one room office with one staff in each district where the Legal Aid Act has been implemented.

4.4 The Strengths of the Legal Aid by the Government

19 See *Lilamani Poudyal v. HMG Council of Ministers*, 45 NKP 5 & 6, at 354.

- **Credibility:** The legal aid provided by the government is credible as it is carried with a view to translate the aspirations of the Constitution in practice. Government is the highest, resourceful, legitimate and valid institution that can make real impact in society. Therefore, the initiative by the government is backed up with the legislative instrument - the Legal Aid Act. The legislative backup and involvement of the highest institution of the state have enhanced the credibility of legal aid, at least theoretically.
- **Sustainable:** One of the major strengths of the legal aid provided by the government is its nature of sustainability. When the legal aid is backed up by law and budget is allocated by the Parliament the sustainability of legal aid can be entrusted.

4.5 The Weaknesses of the Legal Aid by the Government

- **Limited Scope:** District Legal Aid Committee provides legal aid only in those districts where the Legal Aid Act has been enforced. Presently it is enforced only in 33 districts. Still the Act has not been implemented in majority of the districts. Therefore, only a limited numbers of persons can be covered under the Act. However, in future, it can be expected that the Act will be enforced throughout the country.
- **Unrealistic Ceiling:** The ceiling of 40,000.00 NRs annual income for getting legal aid is unrealistic. It is not a net profit but income. In average the Nepalese family consists of five members. If each member has about 700.00 NRs income per month that accounts 42,000.00 incomes per year of the family that exceeds the ceiling. About 700.00 NRs income per head a month means less than 24.00 NRs income a day per head. A person who earns less than a dollar a day is considered absolutely poor. In this context, the ceiling excludes even the absolute poor people from the opportunity of getting legal aid.
- **Biasness:** To get the legal aid, the person who needs legal aid has to obtain a recommendation letter from a local body such as VDC or Municipality. Due to this a lot of people looking for legal aid do not get it because there is no local body presently. When there was a local body, the respondents say that it was difficult to get recommendation from the local bodies due to political biasness.
- **Faulty Composition of the DLAC:** The composition of the DLAC is faulty. This is headed by the Public Prosecutor who defends against the prisoners including whom the legal aid is provided on behalf of His Majesty's Government. In the study most of the Public Prosecutors that were interviewed by the researcher were either very much ignorant about the significance of legal aid or they had negative attitude about it.
- **A Concept of Reimbursement:** If the person getting legal aid from the DLAC gets any property or financial benefit after the final decision of a case, he / she is required to reimburse the expenses of the legal aid incurred by the DLAC. When legal aid is provided to help the helpless people, there seems no rationale to reimburse the expenses incurred for legal aid.
- **Nominal Fund:** The fund of the DLAC is very nominal i.e. 14, 00,000.00 NRs was provided in the F/Y 2004-05. Out of this budget the legal aid needs to be provided in all the thirty three districts in which the Act has been enforced. DLAC has a one room office with only one staff, which is built in assistance with the EU. EU has also provided one computer and one telephone to the office. The committee hires legal aid lawyer from the rostrum of the lawyers prepared in coordination with the Bar Units in case to case basis. The lawyer is provided very nominal fee for providing legal aid. That's why experienced and efficient lawyers do not involve themselves in the legal aid provided by the DLAC.

- **Lack of the Involvement of Experienced Lawyers:** Due to very nominal fee provided to a lawyer for his / her service the competent and experienced lawyers are found disinterested in involving legal aid service. Therefore the legal aid provided by the government has turn off to be inefficient and mere formal one.
- **Inherent shortcomings in the Act:** The Legal Aid Act, 1997 is fraught with many shortcomings. Primarily, it is not an umbrella Act. It does not provide any provision on coordination and synergy between the different types of legal aid prevailing in the country. The composition of legal aid committee both at central level and district level is faulty. The definition of legal aid is also very parochial. The annual income ceiling is not pragmatic. The provision of reimbursement of expenses incurred for legal aid seems illogical. In short, the Act needs to be revised and improved thoroughly.
- **Least Prioritized Area:** Legal aid is one of the least prioritized areas of government. It is verified by the state of allocation of budget and the lackadaisical initiatives of the Central Legal Aid Committee.

4.6 A Case Study of Rajbiraj Prison

Especially in Rajbiraj prison the DLAC has provided legal aid to some six prisoners. DLAC has appointed Advocate Hem Narayan Chaudhari as a legal aid lawyer. In almost all the six cases Advocate Chaudhari has visited to his client in the prison but not for discussing about the case and informing the clients about the progress of the case but to ask money with the clients. The lawyer is not supposed to ask money from the client for providing legal service for the legal aid under the DLAC. Because he/she is paid by the Committee for working as a legal aid lawyer in each case. It is also inconsistent to the code of the conduct of lawyers and unethical also. This unethical behavior of Mr. Chaudhary has questioned the reputation of DLAC but has also tarnished the image of lawyers among the prisoners.

Section 5: Legal Aid by Bar Strengths and Weaknesses

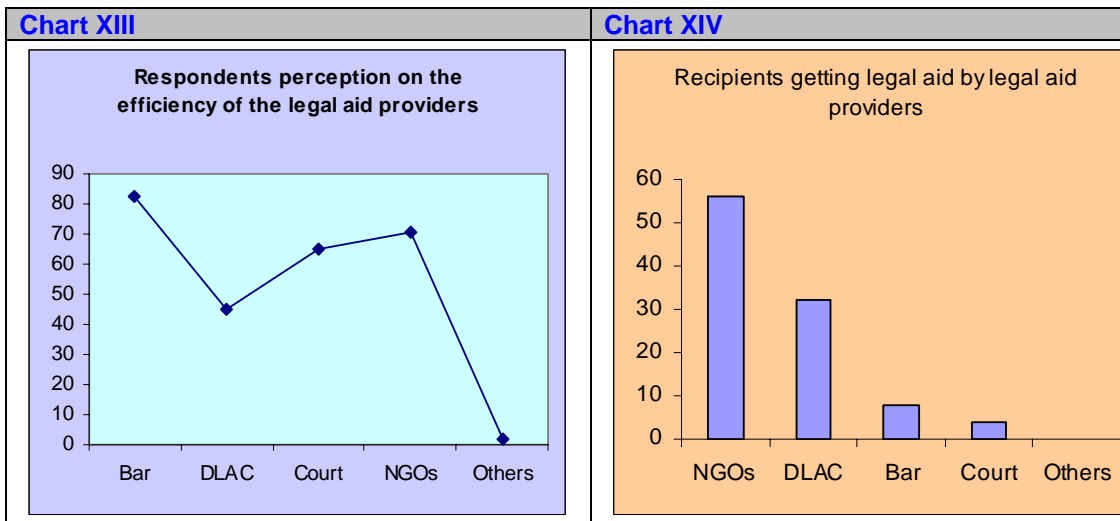
5.1 Nature of Legal Aid by the Bar

Nepal Bar Association is a professional organization of lawyers established in 1962. It is also providing legal aid in the country as one of the active institutions. It provides legal aid in following two ways:

- Supporting Implementation of the Legal Aid Act, and
- Carrying legal aid independently.

Nepal Bar Association is the central organ located in Kathmandu that provides legal aid in Kathmandu. Further, there are sixteen Appellate Court Bar Associations and fifty eight District Bar Associations, which provide legal aid in the respective Appellate Courts and District Courts. Due to its extensive network it is able to provide legal aid throughout the country.

Despite the very positive responses of the key stakeholders about its efficiency in providing legal aid by the Bar (Chart XIII) the perspective of the recipient is different as out of the total legal aid recipients only less than ten percent are getting legal aid by the Bar (Chart XIV).



Nonetheless, the NBA has been carrying out various activities for the protection of people's rights and promotion of the legal profession. The Legal Aid is specifically guided by following objectives:

- a. To provide court-oriented legal aid to the indigent poor and disadvantaged people, and
- b. To launch a strategic legal aid campaign through legal literacy programs to arouse people's consciousness about their rights.

Various schemes, as stated below, are formulated to achieve the aforesaid objectives.

- a. Preparation of necessary petitions and application and representation in courts, tribunals and other quasi-judicial bodies on behalf of the indigent and poor persons.
- c. Collection of information about the women prisoners to provide them free legal assistance and representation of all indigent women by Warish (Authorized person to appear in courts at a given them) in courts.

- d. Providing direct financial help to indigent women to meet expenses like court fees, transportation and similar essential expenses.
- e. Settlement of dispute through conciliation and/or compromise.
- f. Training to the persons responsible for alternative dispute resolution or developing paralegal human resources.
- g. Legal Literacy, including special legal literacy for women, through campaign, publication, lectures and direct approach.

National seminars/workers for the lawyers involved in the legal aid and legal literacy schemes.

5.2 Supporting Implementation of the Legal Aid Act

Nepal Bar Association (NBA) is the Secretariat of the Central Legal Aid Committee (CLAC) and District Bar and or Appellate Court Bar are the secretariats of the District Legal Aid Committee (DLAC) established under the Legal Aid Act, 1997. Chairman of the Nepal Bar Association is a Member of the CLAC and the General Secretary of the Nepal Bar Association is the Member-Secretary of the CLAC. Similarly, Chairman of the Appellate Court Bar Association or Chairman of District Court Bar Association is a Member of DLAC. Further, the Secretary of the Appellate Court Bar or the District Court Bar is the Member-Secretary of the DLAC.

It supports the implementation of the Legal Aid Act, 1997 either through serving as secretariat and carrying out the activities of the CLAC and DLAC as prescribed by the Act or through developing different projects and entering into partnership with donor agencies for the implementation of the projects to develop both hardware and software for the implementation of the Act.

NBA is engaged in institutionalizing the work of providing free legal assistance to the indigent, poor and disadvantaged people since a long time. Especially, when the NBA and the Norwegian Bar Association agreed to enter into a cooperation agreement in November, 1987 since then the Nepal Bar Association is carrying out projects for providing free legal assistance.

Nepal Bar Association carries this project in different districts. The Legal Aid Act, 1997 is one of the products of the initiations of NBA undertaken with the Norwegian Project. It helps to develop software for implementation of the 1997 Act, including development of human resources through imparting training to lawyers and legal literacy for raising awareness of the local communities. Legal literacy is one of the very successful and strongest components of the Project with Norwegian Bar. It also provides free legal aid and developing basic infrastructure in a District, the NBA recommends His Majesty's Government to implement the 1997 Act in such District. HMG implements the Act to those Districts as recommended by the NBA.

Similarly, NBA has another project with the European Union on legal aid. The EU project supports in a district (where the Act has been implemented) where the District Bar has its own building, the EU has helped building a one room office of the DLAC adjoined to the Bar Building. The EU project also helps equip each office with a Computer/Printer and a telephone. The DLAC is an office with a government official (of the post of a *Nayab Subba*, a junior level official) of a law background.

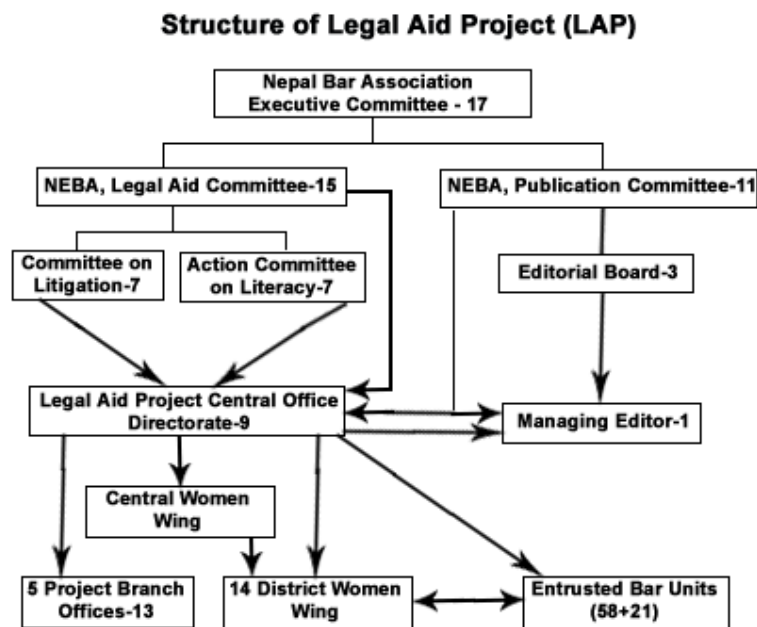
Under these projects the NBA is publishing booklets on various issues to disseminate key information on law to the local communities. Such booklets have a good reputation and the NBA regularly receives requests from various NGO/INGOs for supplying of such booklets. Booklets titled "Law: We must Know" and "Me and My Rights" are the most popular ones.

The NBA has also established a Legal Aid Committee with a view to support and strengthen legal aid Projects and monitor the activities. There are 15 Members in the Legal Aid Committee under which there are two sub-committees, namely - Committee on Litigation and Action Committee on Legal Literary. There is also a central Women Wing to take care of the legal aid, especially to the women. There

are also 14 District Women Wings in different Districts. It has also five Branch Offices of the Projects. Three additional Branch Offices are also going to be opened in near future. All these Branch Offices are led by one full time professional lawyer assisted by two staffs.

The central project office in Kathmandu has eight staff including a full-time director, who is also a lawyer. A rostrum of lawyers is also prepared in which 60 lawyers having expertise on different areas have been enlisted. In Kathmandu, the lawyers from the rostrum are requested by the Bar to provide legal aid service on the referred cases. The requested lawyer is paid by the Bar.

Following diagram gives an overview:



5.3 Carrying Legal Aid Independently

Besides the Projects that the NBA has been carrying out in partnership with Norwegian Bar and EU, it has also been providing legal aid in its own initiation, in districts where the Legal Aid Act, 1997 has not been implemented. It provides legal aid to the poor, marginalized, vulnerable and disadvantaged and women in different districts where it has its Units. Currently, it has its Units in 58 Districts.

However, the Bar Units do not have special fund for providing legal aid. Therefore, the legal aid of this kind is provided in limited scale.

5.4 Strengths of the Legal Aid by the Bar

- **Organized:** Bar is the professional organization of lawyers in the country. Nepal Bar Association has a unit in every court in Nepal i.e. Supreme Court Bar, at the Supreme Court ,Appellate Court Bar Unit in each of the Appellate Courts and District Bar Units in most of the District Courts (currently, it has its Units in 58 Districts). In this way, the Bar is quite organized and professional.. It has special Legal Aid Committee and sub-committees on Legal Literacy and Legal Aid Litigation. It also has Women Cell in all of its Units providing legal aid to women only. In this respect, the legal aid provided by the Bar is found quite organized.
- **Professional:** Bar has an advantage of employing experienced and professional lawyers in the legal aid. As all lawyers are organized under it, they respect the decision and request of the Bar. The rostrum consists of the list of experienced and efficient lawyers for providing legal aid.

- **Implementer of the Act:** In fact Nepal Bar Association is the secretariat of the CLAC and DLAC. In real terms it is an implementer of the Legal Aid Act. In absence of the role of the NBA the 1997 Act becomes non-functional.

5.5 Weaknesses of the Legal Aid by the Bar

- **Lack of Sustainability:** Most of its activities of legal aid are lead by Projects. Despite the fact that it has implemented the Projects satisfactorily it has not designed any program to sustain the legal aid above and beyond the support of the projects. In future, if the Projects are discontinued there is a high risk that the legal aid under the Bar becomes crippled.
- **Lack of Seriousness:** The legal aid under the Bar is provided through the lawyers listed in the rostrum. The lawyers always give priority to their clients and give less time for the preparation of the case under legal aid. They take legal aid cases as their nominal part time job due to the nominal amount they are paid for their service as a legal aid lawyer. Their involvement is mere formal. They don't have commitments and seriousness to the legal aid cases.
- **Lack of Monitoring:** The Bar is involved in many legal aid cases but it does not have a strong system of monitoring and therefore it does not have learning. It is expected that each and every case is monitored to know the strengths, weaknesses, outcomes and also for devising future strategy. But due to weak monitoring system this expectation has not been addressed and as a result the legal aid provided by the Bar has turned not for championing a cause but to show a mere involvement.

Section 6: Legal Aid by Civil Society Organisations

6.1 Nature of Legal Aid by Civil Society

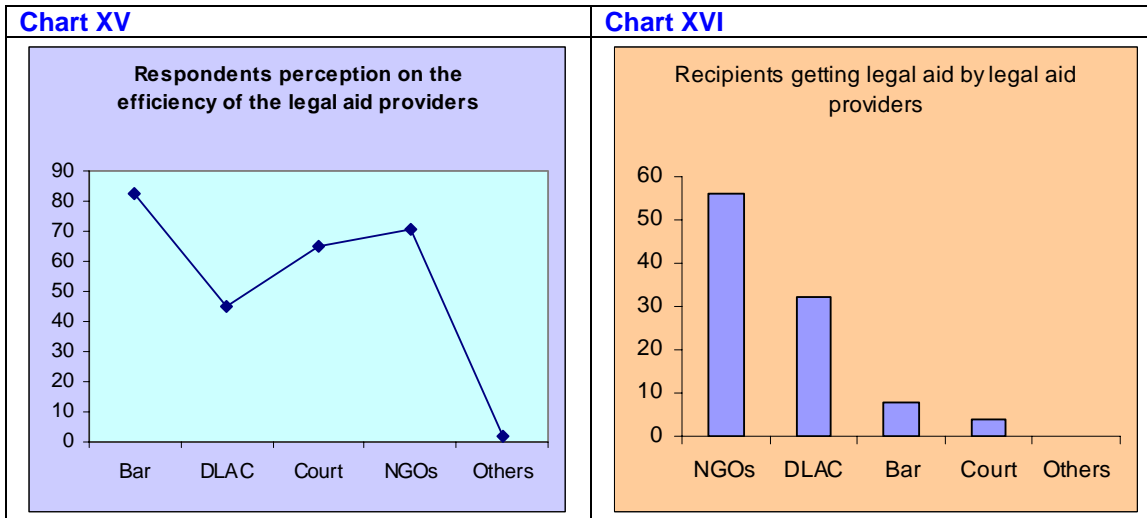
Civil Society movement in Nepal started only after restoration of democracy in Nepal in 1990. Democracy offered opportunities to the civil society organizations to involve in different developmental activities in the country as an important part of society. However, the Organization Registration Act was enacted in 1978 but the civil society movement was controlled under the *panchayat* regime and only allowed on selective basis. Hence, the restoration of democracy in 1990 encouraged civil society movement and the civil society organizations significantly grew in the country.

The civil society organizations have been widely expanded on different disciplines in the society. Legal discipline, as one of the fighters of democracy and vanguard of the civil rights in the country became a part of the civil society movement in the

country since the early days of 1990. Many civil society organizations are working in the areas of justice, human rights, legal aid and other important areas of law.

Today, there are more than half a dozen civil society organizations involved in legal aid. One of the archetypal characters of the legal aid provided by civil society organization is that it is excessively dependent to the donors. The civil society organizations that are providing legal aid in the country are project led in one hand and on the other their access is only in well-located places.

However, legal aid by the civil society organization is day by day being reliable and famous in the society. They are actively working at community level. Their efficiency is acknowledgeable as they are working with efficient professionals available. The perception of both the key stakeholders and legal aid recipients corroborate the efficiency and wider coverage of legal aid by the NGOs (Chart XV and XVI). About seventy percent of the key stakeholders consider the NGOs as one of the effective legal aid providers in the country and about sixty percent recipients of the legal aid are getting legal aid through the NGOs wherever the NGOs are providing legal aid. This indicates strong role for NGOs for providing legal aid in future.



6.2 Major Civil Society Organizations Providing Legal Aid

As mentioned above there are more than half a dozen civil society organizations working in the areas of legal aid. Following are some important among them:

- Legal Aid Consultancy Center (LACC),

- Center For Legal Research and Resource Development (CeLRRd)
- Centre for Victims of Torture Nepal (CVICT)
- Advocacy Forum
- Law Associates Nepal

6.2.1 Legal Aid Consultancy Centre (LAAC)

The Legal Aid and Consultancy Centre (LACC) is one of the leading civil society organisations working in the field of legal aid in Nepal, especially to the women and children. It was established in 1987 by a group of lawyers for the protection and promotion of the rights and interests of women and children in the country. It is working for the advancement and empowerment of the women and protecting the rights of children. LACC has been providing free legal aid and counselling services to the needy women victims, as a part of its efforts in ending violence against women, for past twelve years. LACC has established the Women's Rights Helpline Project (Helpline) in 1999 to provide free institutional legal aid to the woman victims of violence, rape, sexual exploitation, abuses, polygamy, battering, forced divorce and trafficking

The Helpline project was initially implemented as a one year pilot project with the assistance from the Netherlands Development Assistance Program (NEDA). The programme is now being continued with the sponsorship of the Royal Danish Embassy/DANIDA Kathmandu.

Initially, it had started its legal aid services to women in the Kathmandu Valley. Now it is providing legal aid in Jhapa and Doti Districts also. It is also planning to expand its legal aid activities in Dhanusha, Surkhet and Baglung Districts.

It covers different activities under legal aid, including counselling, mediation, conciliation and protecting women from violence through necessary legal intervention and defending cases before the courts. Media campaign is one of the effective tools used by LAAC for informing the victims about its services.

Until it has provided legal aid to about six thousand women victims and handled similar number of cases. It has initiated about 450 lawsuits in different courts and among them it became successful to protect the interest of women in about 225 cases. Still more than 200 cases of legal aid are *sub-judiced* before different courts including the Supreme Court of Nepal. In many cases their counselling has derived very positive results. For examples, many couples have been conciliated by LACC and as a result have given up the case of divorce and reunited.

More specifically, LACC is providing following services:

Legal services: It provides counselling including by telephone to the callers and walk-in victim-clients for free legal advice and mediation. It provides legal aid at spot, from its office and in the courts. In some cases, it also provides financial assistance to the needy and poor women victims.

Referral services: The victim-clients or the phone-callers are also referred to other appropriate organisations, such as emergency shelters for women and children fleeing abuses, victim support programs, family planning projects, rehabilitation clinics for addictions, suicide prevention, human trafficking, HIV-AIDS, drug prevention services etc, as per the needs.

It also helps the client to contact the Police, Police Women's Cells, and obtain medical certificate in order to facilitate collection of evidence for filing a case before the concerned courts, especially on violence. About 12% of its clients, it is referring to the police, CDO office, rehabilitation centres, shelter homes, de-addiction services and family planning services.

Data-base: All incoming phone calls and the interviews of walk-in client-victims are registered and stored in the database. The statistics are valuable tools. They are periodically analysed for identifying and determining the nature and gravity of the problems faced by women. The data-base help make the legal aid effective.

6.2.2 Center for Legal Research and Resource Development (CeLRRd)

CeLRRd is a non-governmental organization, founded in 1998. Its fundamental goal is to accelerate the process of systemic change in society, by fostering widespread understanding of the Rule of Law and unrestricted access to free and fair Justice. It aims to achieve this through research, resource development, community mobilization, legal awareness and legal aid activities.

CeLRRd has three branch offices for the implementation of its programs in the regions: Nepalgunj, Chitwan and Biratnagar. The majority of its staffs are experienced lawyers. It is involved in providing legal aid on almost all areas of law to the poor, disadvantaged, marginalized, women and children. Mostly, it is providing legal aid to the criminal cases. It is involved not only in defending the cases before the courts but also providing counseling, preparation of necessary documents, assessment and examination of evidence, pleading, and appeal before the court.

6.2.3 Centre for Victims of Torture Nepal (CVICT)

The Centre for Victims of Torture (CVICT) is another important civil society organization providing legal aid, especially to the victims of torture since its establishment in 1990. It provides legal aid both from its central office in Kathmandu and district offices located in different 23 districts, namely - Lalitpur, Bhaktapur, Ilam, Tehrathum, Dhankuta, Morang, Sunsari, Jhapa, Saptari, Dhanusha, Mahottari, Sindhuli, Parsa, Makwanpur, Chitwan, Kavreplanchok, Nawalprasi, Palpa, Syangja, Parbat, Dang, Banke, Bardiya and Surkhet districts.

Its focus area of work is to provide counseling, prison visit, fact finding, and filing and defending cases before concerned courts with a view to help the victims to get compensation under the Torture Compensation Act (TCA), 1996. After the commencement of the TCA about 150 cases have been filed throughout the country, out of them 80 cases have been filed before different courts by the CVICT.

It also helps the torture victims to bring the cases before the Human Rights Commission. Further, it also brings public interest litigation before the Supreme Court of Nepal. At community level it also supports for the protection of rights of the victims against violation of human rights, sexual assault and charge of witchcrafts. It also finds facts of serious human rights violations, sexual assaults, witchcrafts and social defacement through sending fact-finding team in the field. As per necessity it provides necessary legal aid at the field through its mobile clinic.

6.2.4 Central Women Legal Aid Committee (CWLAC)

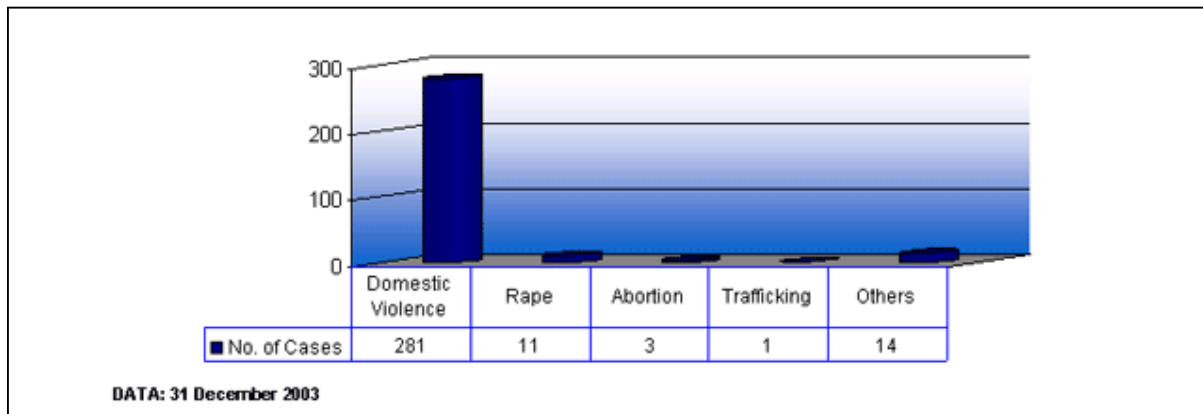
Central Women Legal Aid Committee (CWLAC) was established in 2001 by His Majesty's Government Ministry of Women, Children and Social Welfare (MoWCSW) with the support of Mainstreaming Gender Equity Project (MGEP) of the UNDP. It is established with a view to empower women, increase their access to justice, raise awareness about human rights, women rights, and justice, especially justice in the court of law. It is jointly operated by HMG and UNDP headed by Secretary of the MoWCSW.

The CWLAC provides both preventive and remedial legal aid, especially to women. Its activities include - counseling, mediation, visit to police and other administrative agencies, filing and defending cases before the courts. Domestic violence, rape, trafficking and abortion are its main focused areas of legal aid. It has significantly achieved success in settling disputes outside the courts through the process of mediation especially on the issues of violence against women and divorce issues.

It is helping women for getting alimony, partition and divorce in the cases of polygamy marriage by the husband of the victim. In such situation, it is filing cases and defending the cases before the court. Further, it is also supporting in the implementation of the decision of the court.

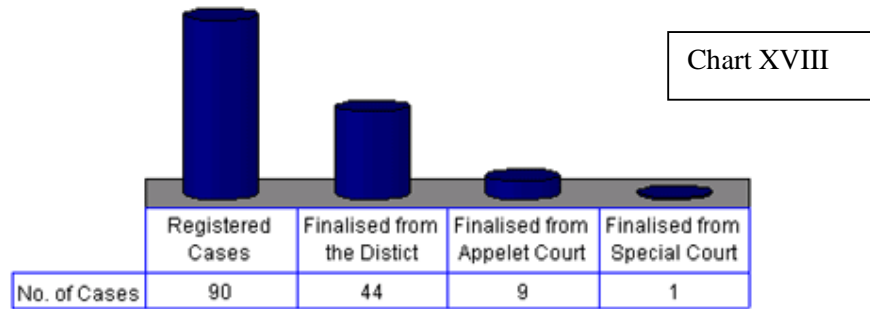
It also provides short-term shelter to the victim women in the rehabilitation centers such as SAATHI, ABC Nepal, CWIN, Concern Nepal and others.

Chart XVII



As of December 2003, 310 complaints had been registered in CWLAC for legal aid. Among them 281 were related to domestic violence cases, 11 were related to rape, 3 were related to abortion and 1 was related to trafficking.

Out of the 310 complaints, ninety complains were of grave nature for which remedy had to be sought through legal process and therefore it filed cases before different courts. Among them, 44 cases have already been decided by the courts, most interestingly all the decisions are in favor of the victims. Further, even during the legal proceedings it took initiation for reconciliation between the parties of the cases became successful to reconcile two cases.



DATA: 31 December 2003

It also supports the victim women to get remedy and necessary help from the Women Police Cell. It has also help line service to those who cannot visit its office for legal aid. It has also mobilized volunteers to facilitate legal aid. It has also developed a network with different governmental and non-governmental organizations for building a coordinated effort in providing legal aid to the victims. Further, it is also carrying policy advocacy for making the laws, policies and institutions gender sensitive.

6.2.5 Advocacy Forum

Advocacy Forum was established in Dec. 2000 with one of the major objectives of providing legal aid to the victims of human rights violations. Advocacy forum has been providing legal aid in four districts i.e. Banke, Morang, Kathmandu and Kaski. It provides legal aid only to the victims of human rights violation by the state, especially to the people who are in illegal detention.

6.2.6 Law Associates Nepal (LAN)

Law Associates Nepal is recently established NGO working for using law as a tool for fighting poverty, injustices, discrimination, deprivation of rights and marginalization. It has taken legal aid one of the effective components for fighting poverty, injustices, discrimination, deprivation of rights and marginalization in society especially focusing poor, children, victims of conflict including internally displaced people, and disenfranchised groups. Rights based approach is its main working tool. It considers legal aid incredibly important for realizing rights based approach in the local communities and empowering them with rights.

Currently, it is carrying out legal aid activities in different nine districts: Kathmandu, Lalitpur, Bhaktapur, Banke, Bardiya, Kailali, Kanchanpur, Dang and Surkhet.

The legal aid activities include: counseling, evidence collection, assessment of evidence, pre-trial briefing, preparation of legal document, community level awareness, support in protection of rights in police custody and before the administrative agencies, filing and defending of a case, appeal of case and support in implementation of the decision of a court. It believes legal aid as a package tool from counseling to implementation of decision.

6.3 Strengths of the Legal Aid by Civil Society

- **Holistic:** Legal aid provided by the civil society organizations is holistic as they are involved not only in defending a case before a court but also from counseling to defending a case and helping the implementation of the decision. In real terms the civil society organizations are providing a more or less complete package of legal aid, which is one of the main strengths of the civil society.

- **Effective:** The lawyers hired by the Civil society organizations are the most competent and professional legal aid lawyers and because of this the legal aid provided by these organizations is efficient and effective. These are the only legal aid lawyers who are well paid.
- **Specialized Service:** Civil society organizations are involved only on specific areas of their expertise. For example, LAAC and CWLAC are involved for providing legal aid to women and children, CeLLRD and Advocacy Forum are engaged to provide legal aid on human rights issues, especially to prisoners, CVICT is engaged to provide legal aid to tortured victims and LAN is engaged to provide legal aid to victims of conflict and IDPs.
- **Prompt Service:** Civil society organizations do have very nominal bureaucracy. They work for specific mission with commitments therefore they are easily and promptly available to provide legal service including in the ground or in the field.
- **Strong Network:** Civil society organizations are more adept working in network. They have established their own networks and using the networks at their best.
- **Familiar with Local Conditions:** Civil society organizations are working with local lawyers. Their local offices are led by local lawyers who are familiar with local conditions and also familiar to the local cultures and languages. This has facilitated the civil society organization to gain confidence of the local people and bring their cause for legal remedy.

6.4 Weaknesses of the Legal Aid by Civil Society

- **Urban Area Centered:** The legal aid provided by the civil society organization is limited to very few urban areas. In some districts such as Banke all major legal aid providers NGOs (CeLLRD, CVICT, Advocacy Forum and LAN) are present. In this district, the Bar Units along with their Women's Cell, the stipendiary lawyer and the District Legal Aid Committee are also actively providing legal aid. But in remote areas the presence of NGOs is absent. The hilly and mountainous areas of Nepal is known for poor, illiterate, disenfranchised and marginalized people who desperately need effective legal aid service but legal aid by NGOs is completely absent in such areas.
- **Donor Led:** The legal aid provided by the civil society organization is donor led. Civil society organizations do not have their own fund and scheme also for sustaining the activities they are carrying. In case the donor discontinue their support there is an imminent risk that the legal aid by the civil society organization becomes discontinued.
- **Lack of Coordination:** There is a lack of coordination and cooperation between and among the civil society organizations providing legal aid. In some cases they treat each other not only as a competitor but as a rival as well. Most of them have their own networks but they don't allow other to use their networks. These networks have turned as NGO privatized networks. Some time they prefer to blame each other but are quite reluctant to acknowledge each other. This lack of coordination and hidden sense of rivalry is one of the serious weaknesses of the civil society organizations.
- **Underused:** The legal aid service provided by the civil society organizations has not been much used by the targeted groups. In many instances, the targeted groups have no idea and information about the role and presence of civil society organization to provide legal aid to them. Due to the lack of information system the potential possibility of legal service by the NGOs has been underused.

- **Financial Constrains:** The projects are devised very stringently and they allow less scope for intervention on the areas that are urgent and necessary for providing effective legal aid. For example, a helpless and discarded woman by her husband who needs to undergo for alimony and partition before a court for years. During that time she encounters many difficulties including financial difficulties. The project cannot provide her even minimum financial support in urgent situations for example traveling to the court, food cost, treatment cost in case of physical bruise due to domestic violence etc. However, some projects are supporting the victims financially as they were devised for the purpose. But in most of the cases the project are very focused and therefore cannot expand the scope of aid.
 - **Implementation Problems:** Many civil society organizations are populists. They expose themselves in media and to other agencies especially to donors by projecting petty works as big achievements. They are basically for projects and earning through projects. In some cases, they have been found that they are not serious on the quality services and becoming part for helping implementation of the decision of a court. A decision even in favor of a victim without implementation cannot bring expected results. So in some cases, the half-way involvement of the NGOs is another serious drawback of the legal aid provided by them. The service they provide is rather quantitative than qualitative. As one of the respondents says that they are very much concerned about increasing the number of the cases to show the donors rather than providing sincere legal aid to the targeted group.
 - **Negative public perception:** To certain extent there is negative public perception to the NGOs. They view the NGOs as that they are the one who systematically deprive the targeted groups and get benefit in name of the targeted groups. People say that the lawyers have been benefited by the legal aid instead the poor, marginalized and disenfranchised groups. As one respondent says that true beneficiaries of the legal aid provided by the civil society organizations are the legal aid lawyers themselves.
-

Section 7: Possible Future Funding Sources of Legal Aid in Nepal

7.1 Funding Sources of Legal Aid in Nepal

Currently the legal aid in Nepal is supported by two major funding sources, that follow:

- By His Majesty's Government, and
- By Donors (Development Partners).

His Majesty's Government funds legal aid in two ways: to the Judiciary and to the Central Legal Aid Committee. The Judiciary has appointed 93 stipendiary lawyers in different courts as follows:

SN	Courts and number of the courts	Number of Stipendiary Lawyers
1	Supreme Court (1)	2
2	Appellate Courts (16)	16
3	District Courts (75)	75
Total		93

Each stipendiary lawyer is paid 2000.00 NRs per month. The total budget accounts 22,32,000.00 NRs, which is allocated in name of Judiciary by His Majesty's Government each year.

Similarly, His Majesty's Government Ministry of Law Justice and Parliamentary Affairs each year allocates budget for implementation of the Legal Aid Act, 1997 in name of the Legal Aid Fund created under the Act. Currently the Act is enforced in thirty three districts and in near future going to be enforced ten more districts. The budget allocated for implementation of the Act in the F/Y 2004-5 is almost about 14,00,000.00 NRs.

The Legal Aid Fund has a statutory backup and created by the Act as mentioned before in which fund will be accounted from following sources:

- His Majesty's Government
- Donation and contribution from any person, association or organization, and
- Any other sources.

Till now, the Fund is accounted only from the source of His Majesty's Government.

Developmental partners are the most important funding sources for legal aid in Nepal. All the projects in the country are run in the supports of the donors. Norwegian Bar Association is the pioneer funding partner in this respect. It is funding for legal aid since two decades. Similarly, there are other developmental partners such as USAID, EU, UNDP and DANIDA funding legal aid in Nepal.

7.2 Possible Future Funding Sources of Legal Aid in Nepal

The current trend of funding seems the only possible future funding source for legal aid in Nepal. The funding by His Majesty's Government is very nominal and thus only ceremonial. However, the government is responsible to implement the Directive Principle of the Constitution that provides responsibility to the government to provide legal aid in the country. In this context, the government is a permanent and sustainable source of legal aid in Nepal. The government may contribute the Fund in a substantial way through employing revenue as a tool for raising the sources for legal aid. In the present situation of political crisis and conflict, it seems that the government has not much priority to legal aid. Indeed, public opinion also has not been built for pressurizing the government to contribute the Legal Aid Fund and the Judiciary's substantially.

In this background, the donors seem most important funding source for legal aid in Nepal. However, donors' priorities frequently change. Moreover, legal aid is not the prioritized area of most of the donors. It is a cross-cutting agenda and supplementary one for them. So the question of sustainability of the legal aid through the funding of the donors is over there.

The Bar is expected to have its own independent fund for legal aid but the Bar has no program and planning in this regard. Bar can create fund for legal aid to be generated from the contribution of its members, specifically for legal aid. But the Bar has also been a donor dependent organization so far.

The NGOs seem most vulnerable institutions as they don't have programs and capacity for self-sufficiency, continuity and sustainability for legal aid.

On this backdrop, it can be concluded that the government and the development partners are the only viable future funding sources for legal aid in Nepal.



Section 8: Recipients' Perspective on Legal Aid

8.1 Lack of Information about Legal Aid

One of the most acute problems of the existing legal aid that surfaced during this study is the underused state of the service. Among the various dynamisms of this underused state of legal aid is the lack of information about the existence of legal aid in the targeted groups. The illiterate and poor people are not aware about the legal for access to justice when their rights are violated. During the study it was found that most of the clients using legal aid in criminal charges were using the service in the Appellate Court. The reason for not using the legal aid in the District Court is due to the lack of the information about the existence of the legal aid. The lawyers do not let the clients know about the legal aid in the beginning of the case because of their own interests. So in the District Courts the client uses the service of the private lawyers due to the ignorance about the legal aid. The private lawyers get as much money as possible with the client and when the client is unable to pay their fee, only then they inform him/her about the legal aid. Even if the lawyer does not inform the client about it, he/she knows about the legal aid after spending a lot of money and time in the case by other sources such as the court officials, or fellow litigants etc.

8.2 Half-way Legal Aid

Because of the ignorance of the client about the legal aid most of the needy people get legal aid either in the middle of the case or even in the last stage. If they had knew about it, they would seek the legal aid in the beginning of the case.

8.3 Questions on Credibility and Quality

During the study it was found that people generally think that the legal aid has no credibility and quality. Generally, it is true also. However, it depends on the quality of the lawyers involved in legal aid. If the lawyer is good the service is good. If the lawyer does not provide service the quality of the legal aid becomes poorer. It is found in Banke District that within two years the Women's Cell provided legal aid in 20 cases in which the decision went in favor of the legal aid recipients in sixteen cases. In the same district the success rate in the cases where legal aid was provided by the DLAC was also quite impressive.

8.4 Expectation of the Recipient

The recipient expect that the legal aid be expanded from court room legal aid to legal literacy, counseling, pre-trial briefing, awareness campaign, training to paralegal personals etc. They demand for robust programs of preventive legal aid having reach up to the grass root level so that the targeted groups become informed and aware about the legal aid in place and could utilize it. Prisoners also expect legal awareness programs about legal aid in place. Because, in most of the cases, the prisoners getting information about legal aid by fellow prisoners.

As earlier mentioned the existing legal aid is mostly limited to the court representation and counseling in which the client gets the service of the lawyers free of cost. But the cost of litigation is much higher than the lawyer's fee. The cost of the court fee, transportation and food cost of the litigants and the witness is huge for most of the people. Some of these costs are covered in the legal aid provided by the NGOs, Bar and the District Legal aid Committee, but the legal aid provided by the court does not even touch these issues. Until such costs are


covered in legal aid, this service will not be properly used by poor and disenfranchised people even after becoming informed about the legal aid in place.

8.5 Client-Lawyer Relation

Lack of client-lawyer interaction and meeting is another acute problem in legal aid especially in criminal cases. It was found more severely acute in Appellate Courts where the accused was in District Prison and the case was in Appellate Court. The legal aid lawyer does not know about the client and vice versa. The prisoners remain uninformed for long time about their case. In many cases, they know the result of the case when the decision of the case notified to the jailor by the court. The legal aid recipient, especially the prisoners are worried about this gap on client-lawyer relation.

8.6 Cliental Dissatisfaction

Lack of integrity of the legal aid lawyers is one of the major reasons of client's dissatisfaction. During the study the legal aid recipient said that the legal aid lawyers ask money to them showing various reasons. During the interactions with the clients and other stakeholders it was also learnt that sometimes the lawyers forward their own clients to legal aid providers, especially to the DLAC and get money from the client as well as the DLAC. In Rajbiraj prison it is found that the DLAC assigned Hem Narayan Chaudhari as a legal aid lawyer, but he also demanded and received money from all the clients. Moreover he did not provide satisfactory service. Such activities of lawyers involved in legal aid has provoked dissatisfaction to the clients about the legal aid in one hand and on the other tarnished the professional decorum of the lawyers.



Section 9: Public Defender System

9.1 Nature of the Public Defender System

To provide justice to the seekers is one of the major responsibilities of any modern legal system and the state. When the litigants cannot hire efficient lawyers for defending their case before a court only the able and rich become defended by efficient lawyers and justice may become lopsided. The litigants (justice seekers) are also competitors before the court for rights and when there is no level playing field between the competitors, fairness may loose in the process of competition for rights. Therefore, it is also the duty of the state to create an environment of fairness through providing efficient lawyers for defending the case before a court on behalf of those who are not able to defend their case by hiring an efficient lawyer. Defending a case by public fund for those who are not otherwise able to defend a case is generally known as a public defender system.

Once Justice Hugo Black remarked the rationale of public defender system saying that, "There can be no equal justice when the kind of trial a man gets depends on the amount of money he has."²⁰

Efficiency and easy access are two important components of the public defender system. It is often said that bad lawyering and lack of quality defense is the elephant in the middle of every court room. Therefore, only defending a case is not enough. The defense needs to be of a quality one. Quality defense requires strong institutional structure, efficient lawyers working as public defender, regular training to the lawyers, strong monitoring and strategic planning. Easy access to the public defender system is another important precondition for meaningful application of the public defender system. Further the public defense needs to be appropriately structured and funded, and operating with effective standards.

The urgency of public defender system is more critical in the cases in which one of the parties is defended by the government or government itself becomes a party of a case. In this context, in some countries, such as USA, Canada and UK the public defender provide legal representation on behalf of the indigent people accused of or convicted of a crime.

However, the scope of public defender system depends on the need of the domestic legal system and therefore it is not necessary to limit to the criminal cases alone. It can be equally applicable in the civil cases also. Because, fairness and level playing field are equally urgent preconditions for civil cases too.

9.2 Public Defender System in Nepal

Public defender system is an integral part of legal aid in different legal systems. In Nepal the public fund is used to provide legal aid to the poor, marginalized, disenfranchised, and women and children. The legal aid by the Court and legal aid under the Legal Aid Act, 1997 partly represent the concept of public defender system as both of them are funded by public fund.

But due to lack of an independent institution, competent and efficient service delivery system and permanent staff the legal aid by the Court and under the Legal Aid Act are far from sufficient to represent the characteristics of public defender system.

As the poor, disenfranchised, marginalized groups, women and minors and the prisoners are not sufficiently and satisfactorily getting legal aid service in the country due to lack of coordination between different legal aid providers, lack of information about legal aid in place and lack of quality services, the move toward public

20 *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

defender system can be a tool to address these problems and promote the objectives of legal aid in the country.

9.3 Possible Options for Public Defender System in Nepal

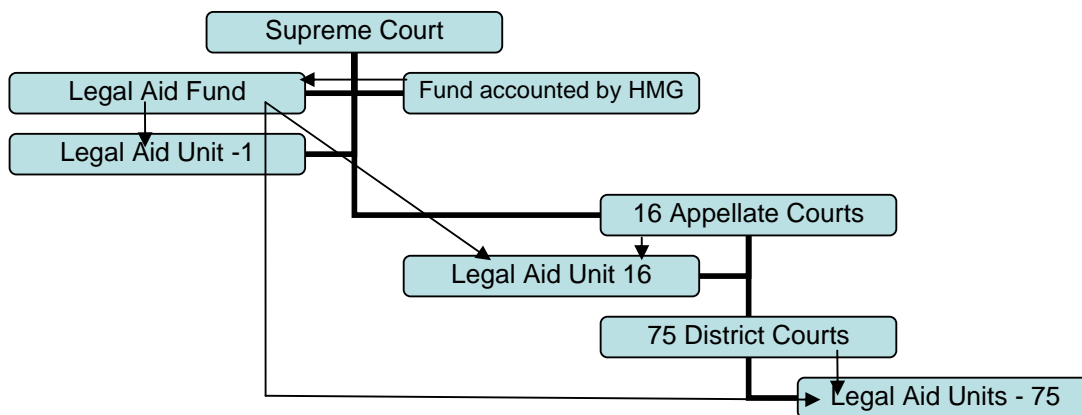
There can be different options for a public defender system in Nepal. However, hereby, following three options are observed as more practical and palatable. They are:

i. Improvement in the existing system

Currently the Courts and the Bar under the Legal Aid Act provide legal aid funded by public fund. His Majesty's Government allocates fund both to the court and the Center Legal Aid Committee (CLAC) under the Legal Aid Act for the same purpose. The only practical difference is that the courts are providing legal aid in all courts in the country, whereas the Legal Aid Act is enforced only in thirty three districts and therefore legal aid is provided only on those thirty three districts.

Both the courts and Center Legal Aid Committee are getting but insufficient funds for providing legal aid. The fund is divided for the same purpose and the efforts are scattered.

Therefore, one option for public defender system can be to merge both the legal aid by the courts and the CLAC and form a strong legal aid unit under the different courts with permanent legal aid lawyers having equivalent position to the government lawyer and providing similar facilities including salary, required staffs and logistics.

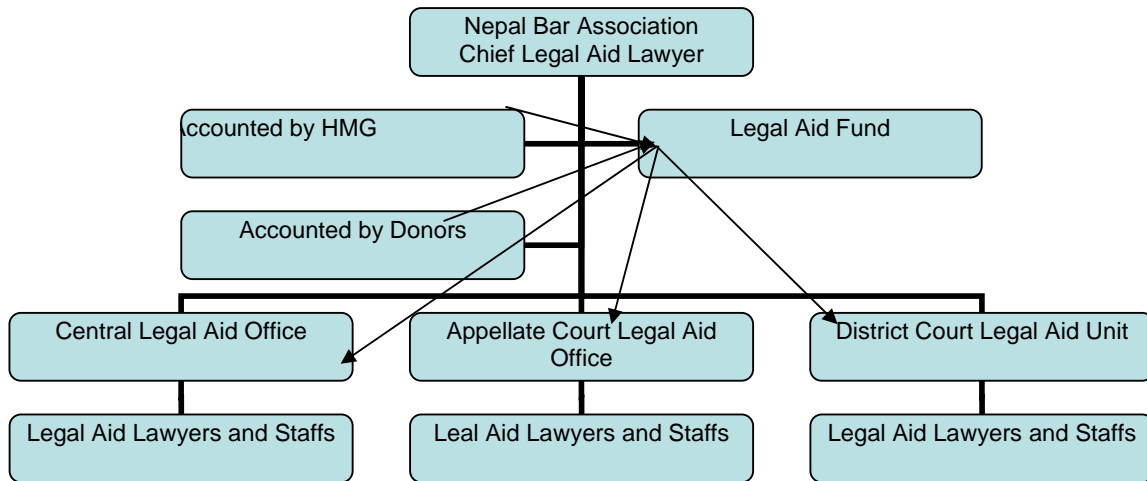


Basically, this option is a slight improvement in the existing systems and still does not incorporate the major characteristics of public defender system. But it will be a move toward the public defender system. Though, it will have some serious limitations. For example, the public defender lawyer will be either the officer of the court or the officer of the government and the commonly prevailing shortcomings of Nepalese bureaucracy may also be symptomatic in this structure. Further, when there will be equally logical grounds for getting legal aid by both of the parties of the litigation, practically only one party can get legal aid and another will not have defending lawyer under this structure.

ii. Harmonization with the Bar

Another option for improvement in the existing legal aid in the country and way forward to the public defender system is to merge between the legal aid by the court and the CLAC authorizing the Bar to carry out legal aid in the country. This will help to club the scattered fund and also allows having basket fund including with from the donor agencies. Further, the Bar as an independent institution will disallow bureaucratic shortcomings and therefore it can work as a professional organization in providing legal aid.

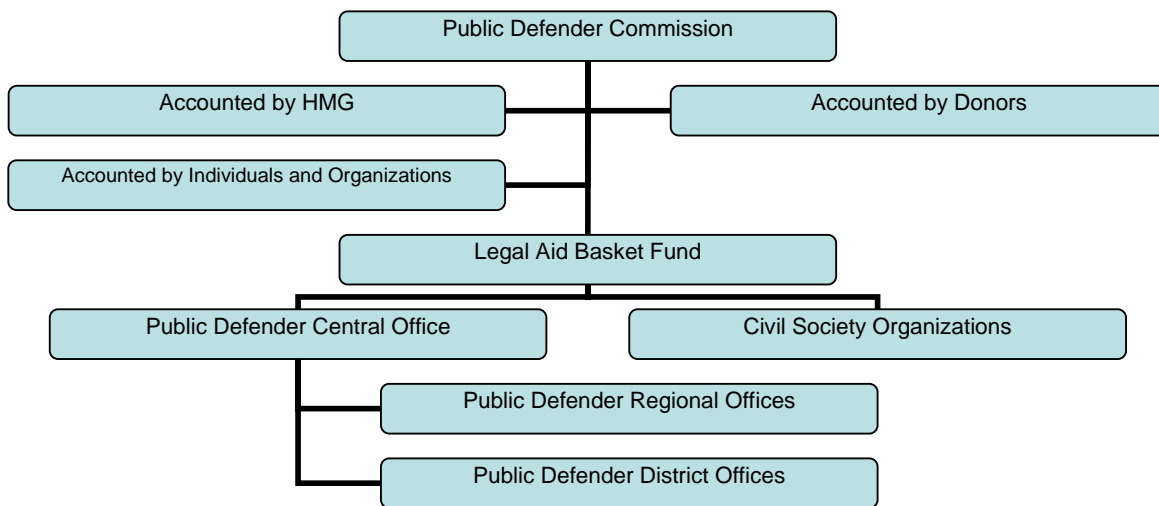
The Bar will have its own permanent legal aid body and permanent lawyers and staffs for providing legal aid in the country. As a professional body it will have more commitments for monitoring, assessing, improving the legal aid and also take necessary decisions promptly as per the necessity.



This option has also some limitations. First, the Bar has not its offices in all districts and therefore it cannot provide legal aid in all the districts. Further, the Bar is professional organization but it cannot be denied that it does not have any political positioning and therefore sometime the political prejudices may affect legal aid.

iii. Public Defender Commission

An independent Public Defender Commission parallel to the Attorney General's Office with its own institutional system, permanent lawyers, staffs and working standards may provide an effective, coordinated and result oriented legal aid in the country. As the fund will be collected in a basket, the Commission will become able to have a rational choice on the distribution of the fund to its own offices as well as different civil society organizations for providing legal aid.



The Commission will be independent and shall appoint its executive head who will be responsible for carrying out day to day works. The Commission will have its own Central, Regional and District Offices to provide legal aid throughout the country. Further, it will have its own rules and standards based on that the public defender lawyers and the civil society organizations will be required to provide legal aid.

The role of the civil society organizations cannot be simply substituted for public defender system but they can work to complement each other. In many instances, both of the parties of a case may require legal aid and the civil society organizations compliment the need. Further, the civil society organizations can easily enter into new issues and provide legal services in a wider scale. Further, the civil society organizations are always dynamic by their nature and this dynamism when coordinated by the Public Defender Commission will bring potential results and learning for the benefit of legal aid in the country.

The basket fund allows all the key contributors to account the fund. It will encourage the government, donor agencies as well as the Bar and interested individuals to account in the basket fund so that the legal aid system in the country would not confront with financial crisis.

However, these proposed options need to undergo through intensive policy level dialogues and discussions between the key stakeholders. At the end of the day, any of the option, which will be preferable needs to be supported by legal regulatory mechanism and an appropriate legal regulatory mechanism, needs to be devised in this regard.

In short, in one or another way it is advisable to move forward to public defender system for making legal aid effective in the country. In this context, consultations and discussions with the key stakeholders and lobbying for an appropriate legal regulatory mechanism need to be taken as priority future agendas.



Section 10: Conclusion and Recommendations

10.1 Conclusion

Legal aid in Nepal started in 1958 at the initiation of the Supreme Court of Nepal. Once there was only the Supreme Court providing legal aid but today there are many actors along with the Supreme Court who provide legal aid to the poor, marginalized, women, children and disenfranchised groups of people in the country.

The Nepalese legal system in different ways has guaranteed and protected the rights of the people. It has also provided right to defense as fundamental right, especially in the criminal cases. But the poor, marginalized, disenfranchised and women in many instances are still unable to have access before the judiciary and in rare cases, if they have access they have failed to defend their case by hiring an efficient lawyer.

Today, the majority of the targeted groups are unable to use the legal aid system in place in the country. Multiple factors have caused this situation. The targeted groups are not aware about the legal aid in the country. They also don't have information about who are providing legal aid in their areas. Further, they are unaware about the process of obtaining legal aid. These have vitiated the chances of proper utilization of the legal aid by the targeted groups. Further, coordination between and among the legal aid providers in the country is very weak and therefore their efforts are hardly consolidated. The legal aid in place is moreover formal rather than potential due to many constrains including the financial constrains.

These shortcomings in the legal aid strongly justify the need for a strong legal aid system in the country. A strong, coordinated and efficient legal aid system in the country can be expected through introducing a Public Defender System. As discussed in section 9, the improvement or harmonization of the legal aid in the country need to be urgently initiated as a move forward to the Public Defender System.

However, it is necessary to have a wide policy level debates and discussions on the identification of the scope and institutional mechanism for the Public Defender system. An independent institutional mechanism for the Public Defender system requires to be legitimized through necessary legal regulatory mechanism.

10.2 Recommendations

1. On Public Defender System

The Constitution of the Kingdom of Nepal provides provision on legal aid in the Directive Principles and Policies of the State. In a country, where about 35 percent people live under extreme poverty and about 70 percent of the people are poor, the constitutional guarantee of legal aid under directive principle needs to be meaningfully realized in practice for which the Public Defender System can be instrumental.

Public defender system is an integral part of legal aid system in different legal systems. In Nepal the public fund is used to provide legal aid to the poor, marginalized, disenfranchised, and women and children. The legal aid by the Court and legal aid under the Legal Aid Act, 1997 partly represent the concept of public defender system. But due to lack of an independent institution, competent and efficient service delivery system and permanent staff the legal aid by the Court and under the Legal Aid Act are far from sufficient to represent the characteristics of public defender system.

In this context, as discussed in section 9 above, it is advisable to move toward the Public Defender Commission.

2. On the Legal Aid Act, 1997 and Legal Aid Rules, 1998 (DLAC)

The Legal Aid Act, 1997 is the single most legislative instrument to provide legal aid in the country from the state. Nepal Bar Association had played an important role for the enactment of the Act and therefore the Bar has been entrusted as Secretariat of the Central and District Legal Aid Committee instituted by the Act. The Bar has potential roles in the implementation of the Act in partnership with the government. However, the Act itself has incurred with some serious weaknesses. Until and unless the weaknesses are removed through amendment of the Act, inroads in the effective legal aid under the Act will continue. In this context, following recommendations are made hereunder:

- It is advisable that the Legal Aid Act, would adopt the method of harmonization as discussed in section 9 above.
- The Legal Aid Act, 1997 needs to be enforced throughout the country sooner than latter.
- The definition of the phrase 'Legal Aid' in section 2 (A) of the Act is very narrow and parochial as it is limited to provide legal aid only to the indigent people. It has not included women, children, disenfranchised and marginalized groups into the ambit of its definition for providing legal aid. Therefore, the section 2 (A) needs to be thoroughly revised and its scope needs to be expanded.
- Further, section 2 (A) does not incorporate court fee and other necessary expenses related to the case in the definition of legal aid, which needs to be incorporated. Therefore, section 2 (A) needs to be revised from this perspective as well.
- The provision of section 4 of the Act that provides on reimbursement of the expenses incurred by the Legal Aid Committee while providing legal aid to a party in a case when the party gets any property or financial benefits as a result of the case needs to be removed.
- The composition of the District Legal Aid Committee under section 7 of the Act is less practical. The public prosecutor is the Chairman of the Committee, who in most of the criminal cases represents the government before a court against the accused who is provided legal aid by the Committee itself.
- The provision of Rule 3 (2) of the Legal Aid Rules, 1998 makes mandatory provision for getting recommendation of the VDC or Municipality for getting legal aid from the District Legal Aid Committee. Two reasons have been found that necessitate revising the provision. First, due to the local political biasness many indigent people have experienced difficulties to get such recommendation. Second, presently, there are no local bodies in existence for giving such recommendation. Therefore, it is found that a practical, easy and unbiased system needs to be built.
- Rule 6 that provides the ceiling of the annual income of 40,000.00 NRs is quite unpractical. As discussed above, when a member of a family earns about 24.00 NRs. a day will be unqualified for getting legal aid, which is a farce to the basic rationales of the legal aid.

3. On Legal Aid by the Court

The legal aid by the court is still weak and inadequate despite the fact that the Supreme Court is the pioneer institution for introducing and practicing legal aid in the country. There is only one provision in the Supreme Court Rules and

similar provisions in the Appellate Court Rules and District Court Rules on legal aid.

Following are the recommendations for improving the legal aid by the Judiciary:

- Considering the possibility of effectiveness and wider coverage of the legal aid by the Judiciary, the legal aid provided by the different courts needs to be developed as a well built system in the country, for which a wider consultation and research need to be carried out for necessary modification in the respective Rules.
- The legal aid section is the backbone of the legal aid provided by the courts. However, in almost all of the courts, the legal aid section is merely in name and almost non-existent. It is not supported with necessary infrastructure, equipments and efficient human resources. Therefore, as discussed in section 9, it is advisable to improve the legal aid through merging the legal aid under the Legal Aid Act , 1997 and by the courts.
- The stipendiary lawyers are paid extremely low salary. For the motivation of the stipendiary lawyer the amount of 2000.00 NRs per month is quite insufficient. Further, senior and experienced lawyers have not been found interested to work as stipendiary lawyer. In most of the cases, beginner, inexperienced and inefficient lawyers have been working as stipendiary lawyers. Therefore, for promoting the cause of legal aid and obtaining its objectives, the stipendiary lawyer needs to be made at least as equal to section officer and also they need to be paid accordingly.
- The stipendiary needs to be informed well in advance about the case in which he / she is supposed to provide legal aid. So that he/she gets proper time for preparing the case. Further, the stipendiary lawyer needs to be provided all necessary documents relating to the case in time and free of cost from the court.
- The targeted groups are not informed yet about the legal aid by the court. The courts have not yet employed any communication tools for informing the targeted groups about legal aid. Still they have not developed a public charter relating to legal aid. In this context, it seems urgent that the courts communicate about the legal aid through various media including a public charter to inform the targeted groups about the legal aid they provide.
- The legal aid provided by the stipendiary lawyers need to be properly monitored and evaluated by the courts for learning and future improvement.

4. On Legal Aid by the Civil Society Organizations

- The legal aid provided by the civil society organizations is growing day by day and it is gaining popularity among the target groups. However because of the sense of rivalry and unfair competition among various such organizations there seems an imminent threat that their credibility be questioned. So a code of conduct seems necessary to address such problems and to enhance the credibility and efficiency of these organizations. For effective legal aid by the Civil Society, the Public Defender Commission would be catalytic as discussed in section 9 above.
- As there seems to be a lack of proper and desirable cooperation and coordination among various civil society organizations providing legal aid, the credibility of their service and faith among the target group is questioned. So there needs to be a proper coordination mechanism among them.
- The civil society movement is not for personal benefit rather it is for community. The state of affair of these organizations is of the interest of the common people. But in practice the service these organizations provide, their knowledge base and the funding source seems to be not transparent. These organizations are quite reluctant of providing any information. So transparency measures needs to be in place.

- Legal aid provider NGOs International NGOs needs to provide client centric service. For this type of service they need to expend their presence up to the remote areas of the country as well.
- Civil society organizations are expected to reach to the target groups with various programs including awareness campaign and legal literacy.
- Civil society organizations need to change their attitude to increase the number of cases to providing legal aid. Rather they should concentrate on providing qualitative legal aid service.
- Long term legal aid projects are more meaningful than the short term projects that are currently in practice.

5. On Legal Aid by Nepal Bar Association

- Nepal Bar is expected to play a pro active role in the field of legal aid. In this context, as discussed above in section 9, the harmonization system would be best mechanism for further enhancement of the significant role of Bar in legal aid.
- Nepal Bar has ability to generate fund from its own source to make the legal aid sustainable. Therefore, it is advisable that Nepal Bar could take some concrete measures to contribute sustainability of the legal aid through also involving in fund raising activity.
- The lawyers providing legal aid through the Bar need to follow the code of conduct of the lawyers, maintain professional decorum and honesty so that the Bar become an important agency for providing legal aid to the indigent people in the country
- Similarly, the Bar is expected to have a strong and efficient monitoring mechanism to learn from the past experiences and build a robust future intervention.
- Nepal Bar still needs to reach to the target groups with various programs including awareness campaign and legal literacy.
- Further, the Bar is expected to help implement the Legal Aid Act efficiently throughout the country in coordination with the government.

6. General Recommendations

- For an appropriate mechanism, institutional structure and scope of the Public Defender System in Nepal an in-depth and specific study needs to be carried out.
- Similarly, a comparative study on Public Defender System needs to be carried out to be familiar with the legal regulatory back up, experiences, institutional mechanism, nature and scope, performances and other related matters of legal aid under the Public Defender System in different countries.
- Similarly, a study needs to be carried out on finding an appropriate legal regulatory mechanism including review and analysis of the existing laws of Nepal relating to legal aid.
- There needs to be a proper mechanism for coordination among all legal aid providers such as the Bar, the Court, and the civil society organization.
- Preventive legal aid needs to go hand in hand with the remedial legal aid so that both of them complement each other.
- The legal aid lawyers are expected to be properly trained about providing qualitative and efficient legal aid. They need to be further sensitized about the interests of the target groups.

- Communication between legal aid lawyers and the clients needs to be improved. The clients should be well informed by the lawyer and the legal aid providing institution about the progress of the case.
- Training to legal aid provider lawyers and paralegal personnel will enhance effectiveness of legal aid and expansion of the service from core to periphery.
- Paralegal personnel needs to be developed as integral part of legal aid at the community level, who in real terms can provide services at the spot.

In a short, legal aid in Nepal has not developed as a system yet. The future interventions need to be focused to help legal aid develop as a sustainable system in Nepal through introducing and developing Public Defender System.