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**REPORT**

**OF**

**INTERNAL EVALUATION OF**

**PRISONERS LEGAL AID PROGRAM**

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## **ACKNOWLEDGEMENTS**

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Legal aid is one of the effective tools to achieve access to justice. However, poor people do not have access to the tools, which they need to protect and promote their rights and interests. The state has not yet realized that the legal aid to the detainees is the right to be respected, protected and fulfilled. The state has failed to respect the right to legal representation especially during pre-trial stage. In this situation, the role of NGOs and the civil societies, enhancing the concept of legal aid, is perceived as most significant. CeLRRd claims for pioneering the concept of legal aid as fundamental human rights.

CeLRRd has been consistently working in this field for the last six years and has been able to set up a legal aid mechanism in a larger part of the country. Currently, under the support of Embassy of Denmark, CeLRRd has been undertaking a project regarding legal aid for prisoners and establishment of the national legal aid network. The development objective of the project is to enhance the condition of human rights protection by strengthening the standard of the criminal justice system in Nepal through providing indigent prisoners' and prisoners of conscience with free access to highly professional legal defense or representation in criminal trials and appellate reviews. The program activities are being currently implemented through three working centres; Biratnagar Center in the east, Nepalgunj Center in the west, and Kathmandu Center in the central development region, the latter being taken over by Kathmandu School of Law.

The present report is an internal evaluation report which is carried out by CeLRRd as a part of the preparation for external evaluation of the project. This report provides an account and analysis of the overall activities of CeLRRd under this

project since its launching. The evaluation has been useful to assess the relevance, efficiency and effectiveness of the program. It has underlined areas for more effective implementation of the program and improvement of organization's goodwill among the concerned stakeholders. The implementations of the recommendations made by the report will definitely bring positive results to meet the priorities of the project, and definitely the project management will consider it seriously. However, some of the recommendations are difficult to address under the existing project due to resource constraints. Overall, the report has been helpful in outlining the priorities of the program to obtain optimum outputs from the project activities.

At this juncture, I would like to express my sincere thanks to the entire evaluation team for their encouraging and overwhelming performance to prepare this report. I am especially grateful to all the respondents and concerned stakeholders for their enthusiastic support to prepare the report. The entire project team and others who were directly and indirectly involved in the report preparation also deserve appreciation and thanks for their efforts.

**Geeta Pathak Sangroula**

Program Coordinator

## **ABBREVIATION AND ACRONYMS**

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<b>AF</b>	:	Advocacy Forum
<b>AJAR</b>	:	Access to Justice and Advocacy of Rights
<b>CD</b>	:	Compact Disk
<b>CDO</b>	:	Chief District Officer
<b>CeLRRd</b>	:	Center for Legal Research and Resource Development
<b>CJS</b>	:	Criminal Justice System
<b>CLRC</b>	:	Community Legal Research Center
<b>Ctz</b>	:	Citizenship
<b>CSSAT</b>	:	Community Surveillance System against Trafficking
<b>CVICT</b>	:	Center for Victims of Torture
<b>DANIDA</b>	:	Danish International Development Assistance
<b>DCHR</b>	:	Danish Center for Human Rights
<b>DIHR</b>	:	Danish Institute for Human Rights
<b>DSP</b>	:	District Superintendent of Police
<b>EoD</b>	:	Embassy of Denmark
<b>FLA</b>	:	Free Legal Aid
<b>GDP</b>	:	Gross Domestic Product
<b>HMG</b>	:	His Majesty's Government
<b>HUGOU</b>	:	Human Rights and Good Governance Advisory Unit

<b>ILRR</b>	:	Institute for Legal Research and Resources
<b>INGO</b>	:	International Non-Governmental Organization
<b>KSL</b>	:	Kathmandu School of Law
<b>LA</b>	:	Legal Aid
<b>LACC</b>	:	Legal Aid and Consultancy Center
<b>MC</b>	:	Municipal Corporation
<b>NaLAN</b>	:	National Legal Aid Network
<b>NBA</b>	:	Nepal Bar Association
<b>NGO</b>	:	Non – Governmental Organization
<b>NHRC</b>	:	National Human Rights Commission
<b>PLA</b>	:	Prisoners Legal Aid
<b>SP</b>	:	Superintendent of Police
<b>SWC</b>	:	Social Welfare Council
<b>TADA</b>	:	Terrorist and Destructive Act
<b>TADO</b>	:	Terrorist and Destructive Ordinance
<b>ToR</b>	:	Terms of Reference
<b>VDC</b>	:	Village Development Committee

## **EVALUATION FACT SHEET**

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- Title** : Internal Evaluation of Prisoners' Legal Aid Program of CeLRRd
- Purpose** : Overall Evaluation of the PLA project of CeLRRd and Kathmandu School of Law
- Duration** : Two Months
- Objectives** :
- a) To independently assess the achievements of the project objectives with the intervention made during 15 May to December 2005;
  - b) To overview the continuity of the previous Prisoner's Legal Aid program;
  - c) To document the lesson generated and best practices demonstrated while providing free legal services to the prisoners;
  - d) To document problem and overlapping in the area of legal aid and nationwide Prisoners Legal Aid Network;
  - e) To collect feedback from the legal aid lawyers, including paralegals;

f) To recommend what ought to be initiated for the proper implementation of the project in the days to come.

**Project Name** : Legal Aid for Prisoners and Establishment of the National Legal Aid Network

**Project location** : Kathmandu Valley (Lalitpur, Kathmandu, Bhaktapur Districts), Biratnagar and Nepalgunj

**Organization(s)** : Center for Legal Research and Resource Development (CeLRRd) and Kathmandu School of Law (KSL)



## **TABLE OF CONTENTS**

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### **CHAPTER 1**

1.	INTRODUCTION.....	1
1.1.	Introduction of Program Partners .....	3

### **CHAPTER II**

2.	OVERVIEW OF THE PROJECT.....	7
2.1.	The Previous Project .....	8
2.2.	Continuity of the Project .....	10
2.3.	Current Project.....	11
2.3.1.	The Service Providing Centers .....	12
2.3.2.	Statement of Problem .....	13
2.3.3.	Objectives of the Project .....	14
2.3.3.1.	Development Objective .....	14
2.3.3.2.	Immediate Objective .....	15

### **CHAPTER III**

3.	ORGANIZATIONAL ASSESSMENT OF CeLRRd.....	17
3.1.	Goal, Aims and Objectives .....	17
3.2.	Organizational Structure .....	18
3.3.	Membership of CeLRRd.....	21
3.4.	Competency Analysis.....	21
3.5.	Human Resource Strength .....	22

3.6.	Equipment and Offices .....	22
3.7.	Other Strength (e.g. volunteers, associated organizations, networks) .....	23

#### **CHAPTER IV**

4.	PHYSICAL OBSERVATION OF THE PROGRAM .....	27
4.1.	Observation of Prisons and Prisoners of Nepal.....	28
4.1.1.	Physical Observation of Morang Prison.....	30
4.1.2.	Physical Observation of Banke Prison .....	31
4.1.3.	Physical Observation of Kathmandu Valley Prisons .....	33

#### **CHAPTER V**

5.	DESCRIPTION OF THE PRISONER’S LEGAL AID PROGRAM .....	35
5.1.	Overview .....	35
5.2.	Program Objectives .....	36
5.3.	Implementation .....	37
5.3.1.	Internal Policy Development Activities .....	37
5.3.2.	The Legal Aid Lawyers .....	37
5.3.3.	Legal Aid Research.....	38

#### **CHAPTER VI**

6.	OBSERVATION OF LEGAL AID PROMOTION ACTIVITIES .....	39
6.1.	Development of Comprehensive Legal Aid Manual .....	40
6.2.	Establishment of Nationwide Legal Aid Network (NaLAN) and its Progress .....	42

6.3.	Website Development and Implementation of the Prisoner's Legal Aid Project .....	48
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## **CHAPTER VII**

7.	EVALUATION OF FINDINGS .....	51
7.1.	Issues of Rationale .....	51
7.2.	Physical Observation of PLA Centers .....	52
7.2.1.	Physical Observation of CeLRRd Regional Office: Biratnagar .....	52
7.2.1.1.	Office Observation .....	52
7.2.1.2.	Interview with PLA Coordinator .....	52
7.2.1.3.	Interview with Independent Respondents .....	54
7.2.2.	Physical Observation of CeLRRd, Regional Office, Nepalgunj .....	65
7.2.2.1.	Office Observation.....	65
7.2.2.2.	Interview with PLA Coordinator .....	65
7.2.2.3.	Interview with Independent Respondents .....	67
7.2.3.	Physical Observation of KSL, Kathmandu Center .....	70
7.2.3.1.	Office Observation.....	70
7.2.3.2.	Interview with PLA Personell.....	71
7.2.3.3.	Interview with Independent Stakeholders .....	77
7.3.	Summary of Key Findings .....	80
7.4.	Judicial Trend Analysis Made by Legal Aid Lawyers.....	82

## **CHAPTER VIII**

8.	BEST PRACTICES AND LESSONS GENERATED .....	85
8.1.	Best Practices (Quality Analysis).....	85
8.2.	Lesson Generated .....	87

## **CHAPTER IX**

9.	Problems and Challenges Ahead.....	89
9.1.	Problem of Overlapping.....	89
9.2.	Challenges .....	92
9.3.	Recommendations .....	94

## **ANNEXES**

Annex A	: Evaluation Matrix .....	101
Annex B	: Nagarkot Declaration on National Legal Aid Network .....	113
Annex C	: NaLAN Executive Committee.....	115
Annex D	: Case Memorandum.....	117
Annex E	: Prisoners Memorandum .....	129
Annex F	: Prisoner's Case Profile.....	133

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## 1. INTRODUCTION

Legal aid is one of the effective tools to achieve access to justice. However, poor people do not have access to the tools, which they need to protect and promote their rights and interests. This unaccessibility, throughout the history, has been a major factor adversely affecting the affordable professional legal services to a significant segment of the population.

Right to criminal justice is guaranteed as fundamental right under Article 14 of the Constitution of Nepal. State is also obliged under Article 26 (14) of the Directive Principles of the State enshrined in the same Constitution, to pursue the policy ensuring free legal aid to the marginalized or incapable parties by adopting the suitable legislation or scheme. Targeting this end, the Legal Aid Act and its Regulation have been enacted in 1998 and 2000 respectively.

Right to legal representation is also a human right guaranteed by Article 14 (9) of the ICCPR. This right has further been interpreted by the Human Rights Committee stating “right of the accused to be present during the determination of any charge against him ...to be assisted by counsel of his own choosing, or what arrangements are made *if a person does not have sufficient means to pay for legal*

*assistance*<sup>1</sup>. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defense is all the more necessary."

Being a party to the ICCPR<sup>2</sup>, Nepal is legally obliged to ensure the right to legal representation unconditionally. Despite the international commitment, constitutional and other legal framework and the case law observed by the Supreme Court of Nepal ensuring lawyer's representation in the criminal charges<sup>3</sup>, the right is far from being achieved. The state mechanism in Nepal has repeatedly failed to ensure the right to legal representation, including legal aid. As a result, a large number of criminal cases go unrepresented.

The State has not yet internalized the concept of legal aid. The Legal Aid Regulation is an example of lacking conceptual clarity as that was enacted with 'selective provision' not providing legal aid for various natures of the cases. Thus, as a core concern of public interest, the discriminatory provision was challenged by CeLRRd where the Supreme Court proactively invoked the said provision unconstitutional and *inconsistent with the fair trial standards guaranteed by the international human rights*<sup>4</sup>.

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<sup>1</sup> Cited in introduction of PLA Report submitted by CeLRRd to Embassy of Denmark (hereinafter CeLRRd, Embassy Report), 2005

<sup>2</sup> Nepal has acceded the ICCPR (without any reservation) in 14 May, 1991

<sup>3</sup> See Parsuram Banjade on behalf of *Yagya Murti Banjade v. Bagmati Special Court*, NKP, 2027 ((Nepal Law Report, 1970), page 157, para 20) cited at Prisoners Legal Aid Manual (CeLRRd, 2006) at p. 12

<sup>4</sup> Advocate *Lilamani Poudel on behalf of CeLRRd v. Cabinet Secretariat*, SC Writ no. 3553/2056 (1999), decided in 2059/12/13 (27<sup>th</sup> March 2003), (see also, DIHR/ CeLRRd, Annual Report 2003)

Right to legal representation is a non-derogable right under the Constitution, even in the situation of the state of emergency<sup>5</sup>. This means that irrespective of the cases charged under the ‘Terrorism and Disruptive Activities’ either filed under previous Terrorism and Disruptive Activities Act (hereinafter referred as TADA) or the existing Ordinance (hereinafter referred as TADO) and other laws related to State or Public Securities. However, the state has not yet realized that the legal aid to the detainees is the right to be respected, protected and fulfilled. The state has failed to respect the right to legal representation especially during pre-trial stage. In this situation, the role of NGOs and the civil societies, enhancing the concept of legal aid, is perceived as most significant. CeLRRd claims for pioneering the concept of legal aid as fundamental human rights.

## **1.1. INTRODUCTION OF PROGRAM PARTNERS**

### **a. Center for Legal Research and Resource Development (CeLRRd)**

CeLRRd is a non-governmental organization founded in its present form in 1998. Earlier the organization existed in the name of Institute for Legal Research and Resources (ILRR). CeLRRd has given the continuation of work of ILRR. The organization works in the sector of law and justice in Nepal. Further, CeLRRd is actively engaged in the protection and promotion of human rights culture through advocacy and trainings to various actors involved in the administration of justice. CeLRRd believes in systematic change in society, by fostering widespread understanding of the rule of law and unrestricted access to free and fair justice.

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<sup>5</sup> See Article 115 of the Constitution of the Kingdom of Nepal, 2047 (1990)

CeLRRd is registered at the District Administration Office, Kathmandu, and is affiliated with Social Welfare Council. Apart from the areas of criminal law and justice, CeLRRd has been intervening in areas such as Prisoners Legal Aid, Juvenile Justice, Community Mediation, Anti –Trafficking to name a major few. Considering promotion of rule of law through human rights and community based legal education, CeLRRd has been instrumental in the establishment of Kathmandu School of Law, a pioneer law college of Nepal. CeLRRd and KSL have been complementing each other in various ways such as by exchanging research products and academic inputs, including clinical service etc.

With reference to the “Prisoners Legal Aid Program”, CeLRRd has set up three working centers in Biratnagar, in the east; Nepalgunj, in the west; and Kathmandu, in the central development regions. The Kathmandu center is associated with KSL and is using this program as a best practice to develop a model legal education, especially in the area of criminal law and justice, including advanced methodological teaching. The description of organization further provides the organizational assessment reported in Chapter III below.

**b) Danish Institute for Human Rights (DIHR)**

The Danish Institute for Human Rights (DIHR) is a national human rights institution in Denmark established in accordance with the UN Paris Principles. It is the institution devoted to multidisciplinary approaches towards human rights. The work of DIHR includes research, analysis, information, education, documentation and a large number of national and



international programs. Nepal is one of the countries being supported by DIHR with various programs related to human rights.

Upon invitation of The Royal Danish Embassy (currently known as Embassy of Denmark) in Kathmandu, the DIHR started its engagement in Nepal in 1996. The first DIHR-supported activities started with the then ILRR in 1997 and the focus was on an extensive analysis of the criminal justice system in Nepal. The findings of these studies paved the way for specific project activities aiming at strengthening and reforming the judicial sector in the following years. Nepal takes the position of medium priority in DIHR's international strategy.

**c) Danida HUGOU**

Danish support to human rights and good governance was initiated soon after the restoration of democracy and establishment of the interim government in Nepal in 1990. In the following years, the Danish assistance to human rights and good governance increased considerably with broadened scope and has been a priority area since 1998. The Human Rights and Good Governance Advisory Unit (DanidaHUGOU) was established in 1999 to support implementation of Danida's Human Rights and Good Governance Program Phase I with the broader objective of promoting functional democracy where human rights and equality are secured for all sections of the population in Nepal. In September 2003, DanidaHUGOU launched the Phase II of Human Rights and Good Governance Program, which will run till 2008.

The Justice Component constitutes one of the six components under Danida's Human Rights and Good Governance Program. The objective of

the Justice Component is “justice reform, prioritizing the needs of marginalized groups, implemented through improved capacity of justice agencies” The component outputs are:

- i. Communication, coordination & interaction between the justice sector agencies/non-state actors is institutionalized;
- ii. Legislation and regulatory framework affecting the administration of justice is reformed;
- iii. Effectiveness of staff, legal as well as non-legal, within justice sector is improved; and
- iv. Access to justice, through the professional courts or through informal mechanisms is improved with focus on poor and disadvantaged people.



## 2. OVERVIEW OF THE PROJECT

Since its inception, CeLRRd developed and implemented step-by-step programs as follows aiming to internalize and institutionalize the program:

SN	Program	Year	Support	Remarks
1	"Criminal Justice System in Nepal: Existing Realities and Prospective Reforms"	1997	Royal Danish Embassy	A three days workshop was held on 10-12 June, 1997
2	"Analysis and Reform of the Criminal Justice System of Nepal".	1997-1999	DCHR	Report was published in 1999 both in English and Nepali version <sup>6</sup>
3	Prisoners Legal Aid <sup>7</sup>	1999-2001	„	1st phase
4	Prisoners Legal Aid	2001-2002	„	2nd phase
5	Prisoners Legal Aid	2003-2004	„	3rd Phase Network was established in 2003

<sup>6</sup> See the study on 'Analysis and Reform of the Criminal Justice System in Nepa' thatl was conducted by ILRR/CeLRRd, 1999

<sup>7</sup> See the Progress Reports DIHR/CeLRRd, 1999-2004 respectively

6	Legal Aid for Prisoners and Establishment of the National Legal Aid Network	2005-2007	Embassy of Denmark	Continuity of the project with expansion of Network
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## 2.1. THE PREVIOUS PROJECT

As presented in the abovementioned table, the preliminary first hand observation on 'Criminal Justice System in Nepal' was carried out by Institute for Legal Research and Resources (ILRR).<sup>8</sup> A three days National Workshop on "Criminal Justice System in Nepal: Existing Realities and Prospective Reforms" held on 10-12 June, 1997, supported by the Royal Danish Embassy (Embassy of Denmark) was worth mentioning.<sup>9</sup> The participants of the workshop represented from all major components of criminal justice system, eventually, made a close observation of existing realities and prospective of reforms and revealed that most of the prisoners were young and poor, many were illiterate and a vast number were unable to obtain access to legal representation. Prison officials were not equipped to manage prisons according to international standards as training and support was rarely provided if at all. Bail was infrequently used and prison was often the first resort of the courts both before and after trial. Rehabilitation program for prisoners were not developed and post-release support was next to non-existent. On the social aspects it found that by imprisoning members of poor families - mainly the bread-winners separates families, pushes them into poverty

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<sup>8</sup> ILRR, as a non-governmental organization, was renamed as CeLRRd since 1998. The ILRR's programmes were subsequently carried out by CeLRRd.

<sup>9</sup> See generally the Report on 'National Workshop on Criminal Justice System in Nepal: Existing Realities and Prospective Reforms, 10-12 June, 1997, Published on July, 1997

cycle, and ultimately exposes their children to greater vulnerability, like trafficking, prostitution, voluntary or forced migration.

These harsh realities of the prisoners provoked CeLRRd to carry out a thorough research on “Analysis and Reform of the Criminal Justice System of Nepal”.<sup>10</sup> The research substantiated the initial findings of the preliminary observation and revealed that majority of the prisoners had never been represented in the court. Hence, large numbers of people were sentenced to prison without any kind of legal defense during the trial. The prisoners had no opportunity to obtain legal counseling before or during the interrogation, which explicitly indicates the violation of the right to fair trial.

In this hindsight, CeLRRd felt a need of tangible result-oriented intervention and it promptly acted accordingly to provide legal aid to the prisoners since 1999, creating milestone in the field of criminal justice system of Nepal. The ultimate goal of the free legal aid is to foster the human rights in the context of Criminal Justice. The project was launched with support from the Danish Center for Human Rights (DCHR) currently known as Danish Institute for Human Rights (DIHR) in between 1997 to 1999. With support from DIHR, CeLRRd conducted a nationwide survey and needs-assessment study among prisoners.

The research unveiled facts and figures regarding the criminal justice system in Nepal. Certain recommendations were made explicitly for an urgent need of launching prisoners' legal aid program. Pursuant to the recommendations, series of consultations were held between CeLRRd and DIHR (the then DCHR) wherein the legal aid project was developed for a period of two years (1999-2001) and subsequently extended for two more years.

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<sup>10</sup> See the Progress Reports DIHR/CeLRRd, 2003-2004 respectively

Considering the impact, contribution and the service that was provided by the project with intent to expand and institutionalize the legal aid program, the project was further extended for one year (2003-2004).

The program documents more than 6000 cases represented within a time period of six years. Coming across to the 3rd phase of the PLA, the program introduced and developed the concept and framework of 'Nationwide Legal Aid Network' respectively. The conference of hundred legal aid lawyers held in Nagarkot in 2003 formally established the "National Legal Aid Network".<sup>11</sup>

The notion of institutionalized framework of legal aid further succeeded by the present project entitled ' Legal Aid for Prisoners and Establishment of the National Legal Aid Network' commenced from 15 May 2005. The detail of the continuity of the project is described below.

## **2.2. CONTINUITY OF THE PROJECT**

The project documents depict the fact that the project 'Legal Aid for Prisoners and Establishment of National Legal Aid Network' was designed internalizing the value of sustainability by handing over the cases represented by the CeLRRd to the local bar units. However, the Bar was not in a position to take over such responsibility due to the lack of legal aid skills and infrastructure. The political problem created by internal armed conflict also obstructed the Bar for taking the responsibility. Therefore, the concept of legal aid to institutionalize and achieve sustainability with the idea of establishing a National Network was propagated since 2002, which has progressively been materialized in 2003.

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<sup>11</sup> See Annex B, Nagarkot Declaration

The representation of cases is being continued until the program activities are not fully taken over by Network. The 'succession of the project by national Network' is seen in the process carrying the following strategies related to quantitative and qualitative legal aid representation by accomplishing the mission of sustainability of the legal aid service in Nepal.<sup>12</sup>

- Each member of the National Network shall take at least five cases pro-bono. This way, annually about five hundred cases will be covered by the existing membership of the network.
- Approximately 100 young legal aid lawyers are to be trained in the concept of legal aid in criminal cases during the project period aiming to empower legal aid lawyers to fulfill their commitment of pro bono initiatives of case representation mentioned above.

The project for this year has thus emphasized the activities of capacity and institutional building of the 'Network'.

### **2.3. CURRENT PROJECT**

This project, with support from the Embassy of Denmark, has been launched from 15 May 2005 for a period of two years. It aims to provide adequate legal aid to the prisoners throughout the country, specially giving emphasis on the situation of political insurgency. It further seeks to develop the infrastructure for the sustainability both in part of the skill of the lawyers in general and in the part of the infrastructure and coordination among the legal aid lawyers in particular.

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<sup>12</sup> Ibid Nagarkot Declaration

### **2.3.1. The Service Providing Centers**

The five service providing centers, which were established by the previous project at Kathmandu, Janakpur Nepalgunj, Biratnagar and Chitwan, were rearranged into three centers at Biratnagar, Kathmandu and Nepalgunj since May 2003. The present project is continued with the same structure as follows:

Out of these three Centers, the Kathmandu center works through the Kathmandu School of Law under the permanent component of prisoners Legal Aid Clinic, which is providing free legal aid to prisoners of Kathmandu Valley but not limited within. Kathmandu center functions in multi-disciplinary approach by engaging number of students at the clinic for their academic concerns. The students are assigned a number of works in relation to fair trial like observation of the detention centers, court, police station, Human Right Commission, INGOs and NGOs etc. and other activities for protection of the right of the prisoners. The students are involved in the preparation of the case and even in the case representation at the court if they are advocates. Teachers are engaged in the case representation in the various law courts in critical issues. Being a capital city Kathmandu has Supreme Court, Special Court, Appellate Court and District Courts including number of Tribunal and Quasi-judicial Bodies.

Similarly the next center is located in Nepalgunj, the hub of the Mid-Western part of Nepal. This Center looks into the cases of 5 Appellate Courts; Nepalgunj, Dang, Dipayal, Mahendranagar and Jumla and the District Courts within their jurisdiction. The center further looks into different district courts and tribunals under the same jurisdictions.

Finally, Biratnagar is the hub of eastern part and the second largest city of Nepal. Biratnagar Center looks after the three appellate courts; Biratnagar, Ilam, and



Dhankuta including the different district courts and tribunal under the same jurisdiction It has all regional administrative state machineries and also provides Legal Aid service to the Quasi-Judicial bodies, especially at District Administration Offices.

To coordinate the prisoners legal aid services on demand a number of sub centers are set up with specific coordinator in the areas where above mentioned jurisdiction do not fall namely in Dang Mahendranagar, Kailali, Rupandehi, Hetauda and Jhapa. In February 2006, the Center for Legal Research and Resource Development issued a request proposal to conduct an internal mid-term evaluation of the Prisoner's Legal Aid (PLA) Program administered by the center and funded by Embassy of Denmark.

### **2.3.2. Statement of Problem**

The present project intends to address the following problems:

- *Lack of state supported legal aid program*: to indigent prisoners facing trial as well as appellate review in higher courts, including the Supreme Court.
- *Decongestion of prisons*: a serious problem faced by many prisons due to delays in trials and reviews of appeal. Often the prisoners spend more time than the actual sentence sanctioned by the court due to the delay in trial or reviewing an appeal.
- *Lack of fair trials*: number of prisoners are convicted and sentenced simply because they are not financially secured to hire a lawyer.
- *Random prosecution*: the prosecutors hardly apply any filtering device in order to prevent random prosecution. A significant number of prisoners had

been facing trial, simply due to prosecutor's lack of sensitivity towards the human rights of the suspect.

- *Frequent transfers from prisons:* number of prisoners faced frequent transfers from one prison to another, thereby rendering them incapable of being present during the hearing of his /her case and being in contact with their family members or friends. This situation further aggravated the prisoner's constitutional right to be represented by a lawyer, wherein a considerable number of prisoners go un-represented during trial. Such a situation demonstrates the judge's insensitivity towards the accused person's right to a fair trial.

These problems, along with many others, evidently vitiate fairness in the administration of justice. According to the research carried out by CeLRRd, in more than 50% of the criminal cases tried at courts the accused were not represented by a lawyer.<sup>13</sup> This statement of the problem is seen as an obvious tool carried out by CeLRRd as a major justification of the project that is further reflected into the following objectives.

### **2.3.3. Objectives of the Project**

#### **2.3.3.1. Development Objective**

The development objective of the project is to enhance the condition of human rights protection by strengthening the standard of the criminal justice system in Nepal by providing indigent prisoners and prisoners of conscience free access to

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<sup>13</sup> Supra note 10

highly professional legal defense or representation in criminal trials and appellate reviews.

### **2.3.3.2. Immediate Objective**

The project is launched with the following immediate objectives:

- a) To provide prisoners, needing free legal aid, a free access to legal aid counseling and representation. This objective shall be achieved through the following service:
  - Copying of case files and conducting motion to representation,
  - Providing legal counseling,
  - Helping to expedite the trial and appellate process.
- b) To strengthen the capacity of legal aid lawyers to deliver quality service for counseling and representation of clients. This objective shall be achieved through:
  - Providing professional training to legal aid lawyers
  - Developing a comprehensive legal aid manual
- c) To strengthen institutional framework of the national legal aid network. This objective shall be achieved through:
  - Establishing the Network's Secretariat
  - Expanding the membership of the Network
  - Developing an electronic linkage for coordinating and linking legal aid activities through out the country

The above-mentioned outputs are observed on the basis of indicators. The prima facie indicators adopted by the program are related with the case representation in order to assess whether prisoners have easier access to legal aid, lawyers have easier access to prisoners, speedy trial of cases are represented by legal aid lawyers, police behavior has improved, the use of police coercion or use of force

to obtain confessions are reduced, and most importantly, whether prisoners falsely implicated are released or not. Remainder outputs provide the indicators as underlying tools necessary for achieving the quality legal aid representation through professional skills, including commitment to reestablish the socio-economic and civil rights of the poor and indigent people seeking access to justice.

In connection to these objectives and expected outputs, the outputs are assessed, mainly being based on the immediate objectives of project since it is the mid term evaluation. However, the attempts of the evaluation process was firstly initiated with the *organizational assessment* to see whether this development objective generally, and the immediate objective particularly, are being achieved or not.



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### **3. ORGANIZATIONAL ASSESSMENT OF CeLRRd**

Going through the project documents such as Constitution of organization, financial and administrative guidelines, project agreement including decisions made by the concerned committees, the evaluators come up with the idea making organizational assessment of CeLRRd, including its mission, vision and activities related to access to justice in general and the PLA program in particular.

#### **3.1. GOAL, AIMS AND OBJECTIVES**

Its fundamental *goal* is to accelerate the process of systematic change in society, by fostering widespread understanding of the Rule of Law and unrestricted access to free and fair justice.

CeLRRd *aims* to achieve this through research, resource development, community mobilization, legal awareness and legal aid activities protecting and promoting human rights of every human being.

Following are the *major strategic objectives* carried out to achieve the organizational goal;

- Promotion of Rule of Law and fostering human rights & accessibility to justice for all.
- Systemic change in society, by fostering widespread understanding of the Rule of Law and unrestricted access to free and fair justice.
- Capacity building of justice actors through enhanced legal education, trainings and refreshment courses.
- Provide extended and institutionalized legal aid services to the victims of injustice and human rights violation. Accessibility to fair trial of people through free legal aid program.
- Fostering gender equality through equitable measures.
- Empowerment of people through increased awareness on socio-economic rights.
- Foster legal professionalism with an emphasis on "alternative lawyering".
- Safeguard the rights and interest of disadvantaged segments of Nepalese society.

### **3.2. ORGANIZATIONAL STRUCTURE**

As a non-profit making organization CeLRRd has been working as mandated by its statutes and as per its bylaws under organizational structure.

*Executive Committee* is a higher authority of CeLRRd and functions as a policy developing body of the Institution. It is responsible to look overall aspects of the institution and its implemented programs.

Besides the Executive Committee, the Director and Program Managers are directly responsible to manage and implement the project/s. The Director is also responsible to look after every project in coordination with other concerned Program Managers. The Program Manager is fully responsible and works democratically without any pressure as mandated by the project and by the Executive Committee. They are responsible to report to the Executive Committee through Director.

Out of 9 members of the Executive Committee, 3 are female, including vice-president. With this 33% inclusion, CeLRRd maintains gender sensitivity at the decision level.

CeLRRd is aware about the effective institutional governance and maintaining decentralization, participatory and bottom up approach to implement the project and its activities. Almost all its Executive members do not receive any remuneration from the institution. The staff that is remunerated from one program cannot obtain salary or any other financial benefit from any other activities of the project to which he or she is responsible for.

As per the commitment shown by CeLRRd during its meetings at the Embassy of Denmark and DanidaHUGOU and in the Steering Committee meetings, 3 members of Executive Committee, who have been receiving salary from CeLRRd as a project staff, will be dropped from the project or the Committee after the coming Annual General Meeting of CeLRRd. To provide advice from time to time, as required, CeLRRd has formed a *Team of Advisors*, who are highly

reputed in the legal field. The advisory team constitutes of retired justices, professors and lawyers. The advisory team can jointly meet with Executive Committee to discuss on serious issues related with the institution.

CeLRRd has two *regional offices* located in Nepalgunj and Biratnagar for the implementation of its programs. The majority of its staffs are highly trained lawyers, experienced in the techniques of ‘alternative lawyering’, a new approach of professional outreach for the public interest. The gender sensitivity training is one of the essential components.

CeLRRd believes that activities in which it is involved at local level should be implemented *in partnership* with those communities. In this regard, CeLRRd aims to operate through grassroot level organizations, and for all activities to be community owned. CeLRRd’s staff should be responsive to community needs and provide regular encouragement and support for their activities.

To implement new projects, the Executive Committee has formed a *Project Management Committee*, which is responsible to look over the concerned project in each phase of its implementation. This Committee is responsible towards the Executive Committee and has representative from the Executive Committee as well. The Committee finalizes the ToR and job description of the project. It makes the project team accountable according to the authority delegated by the Executive Committee and Project Management Committee. The Project Management Committee is also responsible to hire expert(s) as and when required for the concerned project on consultation with the Project Manager/s and Director.



### 3.3. MEMBERSHIP OF CeLRRd

CeLRRd is basically a lawyers' organization, but its membership is open for all. Till date, CeLRRd has a total of 34 members and around 20 associates from west to east of Nepal, who are the good activists in promoting human rights, rule of law and protecting women and children against trafficking and violence in their district and region. Anyone interested can have the membership of CeLRRd proving that they are working for promotion of human rights and rule of law having sensitivity on issues related to women and gender. Now CeLRRd has around 35% female members out of its total membership.

### 3.4. COMPETENCY ANALYSIS

CeLRRd believes in providing competent service to the community; and in order to maintain the competency it has been practicing various methods institutionally. CeLRRd has been organizing regular and rigorous area wise *trainings and orientations* for the various project teams and other office staffs. The regular issues based *research* activities and analytical report publications are the strength of CeLRRd; and its member's involvement as *experts* in various projects of other organization in districts, regional and national as well as in some cases internationally are the evidences of CeLRRd's competencies.

*Replications* of CeLRRd's projects in other countries have also proved the competency of CeLRRd and the effectiveness of its programs. Replication of Prison's Legal Aid Project in Vietnam<sup>14</sup> is worth mentioning.

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<sup>14</sup> The program manager for PLA, Ms. Geeta Pathak Sangroula had provided a three-days training organized by DIHR to National Legal Aid Lawyers of Vietnam on the Concept and Scope of Legal Aid, with reference to the access to justice within the human rights and Constitutional framework. The essence of PLA program of Nepal is seen being internalized not only in Nepal but also being introduced in other countries like Vietnam. Thus, the PLA, Nepal can be perceived as best practice in institutionalizing the concept and methodology to/for legal aid.

### 3.5. HUMAN RESOURCE STRENGTH

The number of full-time and part-time staff by category (e.g. number of project managers, accountants, etc), indicating their place of employment

Average Human Resource	Total Number	Place of Employment
Director	1	CeLRRd Central Office
Program Managers (Full Time)	2	CeLRRd Central Office
Project Coordinator (Full Time)	6	CeLRRd Central Office
District Coordinator	6	District Offices
Program Officer (Full Time)	11	District Offices
Accountant (Full Time)	4	CeLRRd Central Office and District Offices
Community Mobilizer/ VDC or MC Coordinator	42	Filed Office
Office Assistant (Full Time)	9	CeLRRd Central Office/Regional/Field Office
<b>Total=&gt;</b>	<b>81</b>	

### 3.6. EQUIPMENT AND OFFICES

Equipments	Quantity
Computers	15
Lap-top	4
Laser Printers	4
Photo copy Machine	3
Bubble Jet Printer	2

LCD Projector	2
Computer Accessories	15
Server Computer	1
Scanner	1
Fax Machine	1
OHP	2
<b>Offices</b>	
Head Office	1
Regional Office	2
District Office	12

### 3.7. OTHER STRENGTH (e.g. volunteers, associated organizations, networks)

Relevant Resources	Quantity
1. Volunteers	396 women Paralegal Committees in 14 districts, namely Jhapa, Sunsari, Udayapur, Parsa, Makwanpur, Chitwan, Sindhupalchowk, Nuwakot, Nawalparasi, Banke, Kanchanpur, Dolakha, Dhading, Rasuwa are working voluntarily in prevention of trafficking and violence against women.
National Legal Aid Network	135 Lawyers are the members. Currently, there are eight organizations in this network including CeLRRd. Network is in the process of

	<p>mainstreaming legal aid providing non-governmental organizations formally and informally. Informal process includes maintaining relationship with the organizations even if such organizations have not received the membership of the Network.</p>
<p>Kathmandu School of Law</p>	<p>CeLRRd and KSL have been working together in number of issues like reform of criminal justice, juvenile justice and promotion of democracy and rule of law. KSL students and resources are mobilised in CeLRRd's community activities.</p>
<p>Consortium of CeLRRd, Pro-Public, SUSS, RUDUC, IGD</p>	<p>This consortium has been working together to implement community mediation programs in 14 districts, namely Chitwan, Nawalparasi, Banke, Dhading, Dhanusa, Mustang, Dhankuta, Dadeldhura, Tanahu, Sarlahi, Kaski, Doti, Kailali and Kanchanpur In these 14 districts, the consortium has trained 1300 mediators. 783 Mediators directly working with CeLRRd and 1944 Mediators work in consortium.</p> <p>Under the Partnership with DanidaHUGOU 278 community mediators are working with CeLRRd</p>

### **CeLRRd's Partners and Network Organizations**

1. Kathmandu School of Law, Dadhikot Bhaktapur
2. Human Rights Protection and Legal Research Center (HuRPLARC)--  
Chitwan
3. Community Legal Research Centre (CLRC) --Makawanpur
4. Community Legal Research Centre (CLRC) -- Morang
5. Community Legal Research Centre (CLRC) -- Udayapur
6. Community Legal Research Centre (CLRC) -- Sunsari
7. Community Legal Research Centre (CLRC) -- Jhapa
8. Community Legal Research Centre (CLRC) -- Banke
9. Community Legal Research Centre (CLRC) -- Kanchanpur
10. National Legal Aid Network (NaLAN) – (Central Office, Lalitpur)

NaLAN is the landmark achievement of CeLRRd, mandated for functioning independently with the aim of sustaining the legal aid throughout the country.

Despite the strength, there are certain aspects where CeLRRd has to pay more attention at implementation of the projects. In this regard, the evaluation report has made some suggestions for strengthening the organization through adequate management or arrangement to avoid overlapping in the case representation and developing more coordination with the line agencies especially with Bar

Association, prison authority and so forth. The recommendations<sup>15</sup> are drawn after physical observation of the activities of all three centers of the program, interview with line stake-holders (such as investigator and prosecutor) and the physical observation of the organization itself.



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<sup>15</sup> See infra note 9.3 at Chapter IX

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## **4. PHYSICAL OBSERVATION OF THE PROGRAM**

Evaluators assigned for this project entitled 'Internal Evaluation of the Legal Aid for Prisoners' commenced their observation by first visiting CeLRRd's Regional Offices in Nepalgunj on 24 March 2006 and noted the implications of PLA program and the suggested inputs to enhance the program.

The evaluators visited the Banke jail and met the jailer and the prisoners who had been receiving LA from CeLRRd. Upon concluding their visits, the evaluators paid a visit to the President of the Appellate Court NBA, Banke.

Due to the political disturbances (insurgency and the internal violence), time stood as a major constraint in Nepalgunj and Biratnagar and this left many actors inaccessible. However, the evaluators were successful in meeting the key actors who furnished minute details of the program. Likewise, the evaluators had an appreciable amount of time in Biratnagar, Morang. This led the evaluators to interview almost all the concerned stakeholders, rights-holders and the state actors. Evaluators interviewed UN-OHCHR representatives, judicial bodies, and law enforcement or implementing agencies, prisoners and jailer.

Eventually, the task laid in evaluating the PLA of Kathmandu Center, which has been merged with KSL. In between the time of their visit to Nepalgunj and

Biratnagar, the evaluators briefly observed and interviewed the prisoners of Kathmandu valley prisons. However, the follow-up could not be carried out due to the deteriorating situation of the prisons as the remaining prisoners demanded their release after all the political prisoners were released by the government.

On the basis of the outcomes of the physical observation of all three centers, the evaluators finally met the stakeholders of justice components. However, all the prosecutors and law enforcement personnel of Kathmandu valley could not be contacted due to their busy schedules.

In addition, the evaluation team also made a physical observation of prisons as a connected issue of prisoners' human rights.

#### **4.1. OBSERVATION OF PRISONS AND PRISONERS OF NEPAL**

Considering the development objective of the project required to examine the overall situation of the prisoners, the evaluation process was attempted firstly with the physical observation of prisons and prisoners from human rights perspectives, including a brief overview of the laws relating to the prisons.

Prisons in Nepal have not been modernized. Often women, men and children are not segregated and they are forced to live, eat and sleep together. There are all together 73 prisons across Nepal and almost all the prisons are facing difficulties in fulfilling its constitutional and international obligations to protect the rights of the prisoners. Nepal's prisons are governed by outdated regulations. Almost 80% of the prisons were built during the Rana regime and, because of their age, most of the prisons are severely deplorable and not fit for human beings to live. Even the prisons build after the Rana regime are poorly build with inadequate



facilities.<sup>16</sup> Although the United Nations Standard Minimum Rules for the Treatment of Prisoners constitutes the basic principles and standards to be implemented everywhere in the world, in most prisons, physical condition, cleanliness of the kitchen, sanitation and personal hygiene are poor. Prisoners across Nepal face greater hardship as they are not provided with cooking utensils and facilities, inadequate low quality food and restriction in communicating with their relatives and obtaining legal counseling. Further the existence of health care, recreational and educational facilities are far to be imagined. The lack of rehabilitation and social reintegration programs and the inadequate access to legal advice and counsel are distant reality and with the current existing attitude of the prison authorities, they are difficult to be addressed.

The problem of overcrowding is an obvious problem; especially, it is more severe in the Terai districts. The prisoners are compelled to live in a very limited space without proper ventilation. The cause of overcrowding is largely due to the traditional focus of Nepal's criminal justice system on punishing the offenders by isolating them from society and seeking to deter people from committing crimes. Nepal's courts have only two sentencing options. They can either order those found guilty of committing an offence to pay a fine or sentence them to a certain term of imprisonment. Large number of prisoners cannot afford to pay a minimum fine and they wait for their term to end. Most of the prisoners are not influential and wise enough to set up their defender systems. Consequently, a large number of prisoners suffer from the systematic abuse of human rights within the prison by the authorities and the dominant prisoners.

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<sup>16</sup> See, 'The Study on 'Analysis and Reform of the Criminal Justice System in Nepal was conducted by ILRR/CeLRRd, 1999, p. 142

The 1963 Prison Act and rules are also seriously outdated principally because of their punitive focus and the lack of any reformatory provisions. The Prison Act, 1963 contradicts with the constitutional and other international obligations. Despite the contradictory laws, the early 1990s saw great leaps forward to put in place sound legislative framework. In particular the 1990 Constitution enshrined many human rights provisions in line with international standards. The Constitution spells out the rights of Nepalese citizens to fair criminal justice and gives prisoners the right not to be subjected to torture and humiliating treatment. During that period Nepal signed various international instruments relating to penal reform. In line with the framework of various international instruments, Nepal introduced series of progressive domestic legislation, including a new State Cases Act, the Children's Act, the Legal Aid Act, the Treaty Act and the Compensation for Torture Act. The growing human rights violation inside the country led to the establishment of the Nepal Human Rights Commission in 2000.

As part of the evaluation of the program districts, three prisons were observed.

#### **4.1.1. Physical observation of Morang Prison**

The prison covers an area of 4.06 hectare. The physical infrastructure consists of one administrative block, two adjoining prisons for male and female. There exist no separate meeting rooms for male prisoners. However, a small junkyard of 3x2 metres was available for meeting male prisoners by legal professionals only. Prisoners are demanding that a separate meeting room be built. The prison was built after 1990. There is an additional building under construction to accommodate male prisoners. At present all criminals – murderers, pickpockets and women traffickers, economic offenders, drug smugglers and drug addicts - are hauled in the same place. Previously there were over 500 prisoners but now the

number has reduced to 458 within one month. Political prisoners were released during this time.

Morang prison is also home to dependant children of the prison inmates. The total number of such children is four. The Jailer, Kumar Pokhrel informed us that preparation was under way to send these children to the SOS Children's Village. Likewise, there is no opportunity for recreation and sports. There is no facility for extra longer visits and more leisure activities. But there is a facility for reading newspaper.

Opportunity for education and other income generating activities are zero. In addition, the potential spread of communicable diseases during the monsoons are very high in Morang prison due to overcrowding, malnutrition, poor ventilation, lack of potable water, inadequate sanitation, and lack of medical care. The prison authorities have no means to address these problems. The prisoners, however, expressed satisfaction over the behavior of the Jailer. They have also expressed satisfaction over the treatment from the security personnel deployed at prison.

#### **4.1.2. Physical observation of Banke Prison**

The prison covers an area of 0.558 hectare. The physical infrastructures consist of one administrative block, two adjoining prisons for male and female attached along a dark small corridor for meeting prisoners. All the existing infrastructures are deplorable. The cracks on the walls of male and female prison centers significantly depict that no maintenance has been carried out since its construction after the Rana regime. Boundary walls, wiring and lighting systems are all in extremely poor conditions. All criminals-murderers, pickpockets and women traffickers, economic offenders, drug smugglers and drug addicts - are hauled in the same place.

Like Morang prison, Banke prison is also home to dependant children of the prison inmates. The total numbers of such children are four. The dependant children are not the offenders, but they have to live in the prisons, as their guardians remain in the prison. Thus, these dependant children are being punished for crimes not committed by them. They are the victims of the situation created by their guardians. Likewise, there is no opportunity for recreation and sports. There is no facility for extra longer visits and more leisure activities. Above all, there is no separate room for visitors who want to meet the prisoners. When relatives /guests arrive they all gather into one cluster making the two-way conversations almost impossible.

Also, opportunity for education and other income generating activities are zero. Similarly, there is only one tube-well each for male and female prison houses. The tube well is extensively used for drinking, bathing, and washing purposes. Fear of arsenic which is growing in Terai regions is largely ignored on the ground of ignorance on both the part of prisons authorities and the prisoners. In addition, the potential spread of communicable diseases in Banke prison is highly probable due to overcrowding, malnutrition, poor ventilation, lack of potable water, inadequate sanitation, and lack of medical care. The prison authorities have not been able to cope with this situation and they largely treat this as a least priority issue.

Further, prisoner's desperation to seek single-occupancy of a cell or a room is a remote reality due to lack of fund. The resentment shared by some of the prisoners is their privacy has been hacked. Despite all these, prisoners were found to be extremely satisfied with the treatment they have been receiving from the jailer. None of the prisoners was found accusing the jailer of being harsh and torturous. They also did not make any complain against the security personnel deployed at the prison, though Banke prison has a history of shooting inmates. So far, no such

physical abuse has occurred. The jailer's wish to establish a library for prisoners reflects his compassionate and educated thought.

Like prisoners in other prisons, Banke prisoners suffer from stigma of disgust and depression. In Banke prison, appealing faces of women prisoners draw one's attention. Their appeal towards the visiting free legal aid lawyers was especially captivating. A young girl who was arrested from Mahendranagar, a far western town, had been tagged as a political prisoner. Her wish was that she be transferred to her home prison in Mahendranagar. The ordeal of male prisoners is equally alarming although they don't reflect it on their faces. There were few dependant children, who are victim of their parent's actions. The face of these children reflects the trauma of prison environment and the restricted playful childhood. While they grow up in the prison they miss the opportunity of childhood desire and their mind is perplexed in recognizing their status.

#### **4.1.3. Physical observation of Kathmandu Valley Prisons**

The premises of the Central Prison, includes the Bhadrageal Prison Unit, Women's Prison Unit and Central Prison Unit at Jagnath Deval, Kathmandu. This is Nepal's first jail, built in 1912 AD. Unlike the jails across the country, the Central Jail is well equipped with all the facilities, including a library, health facilities, playground and school; the prisoners have a different lifestyle in the jail. The education programmes range from basic literacy to high school level. The prison authorities encourage the younger prisoners to pursue their education although it is not mandatory. However, the dependant children of the prisoners attend the school. The prisoners have also ample opportunities to study privately. Some of them have even graduated as a private examinee and have enrolled themselves as a teacher in the prison school. Once engaged in the teaching

profession the state grants 2 months remission for each year. The next encouraging event is that the jail inmates have delved deep into the meditation practice within the prison premises. For this purpose they have set up a separate hall, fully decorated with religious posters spreading the message of moral good. Apart from that, they also spend time watching religious channels on television and preachings from well-known spiritual gurus through different CDs. There is a small scale cottage industry in the prison where prisoners can work according to their wish. They also get reasonable remuneration for their work and on top of that they get two months remission for each years work. At Central jail, congestion is merely a problem as four to five prisoners share a 10x14 square feet room.

The next jail is Sadar Khor in Dill Bazaar. The jail has no provision or separate cell for women, so in Sadar Khor only male inmates are kept. There is a facility for library, and sports. The third is the Nakkhu jail at Lalitpur. The jail has a library, sports and health facilities. Nakkhu jail has introduced meditation techniques specifically tailored for the drug abusers. But other inmates can also participate. The meditation center is like a school having its own curricula and extra-curricular activities.



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## **5. DESCRIPTION OF THE PRISONER'S LEGAL AID PROGRAM**

### **5.1. OVERVIEW**

As described by the program branches, the prisoner's LA program consists of the following three components:

- Development of the prisoner's LA through internal policy development activities, research on legal aid issues and participation in, and support of, the LA lawyers from various districts.
- Implementation of the program, with the support of the Embassy of Denmark, through legal representation and other necessary paralegal and other services in the valley by the Kathmandu center located at Kathmandu School of Law, by Biratnagar center, and by Nepalgunj center.
- Analysis and integration of support for prisoner's legal aid through establishing the LA Network with initiatives and priorities.

Each of these components is described below. Before that however, we consider the objectives of the CeLRRd's Legal Aid Program

## 5.2. PROGRAM OBJECTIVES

The program documentation provides the specific expression of the objectives of the program. As described in the terms of reference for evaluation of the legal aid for prisoners, the program has both its development and immediate objectives. The development objectives of the project is “to enhance the condition of human rights protection by strengthening the standard of the criminal justice system in Nepal through providing indigent prisoners and prisoners of conscience with free access to highly professional legal defense or representation in criminal trials and appellate reviews”. Likewise the immediate objective of the project is “to provide prisoners, needing free legal aid, a free access to legal aid counseling and representation”.

The immediate objective is envisaged to be achieved by providing the following services:

- Copying of case files and counseling motion for representation
- Providing legal counseling
- Assisting to expedite the trial and appellate process
- Strengthening the capacity of legal aid lawyers to deliver quality service for counseling and representation of clients

Likewise, in order to strengthen the institutional framework of the National Legal Aid Network (NaLAN), the following initiatives shall be undertaken:

- Establishing the Network’s Secretariat
- Expanding the membership of the Network



- Developing an electronic linkage for coordination and linking legal aid activities through out the country

## **5.3. IMPLEMENTATION**

### **5.3.1. Internal Policy Development Activities**

CeLRRd has been continuously providing legal assistance to under-privileged prisoners in co-operation with DIHR for six years. It has developed policy related to the project to provide the free legal aid. Since 15 March 2005, the financial responsibility has been transferred from DIHR to the Embassy of Denmark.

The policies introduced by the program were about ways to represent the prisoners in the courts, to publish booklet to inform the prisoners about their rights, to review the pre and the post trial safeguard, to publish posters, booklets, and lastly to conduct several orientations to the stakeholders and other several policy related works.

### **5.3.2. The Legal Aid Lawyers**

There are several legal aid lawyers who are working for the effective implementation of this project. For the nationwide representation, there are lawyers in three centers of CeLRRd. They represent several cases and try to maintain quality in their representation. Their prime mottos are to:

- Serve for the enhancement of criminal justice system focusing access to justice to all.
- Provide all other necessary legal or paralegal assistance to the prisoners.

- Advise the legal aid clients and other disadvantaged persons about legal aid service.
- Identify ways to reform areas of law or justice and legal aid mechanisms.
- Establish effective working relationships at all levels of justice components.

### **5.3.3. Legal Aid Research**

CeLRRd and KSL have introduced the research to be conducted by the students of law, which are beneficial for the reform of the criminal justice system of Nepal. There are student interns both from LL.B and LL.M levels who do involve themselves in research activities on legal aid issues. This ultimately assists to institutionalize the program more effectively with the concept of adequate clinical legal education.

Moreover, the program provides a greater scope for the internship program for students of law and other scholars coming from various institutions of Nepal and abroad. Currently, one LL.M student, coming from Switzerland is studying Criminal Law and justice course at Kathmandu School of Law and is also engaged in research activities in the PLA Clinic, including the criminal law and practice in Nepal.

According to the legal aid lawyers serving in the clinic, apart from the court representation, they are also involved in providing basic and extensive clinical education to the student of law both in credit and non-credit manner. Thus, the development goal of the project is being achieved with the progressive realization of the significance of the legal aid in Nepal.



## 6. OBSERVATION OF LEGAL AID PROMOTION ACTIVITIES

The achievements against Objectives and Outputs during the evaluation period are summarized in the following table:

<b>Immediate objectives and outputs of the project</b>	<b>Indicators</b>	<b>Target</b>	<b>Result</b>
Immediate Obj.	Number of case representation  About 1800 cases represented	3000 thousands cases during the two years of project period	Average.
Output 1	Quality increased in case representation as Objective test analysis made in several cases and applied human rights standards	All needy prisoners of general criminal cases and the prisoners of political conscience	The trust is seen progressively built among the rights holders, prisoners and the justice dispensing mechanism reported above.

Output 2	Website is developed	To develop website within three month of project lanching	It has come out completely within the time frame
Output 3	Manual is prepared	To prepare comprehensive legal aid Manual within two quarter session	Manual is prepared and the Orientation was held.
Output 4	Network is established	To establish Network secretariat within two quarter sessions	Legally registered, affiliated with SWC, and the secretariat established with its independent infrastructure.

## **6.1. DEVELOPMENT OF COMPREHENSIVE LEGAL AID MANUAL**

This task is seen to be carried out by the project team with the assistance of legal experts at the end of 2005. Evaluators have received a valid claim that this kind of manual is the first attempt made by CeLRRd only. The manual comprises both domestic and international human rights instruments and practices, particularly related to the range of principles and the application and interpretation made by the courts order to ensure the fair trial issues.

Evaluators also observed the documents following step-by step process carried out by the preparation committee. It was found that a series of consultations were held at the preliminary drafting stages and post drafting stages. The first consultation meeting on the preliminary study was conducted to finalize the area of the Manual, targeting to find out the lacunas in the existing legal system and the provisions in the area of ensuring the legal aid. To obtain the factual information, the paid lawyers, engaged in Supreme Court, Appellate Court, and District Court were invited to participate along with the KSL teachers and other governmental authorities during the consultation meeting.

Next step of the consultation was held among the legal aid lawyers and paid lawyers outside the Kathmandu valley in Nepalgunj and Biratnagar Legal Aid Centre of CeLRRd.

The consultations were made for providing feedback on the draft. The expert commentator from the judiciary, Office of the Attorney General and Nepal Bar Association including KSL teachers were invited along with the participant from paid lawyers, government attorneys and defense lawyers. Final consultation on the post draft Manual was made among legal experts and KSL teachers.

The evaluators also considered the documents about residential orientation at the presence of DIHR experts on 4<sup>th</sup> to 8<sup>th</sup> November, 2005 at Nagarkot where the experienced legal aid lawyers from different organizations of Nepal, including Prisoners legal Aid Network participated. In the orientation program, the internal experts and experts from DIHR provided further inputs to finalize the manual.

A 257-pages Manual, including 11 Annexes, has been prepared in the Nepali version; however, the contents are translated into English. The evaluators came to know that out of 1000 copies, many were already distributed to the legal aid lawyers and programs were held to orient them on it. The Manual is seen being used as a major tool for the training on skill development for adequate legal aid lawyering. The Legal Aid lawyers also suggested updating the manual with additional informations. Some LA lawyers also suggested that the language of the Manual should be more user-friendly and precise and should focus more on the practical methodology. The evaluators also observed that the Manual was not published within the time frame. However, it was found being extended by the project meetings, including the steering committee of the project.

## **6.2. ESTABLISHMENT OF NATIONWIDE LEGAL AID NETWORK (NaLAN) AND ITS PROGRESS**

The mission of establishment of ‘Nationwide Legal Aid Network’ was started since 2002 initiated by the DIHR project mentioned above. It was formally established at the end of 2005. The Secretariat of the National Legal Aid Network has been set up at Kuponhole. It carries a broad vision to facilitate the process of institutionalization of legal aid nationwide.

### **a) Physical Observation of Office**

The evaluators made a physical observation of the office. Upon visit to its office, the following information was received from the President of NaLAN:

- The National Legal Aid Network (NaLAN) is formally established with its statute registered at District Administration Office in Lalitpur District. and has received affiliation with Social Welfare Council (SWC);
- The network office is functioning independently with a separate bank account, postal address, and communication facilities (Telephone/ Email etc.<sup>17</sup>);
- It has also accomplished a permanent registration at Internal Revenue Department of Nepal Government (then HMG) and has received a PAN Number;
- Currently, the administration of the office is run by three staffs; Program Secretary, Office Secretary and Office Assistant, out of which two are females. The remuneration for the Programme Secretary and Office Secretary are supported by the present project. However, Office Assistant is remunerated by the Network through its core fund established from the membership fees and contribution fund generated at network.

## **b) Work progress**

- Coordination with various organizations:** NaLAN has also started its process towards expansion of its relation with legal aid providing organizations such as Advocacy Forum, CVICT, LACC as well as the

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<sup>17</sup> See Annex C, for detail address and the list of executive committee members

Bar Units. Couple of meetings was held to discuss on the possibilities of working together by establishing a platform common for all. It also discussed on the role of the Network in providing secretariat service as well as undertaking work at policy level to facilitate the organizations working in this area.

ii) **Membership expansion and maintenance of records**

- The network was established by the mandate of 100 lawyers who participated at the national conference held in Nagarkot. As the Network was established by the initiatives of the participants of Nagarkot conference, it has decided to retain the participants of the Nagarkot Conference as founder members. Nevertheless, after the formal establishment, eight organizations namely CeLRRd, KSL, AJAR, Peoples' Forum for Human Rights, CLRC of Kanchanpur, Nepalgunj, Udayapur and Biratnagar have taken membership of the network. The meeting further discussed about the expansion of the membership by developing a 'membership form' and disseminating the information about the Network all over Nepal.
- It has also started maintaining the records of legal aid providing organizations, including publications related to access to justice developed by the respective organizations to be displayed at Network Office.



iv) **Development of ToR for the member organizations and the Legal Aid Enhancement Activities**

To maintain the organizational and functional disciplines, administrative and financial guidelines have been developed. For the enhancement of the legal aid, it has also decided to provide a platform for the law students and newly joined legal professionals interested in the area of legal aid. For this purpose, it has been agreed that the Network will collect some important cases finalized by the courts in order to study the judicial trend and scope of fair trial. CeLRRd has submitted some 50 cases.

V) **Management and Operation of the Network**

NaLAN is seriously concerned about strengthening its organizational set up as a model 'Network' with the following steps:

- Amendment in the Statute of the network providing a clear objective to carry out the umbrella-organizational-concept.
- The meeting discussed about fixing the electoral rules following the nature of membership. According to this, there will be two types of members in the executive Committee; individual and organizational member. The former is elected by individual member and the latter to be elected by the votes of member organizations only.

- The decision of the Executive has to be forwarded to the General Assembly for approval.
- Moreover, NaLAN is concerned about the strategy and the plan of action to be developed to implement the structures adopted by it on ‘Management and Operation of the Network’. For example, the expansion of the network at regional and district level through the member organizations working in the regions.

**Plan of Action for 2006:**

- Translation of the Network Constitution in English;
- Development of the Network brochure;
- Development of TOR for internal organizational structure, role and responsibilities of the member organizations and the relationship with Network;
- Development of project proposal in different areas of legal aid programs;
- Initiation of Network Establishment Project and meeting of implementing partners;
- Press conference for the wider dissemination of the objectives of the Network;
- Internship for the law students;
- Talk program on the thematic issues of access to justice;

- Formation of working committees within the network to carry out activities mentioned above. The project committee, coordination committee, and training and publication committees are a few to mention;

**Other progress:**

- Network is stepping towards its mission to work in coordination with various legal aid providing organizations, and also with the independent human rights monitoring mechanisms that work for the promotion of rule of law and access to justice and within the ambit of human rights such as NHRC and the OHCHR, Nepal.
- Representatives of various legal aid organizations directly or indirectly affiliated with the Network participated in training organized by CeLRRd,
- Started frequent meeting of network with integrated local Bar Units. For example, Appellate Court Bar (Patan) and District Bar (Kathmandu) are attending meetings designed for legal aid strengthening programs.

With this observation, the evaluators got a very positive impression about the institutional set up of NaLAN and its scope to facilitate the development objectives carried out by the legal aid organizations.

### **6.3. WEBSITE DEVELOPMENT AND IMPLEMENTATION OF THE PRISONER'S LEGAL AID PROJECT<sup>18</sup>**

One of the components of the project was development of a separate website and its implementation for smooth functioning and representation of the legal aid with a technologically advanced information system. The website envisaged to conduct an online discussion on legal aid cases and connect legal aid network members and help achieve increased consultation among lawyers concerning legal aid service and also facilitate in exchanging information and expertise. The website is being coordinated by the Prisoners Legal Aid Clinic, Kathmandu Center

The program was targeted for National Legal Aid Network's members, law teachers, law students and concerned stakeholders (government attorneys, prison authorities, defense lawyers and Court personnel and judges) to be operated by Kathmandu, Biratnagar and Nepalgunj center to serve the following purpose:

- Publication of the Supreme Court's weekly cause list, so that prisoners and lawyers representing them outside Kathmandu will be informed of the date of hearing of their cases at the Supreme Court and Appellate Courts
- Displaying the weekly list of cases to be tried in Courts covered by the legal aid program
- Prompt information on the status of cases, for instance judgment
- Facilitating discussion among lawyers for effective representation of the cases

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<sup>18</sup> See for detail at <http://pla.celrrd.org/index.php>

- Providing a system of 'daily monitoring of cases' throughout the country.

Upon the observation of the three centres, Kathmandu School of Law Center has been found updating and operating PLA cause list in the website, because the center has been fully equipped with high internet bandwidth and trained technician. The rest of the centres were not found uploading and updating the cause lists. When asked to the Legal Aid Lawyers at Kathmandu Centre about the importance and usefulness of the site, they shared that it is highly useful to legal aid lawyers to know the status of their cases. However, they asked for the provision of Nepali version of the site to make it readable by ordinary prisoners themselves.

When contacted with the legal aid lawyers in their respective centers at Biratnagar and Nepalgunj, they shared that they were oriented about using the website and its functioning but lacks technical know how to update and upload the site.

IT Coordinator of Kathmandu School of Law Mr. Mahesh Phuyal shared the following:

- The cause lists are uploaded currently from the Kathmandu centre only because it has technical expertise to upload and maintain the site. Maintaining and operating the site requires trained legal aid lawyer and technical expert to control and maintain the server. The centres in Biratnagar and Nepalgunj lack these resources.
- Moreover, the centers at Biratnagar and Nepalgunj have dial-up connection and it is very difficult to update cause list where there is dial up connection.

High-speed broadband connection is required for it, which requires additional budget.

Upon the field observation and interview with the respective persons in the three centres, only Kathmandu center has been practicing the use and operation of the site. It was found that operating the site has been highly useful to the legal aid lawyers and there is an increasing trend of using it by legal aid lawyers. However, the other two centers have not been able to update the cause list due to technical and budgetary constraints.



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## **7. EVALUATION OF FINDINGS**

The evaluation is generally to look at three principal issues: Relevance, Success and Cost-effectiveness.

### **7.1. ISSUES OF RATIONALE**

Issues of rationale consider the extent to which the objectives and mandate of the program continue to be relevant as per the need of the people. A related question is whether the activities and operational outputs of the program are consistent with the program's mandate and plausibly linked to the objectives and any other intended results. The results cover the extent to which the program meets its objectives, within budget and without causing significant unwanted results. A related question is concerned with the extent to which the program complements, duplicates, overlaps or works at cross purposes with other programs. Issues of cost-effectiveness consider the extent to which the program involves most appropriate, efficient and cost-effective methods to meet its objectives. Related to this issue is the question of whether there are more cost-effective alternatives to the program.

## **7.2. PHYSICAL OBSERVATION OF PLA CENTERS**

### **7.2.1. Physical Observation of CeLRRd Regional Office: Biratnagar**

#### **7.2.1.1. Office Observation**

- Two sets of computers.
- Data well maintained in computer.
- Case representation data separately maintained.
- Altogether 11 staffs in the regional office (no immediate plans to increase the human resources)
- There are 6 rooms: separate meeting room, legal aid room, coordinator's room, and three rooms for other purposes such as documentation, for visitors coming from far distances.
- Office is well maintained.
- Three litigation lawyers for PLA, one woman lawyer as para legal.

#### **7.2.1.2. Interview with PLA Coordinator**

##### ***Perception Analysis – Brief Outline of PLA Program***

Most of the cases registered in the LA program office are from Morang prison, which is said to have constituted 85% of the total criminal cases. It is claimed that LA has been provided to everybody and no discrimination is made unless the prisoners have had a private lawyer.

- The office is obliged to cover all the Appellate, District Court Quasi Judicial bodies. It apparently looks into remand case from the very beginning. The office has a bitter experience of the time



when the police were reluctant to the program. But these days, the police are cooperating with CeLRRd.

- In a nutshell, in the field of legal aid and the enhancement programs, CeLRRd's profile is high.

### ***Problems to the lawyers***

- In comparison with the huge caseload, human resources are few. The human resources are not sufficient to meet the overall objectives of the PLA program.
- Recruitment of at least two LA lawyers should be made.
- Bar, government lawyers, and private attorneys complain that the PLA program has minimized their profession.
- There is a lack of library facility. A separate library is a must to enhance the knowledge and proficiency of LA lawyers while litigating.
- Because of the physical distance of courts, all cases cannot be covered within the prescribed time frame.
- There is no separate staff to look into financial matters. Financial matters and reporting is to be performed by the coordinator himself.
- Police personnel do not entertain junior staffs.
- No quick information is disseminated by the court.

### ***Suggestions***

- Foremost to increase human resources (LA lawyers) by at least two person.

- In order to cover wide distances and save valuable time, it is imperative that a motorbike be available..
- A well furnished library with all the necessary and relevant LA books and Country Civil code book need to be set up.

***Achievements***

- Increase in effectiveness of LA lawyers while defending the cases.
- Growing recognition and faith among the general public that LA lawyers can provide better representation.
- Due to LA lawyers' motivation and inspiration, court has adopted the practice of citing international convention while rendering their verdict.

**7.2.1.3. Interview with Independent Respondents**

***a) NHRC Biratnagar: Pradeep Jha, Protection Officer***

***Perception Analysis – Brief Outline of PLA Program***

CeLRRd is distinguished for its excellent work in providing LA to the prisoners. What is distinct about CeLRRd is the way it has geared up the areas not covered by NHRC as the latter takes complain in thematic areas only. As for the difficulties in legal interpretation, NHRC often refers the cases to CeLRRd, that has received 12 such referrals so far.

***Suggestions***

An urgent need of extending the PLA program has been strongly felt. For that, a strategy is required to cover, in the broader assistance framework, the rest of the districts of eastern Nepal, apart from Biratnagar, Morang. Likewise, it is essential to build two-way traffic in legal aid in all 16 districts

of eastern Nepal by mobilizing the entire district based paralegal lawyers so as to bring equity in representation.

Much more emphasis is to be given on the part of coordination. To this end, NHRC and CeLRRd's PLA program could coordinate right from the beginning. The Commission could coordinate with CeLRRd, especially on issues of rights-based approach. They should ponder on the issue of the victim's protection, which could be achieved through a balancing approach of accused and victims' rights.

As the government seems to be stubborn in cases of political prisoners, CeLRRd is expected to ascertain them and deal with the cases more cautiously. Likewise, exchange of respective publications among or between the stakeholders working in the similar areas could be more worthwhile.

The past witnessed a bitter experience of the problem of duplication. To avoid any further duplication in future, frequent coordination is mandatory. Also, the founding of an institutional mechanism at NGO level would help to reduce the problem.

***b. District Police Office, Morang: Jagat Bdr. Bista, SP***  
***Perception Analysis – Brief Outline of PLA Program***

CeLRRd's PLA program has been perceived as being carried out in an inclusive manner and in coordination with the law enforcement bodies. The program is appreciated for its work of providing timely suggestions to prisoners to aware themselves of their rights. Similarly, CeLRRd's involvement in the prison has brought a reform within the prison, particularly in building relationship between prison authority and the legal aid lawyers not only from litigation perspective but also from para legal

service provided to them. However, there were slight grievances with CeLRRd in regard to the Maoist detainees. As for the case, the release order had been given by the court, but the security personnel irrespective of the order wanted to re-arrest the individuals. Hence, there occurred a tug of war between LA lawyers and the security personnel. Nevertheless, all the detainees have been treated on the basis of human rights norms and principals, and subsequently allowed for having legal counseling conferred by the LA lawyer.

One thing very strange is that there was a tendency among the individuals to recommit the crime even after their release in order to acquire the same positions they had been holding earlier while they were in the prison.

### ***Suggestions***

- It would have been better if the PLA program was implemented in coordination with the government.

### ***c. District Police Office, Morang: Rabindra Sharma, DSP***

#### ***Perception analysis - Brief Outline of PLA Program***

The PLA program of Biratnagar Center had been conceived as intensive and resultant. There stood the beneficiaries of the program in a great number. Similarly, in Morang, the work which CeLRRd has carried out in criminal justice system is highly appreciated. However, due to the lack of coordination between legal aid providing agencies, there is confusion among the prisoners to whom they are to approach.

The investigation department of police including all responsible personnels has not been adequately informed about the legal aid programs. Since there

is lack of adequate knowledge and the coordination between police and the LA lawyers, there is misconception among the police personnels, who by this reason are not aware of the objectives for which the lawyers have been working.

People seem to be frustrated at the activities of the court. They are increasingly lacking trust on it. Even they are found questioning the explicit role of the court whether the court is an investigating agency or an umpire.

### ***Suggestions***

- There is an apparent need of overall reform in the legal system.
- The legal aid lawyering should be based on assisting the accused to devise the objective evidences rather than counseling the accused on how she/he can make her/his statement or whether she/he should outrightly deny or avoid confession at any cost.
- Legal aid lawyers can contribute by sharing their experience in different platform as well, so that legal aid program will not only be confined within the court-based program. Furthermore, legal aid lawyers should also consider that the State has challenges for carrying out its responsibility due to lack of resources.

#### ***d. District Prison, Morang: Kumar Pokhrel, Jailer***

##### ***Perception Analysis – Brief Outline of PLA Program***

CeLRRd has been recognized as the most trusted institution in terms of executing the LA program. Apparently, the effectiveness of this program lies in the coordination that exists between the PLA program and the prison authorities. In addition, the access of PLA program of CeLRRd to the cases

of internment is worth mentioning. The program that has also been providing free legal aid to women has been positively responded. In fact, there are four women under TADO currently imprisoned and CeLRRd is providing free legal aid to them.

***Suggestions:***

- There is a need for a round-table discussion including follow up between the LA lawyers and the prison authority so that the best practices can be generated upon adequately knowing the strength and the limits of each other.
- Emphasis is to be given on informing the prisoners regularly about the progress of cases at the Supreme Court.

***e) Prisoners***

***Perception Analysis – Brief Outline of PLA Program***

PLA program of CeLRRd has been perceived as significant. The trust of the prisoners on this program is growing. It has now become a custom for the prisoners to refer PLA program of CeLRRd to new comers. So, everyone seems to have been thoroughly sensitized and aware of the PLA program.

There is a serious problem that all minor, major and mentally retarded prisoners have been locked up in the same compartment. Currently, the number of prisoners under the TADO is 60. Out of them only 5 prisoners so far have received submission but they are not submitted to the court in person during hearing.

It has only been a few days since the prisoners have been permitted to meet the lawyers but the meeting time is very limited and the meeting place is not

separate. This is why the prisoners are still not able to talk with their lawyer in real sense. Moreover, the prisoners are very often asked by some lawyers not to believe the quality of legal aid as it has been provided free. They are even forced to approach those lawyers.

### ***Suggestions***

- The success of program is envisaged if regular counseling with frequent physical meeting is provided by the LA lawyers and the progress and status of the cases is timely informed to the prisoners. Besides it, the process of LA counseling should commence from the very primary stage i.e. right from the time of arrest.
- By and large, CeLRRd needs to fight for the rights and interest of the people by intensifying the PLA program and should never take retract even in hostile conditions of the state.

#### ***f) OHCHR, Biratnagar: Ali Saleem, Representative***

##### ***Perception Analysis – Brief Outline of PLA Program***

Prior to OHCHR's presence in Biratnagar, there had been no access to LA lawyers. These days, PLA program of CeLRRd has been received as a lead in coordinating legal aspects and human rights principles.

There was a perceived need to discuss with CeLRRd about the cases of TADO detainees and the general prisoners, therefore, OHCHR made a request to CeLRRd for acting accordingly.

***Suggestion***

- Priority should be given to TADO or other political cases detained under the security related laws and the role of legal aid lawyer should be proactive.
- It would be better if LA lawyers informed this office on the challenges they face particularly when they are threatened or intimidated in the course of defending their cases.

***g) Appellate Court Bar Unit, Morang: Suresh Lal Shrestha, President***

***Perception Analysis – Brief Outline of PLA Program***

- CeLRRd has been praised for having a good networking in LA. After the enactment of LA, Bar has also been providing legal aid but the legal aid of the Bar has been more focused on the cases of women.
- CeLRRd has initiated to include the Bar in sensitive cases for collective support, which is a good practice. For example, in matters of re-arrest, CeLRRd, NBA and other organizations have worked in collaboration.
- CeLRRd's legal aid lawyers have been entertaining cases of prisoners who are economically sound and are able to hire the private lawyers. That has resulted in the loss of the profession of many lawyers.
- It is obviously the responsibility of Bar to protect the interest of other paid lawyers who are members of the Bar.

***Suggestions***

- CeLRRd should provide LA only to the prisoners who are financially incapable and this problem should be resolved at the earliest.



***h) Registrar, Appellate Court, Morang***

***Perception Analysis – Brief Outline of PLA Program***

CeLRRd as a pioneer of the PLA program has been appreciated for doing a creditable work in the districts. However, the problem exists there since other actors such as police, jailer and CDO do not cooperate. The problem is further intensified and aggravated by the lack of sufficient government layers in dispensing the cases and by the untimely transfer of the government attorneys.

Despite the good work provided under the PLA program initiated by CeLRRd, there is widespread disappointment of other lawyers who fear of being displaced from their profession due to the free legal aid provided by CeLRRd through its program.

***Suggestions***

- The program is responded as good; however, stress is to be given to increase and intensify the coordination among CeLRRd and other stakeholders. Similar emphasis is to be given on the essentiality for all the organizations involved in LA to bring their cases (request) at the same time.

***i) Appellate Government Attorney Office, Morang: Ramesh Khatri, Joint Government Attorney***

***Perception Analysis – Brief Outline of PLA Program***

- CeLRRd's PLA program is viewed as estimable. However, it is indicated that the profession of private lawyers is at risk since free legal aid is being provided by CeLRRd. Thus cases of prisoners should be shared based on the prisoner's financial capacity. It may also

be an effective way to minimize the conflict arising between the private defense lawyers and the lawyers providing free legal aid service through CeLRRd.

In the recent days, people's attraction towards the service provided by CeLRRd is growing. It is obviously due to its honest staffs and their efficiency. The habit that PLA lawyers of CeLRRd have developed to remain silent about the government lawyers may also be the reason behind its popularity.

- It is an affirmative sign that CeLRRd's PLA program is linked in closer nexus with the police than with the prosecutors. Furthermore, the Office of the Attorney General has also started internalizing the value of legal aid as one of the important components of justice dispensing mechanism. In fact, the Office has issued two important circulars to all District Attorney Offices as well as the District Police Offices to respect the right to representation of detainees.<sup>19</sup> As a result, the circular is abided by the investigation authorities, who have developed a detainees' profile including a separate column where details of the lawyers representing the case is sought.

### ***Suggestions***

- There is a perceived need for PLA program to focus on result-oriented work specially in assisting the judiciary in developing new jurisprudence for future benchmark. Other experiences show that a thorough discussion is essential to be held with the prosecutors before

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<sup>19</sup> The initial circular was issued in 2005 mainly focussing the necessity of legal aid at investigation level. While the recent circular issued on 2063-2-7 (3<sup>rd</sup> May 2006) focuses the role of prosecutor in ensuring the legal aid.

moving ahead with the cases. This approach is expected not only to bridge the gap but also to produce a better result. Similarly, LA lawyers should make use of the AG Office's circulars<sup>20</sup> as an opportunity if they want to aware the detainee about their right to legal representation.

- There is another need for formulating a common approach to provide access to justice for all. For this, all stakeholders of the justice component should sit together and discuss on their strengths and weaknesses. This practice would certainly help them correct, learn and do accordingly.

***j) District Court, Morang: Mahesh Pudasaini and Tej Bahadur Karki, Judge Perception Analysis – Brief Outline of PLA Program***

- CeLRRd is recognized for having a team of dedicated staffs and for having maintained a good working relationship with the court. In perceivers' view, the present activities related to CeLRRd's PLA program are fruitful because they support prisoners' right to legal representation and LA. But some private lawyers are said to have made negative remarks about CeLRRd's program as the latter has encompassed most of the criminal cases. It is also worrisome that there is no representation on behalf of the indigent prisoners although an attorney is appointed by the court.

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<sup>20</sup> Ibid

### ***Suggestions***

- PLA program requires more effective management with regular monitoring system.
- The program needs to be seriously implied as mandatory in all the cross-examination and testimony of witnesses.
- It is equally essential to prompt the provision for representation in all stages.
- There is also a need to discuss on the empirical research at the court, which is certain to facilitate more understanding of the PLA program. Similarly, a very clear-cut strategy needs to be defined by PLA program in relation to legal aid clients who procure the services of paid lawyers. Frurthermore, free legal aid should be made accessible to the indigent only, not to those who can afford to pay for a lawyer.

***k) District Government Attorney Office, Morang: Bhanu Bhakta Kafle,  
District Government Attorney***

#### ***Perception Analysis – Brief Outline of PLA Program***

CeLLRd's PLA program is considered to have had good representation. LA lawyers have been observed frequently interacting with the court. In this way, there has been set up a good coordination among the legal aid providing lawyers and the court authorities. In addition, there is pro-activeness among the LA lawyers of CeLRRd but it is not much entertained while taking statement. However, their participation in other stages deserves much worth.

***Suggestion:***

- It is necessary to expand the program to other districts as well. Otherwise, the program is good.

**7.2.2. Physical Observation of CeLRRd, Regional office, Nepalgunj**

**7.2.2.1. Office observation**

- Two set of computers and other office equipments
- Activity data maintained in Pie and Bar Chart
- Separate meeting room / mediation room/ office room in good condition
- Three litigation lawyers for PLA, no woman lawyer recruited
- All together 15 persons (about to increase)
- Data well maintained in computer
- Case representation data separately maintained

**7.2.2.2. Interview with PLA Coordinator**

***Perception Analysis – Brief Outline of PLA Program***

CeLRRd's PLA lawyers, as commoners rather than as lawyers, are found to have visited prisoners or detainees in police stations. But they have faced problem when the prisoners do not get access to communication with them separately.

- As responded, there has been a tough competition due to the presence of other NGOs and Bar units that provide legal aid. Bar is

found to have complained that PLA has hampered other lawyer's profession. So, there has been developed an unhealthy atmosphere of competition among the NGOs working in those areas.

Apparently, legal aid lawyers are often been kept under surveillance by the security forces although CeLRRd's PLA layers have not received any threat or intimidation yet. Similarly, jailor seems to be positive in regards to lawyers but the police have never been found comfortable with them. By these reasons, it is very difficult for the layers to get permission for visiting the jail. For instance, lawyers have not been allowed to visit Surkhet jail. These problems might have been created due to the lack of coordination with the government. Once the coordination has been maintained, it is likely to enhance in building institutional relationship.

- Kathmandu Center is found to have reciprocated only in response to request. The Regional Center had referred 25 cases to the Supreme Court. However, Kathmandu Center has not made available the progress of those cases.

The Regional Center has a perceived problem of library facilities. In fact, the Center has to rely solely on the materials developed by CeLRRd.

### ***Suggestions***

- To cover long distances in a short period and to save time which can be used for other productive purposes, a vehicle should be provided, if not a motorcycle will also be helpful.

- Salary paid for PLA lawyers is also low. It would be good if salary is increased.
- There should be regular meetings among the service providing centers, particularly with Kathmandu Center as the cases of regional centers are forwarded to the Supreme Court for final remedy.
- Human resource should be increased, by at least one more lawyer.
- Establishment of a small library for study is the principal demand.

### **7.2.2.3. Interview with Independent Respondents**

***a) Advocate Suresh Kumar Poudyal, President, Appellate Court Bar Unit, Banke***

#### ***Perception Analysis – Brief Outline of PLA Program***

As asserted, lawyers of PLA, CeLRRd have been working very well. Their performances have also been published in local newspapers. However, CeLRRd’s coordination seems to be very weak and it seems to have failed to follow up the progress in villages. Moreover, CeLRRd is criticized for not carrying out follow-ups with the paralegal groups of villages and not having the refresher trainings.

As PLA is free, it has affected the business of lawyers, which can be observed in terms of accusations made by other layers. As reported, there are about 350 lawyers in all who can hardly pay the rent of their firms. In fact, the advocacy business is in crisis. The PLA program has been held accountable for creating such atmosphere.

### ***Suggestions***

- Awareness program should be carried out and paralegal trainings should be taken to the villages
- Coordination with NBA should be enhanced because of the possible uncertainty of the continuation of the program by CeLRRd. If so, sustainability of the project comes as a big question along with those cases that are being handled.
- Bar and CeLRRd has to coordinate with each other since both are committed to provide LA at local levels. The coordination may prevent unhealthy competition and duplication of representation.
- CeLRRd should develop a strategy to sustain itself without making anyone their enemy.
- PLA in near future should be integrated with the Bar.
- CeLRRd should send their PLA progress reports case wise to the Bar as well. The major thing is that the staffs must be honest.

#### ***b) Shiva Lamichane, SP, District Police Office, Banke***

##### ***Perception Analysis – Brief Outline of PLA Program***

The program of CeLRRd has done a lot for the establishment of due procedures. It is viewed to have launched an exclusive program in the reformation of CJS of Nepal. Likewise, a large number of police personnel have been made aware of the basic human rights norms. Its recognition is further justified by having been given an access to prisoners as to ICRC, OHCHR and NHRC. After all, difficulty exists there because of the lack of network for coordinating the program.



### ***Suggestions***

- It is essential to give continuity to the program.
- Coordination with the police and other actors of judicial sector should be strengthened.

#### ***c) Bharat Bahadur Thapa, Jailer, District Prison, Banke***

##### ***Perception Analysis – Brief Outline of PLA Program***

The prison is found to have a good coordination with CeLRRd's PLA program. As reported, there are four women and 19 political prisoners and five are under internment. All are under TADO. PLA program of CeLRRd has benefited the prisoners and deserves much worth to be further continued.

#### ***d) Prisoners, Banke Prison***

##### ***Perception Analysis – Brief Outline of PLA Program***

- PLA program of CeLRRd is trusted by majority of the prisoners. It has been easy and comfortable for the prisoners to call the PLA layers, as the latter readily pay visit. They have been thoroughly sensitized and made ware of the PLA program as there are trainings organized and the materials developed for adequate LA lawyering. Moreover, they have got all these benefits free of cost, as they should not pay any money for the program.
- The prisoners have regularly been informed about the status of their cases at the District and Appellate Court but the information of the cases sub-judice before Supreme Court takes a lot of time.

### ***Suggestions***

- Prisoners are often transferred from one prison to another without properly notifying their legal aid lawyer and therefore, LA lawyers should monitor and talk with prison authority in this regard.
- Prisoners meeting and communication with lawyers should be made private and sufficient time should be provided.
- PLA program should develop paralegal materials and awareness program for the prisoners.
- PLA lawyers should frequently visit and update the prisoners on the progress they have made.

### **7.2.3. Physical Observation of KSL, Kathmandu Center**

#### **7.2.3.1. Office Observation**

- Office is well maintained.
- There is no computer for the PLA program; however data are well maintained in the computer from other program and the files.
- Case representation data is separately maintained.
- Altogether, there are six staffs. Three are paralegal lawyers and all three of them are women.
- There is only one room; there are no separate meeting rooms and legal aid rooms. PLA program share the infrastructures of KSL's Coordinator's room, and three rooms for other purposes.

### 7.2.3.2. Interview with PLA Personell

a) *Mr. Ram Prasad Aryal, Legal Aid Counselor/Center Chief*

*Perception Analysis – Brief Outline of PLA Program*

It is the apparent duty of state to provide free legal aid to the indigent and needy prisoners. In this connection, CeLLRd's program is claimed to be instrumental to meet the state's objectives. It is further claimed to be fruitful for changing the traditional concept towards criminal justice in general and legal aid in particular. The program is found to have been institutionalized within the concept of right-based approach requiring a consideration of legal aid as fundamental human rights.

The number of cases received by the center corroborates the gravity of the program. The center has received nearly 300 cases since 15 May 2005. Moreover, the center is proud of giving foremost priority to those who don't have any lawyer, and subsequently to women, juveniles and political prisoners. It does not mean that other people have not been provided with the aid. There are minors, too, who have been responded as an integral part of the program and have been benefited from it.

For the protection of privacy of the accused, the center has encouraged in-camera hearing where required, and particularly in juvenile case, the name of accused has been kept behind the curtain until proven guilty.

***Problems***

- We don't have sufficient LA lawyers as per the current case volumes

- Although the students of KSL are highly benefited from this center established within the KSL premise, the Center is a bit far from the distance for the court and prison visits.
- We have no easy access to jail due to formal requirements such as permission letter and reporting to the prison authority as per their format.
- Lack of good coordination among LA providing institutions has resulted in duplication of activities.
- The court is not congenial in disseminating information and related documents.
- Due to the confinement of the jurisdiction within the Kathmandu valley, the cases from other districts are not reported on time, thus there is problem of exceeding the limitation for appeal.

### ***Suggestions***

- Due to the shortage of human resources, division of work should be made. Center Chief's duty should be limited to coordination, i.e. reporting, monitoring and evaluation.
- Legal aid office should be established in the city so as to expedite and enhance the quality of the service. A separate contact office for PLA should be established in Kathmandu city to avoid physical distances and time lapses.
- Initiation should be taken by various components of criminal justice system of Nepal to institutionalize the legal aid throughout the state.
- Convicted prisoners are holding the administrative positions like *Naike* (Monitor), *Bhai Naike* (Assistant Monitor), *Chaukidars* (Guards) etc.

and there is a risk of abuse of human rights violation of other prisoners by the latter three. Therefore, the violation of rights of other inmates' is likely. The protection of rights of other prisoners is imperative. The above three positions should be placed under the police or civil servant.

- Only the above-mentioned three are given special privilege of deciding the remission, and there exists a great risk of them recommending their favorite persons while discarding the honest and faithful prisoners.
- There is no objective ground on the remission and no provision for panel of experts like doctors, psychologist, and sociologist to decide scientifically and accurately the remission of prisoners.

#### ***Achievements***

- Because of LA lawyers' motivation and inspiration, court has adopted the practice of citing the international convention while rendering its verdict.
- Many indigent prisoners have had access to justice through this program.
- The program has been successful in securing the human rights of prisoners. Many prisoners are aware of their entitled benefits now.
- The program has largely contributed towards the reform of criminal justice system of Nepal.
- PLA program has brought about the opportunities of exposures of lawyers and groomed their intelligence.
- More importantly, the program has recognized the need of objective review of legal aid law and policies in Nepal.

**b) Ms. Yamuna Bhattarai, Legal Aid Lawyer**

***Perception Analysis – Brief Outline of PLA Program***

Experience shows that the lawyers have been facing problems in time management. Principally, they have been assigned the work responsibility ranging from court representation to visiting the prisoners at prison, for which there has been developed a special schedule. Apparently, visiting the Women prison at Central Jail along with para legal consumes a lot of time. The problem seems to be further aggravated by the environment of the court where no facilities are provided for lawyer's client meeting. Its virtual effect can be realized on the part of the legal aid lawyers who have to be in queue for a long time along with other visitors; and consequently, meeting is permitted for a limited period in a crowded place located in front of the door. The lack of separate meeting hall and the lengthy court procedure, no doubt, jeopardize the credibility of legal aid lawyering.

***Suggestions***

- Coordination between the legal aid providing organizations needs to be maintained so as to avoid overlapping of representation of cases.
- There has to be special treatment to the legal lawyers in terms of access to case files and other important informations about the case progress.

**c) Ms. Tara Khanal, Para Legal**

***Perception Analysis – Brief Outline of PLA Program***

It has been perceived that there is lack of the adequate legal representation, which can be achieved through a regular visit of the prison and meeting to the prisoners.

Generally, the paralegals are entitled to monitor the cause list published at the courts and convey it to the prisoners, and to prepare the applications for prisoners. To understand the case, the physical presence of para legal in the prima facie hearings at court is necessary from the very beginning. Apart from these activities, the para legals get involved in taking necessary steps for the release of the prisoners who have been detained for excess to prison term – a problem, which usually arises due to the ambiguous letter of punishment that does not contain the correct details of arrest, decision and the period of imprisonment.

### ***Achievement***

- One of the paralegals shared her experiences on how she had to solve a legal problem. The following case is taken as one of the best practices relating to paralegal services:

*“Once I was in central Jail, where I met Sukaraj Tamang, a convict sentenced to life imprisonment by the Appellate Court in a case relating to homicide.. He was not aware that his appeal date had commenced from the date he had signed in the opinion book of the judgment. When I informed him about his appeal provision and requested him to provide a copy of the judgment, I was informed that it was not delivered to him and neither was he able to get a copy of the decision from the court since there was no one to assist him during the court proceedings. On the basis of the primary information received, I went to the court and asked for the detail of information. To my surprise, that particular day was the last day for submitting an appeal petition. I received a photocopy and met a legal aid lawyer at KSL*

*center and prepared the appeal and submitted to the court on the very same day upon fulfilling all necessary formalities. Copying of the judgment, drafting of the appeal petition and submitting it before the court to be done on that very same day. Moreover the situation was more aggravating due to strikes and no transportation was available. I had to walk for about two hours and, finally, got the case registered at five o'clock upon much request. As the account section of the court had closed at five, the appeal was deposited to sustain the period of limitation and subsequently the appeal petition was duly registered the next day. The appeal petition is yet sub-judice. Such kind of challenges and difficulties has to be faced by the paralegals due to procedural unfairness.”*

- Most of the time, even after the court's release order; the prisoners are not released due to the lack of efficient and effective communication and correspondence between the courts and the prison. The paralegals' intervention in exploring such illegal detention provides the scope for approaching the cases of habeas corpus in the court or communications to the concerned court and getting prisoners released.

### ***Suggetions***

- Paralegal should not be treated as inferior but rather they should be seen as a complementary tool in achieving adequate legal representation
- More facilities should be given to paralegals so as to make them feel convenient in field – the place where they have to spend most of their time.



### 7.2.3.3. Interview with Independent Stakeholders

*a) Ishwor Khatiwada, Judge, Appellate Court Baglung (Deputed at National Judicial Academy during this evaluation)*

*Perception Analysis – Brief Outline of PLA Program*

- Legal aid, which is the fundamental right of every prisoner, had been criticized in the previous days in terms of its practical implementation due to lack of legal representation or inadequate or poor legal representation, but in the recent days, they have been made widely available through NGOs like CeLRRd. On that account, CeLRRd's role has been taken as well performing and satisfactory.
- It has been observed that maximum number of people have been deprived of legal representation; the quality of the court paid lawyers has been badly hampered by the nominal pay scale (just 2 thousand rupees per month) provided by the court; and moreover, there have been cases of mismanagement of the amount for payment. Therefore, the activities of CeLRRd seem to have had a direct relevance to the matter at hand.

*Suggestions*

- Taking into consideration that the services provided by CeLRRd are in the best interests of people, they should be sustained for long term.
- The program would be more effective if the legal aid lawyers who are highly qualified, trained, experienced, competent and diligent were provided with more incentives.

- Realizing that the LA layers are working as a part of state mechanisms for justice, due respect is required to promote them.
- It is also the role of the court to monitor whether LA lawyers are true to their work or not.
- Monitoring should be focussed on who is getting the service. Since the service is free, people who can afford to hire private lawyers may be acquiring these services intentionally and this might jeopardize the rights of those who don't even know about the right of representation in the court and the principle of presumed to be innocent until proven guilty.
- The Judge also has the responsibility to see as to whether or not the police are providing opportunities to the detainees to meet their lawyers. A judge can order the police to allow the lawyers to meet with the detainees or arrested persons. Such acts of the judge will contribute towards the significance of the service of the program.

***b) Narendra Prasad Pathak, Deputy Attorney General, Office of the Attorney General, Kathmandu***

***Perception Analysis – Brief Outline of PLA Program***

CeLRRd, though having the status of an NGO, is viewed to have occupied a large volume of criminal cases under the free legal aid program and to have provided the service for which the state is held accountable. In this backdrop, CeLRRd and its lawyers working for Kathmandu center are appreciated for their hard working and good performance. However, no

interaction programs between CeLRRd and the office of Attorney General have been held in this regard.

LA is a fundamental right and there are the people who don't even know that they have the right to legal representation. Because the prisoners are presumed to be innocent, the right of legal representation is thus the natural right or the part of the principle of natural justice.

The essence of the legal aid program is to support the weaker section of society. So, the program is expected to be provided to the marginalized ones. It is further expected that the free-of-cost nature of the program is likely to assist in combating lengthy court procedures. Still and all, there is doubt whether the people provided with the service are the rightful recipient.

The court paid lawyers are paid very low and thus their services are very poor. They have very less responsibility and the courts also do not provide them with the documents that are considered necessary for a proper legal representation. Moreover, there are no adequate facilities like rooms for the preparation of the cases assigned to them. Although, recently the Supreme Court has arranged for a room for such preparation, it still lacks required infrastructure and facilities. Thus, NGO is considered to be the best means of providing the service and CeLRRd is esteemed for having led in this area.

### ***Suggestions***

- The service should be provided with the priority to pro-poor people who in reality cannot afford the expensive legal services.
- Women, children and marginalized communities' cases should be prioritized as special rights holders.

- The program should be sustainable and expanded to every corner of the country.
- This service should be enhanced and access to justice should be made easier in order to make the justice efficient and effective. The NGOs working in the area can facilitate all stakeholders in carrying out their responsibilities.
- Free legal aid should be provided only to those who really need it. Providing it indiscriminately (without discriminating between rich and poor) may jeopardize other private defense lawyers who have their private firms.
- If free legal aid service is provided to all without distinguishing between rich and poor, it may affect the poor people who may lose the opportunity in accessing the service from this program because of the access of rich.
- Gravity of the case should be taken into consideration and special cases should be given special priorities.

People who are trapped due to the organized crimes (where mostly the poor people are dragged in the cases and the mafias are saved. For example, Narcotic Drug) should be specially identified and legal aid service should be provided to them without distinction of any kind.

### **7.3. SUMMARY OF KEY FINDINGS**

The free legal aid program of CeLRRd is highly appreciated by all the authorities, stakeholders and concerned right holders in all the three districts where the programs are currently running. The program has gained recognition and support

from all related sectors and is considered as one of the most trusted programs. The overall impression of the program, activities of paralegal, litigation at all stages, was found very positive and remarkable. It has established a good coordination with prisons and other authorities.

All legal authorities professionally associated with the program recommended that the program should expand its network so as to provide access to justice to a wider section of the society , especially to those who are considered as the indigent and marginalized groups of people. In order to protect the profession of the private lawyers from turning into insolvency, legal experts suggested CeLRRd not to entertain cases of people who are economically sound. Some further recommended that the program should run in close coordination with the government. This would help in smooth running of the PLA program and institutionalisation of the program throughout the country. Others viewed that CeLRRd's PLA program is already taking a lead role in the area.

Likewise, some legal authorities opined that every prisoner should have access to proper legal representation and CeLRRd is playing a supportive role to enhance such access through its PLA program. Further, they voiced satisfaction over the performance and professionalism of CeLRRd's LA lawyers. However, they have strictly outlined the need of representation on behalf of the indigent prisoners to support the spirit of PLA program.

Subsequently, legal authorities pointed out the need of representation in all stages, for instance the legal aid lawyers' physical presence in all cross examination and witness testimony. The representation was felt imperative in all stages so that a legal aid lawyer is well versed with the case.

#### **7.4. JUDICIAL TREND ANALYSIS MADE BY LEGAL AID LAWYERS**

On the basis of the case progress reported by the legal aid centers and interview extracts, the evaluators have come to a conclusion about the judicial trend in criminal justice system that may be summarized below:

- The overall judicial trends are found to be conventional. The cases are generally registered without complete and sound investigation.
- In the bailment, the courts are generally pursuing two pronged approach – firstly, the due consideration of personal liberties of the accused requiring objective satisfaction of law and secondly, the extra-legal pressure from the media, human rights activists and other situation or pre-supposition of the judges themselves in respect of the political prisoners.
- The extra-judicial confessions have been highly considered and entertained by the judiciary. The number of decisions shows that the trial courts often considered the confession as the sole evidences on which the conviction was based. However, the Supreme Court is seen to be a bit progressive in considering the evidentiary value of such extra-judicial confessions in corroboration with other independent material and circumstantial evidences.
- In the cases relating to accused women, the higher courts are generally seen reducing the sentences sympathetically. The courts are found generally applying the margin of appreciation reducing the sentence demanded by the prosecution.
- Even in the cases where there are sufficient grounds for acquittals, the courts merely reduce the sentences and do not evaluate the evidences in depth. Especially the lacunas from the side of investigation and prosecution

pointed out during the hearings by the defense lawyers are not accounted for.

- Burden of proof in general has to be borne by the prosecution but in number of cases the court without viewing the detail of the facts imposes the burden of proof upon the accused if he/she has not confessed the accusation. .
- The latest trend of the court shows granting high discretion upon the administrative authorities in making decision. This is a draw back of the court in such issues empowering administrative authority to extend the time of proceedings as they wish, especially in the cases charged under the Terrorism Disruptive Activities Ordinance and Public Offences Act and Public Securities Act (Political Detention).
- The writ petitions are increasing where the personal liberty of people is oppressed dangerously. Even after the Higher Courts (Appellate Courts in the Regions and the Supreme Court) issuing the writs to release the detainees from such arbitrary and unlawful detention, the administrative authorities do not respect and follow the order.
- Sometimes they are released for seconds and detained subsequently. There are many instances where the legal aid lawyers have intervened thrice or four times with petitions for the same detainee. Court in the recent days is moving toward securing the release of such political detainee from the detention. Moreover, there is no compensation against such illegal and arbitrary detention and neither is there any legal remedy or compensation for miscarriage of justices. Compensation is provided only in the cases of torture perpetrated by state machineries and there is nominal chance of

proving that such an act had occurred. Even if a decision is rendered in favor of the torture victim, the execution part remains failed.

- Major trauma in this regard is the access to the prison. Government is always rigid. Where the political detainees are concerned; it does not permit entry into the prison as well as detention centers. Detention in military camps clearly shows that the government is not concerned about the rights of the people and there is a trend of ignoring court orders.. The cases filed against contempt of court are not seriously considered by the government and there is no effective mechanism within the judiciary to follow-up its decision.





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## **8. BEST PRACTICES AND LESSONS GENERATED**

### **8.1. BEST PRACTICES (Quality Analysis)**

The program has enhanced the Fair Trial with the following best practices:

- Lawyers are representing the persons during *remand*. The examples of such practices are being disseminated to LA Lawyers especially in the cases where judges have intervened and, also the denial of remand due to lack of necessary requirements.
- The most important practice is that *international legal standards* are raised in the appeal and case memorial submitted to the court and also referred with logical interpretations during the pleadings to protect the rights of the rights holders. For example, article 14 of *ICCPR*, including General Comment issued by the UN Human Rights Committee and the CAT provisions is frequently raised in the courts.

- The findings of observation also provided the message that the Manual developed by the program is being used by Legal Aid Lawyers. Especially, the cases that have referred *number of instruments and principles of human rights* such as equality of arms, principle of legality and the presumption of innocence observed by the UN Human Rights Committee and the regional human rights mechanism are of especial significance.
- Court is rendering judgments based on *objective satisfaction* of the service rather than the subjective satisfaction. For example, the representation of CeLRRd in political cases (TADO, TADA and other security laws) was highly appreciated by all concerned authorities.
- The lawyers have *direct contact with the prisoners* who are getting the services. They are counseled in every step of the proceedings. And the most important service is the *paralegal service* provided by the program.
- Another best practice found is that *court has recognized the service* provided by this program and the court *requests CeLRRd PLA* lawyers to represent that person whenever it feels that any person is not adequately represented by his/her lawyers or the court paid lawyers.

## 8.2. LESSONS GENERATED

- The first lesson generated by the program was that a *large number of prisoners were found unrepresented* and the state has highly failed to ensure the legal aid for poor and indigent people.
- *Socio-economic condition* of the prisoners remains a major determining factor as prisoners remarked that 'in absence of legal aid lawyers, the legal representation to the poor people who cannot afford private lawyers to defend them is not ensured". Thus the free legal aid service was essential to all those who were found unrepresented.
- With regard to the legal aid, even after the enactment of Legal Aid Act and Regulation and the constitutional provisions of state policy providing free legal aid, they remained only *instrumental*. Thus it is learnt that merely the enactment of laws are not sufficient until and unless they are ensured by the state practice.
- When the program started representing the cases effectively, private defense lawyers considered the free legal aid to be an obstacle to their profession and considered that the free legal aid tried to preempt their profession. Their attitude towards the program was negative. From such *hostile environment among the legal professionals*, the program received a serious message that

the goal of legal aid mission can not be achieved without coordination between legal aid providing agencies and the private lawyers.

- Emerging *anti-NGO sentiment* in the society among people is creating problems to sustain the program and the lawyers. The wrong message among people that ‘NGOs are the dollar seekers’ is deeply rooted and they are against the sustainability of NGOs. Thus the lesson is that the program might be successful at the level of representation but it is getting more difficult to run the program.



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## **9. PROBLEMS AND CHALLENGES AHEAD**

### **9.1. PROBLEM OF OVERLAPPING**

- Representations are overlapped due to many reasons. One of the reasons is the availability of many other organizations working in the same area.
- Though CeLRRd pioneered free legal aid program, overlapping is still a problem with it. From the beginning CeLRRd was conscious of this problem. Therefore it systematically prepared the questionnaire and the memorandum (both are in the Annexes) where there are some explicit questions, which helped the program to see as to whether or not the person filling the questionnaire already had lawyers to represent him/her in the court. Especially question no. 17 requires the name of the organization that is representing the person. Question no. 18 further requires status of representation. Then Question no. 19 further sees as to whether or not the person receiving service from that organization is satisfied with the service. Question no. 20 of the memorandum includes the question regarding having any hired lawyers or not. If not, then was it due to economic or other reasons.

- The most interesting fact is that the collected forms filled by the prisoners of all three centers revealed that economic factor was the major cause for them not being able to hire a lawyer.
- Despite all these factors, still there is overlapping situation due to the following reasons:
  - The communication gap between privately hired lawyer and the prisoner makes the prisoner to decide to have more lawyers and they request for free legal aid and the fact is not known to the LA lawyer.
  - Despite having paid lawyers, some prisoners are never produced before the court. This situation makes prisoners to think that the hired lawyers were not good for them. For example, prisoner of Sunsari district is kept in the Morang jail. Thus during the hearing, s/he may not be produced in the court. Because they are not produced in the court, they cannot hear their lawyers pleading for them. Thus a sense of frustration comes in the mind of prisoners and they prefer changing the lawyers. This causes overlapping of representation.
  - In some cases, the relatives of the prisoners hire lawyers for them but the prisoners are unaware of it since they are unable to meet the lawyers on a person to person basis.
  - A genuine cause of overlapping is that in some cases where there is already a court paid lawyer, the court requests the lawyers of PLA to represent the prisoner. In this case, overlapping was unavoidable. However, there will be no conflict of interest in terms of making the service ‘free’, but there may be conflict in arguments developed by

different lawyers being based on different perceptions that ultimately jeopardize the interest of the prisoner. One such example was shared by the LA lawyer of KSL PLA Clinic. The legal aid lawyer was from the very beginning representing a case relating to infanticide at Supreme Court. Later, she found that another LA lawyer from another organization appeared to represent the accused and argued for mitigating the sentence from 20 years to 5 to 3 years. While the case was very strong in terms of lack of objective evidences, rather there was a serious error on the post mortem report and therefore the KSL LA lawyer had meticulously prepared the case for acquittal. Since there was ambiguity between both LA lawyers coming from two different organizations, the court got confused and the case was decided in favor of the prosecution. Therefore, such overlaps are serious.

- Another cause is that there is a very *poor coordination* between the organizations that are providing similar type of services in the same area. However this is not intentional but rather this is mainly due to lack of adequate mechanism and lack of institutionalization of the service.
- One inevitable fact is that clients are not satisfied with the service of a lawyer and since the service is free they want to test the service of as many lawyers they can get. Moreover, there is a perception among prisoners that more lawyers there are in a case, the more stronger the case will be. This psychology negatively contributes them to lie and when the survey is made they simply say that ‘they do not have any

lawyer'. This misleads PLA program and create tensions among the legal aid lawyers.

- Another reason for overlapping and duplication is the unhealthy competition among various organizations and their lawyers who rather than exploring new avenues, wants to compete in the same field. New avenues for legal aid are not explored by the newly introduced organisations.
- Time factor is another major cause of overlapping because a lawyer represents in the time of pre-trial, but that lawyer is changed at the stage of trial and post trial. Therefore, there are obvious chances of overlapping.
- One serious reason for overlapping is the newly mushroomed organizations providing similar services to the same rights holders in the same place. They further target on the quantity of representation rather than the quality. For instance, a case previously reported in DIHR report was found being reported by other organization in their report. (This has been reported by Biratnagar Center showing the decision of the case as evidence; However, the name of the organisation is not mentioned in this report.

## **9.2. CHALLENGES**

- Challenges are mostly interlinked with each other. On thorough exploration the evaluators have found that the challenges are dynamic and interrelated with each and every component of the whole PLA program.



- The foremost challenge is lack of *coordination among all the authorities* directly concerned with the PLA program, which has been one of the greatest challenges faced so far. The lack of coordination has often caused delay in giving verdict to cases and has posed multiple technical difficulties like no information sharing, no ideas shared in similar cases etc.
- *Human resource*, which is regarded as a prime factor to expedite the overall PLA program, has been one of the major factors in hindering the objectives and motives of PLA program. There are simply not enough human resources in all the three program districts. Due to lack of human resources array of problems have sprouted. There aren't sufficient LA lawyers to litigate the cases. They face other disadvantages, like since they are few and they have to travel long distances, mostly due to distant locations of judicial and quasi-judicial bodies, the time incurred cannot be merely compensated.
- Today is the age of *information and technology*, while this phenomenon is fast happening in world and even in Nepal, the regional offices and Kathmandu Center is devoid of computers. The computers brought for other purposes were shared to tabulate the data. Likewise, there is no as such arrangement for transportation of LA lawyers. LA lawyers were observed making hectic travel frequently between the courts, prison and their office by locally available means of transport. Similarly, the website was developed and orientation on its operation procedures was provided but since legal aid lawyers are not trained on the aspects of updating information, it remains unused. Only the KSL Center is benefited, as there are technicians available to train the legal aid lawyers working there.

- Resentment shared by the LA lawyers was on *salary*. LA lawyers complained about the poorly paid incentive and they voiced that this incentive does not recognize their work, which they were performing in a demanding and challenging environment. The LA Lawyer also shared their problem of not getting the salary for many months during the transit period of the project being handed over by DIHR to the Embassy of Denmark. The regional coordinators shared that even the rent, file copying and other related costs were not paid for those months and the LA lawyers had to take loan to pay by their own.
- The LA lawyers were found to be on constant threat from both the warring party and security forces. CeLRRd is often excluded from the interaction among the other NGOs and Bar authorities, which has been working in the same interest.

### **9.3. RECOMMENDATIONS**

Overall, all the concerned respondents of the evaluation recommended for the betterment as well as for the sustainability of the program. However, some pointed out the problems and challenges and recommended to improve the quality and emerge from such limitations. Followings are some *specific recommendations* that evaluators have come up mainly based on the remarks, including suggestions, passed out by the rights holders and the stake holders, including the people involved in the program:

**Regarding quality legal aid representation:**

- Due to the present condition and political disturbances and lack of availability of adequate service facilities, including lack of competent human resources in the Bar units, CeLRRd, right now, is not in the position to handover its responsibility as it was previously designed. If the legal aid program is handed over to institutions that do not have sufficient well trained and skilled human resources, the program can collapse. Therefore, the overall findings justify continuing the present role of legal representation till the time Bar or state provided legal aid mechanism is competent to handle effectively.
- Presently the Legal Aid Regional Offices are having limited resources i.e. computers, vehicles and library which are very much necessary for the LA lawyers to appropriately prepare case, reach court on time, and maintain the record as per representation.
- Though some of the lawyers involved in the program said that they are sufficiently paid, some complained that they have some limitations regarding the transportation expenses, lunch and other expenses used for the official purpose. Therefore, request for review of salary was made to the evaluation team. Request was made that such a review should be scientific and as per the market context.
- Considering the nationwide volume of prisoners, very limited numbers of prisoners are receiving the legal aid service. To increase availability of the service, project needs to be expanded to some other districts which will increase people's accessibility to justice.

- Most of the respondents complained that the program was not in coordination with other governmental and non-governmental organizations and institutions. Thus the central Executive Committee needs to design the program in a different way so that a better coordination with the local organisations such as the Bar, NGOs, District Attorney's Office, Police office and others can be enhanced and strengthened.
- The overlapping is a problem that the project is facing today. Thus to avoid it, coordination among the organizations, working in same area needs to be increased. Consultation with the family members or relatives of prisoners may also reduce the problem.

#### **About the Establishment of National Legal Aid Network**

- Misconception about the network is that it is taken as a counter organization of Nepal Bar Association.
- However the sustainability of program is institutionalized. Framework was developed by the previous project to establish network.
- Before establishing the network, there had been a proposal made by CeLRRd to handover the LA program integrating with NBA at local units. However the political scenario changed the whole context. Local Bar units were not in the position to take over cases of CeLRRd. Because according to the proposal it was required to strengthen the local Bar unit first. Fourteen districts were without lawyers from Bar. Thus the emergence of the network was essential to work as an umbrella organization. The main objective of the network is to work as an umbrella organization in the field of PLA.

- Step by step programs were held to establish the network. First the national conference provided unanimous mandate for establishing the network. One hundred lawyers of the same field signed the declaration.
- The Declaration was adopted which made clear giving due recognition to the status of NBA and Bar Council as above the network.
- To carry out its objectives effectively, the network has also focused towards coordination through an integrated approach. However, there is a problem that only individual lawyers or organization of similar status as of a NGO could be the members of NaLAN. So, the Bar local units are excluded from this opportunity.
- There will be only coordination among Bar and network. Network is not going to take over the Bar.
- Network has to work with Bar in integrated approach of complementarity and also with those organizations who are not the member organizations, but providing moral support to the network.

#### **About the implementation of the PLA Website**

The following measures are necessary to make the website highly useful in all the three centres.

- The website should be maintained in Nepali version to make its maximum use by ordinary prisoners also.
- Legal aid lawyers should be trained in each center to upload and enlist the cause list in the website.

- A person with technical expertise (system administrator) is necessary in centre to supervise and maintain the site and sort out the problems that arise during its operation.
- A budgetary provision should be made to increase the internet bandwidth in all legal Aid Centers, particularly in Biratnagar and Nepalgunj center where there are no technicians to train them for the operation of PLA website.



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# ANNEXES

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## **EVALUATION MATRIX**

- Evaluation Matrix is a very simple tool and it has a powerful purpose.
- It helps the user to consider a wider range of data collection methods
- Evaluators sometimes get into the habit of using one or other data collection method, e.g., questionnaire, without considering the advantages of alternative methods that may have more powerful expression
- This tool prompts user to consider each evaluation question and to decide which of the many data collection options have the greatest potential for providing the desired information

### **How to use Evaluation Matrix?**

1. The "Evaluation Matrix" tool will help you consider the most appropriate and feasible data collection method for each of the questions identified in your evaluation plan
2. List your questions on the vertical side of the matrix.
3. List the feasible data collection methods on the horizontal side of the matrix (The feasible data collection means are described in brief below.)
4. Consider each question carefully and choose the most appropriate data collection method.

### **Anecdotal Record Form**

- Evaluation data does not have to be reported as "cold hard statistics"
- This provides an opportunity to capture the "human story" and critical incidents involved in the project development

### **Expert Review Checklist**

- Expert review is one of the primary evaluation strategies used in both formative and summative
- This checklist facilitates experts critically evaluate the quality of the program

### **Focus groups**

- Focus groups are a powerful means of collecting data from the group
- The evaluators has to be precise to get the quality of information he/she is seeking

### **Interview Protocol**

- Interviews are a powerful means of collecting data
- However, interviews need to be carefully planned so that evaluators get the kind and quality of information they are seeking.

### **Questionnaire**

- Questionnaires are undoubtedly the single most frequently used by evaluators
- The questionnaire although appears easy has to be precisely and thoughtfully drafted to avoid any duplication
- This is also one of the powerful tools of extracting the desired information

## Evaluation Matrix

Evaluation Questions	Data Collection Methods					
	Anecdotal Records	Expert Review	Observations	Focus group discussion	Interview	Questionnaires
<b>• CeLRRd Staffs (Biratnagar &amp; Nepalgunj)</b>						
How many staffs are there in CeLRRd Regional Office?			√		√	√
Are number of LA lawyers sufficient for your region in CeLRRd?					√	√
What is the current status of case volume and how many cases in a day do you have to litigate?					√	√
What are the standards do you base for providing LA?					√	√
What is the overall achievement of the project?					√	√
Do you refer or cite any international instruments while pleading in court?					√	√
Does the court entertain the international norms?					√	√
Are you providing LA to minors?					√	√
What measures do you take for the protection of their privacy?					√	√
What is the composition of LA staff in the program districts?					√	√
What are the difficulties faced in the field?					√	√

Prioritize your professional relations with all related components of CJS of Nepal?					√	√
Are the infrastructures and resources provided to you sufficient?					√	√
What is your personal achievement from the project?	√				√	√
What basic problems do you face with regards to the smooth functioning of the program?					√	√
What do you recommend for the better implement of this project?					√	√
<b>• District Prison, Morang</b>						
<b><i>Kumar Pokhrel, Jailer</i></b>						
What is the no of prisoners?					√	
Are the existing infrastructures of the prison sufficient?			√		√	
How frequently do CeLRRd LA lawyer visit the prison?					√	
How many cases do you refer to CeLRRd for LA?					√	
How do you rate the representation of the LA lawyers of CeLRRd?					√	
What do you think should be done to enhance this program?					√	
What do you expect from CeLRRd for the betterment of the prison?					√	

<b>• Prisoners</b>						
What is your name?				√	√	
What is your permanent address?	√			√	√	
On what charge were you arrested?	√			√	√	
Since when have you been receiving legal aid from CeLRRd?				√	√	
What is the physical status of the prison?			√	√	√	
Who referred you for the CeLRRd LA program?				√	√	
Have you ever paid any incentives to the lawyers?				√	√	
How frequently do the lawyers visit you?				√	√	
What is the status of your case now?	√			√	√	
Are you satisfied with the service provided by the CeLRRd?				√	√	
Do you recommend other prisoners for the service?				√	√	
<b>• NHRC Regional Office, Biratnagar</b>						
<b><i>Pradeep Jha, Protection Officer and team</i></b>						
How long have you been aware about the PLA program of CeLRRd?				√	√	
What should be done to effectively run the PLA program?		√		√	√	

What are the challenges and implications you observe in PLA program?		√		√	√	
What is your recommendation for the betterment of the project?		√		√	√	
<b>• UN-OHCHR, Biratnagar</b>						
<i>Ali Saleem , Representative and his team</i>						
How have you observed CeLRRd's effort to provide LA in this region?		√		√	√	
Do you see any scope of cooperation with CeLRRd?		√		√	√	
<b>• Judicial and prosecutors bodies of Morang</b>						
<i>Suresh Lal Shrestha, President, Appellate Court Bar Unit, Morang</i>						
How do you see the PLA program of CeLRRd?		√			√	
Does NBA have any policies to coordinate with CeLRRd?		√			√	
How have you rated the efficiency of CeLRRd?		√			√	
What is the general impact of this program in field?		√			√	
What are your suggestions to make the program effective?		√			√	
<b>• Registrar, Appellate Court, Morang</b>						
How have you observed the work of PLA of CeLRRd?		√			√	

Are the PLA lawyers adequately providing LA to political prisoners?		√			√	
How do you see the scope of improvement of the program?		√			√	
What would be your further recommendation for strengthening this project?		√			√	
<b>• Ramesh Khatri, Joint Government Attorney, Appellate Government Attorney Office, Morang</b>						
What is your comment on performance of PLA by CeLRRd?		√			√	
How do you judge the quality of the service?		√			√	
What is the frequency of coordination of PLA CeLRRd with the attorney office?		√			√	
What are your recommendations to effectively run the project?		√			√	
<b>• Mahesh Pudasaini, Judge, District Court, Morang and his associate</b>						
How do you see the work of PLA of CeLRRd?		√		√	√	
What should be done to give sustainability to the program?		√		√	√	
What is the presentation of CeLRRd's LA lawyers in the court?		√		√	√	
What are your suggestions to strengthen the PLA program of CeLRRd?		√		√	√	

<b>• Bhanu Bhakta Kafle, District Government Attorney, District Government Attorney Office, Morang</b>						
How frequently do CeLRRd's LA lawyers interact with court?		√			√	
Are they well prepared while litigating the cases?		√			√	
What are the measures to be opted for the effectiveness of the PLA program?		√			√	
<b>• Law Enforcement Personnel Morang</b>						
<b><i>Jagat Bdr Bista, SP, District Police Office, Morang</i></b>						
Do LA lawyers of CeLRRd frequently coordinate with you?		√			√	
Have the police facilitated the LA lawyers of CeLRRd in meeting with arrested persons?		√			√	
What are the limitations in your opinion that are hindering the successful implementation of the project?		√			√	
What do you recommend for the success of the project?		√			√	
<b>• Rabindra Sharma, DSP, District Police Office, Morang</b>						
How have you observed the PLA program in Morang?		√			√	
What are the lacunas you see in PLA program?		√			√	
What are your suggestions to improve the lacunas?		√			√	



<b>• Judicial and prosecutors bodies of Banke</b>						
<b><i>Suresh Kumar Poudyal, President, Appellate court Bar Unit, Banke</i></b>						
How have you seen the PLA lawyers and the program as a whole?		√			√	
Do you receive any complains about the FLA of CeLRRd in your region?		√			√	
Have you ever referred any cases to CeLRRd?		√			√	
What do you recommend for the effectiveness of the project?		√			√	
<b>• District Prison, Banke</b>						
<b><i>Bharat Bahadur Thapa, Jailer</i></b>						
What is the no of prisoners?						
Are the existing infrastructures of the prison sufficient?			√		√	
How frequently do CeLRRd LA lawyer visit the prison?					√	
How many cases do you refer to CeLRRd for LA?					√	
How do you rate the representation of the LA lawyers of CeLRRd?					√	
What do you think should be done to enhance this program?					√	
What do you expect from CeLRRd for the betterment of the prison?					√	

<b>• Prisoners</b>						
What is your name?	√				√	
What is your permanent address?	√				√	
On what charge were you arrested?	√				√	
Since when have you been receiving legal aid from CeLRRd?					√	
What is the physical status of the prison?					√	
Who referred you for the CeLRRd LA program?					√	
Have you ever paid any incentives to the lawyers?					√	
How frequently do the lawyers visit you?					√	
What is the status of your case now?					√	
Are you satisfied with the service provided by the CeLRRd?					√	
Do you recommend other prisoners for the service?					√	
<b>• Law Enforcement Personnel, Banke</b>						
<b><i>Shiva Lamichane, SP, District Police Office, Banke</i></b>						
Do LA lawyers of CeLRRd frequently coordinate with you?		√			√	
Have the police facilitated the LA lawyers of CeLRRd in meeting with arrested persons?		√			√	
What are the limitations in your opinion that are hindering the successful implementation of the project?		√			√	

What do you recommend for the success of the project?		√			√	
<b>Kathmandu, PLA Center</b>						
How many staffs are there in CeLRRd Regional Office?					√	√
Are no of LA lawyers sufficient for your region in CeLRRd?					√	√
What is the current status of case volume and how many cases in a day do you have to litigate?					√	√
What are the standards do you base for providing LA?					√	√
What is the overall achievement of the project?					√	√
Do you refer or cite any international instruments while pleading in the court?					√	√
Does the court entertain the international norms?					√	√
Are you providing LA to minors?					√	√
What measures do you take for the protection of their privacy?					√	√
What is the composition of LA staff in the program districts?					√	√
What are the difficulties faced in the field?					√	√
Prioritize your professional relations with all related components of CJS of Nepal?					√	√
Are the infrastructures and resources provided to you sufficient?					√	√

What is your personal achievement from the project?	√				√	√
What are the basic problems do you face to smoothly function the program?					√	√
What do you recommend for the better implement of this project?					√	√
<b>• Judicial bodies, Kathmandu</b>						
<i>Narendra Prasad Pathak, Deputy Attorney General, Office of the Attorney General, Kathmandu</i>						
What is your overall impression towards CeLRRd PLA Program?		√			√	
How have you found the quality of the service provided?		√			√	
What is the frequency of coordination of PLA CeLRRd with the attorney office?		√			√	
What do you are the interventions to be made to effectively run the project?		√			√	
<i>Ishwor Khatiwoda, Judge, Appellate Court, Baglung</i>						
How do you see the work of PLA of CeLRRd?		√			√	
What should be done to give sustainability to the program?		√			√	
How do you find the presentation of CeLRRd's LA lawyers in the court?		√			√	
What are your suggestions to strengthen the PLA program of CeLRRd?		√			√	



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## NAGARKOT DECLARATION

On

### National Legal Aid Network

*(Adopted by the National Conference of Legal Aid Lawyers held in 8<sup>th</sup> June, 2003)*

It is indisputable truth that the **Right to Legal Defence** by lawyer is guaranteed by the Constitution of the Kingdom of Nepal and the International Human Rights Instruments. In addition, the right to legal defence is an integral part of due process of law, any violation of right to legal defence may cause negative impact in fair and impartial judicial proceedings. Considering these values, this Conference of lawyers involved in Prisoner's Legal Aid, agreed that right to legal defence to helpless prisoners is their human rights relating to fair and impartial justice. We, the participants of this Conference heartily accept the basic value and duty of legal professionals involved in such significant service of free Legal Aid. While dispensing such duty, we promise to follow, in practice, that all directions given from time to time by Nepal Bar Association and the Rules of Professional and Moral Conduct of lawyers issued by Nepal Bar Council. Being committed to the conclusions of the Conference, we have promised, to promote legal profession by such action into the civilized, respective profession for the protection of the poor and indigent through effective Legal Aid. We, hereby, proclaim the "**Nagarkot Declaration**" with the following five specific points;

- 1) We all agreed for formation of Nation-wide Legal Aid Network with the view of protection and promotion of Prisoner's Constitutional and Human

Rights, willing that Legal Aid concept as primary purpose for the sustainable institutional development.

- 2) Realizing the need of a structure to fulfill the concept of National Network, presently with the formation of action committee on the regional (Five Regional Development areas of Nepal) basis, we have agreed to extend it from regional to district level in tune with decentralization principle.
- 3) We realized the need of drafting the Constitution and guidelines of Network for systematic administration.
- 4) Realizing the necessity of institutional integrity for effectiveness of Legal Aid Programme, we have agreed to affiliate the Network with Nepal Bar Association, Bar Council and other concerned Governmental and Non-Governmental Organizations.
- 5) Internalization of Legal profession is an essential element for the continuation of Legal Aid Programme. Taking it into consideration, we, according to our humanitarian and economic capacity, shall represent the cases voluntarily and perform the role as a social engineer, following the professional ethics for enhancement of the notion of **Free Legal Aid**.



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**NALAN EXECUTIVE COMMITTEE**

<b><u>SN</u></b>	<b><u>Name</u></b>	<b><u>Designation</u></b>	<b><u>Organisation/Individual</u></b>
1.	Geeta Pathak Sangroula	President	CeLRRd
2.	Balkrishna Dhakal	General Secretary	Kathmandu School of Law
3.	Sudip Devkota	Treasurer	Individual
4.	Hari Bahadur Karki	Vice-president	AJAR
5.	Som Luintel	Vice-president	People Forum
6.	Jhabindra Poudel	Vice-president	CLRC, Nepalgunj
7.	Netra Tamang	Vice-president	CLRC, Kanchanpur
8.	Hem Raj Pant	Vice-president	CLRC, Biratnagar
9.	Baldev Chaudhary	Member	CLRC, Udayapur

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**Address of NaLAN**

P.O.Box. : 25113,

Kupondol-1, Lalitpur, Nepal,

Phone : 977-1-5011641,

E-mail: [nalan@wlink.com.np](mailto:nalan@wlink.com.np)

C/O Mobile : President, 9851078035



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## **CASE MEMORANDUM**

**Center for Legal Research and Resource Development**

**Prisoners Legal Aid Program**

**Case Memorandum for Legal Aid Lawyers**

**Plaintiff:**

**Defendant:**

.....

.....

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**VS.**

.....

**Case:** .....

**Part 1:**

**A. Brief Introduction of the Client**

1. Surname : .....

2. Given Name : .....

3. Nick Name:.....

4. Age:.....

5. District:.....

**B. Case Details:**

1. Date of Case filed in the Court:.....
2. Accused under Custody or Bail:.....
3. If in Custody, the Jail:.....
4. If on bail, the types of bail ( money bond, or simple appearance): .
5. If on Money Bond, the amount or the property submitted:.....

**C. Condition of Accused:**

1. Economic Background:.....
2. Education:.....
3. Past Criminal Background .....
4. Employment:.....
5. Other Important Information, if any:.....

**D. Theme of the Case:**

The following elements may be of use for developing the theme:

1. **The position of accused** (Status of Accused)
  - Specification of position in terms of duration or timeframe ( when he/she obtained the position or how long he/she has been in the position):.....
  - .....

His/her good works in the position (what particular matters of his positive achievements are established):.....

- :.....
- Family Background ( how many children or his/her prior family background)
- :.....

2. **Negative of accused** (it is necessary to be aware of matters of negative perspective of accused when considering the theme).

- Prior record of bad behavior:.....
- Prior record of criminality: .....
- Prior record of alcoholism, gambling and other anti-social behaviors:.....
- Family and related unacceptable behaviors ( like divorce or record of fighting with spouse, abuse of children etc).....

3. Any Particular information to be cited in relation to Core Theory (for instance, if you have to mention of' definition of Throttling, it is better to do here).

.....

**Part 2**

**A. Facts of Cases in relation to Evidences**

**1. Relevant Facts:**

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.....

**2. Facts in offence or cause of action:**

**1. Primary Fact :**

.....

.....

.....

**2. Secondary Fact( fact which is essentially associated with primary fact and needs decision)**

.....

.....

**3. Tertiary Fact( fact which helps to decide the case)**

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.....  
.....

4. **Other Fact** (if any, which may important in certain circumstances):

.....

<p><b><u>Core Theory:</u></b></p> <p>1. Description of Core Theory :..... ..... .....</p>
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3. **Issues to be decided:**

1. ....
2. ....
3. ....
4. ....

4. **Evidences:**

1. ....
2. ....

3. ....
4. ....

**5. Arguments:**

Arguments are always related to core theory. Arguments are designed and presented to prove the core theory. A few things must be always considered while developing arguments.

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....
9. ....
10. ....

5. **Major Arguments and Reasoning**

**ARGUMENT NO. 1**

*Full Text of Argument:*.....

.....

**REASONING:**

• **Reasoning No. 1**

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Heading of Reasoning:.....

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Support Document

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Authority .....

• **Reasoning No.2**

Heading of Reasoning:.....

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Support Document:

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Authority:

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**ARGUMENT NO. 2**

Full Text of Argument:.....

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- **Reasoning No. 1**

Heading of Reasoning: :.....

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Support Document: :.....

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Authority:.....

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- **Reasoning No. 2**

Heading of Reasoning:.....

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Support Document :.....



Authority: :.....  
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**ARGUMENT NO. 3**

Full Text of Argument:.....  
.....

- **Reasoning No. 1**

Heading of Reasoning: :.....  
.....

Support Document: :.....  
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Authority: : :.....  
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**ARGUMENT NO. 4**

Full Text of Argument:.....  
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- **Reasoning No. 1**

Heading of Reasoning: :.....  
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Support Document: :.....

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Authority: : :.....

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### **ARGUMENT NO. 5**

Full Text of Argument:.....

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- **Reasoning No. 1**

Heading of Reasoning: :.....

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Support Document: :.....

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Authority: : .....

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**Conclusion:**

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**Bibliography:**

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**Kathmandu School of Law**

**Prisoners Legal Aid Clinic**

**PRISONERS MEMORANDUM**

1. Full Name of the prisoner.....
2. Age .....
3. Address.....
4. Profession .....
5. Prison .....
6. Case.....
7. Date of case registered .....
8. Status of the case .....
9. Has the decision been given by the district court?    Yes    No
  - a. If decided has your case been filed at appellate court?    Yes    No
  - b. Has the appellate court given any judgment?
8. Name of the complaint .....
9. Case no .....
10. Names of other defender .....
11. Date of imprisonment .....
12. Trial court .....
13. Subjudice court .....

c. Remaining  
work.....

14. If the judgment has already been made

a. The outcome of the judgment

b. Date of judgment

15. Have you hired lawyers? Yes No

16. If yes what is their status? Paid Free

17. Prior to this has your case been looked by other organizations?

18. If yes have you have you gained any service from the legal professionals or organizations?

19. Are you satisfied with the service provided by those organizations?

20. If you have not hired lawyers then what is the reason?

Economic Unknown Others

21. Would you like to get free legal aid service from Kathmandu School of Law?

.....

.....  
Signature of the interviewee  
Date

.....  
Signature of the interviewer  
Date

**Schedule – 1**

**(Related to Rule 9)**

This letter of appointment of lawyer is submitted to .....in the year 20...writ/appeal/ petition/ civil case/ criminal case no.....

Plaintiff.....

Status in the case

Defendant .....

**Case**

I .....on the aforesaid plaintiff/defendant/appealer/petitioner would like to appoint Senior advocate/advocate/pleader .....till the final judgment is made and receive the date of time on my behalf and therefore

I have written this statement of appointment of lawyer on your name. I would request you not to carry out any actions that will be detriment to my case.

Favor

**Acceptance**

On the aforesaid subject I hereby agree to plead and inform you on behalf the date of time of the case of Mr./Ms..... and I will not carryout any actions that is detriment to your case.

Senior advocate/ advocate/ pleader

No of certificate

Date:

Kathmandu School of Law

Prisoners Legal Aid Clinic



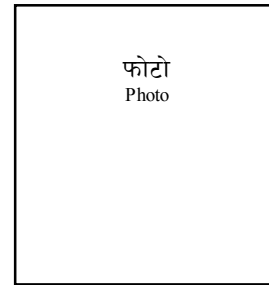


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## PRISONER'S CASE PROFILE

### बन्दीको मुद्दासम्बन्धी विवरण

(Prisoner's Case Profile)



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(१) नाम (Name of Prisoner): .....

(२) ठेगाना (Address): .....

(३) कारागार (Prison) : .....

(४) थुनामा परेको मिति (Detain Date): .....

(५) कारागार सहरवा भै आएकोमा पुरानो कारागार (Previous Prison) : .....

(६) मुद्दा (Case) : .....

(९) मुद्दा नं. (Case No.) : .....

(७) विचाराधिन अदालत (Court) : .....

(८) फाँट (Section): .....

(१०) मुद्दा दर्ता मिति (Reg. Date): .....

(११) शुरु अदालत (Trial Court) : .....

(१२) कानून व्यवसायीको नाम (Name of Lawyer's) : .....

(१३) क्लिनिकमा मुद्दा दर्ता नं. (Clinic Case Reg.No.).....

(१४) फैसला सम्बन्धी विवरण (Detail of Judgement) :

सि.नं. (SN)	अदालतको नाम (Court)	फैसला मिति (Date of Judgement)	परिणाम (Result)	कैफियत (Remarks)
१.				
२.				
३.				

(१५) बन्दीलाई भेट गर्दा भन्ने विवरण (Detail of Jail Visit) :

मिति (Date)	मुद्दा सम्बन्धी जानकारी (Case Information)	भेट गर्ने व्यक्तिको नाम (Name of Visitor)	हस्ताक्षर (Signature)	कैफियत (Remarks)

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**मुद्दासम्बन्धी अन्य टिपोट (Other Remarks Related to Case)**

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