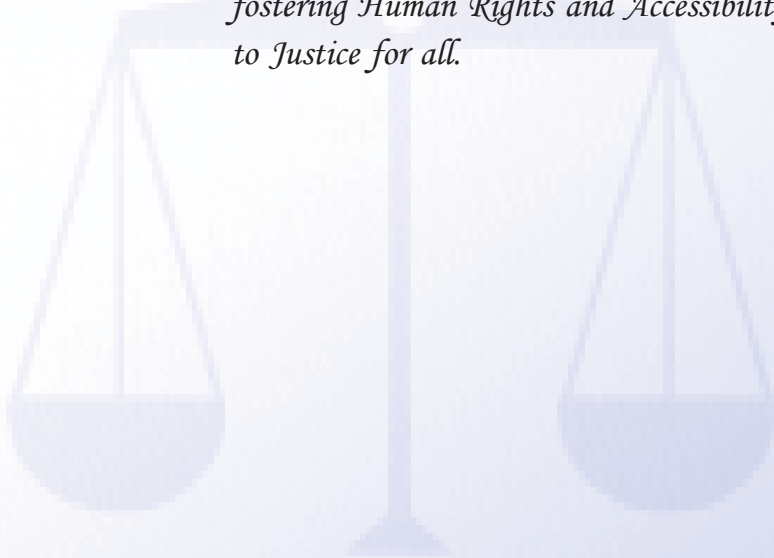


**A Glimpse of**

# CeLRRd

*Center for Legal Research and Resource Development*

**A** *n Organization committed to the Systemic Change in the Society through systemic change, promotion of Rule of Law, and fostering Human Rights and Accessibility to Justice for all.*



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# Message from Coordinator

CeLRRd has passed a number of years with creative efforts to bring about systemic changes in the sector of Justice, protection of vulnerable individuals and groups, and promotion of Rule of Law. The days in the past were full of struggle but of great inspirations and outcomes. The development of professionalism of all members and staff of CeLRRd is spectacular, and it is an indicative of its increasing capacity. In the sector of Criminal Justice, it has been recognized as a leading institution in Nepal. The contribution it has made for developing and implementing the “Community Surveillance System against Trafficking” is far reaching too. This program has earned for CeLRRd a great fame. The promotion of legal education with great emphasis on modern approaches and methods is a landmark contribution.

CeLRRd is a team of politically non-partisan professional lawyers and law teachers. It respects the political ideology and belief of each member, yet the political influence is strictly prohibited in its works. The team operates with a strong feeling and ideology that a nation can advance only by non-partisan involvement of professionals in the affairs of development. The cooperation between the government and non-governmental institutions is another foundation CeLRRd is based on. In the past CeLRRd has extensively worked in collaboration with government institutions. The development and publication of “Criminal Procedural Guidelines”, “Manuals for Investigation, Prosecution and Adjudication”, “Trial Handbook” and “Manual for Juvenile Justice” are major outcomes of this collaboration. All these documents have been developed in



active and deeply felt cooperation with the Judiciary, Office of the Attorney General, Police Headquarters and the concerned Ministries. These works, in the sector of Justice and Law enforcement, have been able to develop a common approach to address the problem. Importantly, CeLRRd has gained experience of working as a secretariat for programs collectively implemented by institutions mentioned above. The non-partisan role of the CeLRRd has significantly contributed to this achievement.

The intensification of research activities in the field of Law and Justice is a significant contribution made by CeLRRd. As the State is still conservative to the investment in the sector of Law and Justice, the research activities in this regard are very important. Beginning from 1997, CeLRRd has completed a number of research on Law and Justice sectors- “Analysis and Reforms of the Criminal Justice System of Nepal”, “Impact of Corruption in the Criminal Justice System on Women” “Counter Corruption Legal Framework” “Trail Court System in Nepal: With Special Reference to Women’s Accessibility to Justice”, “Baseline Study on Criminal Justice System” and “Analysis of Laws and Policies on

Labour Migration and Trafficking” being the most important ones. In addition, CeLRRd through Kathmandu School of Law has conducted some important studies on Juvenile Justice System. Collectively, these research activities have significantly contributed to the development of the Nepalese Jurisprudence.

The impacts of these researches are far reaching. The attention of donor communities towards improvement of the condition of the institutions involved in dispensation of Justice, and reformation of the system began subsequent to the “Analysis and Reforms of the Criminal Justice System of Nepal, the first comprehensive study ever carried out in the context of Justice System in Nepal. The current Danish support to the Justice sector is largely the consequence of the plan of action for interventions suggested by the said research. Although, The Asia Foundation has been involved in strengthening of the Judiciary since early 1990s, the specific interventions concerning the Reformation of the Criminal Justice System in particular began after 1997. The findings presented “Analysis and Reform of Criminal Justice System of Nepal” in relation to the chronic delay in criminal proceedings, huge failure of prosecution, lacking system of filtering of cases, prevalence of torture and inhuman treatment, and deprivation of legal defense inspired TAF to support an in-depth study of Trial Court System in Nepal. The study was remarkable in many aspects; it widely analyzed the caseload situation, practice of using filtering devices for funneling the Criminal Justice System, the quantity and quality of the human resource engaged in the Justice System, the attitude of the State to the investment on Justice System. The findings, based on the official statistics, presented very unsatisfactory situation of the Justice System in Nepal. Obviously, TAF came up with an increased intervention for Strengthening the Trial Court System in Nepal. Justice system then gradually attracted other donors too.

All the researches carried out by CeLRRd significantly demonstrated the weaknesses of the Justice System in Nepal, the Criminal Justice System in particular. The recorded weaknesses

were found largely responsible for the continuity of violation of rights of persons to fair trial. As demonstrated by various researches mentioned above, the lacunas and gaps in, and discrepancies and defects of, legal framework concerning procedures practiced by the current administration of Justice was a serious hurdle for ensuring fair trial, as well as addressing a number of problems surfaced. The researches carried out by CeLRRd and dissemination, thereof, have categorically recommended the need for urgent improvement of the existing legal framework, the procedures in particular. The rethinking on having a consolidated “Criminal Procedure Code” was therefore prompted by such studies. CeLRRd’s members have significantly contributed to the drafting of the code.

Implementation of the “Prisoners’ Legal Aid Project” by CeLRRd in cooperation of the Danish Center for Human Rights, DCHR (now Danish Institute for Human Rights, DIHR) was an immediate result of the research carried out in 1997-Analysis and Reforms of the Criminal Justice System. The project was designed and implemented to immediately address the problem of lacking representation of large number of accused the said study had surfaced. This project introduced a concept of “Institutionalized Free Legal Aid” in Nepal. The project was implemented upon national survey of prisoners that was conducted for identifying the exact population of prisoners needing legal aid, and also for laying down concrete criteria for service. The project’s outcome is spectacular, as in a very short period of timeframe, about four years; hundreds of poor prisoners have been able to obtain free legal aid service in more than 3000 criminal cases. The ratio of cases where the reversal of judgments has taken place after CeLRRd’s legal aid intervention is about 33 percent. It simply means that a number of prisoners are subjected to imprisonment only for failing to have legal aid. Obviously, through this project CeLRRd has played a crucial role in protecting the Human Rights in the context of Criminal Justice. The project is also important as it provides an opportunity of legal aid knowledge

and skill training for dozens of lawyers. This component of the project was helpful to build professional foundation for legal aid program in Nepal.

CeLRRd while implementing all these activities had to pass through a number of hurdles and challenges. Occasionally, these hurdles were enough to create frustration. The “status consciousness” among actors of Criminal Justice was found to be one of the most frustrating parts of the hurdle in cooperation. This attitude often led professionals, judges in particular, to the disinclination in active participation in refreshment training and continuous education by professionals other than judges themselves. It was one of the reasons; judges opted to have separate workshops for orientation on “Criminal Procedural Guidelines (CPG)”. However, the attitude gradually changed by the time CPG was published. When the resource persons’ training was conducted in order to help nationwide implementation of CPG, the isolation of judges from the single common platform was criticized by other actors. The participation of judges in common platform of all actors significantly increased, onwards the training. This development led to the tolerance of “healthy criticism” of all in a common platform.

Nevertheless, the attitude of many officials to declare CeLRRd’s members as professionals with responsibility to play an important role in the development of Justice System did not go astray. We some time have bitter experience of “official status consciousness” of actors of Justice System. Members of civil society were often considered as “outsiders”, and thus when professionals from organizations like CeLRRd and other organizations made remarks on weaknesses of the system, they did not take it positively. They took it as interference of the outsiders. At the outset, the notion that such efforts could help strengthen the system was largely absent among the government actors of Justice. Moreover, many officials who participated in the programs failed to realize that they were working to strengthen the system; rather they reflected an impression that they were working for CeLRRd. The situation sometimes became very painful

when there was a demand for huge allowance or per-diem for participating in the programs. Further painful was the situation, where the participants demanded for dinner with cocktail. This attitude has now changed largely. A large number of officials now take such programs positively, as important instruments of continuous education.

The donors’ attitude is also not always cooperative. Many of them are interested in “paper reports” than impacts of the program. The differences in amount and mode of payment of allowances, per-diem and subsistence allowance often create confusion among stakeholders. Some donors do not hesitate to support grand cocktail parties, along with huge subsistence and per-diem. This practice encourages participation of people who are interested with monetary gain, rather than the need of strengthening the capacity. CeLRRd has effectively discouraged this practice. CeLRRd has adopted a policy of not allowing the cocktail parties.

Despite all these problems, CeLRRd has been able to grow as a viable institution. It has been able to create concrete impacts in many respects. Linkage of the system of Justice and Law with community is one of the great achievements it has made. The concept of alternative lawyering, i.e. outreach of lawyers for the service of the community has been fostered as the prime mission of CeLRRd. The involvement in prevention of trafficking has been basically founded on the concept of alternative lawyering. This concept has also inspired CeLRRd to extend its cooperation to the Kathmandu School of Law. Currently, it has been supporting legal education of a number of students from marginalized section of the population.

CeLRRd commits to increasingly involve in Strengthening of Criminal Justice System in the days to come. It will further intensify its efforts to strengthen legal education. The prevention of trafficking through CSSAT program will be enhanced by securing wider participation of the community at grassroots as well as national level. The enthusiasm of members and staff is great.

Finally, I would like to thank all my colleagues for their continuous dedication and support to build CeLRRd as a professionally accountable institution. My sincere gratitude goes to Prof. Madhav Prasad Acharya, Chairperson, who despite of his eyesight problem and heavy academic responsibilities at Kathmandu School of Law contributed a lot to build this organization with sound professionalism. Special thanks also goes to Director Mr. Kishor Silwal, Program Chiefs Ms. Geeta Pathak sangroula, Mr. Praksh K.C, Mr. Rammani Gautam and Mr. Anjan

Dahal for their unwavering commitment and hard works to build this organization.

Last but not the least sincere thanks go to our partner organizations. The Asia Foundation and Danish Center for Human Rights deserve special mention for their continuous support to CeLRRd since its inception. Danida has been a major organization to help in the field of Strengthening the Justice System. Support of UNICEF, UNESCO and ILO are appreciable to help the mission of CeLRRd.

**Yubaraj Sangroula**

Co-ordinator

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# Introduction

**C**eLRRd is a non-governmental organization, founded in its present form in 1998. Its fundamental goal is to accelerate the process of systemic change in society, by fostering widespread understanding of the Rule of Law and unrestricted access to free and fair Justice. ....

.....CeLRRd aims to achieve this through research, resource development, community mobilization, legal awareness and legal aid activities. Its strategic objectives are to:

- ✍ **Safeguard the rights and interests of disadvantaged segments of Nepalese society.**
- ✍ **Conduct research activities on socio-legal issues that have direct impact on the lives of Nepali people.**
- ✍ **Foster legal professionalism with an emphasis on “alternative lawyering”.**
- ✍ **Conduct extensive paralegal and general legal awareness programs for the benefit of the grassroots community.**
- ✍ **Provide extended and institutionalized legal aid services to the victims of injustice and Human Rights violations.**
- ✍ **Lobby for essential and appropriate legislation, providing professional assistance in the drafting process.**

CeLRRd has three branch offices for the implementation of its programs in the regions: Nepalgunj, Chitwan and Biratnagar. 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 done in partnership with those communities. In this work, CeLRRd aims to operate through grassroots 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.

CeLRRd works through a network of 11 Community Legal Research Centers (CLRCs) throughout Nepal. Each CLRC is registered as an independent non-governmental organization, and is a link between CeLRRd and community groups, paralegal committees in particular, working at grassroots level. Members of CLRCs have taken part in gender sensitiza-

*CeLRRd in 1998 conducted a three days Gender Sensitivity Training for 90 lawyers from Biratnagar to Nepalgunj. The group of lawyers thus trained had been encouraged to formulate Community Legal Research Center, CLRC, in respective districts. This training was a prelude to the implementation of CSSAT Program. Subsequently, a group of 33 lawyers had been selected from amongst those 90 lawyers for “a 7 day Training of Trainers” on CSSAT Program. Those who participated in this TOT Program had been appointed as Program in Charge and Support Lawyers to CSSAT Program. CSSAT Program was implemented in Jhapa, Sunsari, Udayapur, Parsa, Makwanpur, Dolakha, Sindhupalchowk, Nuwakot, Rasuwa, Chitwan, Nawalparashi, Banke, Kanchanpur, and Dadeldhura. In total 244 Village Development Committees (VDCs) have been covered under the program. Each VDC has constituted a Paralegal Committee. CLRC work in the CSSAT Program, through VDC Paralegal Committee. CeLRRd is directly linked up with CLRC through CSSAT unit at Central Office. For the last two years the unit functions based at Bharatpur and Chitwan.*

tion training and TOT (Training of Trainers) on the organization of CSSAT, CeLRRd's project against trafficking. From December 2001, the activities of CSSAT have been coordinated from CeLRRd's regional office in Chitwan. ■



# CeLRRd

## Programs & Achievements

*CeLRRd's Movements for Trafficking  
Prevention Through the Concept of*

## **Community Surveillance System Against Trafficking (CSSAT)**

**1.**

**C**SSAT is an innovative approach to prevent trafficking. This approach has been evolved by CeLRRd through experience of long work in this field. This approach emphasizes the involvement of the community as owner of all activities. It thus advocates for the effective participation of the community for prevention of trafficking. Further, it believes that the root cause of trafficking of women and girls for sexual exploitation rests on the defective value system of the society. All programs and activities of CeLRRd for prevention of trafficking are therefore guided by the basic principles of CSSAT...

*Antitrafficking rally at  
Kanchanpur*



...Considering Trafficking as a vigorous problem, CeLRRd has undertaken various measures to combat trafficking and has organized many Trafficking Prevention Programs since its inception.

## 1.1. Prevention of Trafficking for Sexual Exploitation- Task Force and Paralegal Committee Strengthening Program

- a. **Program Chief:** Mr. Yubaraj Sangroula (1997-2000) Mr. Ram Mani Gautam( 2000- Paralegal and Task Force Strengthening) Mr. Anjan Kumar Dahal ( 2000- Adolescent Girls Participation and Victims Legal Aid).
- b. **Project Team:** Mr. Bhupendra Poudel (Field Officer, Regional Office Chitwan, ), Narayan Regmi (Field Officer, Regional Office Chitwan), Krishna Bhakta Pokhrel, Mahendra Banstola, Ram Krihsina Adhikari, Fulmaya Ranabhat ( Field Lawyers), Bisal Ghimire (Store Keeper)
- c. **Main Activities:** Strengthening of District and VDC Task Force and Paralegal Committees in major form of intervention under this project. This component comprises activities like:
  - Paralegal training for women, men and adolescent girls,
  - Conceptual Clarity Training on trafficking for District and VDC Task Force.
  - Anti-Trafficking Orientation for Transport Workers in Chitwan, Nawalparashi, Banke, Dhading, Dhanusa)
  - Anti-trafficking Orientation for School Teachers, NGOs and CBOs.
  - Anti-Trafficking Advocacy Classes for School Students.
  - Mass Sensitization Activities on trafficking conduct by Communities.
  - Development of resource materials for effective law enforcement in relation to trafficking and violence against women.
  - Development of awareness materials for prevention of trafficking and violence against women and girls.
- e. **Major Outcome:** This project has been instrumental in developing an innovative concept of prevention of trafficking- CSSAT. This project has very significantly addressed a number of issues related to trafficking. The CSSAT program



CSSAT Training at Sunsari

has identified the defective value system as the root cause of the trafficking. The defective value system, which subjects women to men's control in all spheres of life, provides a basis for the existence of prostitution, where the sex has been identified as a commodity. CSSAT program defines prostitution as an incentive to trafficking for sexual exploitation. This concept has largely helped to consider the problem of trafficking from broader and deeper perspectives.

- f. **Brief Description of the Project:** CSSAT is set up on the belief that gender inequality is the main cause of trafficking and other forms of violence against women. The gender discrimination that has been perpetuated by society and protected by law leaves many women vulnerable to exploitation, through lack of education and opportunity. CeLRRd has defined these long-standing cultural biases against women as a "Defective Value System". The long-term goal of CSSAT is the gradual change in cultural assumptions and roles that can disadvantage women in society.

The program is developed from field studies conducted in districts highly affected by trafficking. The



*Anti-trafficking Orientation for Transport Workers*

trafficking of women and girls for prostitution is one of the most serious problems faced by many communities in Nepal. As the mechanisms of trafficking have become more sophisticated, the practice has spread, affecting people in all parts of the country and of all ethnic groups. Through discussion and experiment, the current model of CSSAT was evolved to combat this problem, and in 1998, the project was established in its present form. A group of young lawyers headed by Mr. Yubaraj Sangroula have made a great contribution to the development of CSSAT as an effective model of prevention. Today it covers 14 of the districts in Nepal that are most affected by trafficking, and has reached 65,000 people, mostly women. These districts are also recognized as prone areas by the Ministry of Children, Women and Social Welfare.

The vigilance, monitoring and social activism of affected communities against the threat of trafficking can prevent its occurrence. Such “community surveillance” is a product of collective strength built among people at grassroots level. Ideally, a “Community Surveillance System” should be organized and implemented by the community itself to meet its changing needs. Community members should have ownership of the entire system, from decision-making to policy-implementation. In realizing such schemes, communities should be facilitated to deal with crimes of trafficking and violence against women, and in the long term, bring their practice to an end.

Through CSSAT, CeLRRd supports communities to form community protection schemes of their own. The major activities of the program have been the following:

Formation of Community Legal Research Center (CLRC) : CLRC is an independent NGO registered in

the district where the CSSAT Program is implemented. Due to unavailability of adequate number of lawyers in Sindhupalchowk, Nuwakot and Rasuwa CeLRRd center office is directly implementing the program. CLRC has lawyers who have obtained gender sensitivity training as members. There has been an understanding between CeLRRd and CLRC of network partnership. Thus, CLRCs are responsible for implementing the CSSAT Program in respective districts. Funds available for the implementation of the CSSAT program is channeled to the Paralegal Committees through CLRCs. These organizations therefore play a very vital role in effective implementation of the CSSAT Program.

By developing this network in many districts, CeLRRd has been able to decentralize the program effectively. A few advantages of the network can be outlined as follows:

- The program has been owned by the local community themselves. Therefore, the program has not been seen as a “baby” of CeLRRd. The sense of ownership is the primary condition for the sustainability.
- The program has effectively implemented the concept of alternative lawyering. In this concept it is a lawyer who approaches the community for support so that the community does not see the legal profession as a profession based on “benefit – loss” market orientated service. This concept thus humanizes the legal profession.
- Since lawyers are directly involved in the service of community, the legal profession has been widely respected by the community.

This way CeLRRd has been able to develop a local mechanism to address the need of community owned trafficking prevention intervention.



*Conceptual Clarity Training on Trafficking for VDC Task-force*

### 1.1.1. Analysis of Laws and Policies on Labor Migration and Trafficking:

This part of the research is one of the activities under “Prevention of Trafficking for Sexual Exploitation” program.

- a. **Research Team Leader:** Yubaraj Sangroula
- b. **Team Members:** Ashish Adhikari and Rishikesh Wagle.
- c. **Scope of Study:** Legislative and Policy Review.
- d. **Main Outcomes:** The study comprehensively analyzed the legislative and policy framework of labor migration and trafficking. The study has been able to present the strengths and weakness of the legislative and policy measures concerning labor migration and trafficking.
- e. **Date of Study:** 2001 (Final Report Published in November, 2002)
- f. **Brief Description of the Project:** This study was conducted in cooperation with The Asia Foundation. The main goal of the study was to review the legislative and policy measures in relation to labor migration and trafficking. This is one of the several research studies conducted by CeLRRd in the context of prevention of trafficking. The study has made an attempt to uncover the level or nature of the nexus between migration and trafficking.

Analysis of Law and Policy on Labor Migration and Trafficking is one of several important research activities conducted by CeLRRd. Over the last 6 years, CeLRRd has developed a network of lawyers against trafficking nationwide.

The law enforcement situation to curb the problem of trafficking is however not effective, although it is significantly improved than in the past. CeLRRd is conscious of this problem. No prevention program would be successfully implemented without cooperation of effective and efficient law enforcement situation. As an effort to address this problem effectively, CeLRRd has recently developed “Manuals for Effective Investigation, Prosecution and Adjudication” in



*Dissimination Meeting at Kathmandu*

two volumes. Orientation workshops have been conducted for over one hundred police officers, prosecutors, judges and defense lawyers. These manuals have been developed considering the special characteristics of the crime of trafficking involves. Trafficking is a type of organized crime, which involves number of people and tactics in series of stages. Trafficking takes place in multiple forms. Many a time trafficking may occur in the form of “migration”. The study of incidents of trafficking from Thailand, Burma, East Europe and several other countries show that migration has been used by traffickers as one of the several modes of trafficking of women and girls for sexual exploitation. Even in Nepal there are number of incidents that establish the nexus between migration and trafficking.

This present study is therefore important to show the linkage between the process of migration and the trafficking. Although there is long ongoing debate on distinction among “migrants”, “trafficked persons” and “smuggled persons”. A rigid distinction is definitely not necessary, but the misconception of any of them will have adverse situation created on freedoms and Criminal Justice System of women. Migration is a fundamental right under the Constitution of the Kingdom of Nepal as well as international human rights instruments. The wrong notion towards the migration will often encourage the governments to adopt hard protectionist attitude towards women that will, in turn, deprive women of their rights to free movement and work of choice. To develop a theory of separation between migration and trafficking, the “compulsion” for mobility had been once used as an important element. It, however, has become off-track at present; all migrants are compelled



*Dissimination Meeting at Chitwan*

for mobility in various degrees and by various reasons. Objective behind the migration may help to some extent to draw distinction between two acts. However, the change in the objective in the middle of migration process or during or after the migration process is not impossible. Thus the objective theory is also not adequately helpful to this purpose and there is a possibility of trafficking putting the migration in a crime control or crime prevention context. But if the “crime element” associated or likely to be associated in the migration is ignored, the life of migrant person may be subjected to a condition of slavery. Person, by her/his own consciousness, takes decision to move from one place to other. There may be compelling reasons for that decision; however, the movement is taken for the purpose or interest of wellbeing of the person.

The study has looked into number of issues within the scope. It is found that the policy of government concerning migrant workers is neither adequate nor effective. In fact, there is hardly any policy which can be analyzed as the “policy on migrant workers”. The study has elaborately studied the existing “Anti-Trafficking Legal Regime” of Nepal. The study covers analysis of the provisions of the proposed bill too. The study has been carried out by a team of lawyers with adequate exposure to development affairs and social issues. The attention is therefore given adequately to various aspects of the problem of trafficking in connection with its nexus with migration process.

The study is based on overview of laws and policy, so that it does not include the qualitative and quantitative analysis of primary data. The objective of the study was limited. However, the findings and suggestions have shared with experts and people involved in field of study and action concerning migrant labor and trafficking. The sharing of ideas includes both the governmental and non-governmental sectors. It

is thus hoped that the study will help to understand the problem more deeply and accurately.

The report of the analysis was disseminated in various places in order to generate awareness as well as collect the suggestion for enriching the quality of the report. The following findings drawn from the analysis of legislative and policy measures and the dissemination of the report thereof are worth mentioning:

- There is no specific Law in Nepal related to the migrant laborers and their rights. The Constitution of the Kingdom of Nepal 1990, Civil Rights Act, The Labor Act, and the Foreign Employment Act provide in general the provisions of citizen’s rights as well as rights of migrant laborers including women and children.
- The legislative framework against trafficking is stringent. The prevailing Trafficking in Human Beings (Control) Act, 1986 has certain flaws and drawbacks and the Bill presented in the parliament tries to address the problems. The Act has criminalized prostitution. It is quite interesting to note that the other countries, which had prohibited prostitution, are decriminalizing it but in Nepal we are proposing to criminalize prostitution. Trafficking and prostitution are different problems and carry different value systems. They need not be and should not be addressed as a single phenomenon. If dealt as a single problem, voluntary prostitution may create voluminous job to Law enforcement officials and forced trafficking may go unnoticed.
- The proposed Bill has incorporated a provision of proceeding in camera of the trial of offences punishable under the Act. It states, if the victim party of the case wants the hearing, court may conduct proceeding in camera. The nature of the offences punishable under the Act themselves demand proceeding in camera. Not only the interest of the victim party but the interest of public in general also requires proceeding in camera. It is not necessary to grant discretion to the court in a matter where there is no point of making a decision on a rational basis.
- Section 14 of the proposed Bill has made a provision of presumption of commission of offence of trafficking of human beings. From the Criminal Law point of view these conditions except the condition mentioned in 14(b) are different stages of crime and are punishable for either attempting or abetting or assisting as de-



fined under Section 13.

- Similarly, the above-mentioned section states the conditions mentioned in Section 14(a) to (d) shall be presumed as commission of offence of trafficking of human beings. But it has not been co-related with Sections 4(2) and 13 of the Act. Section 4(2) defines trafficking of human beings in different categories according to the nature of offences and Section 13 provides different punishment for these different types of offences. There is no specific provision for providing punishment to such presumed offences. It is quite difficult to further presume (there is no such provision under the Bill) that the court will fit the presumptive offence in an appropriate category of punishable act and then punish it.
- Nepal has not still ratified ILO Conventions No. 97 and 143 related to migrant laborer rights and there is no specific commitment of the government to ratify in near future. Similarly UN Convention on Protection of the Rights of All Migrant Workers and Member of Their Families, 1997 has neither been ratified nor there a plan to ratify it.
- There is no provision in Labor Act, 1991 that provides right to migrant laborers. It has only certain protection to women and children worker regarding time and age for working in any enterprise.
- Birth, Death and Other Personal Incident Registration Act, 2033 (1976) provides for registration of the migration incident by senior member of the family, within 35 days of the incident taking place. But it does not clearly mention whether the migration incident has to be registered in the place of origin or place of destination or in both places. The details of prescribed forms for recording the migration incident states it has to be registered in both places. There is a necessity to co-relate the data of outgoing and the incoming migrants in different parts of the country. When one incident of migration has to be registered in two places, then it will cause duplication of recording of migration incident. There is no mechanism available to check this duplication.
- The recordings of the vital events have begun from 2035 BS. But there are no records of migration incident till 2039 BS. If we look into registered migration data from 2040 BS to 2058 BS; 4, 24,717 incidents of migration have been registered. It has not been clear from the registered data, whether family has been registered as single unit or individual has been registered as one unit.
- From 2035 BS to 2058 BS total 8, 66,735 incident of marriage has been registered. It is clear from the data that marriage incident, through which generally women are displaced from their place of origin, are not included or registered as migrant individual. So, the present system of registration does not present accurate picture of internal migration.
- Foreign Employment Act, 2042 (with Second Amendment, 2054) restricts manpower agencies to provide foreign employment to minors and there are tough regulatory measures to women. The agencies may provide foreign employment to women after getting necessary permission from His Majesty's Government and guardian of the woman. This provision was enacted to safeguard women from exploitation. But this provision is not transparent and clear. There are no parameters or circumstances mentioned under which HMG and guardian may give permission for foreign employment. It has adversely affected the freedom of movement of women on one hand and in the other hand those women who have got permission for foreign employment are not protected from exploitation. Rather these women are being abused, maltreated and exploited. (See case of Chandra Kumari Gurung, The Kathmandu Post, August 7, 2000; Editorial, Himalaya Times, 2057/3/25; Six Nepali Girls Rescued, The Kathmandu Post, 17/11/2000, Latvian Company Incident; Gorkhapatra, 2057-3-23)
- H.M.G. has opened 16 countries for foreign employment through approved manpower agencies. The destinations of Nepalese workers are mainly Gulf countries and Malaysia. According to available data of first six months of fiscal year 2058/59 in Saudi Arabia & Malaysia 9530 and 26676 people had gone for foreign employment respectively.
- Every now and then we can hear the sufferings of the Nepalese workers working abroad. A number of newspapers have reported about cheating, abuse & maltreatment of Nepalese workers abroad (see, Gorkhapatra 057/3/24, Himalaya Times 057/4/11). There is lack of initiatives on the part of the Government and

Trade Union of Nepal, to protect Nepalese workers abroad. Official record shows 43, 39 & 4; migrant Nepalese workers have died in the course of their employment in Saudi Arabia, Qatar & Malaysia respectively. These numbers could be higher because these are a number of the legal migrant worker who had gone through registered manpower agencies. There is a trend of huge number of workers going abroad irregularly (without paper registration).

- It is believed that many Nepalese go to the U.S. and European countries as students and tourists and later on they stay over there working legally/illegally. Condition of living, amount of earnings of the workers working in the U.S. and European countries are far better than Asian countries. Basic Human Rights including workers rights are respected in the U.S. and



*Dissemination Meeting at Banke*

European countries. But in Gulf and Malaysia there is no respect for Democracy and basic Human Rights. Foreign workers are not treated fairly and equally.

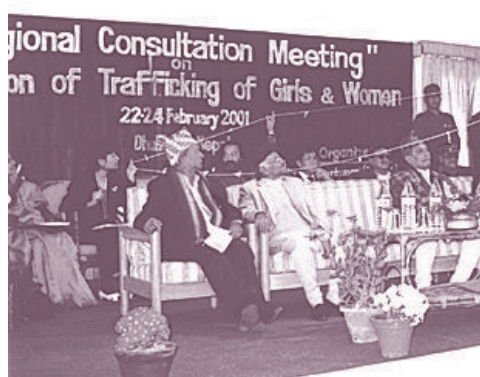
- There are three conventions, namely; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Convention), ILO Convention 97 on migrants, and ILO Convention 143 on Migrant Workers. Among these, UN Convention prescribes for basic Human Rights to the migrant workers and their families. It restricts torture, cruelty, inhuman treatment or punishment to migrant worker and their family. These provisions are applicable to all migrant workers and their family members. Similarly, ILO Convention 143 obliges signatory states to respect the basic Human Rights of all migrant workers, irrespective of whether they are legal or illegal migrants.
- ILO Convention 97 has only minimal applica-

tion to irregular migrants. ILO Convention 143 is clearly concerned with irregular migration too. Part I, Article 1 of this convention obliges states parties to respect the basic rights of all migrant workers.

- The explicit application of ILO convention 143 and the UN convention to irregular migrants is seen as a substantial obstacle by many governments to the ratification of both instruments. Interestingly, neither Nepal has ratified these International instruments nor the Gulf countries, where Nepal send majority of migrant labor. Malaysia is the only country in the Asia Pacific region, which has ratified one of the ILO conventions.
- Planning Commission while reviewing the Eight Plan felt that there has not been any appropriate institutional as well as administrative mechanism to send Nepalese laborers to the labor market abroad. The planning commission states that institutional arrangement would be made to produce quality manpower as per requirement within the country and to dispatch surplus labor abroad. This commitment remains in the paper only. Nothing worth mentioning was done for the promotion of foreign employment.
- One of the objectives of the Ninth Plan was to increase national production by providing job opportunities to the labor force in the country and abroad, to preserve justifiable rights and social safety of the labor. Similarly, it was mentioned that foreign employment would be competitively developed and made reliable creating the situation for the Nepalese laborers to get opportunities in foreign labor market. To obtain the objectives the strategy of the government would be to identify the probable countries for foreign employment. The other strategy was to make arrangements to send Nepali laborers through diplomatic channel.
- According to a recent UN report, at the present rate of decline in births and with the ageing of the population, Europe will need some 160 million foreign workers over the next 25 years to compensate for labor shortage and to be able to maintain its current standard of living. There is better opportunity for the Nepalese laborer to tap the European market. HMG should mobilize its Diplomatic Missions to grab this opportunity. ■

## 1.2 . Regional Consultation Meeting

**T**his part of the project was supported by Asian Development Bank. It was believed; to combat the problem of trafficking, cooperation among activists across the South Asian region should be encouraged. In 2001, CeLRRd organized a Regional Consultation Meeting against trafficking, attended by activists from SAARC nations. The outcome was a series of recommendations for action at national and regional level, and a commitment by all involved for greater cross-border collaboration in the movement against trafficking.



*Inaugural Ceremony*

### The proceedings and objectives

The Regional Consultation Meeting began with the creative and innovative opening with the tying of colorful threads by all the dignitaries at the dais. A representative from each organization or level was presented with a piece of colorful thread which they tied together to form a large connected wreath. This method of tying the colorful threads represented the networking of all the participants from Government Officials to Activist, National I/NGOs to the Regional I/NGOs acting as a symbol of the network and connection needed among these groups in working toward the Prevention of Trafficking of Girls and Women. The meeting was inaugurated by the Chief Guest, Rt. Hon'ble Keshav Prasad Upadhaya, Chief Justice of the Supreme Court of Nepal. Dignitaries like Ms. Urmila Shrestha, Secretary, Ministry of Women, Children and Social Welfare, Pradeep Shamsher J. B. Rana, Inspector General of Police in Nepal, Mr. Rohit Kumar Nepali, the Executive Director of South Asia Partnership, Dr. Richard

Vokes, Residential Representative of the Asian Development Bank, Professor Kapil Shrestha, a member of the National Human Rights Commission of Nepal (HURON), Mrs. Tine Staermose, Regional Technical Advisor, ILO, Mr. Y. Kitamura, Executive Director, UNESCO, Ms. Eriko Onoda, Chief, Planning, Monitoring and Evaluation, Unicef, Ms. Indira Jaising, Director, Women Rights Initiative, Lawyers Collective, India, Mr. Bel Prasad Shrestha, Mayor, Dhulikhel Municipality, Ms. Asta Olsen, Coordinator, DANIDA were present at the program.

### Objectives

Over the years, the problem of trafficking of women and girls for sexual exploitation has been consistently increasing in the region. Hence, the principal purpose of the meeting was to discuss this issue in detail, as well as work in cooperation among all involved in the prevention of the problem.

The meeting had specifically been envisaged to address the following objectives:



*Mr. Yubaraj Sangroula tying threads*

*Speech by Rt. Hon'ble Keshav Prasad Upadhyaya  
on the Inauguration Ceremony of the Regional  
Consultation Meeting for the Prevention of  
Trafficking of Girls and Women at Kathmandu*

22<sup>nd</sup> Feb 2001

Mr. Chairman,  
Persons on the Dais  
Distinguished Delegates  
Ladies and Gentlemen.

I feel very happy to be here this morning to address the Regional Consultation Meeting for the Prevention of Trafficking of Girls and Women and share my views with the distinguished delegates and the participants. I would like to thank the organizers for convening this important meeting and providing me an opportunity to speak to you all. Given that many delegates gathered here have the first hand field experience of working on various aspects of trafficking I feel that it would have been more appropriate to hear more from you rather than speak to you.

The trafficking of innocent girls and women has been in practice in many part of the world for cen-



turies. However, one witnesses a surge in this trade with the onset of Industrial Revolution in the West. This revolution also brought with it a heavy migration of the male population from rural areas to industrial towns and other city centers. Many red light areas in big cities are therefore looked upon as offshoots of urbanization and industrialization. A perusal of the literature on the subject tells us that so long as the trafficked girls and women belonged to the migrant population from the rural areas or foreign countries the urban elite cared very little to find a remedy for this menace. It is only when the problem began to percolate through the urban superstructure one witnesses a changed per-

1. To facilitate the process of networking and coordinating of activities between organizations working towards strengthening preventive initiatives against the trafficking of girls and women.
2. To expedite the adoption of the SAARC Regional Convention against trafficking and also to promote coordination between NGOs and GOs to foster prevention at the regional level.
3. To generate support for CeLRRd and other NGOs in Nepal to intercept girls and women from being trafficked in the initial stage.
4. To create a resolution to draw the attention of the Governments of India and Nepal to address the issues of trafficking urgently and for that pressurize to initiate high level dialogue for adopting appropriate and adequate strategies.
5. To develop a mechanism for rescuing victims from the sex market in the initial stage, i.e. before being exposed to exploitation.
6. To mobilize the officials of SAARC countries to

address the problem of trafficking at the regional level

### **Recommendations Drawn at the Meeting**

The program proceeds with the division of different workshop groups.

#### **Group 1**

Strengthening, information networking between countries- GOs, NGOs, INGOs, Donor Agencies and Individual Activists.

1. The collection of data of the missing persons from villages with the actual number and take step to report with the VDC or the Police.
2. Identification of the trafficker once s/he is caught to be followed by court trial and prosecution.
3. Identification of Communities/Areas that is vulnerable to violence and where the well being and treatment of women is very poor.
4. Identify the routes of the traffickers.

ception of the ruling class. Thus, I believe, the efforts made during the first decade of twentieth century to suppress White Slave Traffic and a few others efforts at the League of Nations for the suppression of the Trafficking in women and children. More specifically the ones made in 1921, 1933 and 1937 at the initiative of the League should be viewed along these lines.

With the establishment of the United Nations, the Human Rights issue got added importance in the realm of International Law. The UN reaffirmed its faith in the fundamental Human Rights, in the dignity and worth of the human person and in equal rights of men and women. The respect for Human Rights fundamental freedoms for all without distinction of race, sex etc. was one of the avowed objectives of the UN. There were two documents of seminal importance adopted by the UN during the formative years. The Universal Declaration of Human Rights and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others set a broad framework within which the study of the issue of traffic in person and other dehumanizing practices could be made. It is, therefore, very significant to note that while the UDHR set a broad framework

for the study the human rights issue of women, the 1949 Convention went on to the specific issue of trafficking. It declared both prostitution and the traffic in persons as incompatible with the dignity and worth of the human person endangering the welfare of the individual, the family and the community. It also declared procuring or enticing for the purpose of prostitution even with consent of the victim a crime requiring punishment. Similarly, hiring or letting any house or financing brothels was also considered punishable under the Convention. As Nepal has already ratified this Convention it assumes special importance and significance in our context.

Today trafficking in person is understood in its broad amplitude to include forced prostitution, forced domestic labour, false marriage, clandestine employment, false adoption etc. It has also been studied as one of the problem relating to migrant workers. The issue, therefore, can neither be studied nor are its attendant problems addressed properly by having reliance only on one or two conventions. I therefore prefer to think that a few conventions need to be invoked to address varied issues relating to trafficking and exploitation of women. Those being the International Covenant

5. Identify the time of the year when it appears that more girls or women are missing from a given area i.e. the season.
6. Identification of the method of trafficking, such as:
  - o Fake Marriages
  - o Job Opportunities
7. Locate the areas working on the issue of trafficking, such as:
  - o Availability of Medicines
  - o Other NGOs, INGOs, Local Bodies
  - o Police stations
  - o Donor Agencies
  - o Institutions
  - o Individuals working in the area
8. Collect the information on the Laws and Policies and the Research done
9. Collect all possible documents
10. Use effective methods to create awareness about Trafficking and Defective Value System through:
  - o Movies
  - o Street Plays
  - o Songs – Radio Jingles



*Paralegal Women at Regional Meeting*

on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discriminations Against Women, Convention Against Torture and Other Cruel Inhuman or Degrading Treatment, The ILO conventions dealing with the rights of the migrant workers.

I am afraid I will not have time to comprehensively deal with the provisions of all these conventions but let me put before this August gathering a few examples. Sexual exploitation is an assault to the life, Criminal Justice System, and security of woman and is a violation of her right to live with dignity. UDHR and the ICCPR proscribe any attack on this right. It is also considered as a cruel, inhuman and degrading treatment which is proscribed by Art 5 of the UDHR, and Art 7 of the ICCPR. Besides, there is always the possibility of the Convention against Torture being invoked to combat the cruel, inhuman and degrading treatment meted to the victim of trafficking and forced prostitution. Trafficking is also considered one type of slave trade which is prohibited by Art 4 of the UDHR and Art 8 of the ICCPR. Similarly, Art 6 of CEDAW makes a frontal attack on trafficking and exploitation of women and obligates state parties

to take all appropriate measures to suppress all forms of traffic in person in women and exploitation of prostitution of women. In the same vein, Art 34 and 35 of the CRC provide for the protection of children from all forms of sexual exploitation, abuse and trafficking. I believe that though an umbrella convention dealing with all aspects of exploitation of women is no doubt desirable, the absence of such a convention will however not impede the efforts of those working to curb the exploitation of women and children.

Now, as the courts in many countries are more sensitive on the issue of trafficking and other forms of exploitation of women and children. I believe that International Human Rights instruments could be effectively used as an additional tool to protect women and children against all sorts of violence against them. In the context of Nepal International Human Rights Conventions are required to be considered as part of the Law of the land by virtue of section 9 of the Nepal Treaty Act 1990. I believe that all of us involved in the prevention of trafficking have more legal space and tools at our disposal to combat this problem.

All of us gathered here are familiar with the re-

- o Speeches
- o Meetings
- 11. Establish Network between the State (District), National and Regional Levels taking down addresses, fax, e-mail, phone numbers, contact persons etc.
- 12. Explore Possibilities of Verification at the Three Levels for:
  - o Prospective Bridegroom
  - o Job Providers

### Group 2

Strengthening, Coordination for Protection of vulnerable Girls and Women through actions like enroute interception, (during travel by any means from border to destination) and early rescue (brothel).

### Strategic plan

- To establish communication link in grassroots, national and regional level within six months.
- To arrange feedback session in grassroots, national, regional VDC/ Paralegal committee weekly, quarterly and yearly by sound correspondence.
- To collect relevant materials from different countries and translate the materials within one year.
- Prepare module in different countries to sensitize national level agencies within six months.
- To organize National level Information Campaign by organizing rally, border campaign workshops, radio/TV program within one year.

gional dimension of the traffic in women and the desirability of a regional legal arrangement to combat the issue of trafficking comprehensively.

The need for such an arrangement was highlighted on different occasions in the past. As for instance, this issue was discussed in the recently held Conference of the Chief Justices of the SAARC countries and the SAARC Law Conference in Kathmandu. Similarly many INGOs and NGOs have also stressed the need for such a regional legal arrangement on different occasions. Despite this, however, and notwithstanding the resolution made at the Rawalpindi Ministerial meet in 1996 to combat inter and intra country trafficking in children and victim of violence due to prostitution and sexual exploitation.

The commitment made by member countries to evolve administrative, legal and rehabilitative structures both within and between member countries under the banner of SAARC, and despite the grave concern expressed by the Head of the States in Male in 1997 at the trafficking of children, and their decision to set up a technical committee to study the feasibility of establishing a regional convention

combating the crime of trafficking in women and children for prostitution, concrete positive actions in this regard are still awaited.

Most of us in South Asia have a domestic legal framework in place to combat the crime of trafficking. In Nepal a new law was promulgated in 1986 to deal with trafficking. As most of you are aware that this Law gives higher credence and evidentiary value to the statement made by the victim in the presence of a judge. This law has, to some extent, been instrumental in securing a higher rate of conviction as well.

The law is however, silent on the preventive and rehabilitative aspects, which is much felt. It is my considered view that unless both preventive and rehabilitative aspects are effectively dealt with, efforts to bring down trafficking in our respective societies will not bear much fruit. I am confident that the consultation meeting will also deliberate on these and other aspects and develop useful research and operational strategies to combat trafficking. I wish you all a good luck for a very constructive and fruitful discussion, and a comfortable stay in Kathmandu.

I thank you all

- To establish Resource Center at National level for the collection and dissemination of the collected information within one year.
- To establish network among grassroots, national, regional and global level.

### Group 3

Launching Advocacy for Prevention of Trafficking at regional level and coordination therein:

- Effective Enforcement of Anti-Trafficking Legislation, including development of law to the effect of rendering the act of trafficking as a serious crimes against humanity.
- Lobbying for adoption and implementation of Regional Convention on Prevention of Trafficking.

Building a Regional Governmental Mechanism, to effectively, curb the problem of Trafficking.

### 1.3. The National Paralegal Women's Convention

CeLRRd organized paralegal Women's Conference "The National Paralegal Women's Convention" on 16 & 17 of March 2000. Sharing of experiences among Paralegal Women, to develop a forum to discuss the necessity of community participation in prevention of girl trafficking, to develop solidarity among paralegal women were the primary objectives of the conference. The conference was participated by 220 Paralegal Women from their respective VDC, 40 VDC Chairpersons, 6 Schoolteachers. Representatives from various NGOs, INGOs, and UN Organizations made their valuable participation at the conference. Former Chief Justice of Supreme Court Rt. Hon'ble Keshav Prasad Upadhyaya inaugurated the conference. The conference was envisaged to identify activities to be implemented under the CSSAT. This conference was instrumental in drawing the attention of nation towards growing problem of trafficking. The conference was also a crucial step to institutionalize the CSSAT program as a model preventive approach. The conference discussed the possible interventions. 7 workshop groups had been divided for considering the future interventions.

#### Workshop 1

Coordination of paralegal committees with other organizations in order to build a National Movement against Trafficking:

##### Recommendations:

1. The community solidarity of paralegal women, elected VDC representatives, schoolteachers and social activists must be strengthened.
2. Anti trafficking alliance of paralegal committees and organizations working at the grassroots level should be strengthened.
3. Paralegal committees at respective VDCs must take lead of mobilizing political parties against trafficking. For that purpose, a strong pressure must be built to have all political parties adopt prevention of trafficking as one of their agendas of action.
4. The press should be encouraged to give attention to the problem.
5. The government must be pressed to recognize the paralegal committees as the founda-



*Paralegal Women at the Conference*

tion mechanism for combating trafficking.

#### Workshop 2

Approach for building grassroots alliance coordination

##### Recommendations:

1. The VDC must take on the role of coordinating agency.
2. The men's paralegal committees should be fastened to build with community participation.
3. The VDC should build a forum comprising of political parties, community groups, schools, saving groups, police etc. This forum should act as an advisory committee to paralegal committees.

#### Workshop 3

Effective mobilization of Local Administration against Trafficking

1. An orientation program for all elected representatives and official political parties at the grassroots level should be conducted.
2. Awareness on social responsibility of elected representatives from the media such as radio and television should be conducted.
3. The awareness materials developed by CeLRRd, such as the Picture Book "Chameli ko Pariwar", and especially the tele drama "Chori" should be distributed na-



tion wide.

4. The CSSAT program should include a campaign for compulsory registration of vital events, such as migration birth, marriage, deaths etc.
5. VDC Board should be encouraged to allow the paralegal committee to participate in its planing process.

#### Workshop 4

##### Financial Sustainability of Paralegal Committee

1. The paralegal committees should obtain minimum financial resources from the VDC. For that purpose, the paralegal committees must negotiate respective VDCs.
2. At the national level, CeLRRd and the proposed CSSAT national forum must act to pursue the Ministry of Women and Social Welfare to arrange a budget for the prevention of trafficking. The budget should be provided to paralegal committees.
3. Each VDC must ensure that the paralegal committee work as a focal group in the VDC for prevention of trafficking. Hence, the VDC must arrange that every organization intending to work against trafficking coordinate with the paralegal committee.
4. The paralegal committees must conduct income generation programs, and women benefiting from the program must contribute something to the paralegal committees.
5. It is necessary for the paralegal committees to launch a compulsory saving system to promote micro-financed income generation activities.
6. The paralegal committee members must be trained to raise funds locally through organizing various programs in order to establish a fund.

#### Workshop 5

##### Structure of the National Movement against Trafficking

1. The concept of protection triangle must be continued. The past experience in this regard has shown that the "Triangle" is a feasible approach to prevention.
2. To strengthen the "Triangle", the paralegal committees must work to constitute an Advisory Committee comprising representatives of political parties and associations.
3. A national committee of paralegal women must



*Ms. Silwal, Paralegal President, Chitwan*

be constituted, which will decide all policy matters concerning the prevention of trafficking. The national committee must have representation from all districts affected by the problem. The representatives of the Federation of District Development Committees, VDCs and municipalities must be invited in the national committee as ex-officio members.

4. Paralegal women, alternative lawyers and representatives of the partner organizations should be the general members of the movement.
5. CeLRRd must prepare a draft constitution of the movement, which will be adopted by a national convention of paralegal women.

#### Workshop 6

##### Future Action Plan of Paralegal Committee:

1. Adopt concrete guidelines for identification of the target groups.
2. Paralegal training for larger group should be extended to ward level.
3. Paralegal training for men is equally important for strengthening the program.
4. The VDC paralegal officials should be given TOT for the conduction of paralegal training at grassroots level.
5. The paralegal training should also be provided to local police in order to ensure their active participation in the prevention activities.

The workshop identified the following additional future activities:

- i. Income generation training and micro-credit projects for affected women.
- ii. Awareness against trafficking among a cross section of people.



*Presentation of CSSAT to the Participants*

- iii. Building alliance with other organizations.

### Workshop 7

Future action plan of Paralegal Committees

1. The education ministry should be encouraged to include the problem of trafficking in schools.
2. A comprehensive legislation should be enacted to protect vulnerable girls and women from sexual exploitation. For this, CeLRRd together with other organizations can build pressure.
3. A campaign should be developed to regulate the open border between Nepal and India.
4. Greater participation of the male community should be secured.
5. Generate indigenous resources for sustainability of the movement.
6. Compulsory sex education at the school level.
7. Coordination with police and NGOs in Nepal and in the region.

The conference adopted the above activities to be implemented for prevention of trafficking.

## 1.4. Paralegal Training for Women and Men and the Formation of Paralegal Committees

This part of the program has been launched in cooperation of UNICEF (1997-1999), ILO/IPEC (in Nuwakot 2000-2001: and The Asia Foundation (TAF 2001-).

To address the social subordination of women at the root of sexual exploitation, CeLRRd has developed “paralegal training” for women and men. Training has been conducted for groups of both sexes in 14 of the districts in Nepal that are most affected by trafficking. Participants are taught about National and International legislation providing for the protection of Human Rights. They are made aware of discriminatory laws, and the values and treatment that can marginalize women in society. They are also informed of current modes of trafficking, and



*CSSAT TOT*

given practical advice on dealing with the problem. The aim is to prepare these participants to take up initiatives to protect girls that are vulnerable to sexual exploitation. The training concludes with the formation of “paralegal committees”. After committee formation, members continue to take part in leadership and refreshment paralegal training, to support their active role in the community. Committees are assisted in their activities by CeLRRd’s staff and “mobile lawyers”.

At present, 52 paralegal committees are operating at regional level, 244 at village level and 2,196 at ward level. At least 19,764 women, local government offi-

CeLRRd and the team of TOT Trainee commiserate with the untimely demise of **Mr. Ishwori Prasad Sangroula** and express due respect for his contribution in developing CSSAT/TOT program. He had been an ardent architect of the CSSAT/TOT program and had significantly contributed in developing Human Resource in this field.



## 1.5. ଓଡ଼ିଆ/ଓଂପିଆଁଂଂ ଓ୍ରାିନିଂ ଓ୍ର ଶୁୁଲ ଓ୍ରାିଚରସ

This part of the program is mainly supported by UNICEF (1997-1999) and TAF (2001). Schoolteachers are respected members of their communities, and have an important role in the development of its young people. Their attitudes are influential, and their awareness of Human Rights Principles and Law can have a great impact on society. To date, 244 teachers have taken part in CRC/CEDAW training through CSSAT. These teachers will lead the Campaign against Sexual Exploitation (CASE), which aims to mobilize students against the exploitation of women and girls. 7,500 children have so far been involved in the program.



*Participants of the Training at Sunsari*

## 1.6. ଓ୍ରମ୍ପୋୱେରମେଣ୍ଟ ଓ୍ର ଆଡ଼ୋଲେସେଣ୍ଟ ଓ୍ରୀଲସ



*Adolescent Girls Participating Anti-trafficking Orientation*



This part of the program is launched in cooperation with UNESCO.

CSSAT aims to safeguard girls who are vulnerable to trafficking. Adolescent girls between the ages of 12 and 18 are most at risk. CeLRRd supports adolescent girls from vulnerable backgrounds to become literate and aware of their rights, and gives them the opportunity to develop their skills and potential. To date, 26,400 girls have taken part in anti-trafficking orientations. 3,705 vulnerable girls have participated in CRC/CEDAW training and non-formal education classes, and 1,850 girls have been enrolled in formal education. CeLRRd is currently in the process of establishing a “Community Learning Center” (CLC) in each program area, to enhance the education of class participants through improved access to resource materials. However, the centers will be for the use of the entire community - thus aim to promote lifelong learning and development for all.

## 1.7. ଓ୍ରମ୍ପୋୱେରମେଣ୍ଟ ଓ୍ରନେରାସନ

This part of the program is supported by UNESCO.

An employment generation program has been carried out in 2 districts, with more than 1,065 people involved in trainings. Employment generation can help to combat trafficking, providing opportunities for girls and women who may otherwise migrate to urban centers in search of work and become prey to traffickers.

## 1.8. Baseline Survey

UNICEF supported this part of the program.

In 2001, CeLRRd completed a baseline information survey in 239 VDCs of 14 districts. It is the first survey of its kind in South Asia to attempt to find qualitative data on the number of girls who have been victims of trafficking in Nepal. The data collected builds a picture of the social condition of females in program districts, and the number of girls missing from each. This helps to identify areas vulnerable to trafficking, and plan future interventions.

The latest data shows that in total, 8722 girls have been reported to be missing from these districts, 1.15% of the total female population in the area surveyed. This data cannot provide a definitive statement on the number of girls who have been trafficked from these districts. However, there is a high probability that direct methods of trafficking, or migration leading to trafficking, were key causes for the absence of the girls. The data collected provides a basis for estimation of the total number of girls subject to trafficking nationwide.



Paralegal Women helping the Survey



## Center for Legal Research and Resource Development (CeLRRd) Findings of the Baseline Survey

Name of The District	Population		Total girls/women (up to 25 years) Marital status			Status of Marriage		Literacy of unmarried girls/women (up to 25 years)		Girl child & Educational Status			Women/girls out of village			
	Total Population	Female Population	Total No. of girls/women (up to 25 years)	Total No. of married girls	Total No. of Unmarried girls	Polygamy	Child Marriage	Literate girls/women	Illiterate girls/women	Total No. of school age girls (5 to 16 years)	Total No. of school going girls	Total No. of girls not going to school	Total women/girls out of village	In Nepal	Out of Nepal - whereabouts known	Whereabouts unknown
Banke	108738	55122	35778	11334	24444	401	3918	9202	15242	16841	8230	8611	395	227	151	15
Chitwan	107340	54887	33312	8927	24385	489	2338	13635	10750	15709	11460	4249	377	260	102	15
Dadeldhura	81488	42182	27115	8919	18196	371	2547	5711	12485	12182	5270	6912	144	78	61	5
Dolakha	65994	35051	20376	5598	14778	343	1167	5777	9001	9597	5074	4523	812	743	43	26
Jhapa	203892	107669	61968	16932	45036	676	3503	26274	18762	26953	010	6943	912	640	234	38
Kanchanpur	132526	64793	43399	11164	32235	574	3193	12413	19822	21640	11077	10563	238	199	23	16
Makwanpur	146152	75858	48448	13340	35108	587	3408	12741	22367	22872	11466	11406	562	408	102	52
Nawalparasi	149150	77765	48541	14675	33866	654	3905	17723	16143	22629	15529	7100	504	318	153	33
Nuwakot	42613	20749	N/A	N/A	N/A	N/A	355	N/A	N/A	6258	2548	3711	668	27	168	473
Parsa	79203	40016	25434	8725	16709	222	2928	4811	11898	12215	4431	7784	321	216	96	9
Rasuwa	24051	12143	7232	1706	5526	55	407	1237	4289	3631	1123	2508	100	64	22	14
Sindhupalchok	87987	42825	N/A	N/A	N/A	N/A	1126	N/A	N/A	11648	4675	6999	1713	238	307	1168
Sunsari	148276	78622	46714	13552	33162	489	3083	14561	18601	21142	12412	8730	346	212	88	46
Udaypur	93632	49225	30813	7427	23386	578	1532	9329	14057	15142	8069	7073	1630	1492	100	38
<b>Total =&gt;</b>	<b>1471042</b>	<b>756907</b>	<b>429130</b>	<b>122299</b>	<b>306831</b>	<b>5439</b>	<b>33410</b>	<b>133414</b>	<b>173417</b>	<b>218459</b>	<b>121374</b>	<b>97112</b>	<b>8722</b>	<b>5122</b>	<b>1650</b>	<b>1948</b>
<b>Percentage</b>	<b>100%</b>	<b>51.45%</b>	<b>100%</b>	<b>28.50%</b>	<b>71.50%</b>	<b>4.45%*</b>	<b>27.32%*</b>	<b>43.48%*</b>	<b>56.52%*</b>	<b>100%</b>	<b>55.56%</b>	<b>44.45%</b>	<b>100%</b>	<b>58.73%</b>	<b>18.92%</b>	<b>22.33%</b>

\* Percentage taken from Total No. of Married girls

♦ Percentage taken from total No. of Unmarried girls

N/A Data not available is being updated from an earlier software program

## 1.9. Vital Event Registration

UNICEF supported this part of the program.

The creation of accurate records of events such as birth, marriage and migration has also been promoted in the 14 program districts. Access to this data can help deal with cases of trafficking quickly, and monitor its potential occurrence. To date, 440 local government officers have been trained in vital event registration techniques. Materials promoting the campaign have been developed in collaboration with the Ministry of Local Development of His Majesty's Government of Nepal (HMG), and distributed throughout the 14 CSSAT districts.

## 1.10. Formation of Task Force and Capacity Building

This part of the program is supported by TAF. HMG has introduced a mechanism of a special task force to deal with the growing problem of trafficking, which descends from national to VDC level. HMG has also developed a national plan of action to prevent the trafficking, which is supposed to be implemented by the Task Forces in coordination and cooperation of NGOs. However, government's initiative to form task forces at grassroots is extremely passive. Under these circumstances CeLRRd has formed taskforces in 20 VDCs of Chitwan and get it functional. Orientations and trainings on trafficking have been conducted to those taskforce members have been conducted.

## 1.11. Mass Sensitization Program by Local Task Force

This part of the program is successfully accomplished as the mandatory of TAF Project, "Combating Trafficking of Women and Children". The mass sensitization program has been completed in 20 VDCs of Chitwan District. Activities like Anti-trafficking awareness folk song competition on the occasion of Intl. Women's Day, Public Show of awareness tele-film, legal literacy for girls and women, massage hooding board display, Micro-phoning anti trafficking awareness rally proved effective to sensitize the mass about trafficking and violence problems. Till date, 135 community generated anti-trafficking activities have been carried out by Local task forces.

## 1.12. Conceptual Clarity Training on Trafficking for Local Member of NGOs & CBOs

In Chitwan district various NGOs and CBOs are working in different social sectors without having adequate knowledge in socio economic peripheries. It was found that local NGOs are isolately working to generate general awareness activities in local level. Considering the circumstances and being the aged national institution working in social issues, CeLRRd proposed 20 trainings for 500 NGOs & CBOs workers in trafficking issues level in coordination with VDC Task Force. The training programs facilitated to establish strong network among different social organizations. Till present, 18 conceptual clarity trainings to 450 NGO & CBO workers have been completed in 18 VDCs.

## 1.13. Enhanced Information on Trafficking and Improved Enforcement of Legal Rights

USAID through UNICEF supported this part of the project. The main objective of the project was to help victims of trafficking achieve fair justice. Under the mandate of the project, CeLRRd has developed manuals for effective and efficient investigation, prosecution and adjudication. Conducting sensitization workshops



*Orientation for Law Enforcement Officers, Kathmandu*

on issues of trafficking for prosecutors, judges, police and lawyers was another important aspect of the project. These activities are helpful to strengthen interagency cooperation against trafficking, and improve standards of justice available to its victims.

Manuals are distributed free of cost to Law enforcement agencies and lawyers. About 200 Law enforcement officials, including defense lawyers have been oriented on the utility of manuals.



*Law Enforcement Officials Participating the Orientation*

## 1.14. Law Reform



▲  
*Paralegal Women at  
National  
Consultation Meeting*



CeLRRd has been active in the movement for reform of the law on trafficking. In 1997, CeLRRd's predecessor, the Institute for Legal Research and Resources (ILRR) coordinated a National Consultation Meeting on a new bill against trafficking. Following this, a drafting committee was formed and wide consultation on a prospective bill carried out. A draft bill on trafficking was produced, which was then promoted by CeLRRd. This bill has been considered by the State along with an alternative bill drafted by Police Headquarters. Based on these two draft bills, the Ministry of Children, Women and Social Welfare has proposed the final bill. The new bill significantly improved version compared to the existing one. However, CeLRRd has reservation to it to the extent it purports women engaged in prostitution.

## 2.15. Women Victim's Legal Aid Clinic

The clinic was established in 1999, and from 2001 it sifted to Kathmandu School of Law (KSL), a law college affiliated to the Purbanchal University. This school works in close cooperation with CeLRRd. The clinic provides legal aid to female victims of violence, rape and trafficking. It is currently dealing with 64 cases, the majority of which are related to domestic violence.

The program was launched to meet the needs of

victims in communities covered by CSSAT, and women workers in Nepal's carpet industry. From 2000 to 2001, CeLRRd conducted the "Hotline Service System", an awareness program for workers in the 50 carpet factories of the Kathmandu Valley, which aimed to inform workers of their legal rights and strengthen them against the threat of trafficking. The work of the Hotline scheme had been continued through the clinic. Factory workers

should approach the clinic for assistance, and be assured of a free and sympathetic legal service. Cases have also been referred to the clinic by paralegal committees in CSSAT program districts, and the NGO, SAATHI.

This organization is concerned with the prevention of violence against women and the rehabilitation of its victims. If needed, SAATHI can offer

shelter to victims whose cases are being handled by the clinic. The clinic is supervised by a practicing advocate, and run by two full time lawyers. The staffs have taken part in a TOT on sensitivity to victims and skills of interviewing and counseling. Students of KSL also provide assistance to the scheme, so as to develop learning skills of legal practice through their participation in the Clinic.

## 1.16 Empowering Adolescent Girls through Education to Become Agents of Social Transformation in Nepal

CeLRRd has been involved in the empowerment program of Adolescent girls in 4 districts of Nepal under CCT project. The program is supported by UNESCO. This includes Educational and Microfinance Component, Science Component, Communication & Information component through establishment of 4 Community Learning Center (CLC). The primary objective of the program is to achieve positive social transformation through the development of girls and their livelihood.

Under mandatory of the program CeLRRd conducted 9 months Non Formal Education (NFE) training to the adolescent girls who actively worked for social change and transformation. The program was enabled to train about 1050 adolescent girls as target group to become literate in two districts Chitwan and Nawalparasi as a first phase program and 900 adolescent girls in two districts Kanchanpur and Udayapur as a second phase program. As a part of the program, CeLRRd organized one month Legal Literacy Program to those adolescent girls that provide them fundamental knowledge about law and its role on society, constitution and state law, fundamental rights of people as provided by law etc.

For enhancement of their knowledge in human rights and its protection CeLRRd formulated various programs in the community level. Separate 2 months Health training was organized for 1950 adolescent girls of all 4 districts. Moreover one month's life skills training was also organized for 1050 girls of first phase program. Forming and collaborating with Community Learning Center (CLC) adolescent girls have been conducting numerous awareness programs on the issues of women rights, domestic violence, social malpractices, Health trainings, life skill trainings etc. Science Club has been formed to



*Adolescent girls using learning materials.*

endorse the health trainings and other relevant activities related with local science techniques.

A part of the program aims to provide non formal science education to popularization of science within the community under the project "Breaking the poverty cycle of women: empowering adolescent girls to become agents of social transformation in south Asia".

CeLRRd is implementing Vocational and Entrepreneurship training to adolescent girls as to train them on Micro finance and income generation schemes. Till date, about 1950 adolescent girls received the orientation on basic financial transactions, and are enable to manage their personal finances. 650 girls have knowledge of principles of income generation and micro credit and the latest initiatives of the same in their local areas.

Communication and Information Technology component is another primary part of CCT program. Activities to regularize computer literacy classes, launching of awareness radio programs in the local radio station, forming radio Hearing Club to enhance media correspondence, presenting mobile TV Shows have been implemented as the mandatory of the program

## 2.

# *CeLRRd's Intervention in Reforms of Criminal Justice System*

*CeLRRd has established itself as a recognized leader in legal and judicial reform in Nepal. The cooperation between the government and non-governmental institutions is the primary foundation CeLRRd is based upon. It works in close cooperation with the government, including the judiciary, office of the Attorney General, Nepal Police, and concerned ministries. Outcome of this cooperation include: "Criminal Procedural Guidelines; Manuals for Investigation, Prosecution, and Adjudication of Trafficking Cases; Trial Handbook; and Manual for Juvenile Justice". CeLRRd has contributed significantly to development and drafting of the Criminal Procedure Code, and has conducted training programs for judges and prosecutors throughout the country. The intensification of research activities in the field of law and justice is a significant contribution made by CeLRRd. Implementation of the "Prisoners' Legal Aid Program" introduced a concept of "institutionalized free legal aid" in Nepal...*





... Nepal continued with its traditional Criminal Justice System till 1951. Prior to this, Nepal practiced an indigenous inquisitorial system of administration of criminal justice. The history reveals that the Nepalese society, like others, largely practiced the “ordeal” of various kinds to dispense justice. The “ordeal” to dispense justice, as in other society, was founded on the belief that the “unseen force” intervenes in the process of justice. This belief gradually faded away with passage of time, and changes in the society. The litigation system constantly evolved in the form of “inquisitorial practice”. The Muluki Ain, which as tremendously influenced by the Napoleon Code, introduced a number of provisions that helped to frame the Criminal Justice System of Nepal in the line of inquisitorial practice.

From this year onwards, the Criminal Justice System of Nepal was given diversion to adversarial practice. Assumption of the leadership of fledgling judiciary by late C.J. Hari Prasad Pradhan was crucial for diversion of the traditional Criminal justice System of Nepal to adversarial practice. In 1964, Nepal enacted the “State Cases Act (Sarkari Muddha Sambandhi Ain), which overtly framed the system of investigation and prosecution in the line of adversarial system. The Act distinguished the role of courts as impartial umpire, and thus the frame work of the courts was grounded on the concept of an independent institution. The Evidence Act was enacted in 1978, which obliged the State to prosecute person with burden of proof without reasonable doubt. These two Acts almost completed molding the Criminal Justice System of Nepal in the line of adversarial system. The Law Practitioners’ Act 1968 was also instrumental in shaping the adversarial system of justice in Nepal. In 1990, the movement for restoration of Democracy ended with promulgation of the new constitution of the Kingdom of Nepal. The article 14 of the Constitution enshrined all important procedural safeguards of suspects and accused as fundamental right of persons.

Moreover, the preamble of the Constitution enshrined the independent and competent justice as one of the basic structures. For the purpose of giving effect to procedural safeguards enshrined into the article 14 of the Constitution, the new State Cases Act had been enacted in 1991. This Act separated the roles the Police and Government Attorneys as

investigators and prosecutors respectively. This Act also did away with the vestige of inquisitorial system - repealed State Cases Act had incorporated Trial Court Judge under the repealed State Cases Act had empowered the trial court judge to give order to the police for conducting fresh investigation of the crime if he/she found that the one submitted to him/her was not found adequate or erroneous. Nepal thus became a member of the community practicing the adversarial system of Justice.

However, the quality of the Justice was not significantly improved even after 1990. The following problems are still found phenomenal:

- Extraction of confession still constituted major character of the investigation. This practice made the accused vulnerable to torture.
- Prosecutors brought about little change in its traditional approach of prosecution, i.e. random prosecution with stiffer penalty being often preferred.
- Adjudication remained unchanged, i.e. the formalism of procedure prevailing over the rights of individuals.
- Defense representation still continued to be largely ineffective and inefficient. The following trends swayed:
  - Senior lawyers remained reluctant to represent the clients at trial level; a psychology that the cases at district courts do not require expertise of senior lawyers- remained pervasive.
  - Senior lawyers often declined in representing clients in matters of witness examination.
  - Violation of human rights through wrong application of procedure or wrong procedure was not taken as a serious infringement of the right of suspect or accused to fair trial. No active interest was taken to correct such problems. The Bar association, continues to remain docile, in fostering professionalism of lawyers.

The lack of sensitivity to allow representation of persons by lawyers from the moment of arrest has been widely acknowledged. This problem has been recognized as one of the most significant problems facing the Criminal Justice System of Nepal. The

right to fair trial in a condition where the right to Legal counseling during police detention is denied is meaningless. This situation is apparent from the following practices:

- Detainees are effectively and deliberately denied the access to advice with lawyers, at least before they are submitted before the Judicial authority the first time.
- No documents prepared during the investigation are accessible legally to lawyers before the charge sheet is submitted before the Trial Court.
- No remand is made through prosecutors- the police can obtain the remand for detention without knowledge of the prosecutors (government attorney). The situation deprives lawyers from complaining illegality of investigation to prosecutors.

One of the major reasons for consistent denial of legal defense during investigation is that lawyers are suspected of educating their clients for denying confession of the crime. Although, Nepal practices, as described above, the adversarial system, it does not have provision in law for the “plea bargaining”. So the suspects have no choice but to change the confession in the court. The lack of the “concept of plea bargaining” is the major hurdle in this respect. The lack of “plea bargaining” is fostering a number of problems as follows:

- In lack of plea bargaining option available for suspects, the defense lawyers representing them are compelled to advice the clients to refrain from making confession during interro-

gation, or to necessarily change it when the suspect is produced before the court.

- Since there is vulnerability of lawyers suggesting their clients to refrain from making confession, the police are reluctant to allow the suspects to contact the lawyers from the very moment of the arrest. This eventually leads to blurring the right granted by the article 14 of the constitution.
- Clever offenders volunteer readily to confess crimes and change their statements at courts. They often make such confession that the facts and evidence available obviously are contradictory. However, innocent and ignorant suspects are vulnerable of being subjected to injustice.

Therefore, the lack of plea bargaining concept is widely hampering the smooth operation of the criminal Justice System. The State however has consistently been ignorant of this fact. The institutional changes are often effected to address the weaknesses of the system, which are bound to be a failure. The strict separation of the roles of police and prosecutors by the State Cases Act 1991 is now widely acknowledged to have been giving rise to number of problems leading high rate of failure in the prosecution.

CeLRRd has made in-depth study of the Criminal Justice System in Nepal, and has made consistent efforts to strengthen it through interactions, seminars, professional orientations and training activities. CeLRRd has proved its pioneer position in the field of Strengthening Criminal Justice System in Nepal.

## 2.1. Analysis and Reforms of the Criminal Justice System in Nepal

- Year of Research Conducted:** 1997-1998.
- Consultants:** Prof. Madhav Pd. Acharya, Mr. Narendra Pathak, Mr. Mohan Mani Dahal, Mr. Ib Henricson
- Research Team Leader:** Mr. Yubaraj Sangroula
- Research Team Members:** Mr. Som Luitel, Mr. Ram Prasad Aryal, Mr. Shiva Rizal, Mr. Bhumi Tripathi, Mr. Lila Mani Poudel, Mr. Matrika Kharel, Kishor Silwal, Mrs. Geeta Pathak, Mr. Dhana Raj Angdambe, Mr. Rajan K.C., Mr. Himal Shrestha, Mr. Hari Sharan Khatri.



- e. **Report Published:** English and Nepali version.
- f. **Major Outcome:** The research report was widely read by officials and personnel of stakeholder institutions. The findings of the research presented the level of performance of the Criminal Justice System, its trends and areas needing reforms. The report highly sensitized the stakeholders about the need of pro-active reform initiatives, the change in the mentality in particular. This research was also very important to connect the relevance of Human Rights in the context of Criminal Justice. Moreover, the research opened an era in Nepal for multi-dimensional research activities in the field of Criminal Justice System.

**Brief Description of the Findings:** This research was conducted in cooperation of Danish Center for Human Rights (DCHR), and CeLRRd, it was then known as Institute for Legal Research and Resources. The main objective of the research was to conduct a comprehensive assessment of the Criminal Justice System of Nepal, and to suggest required improvement. The study comprised of three-dimensional analysis of the Criminal Justice System: firstly the overview of the criminal law framework; secondly, the scrutiny of the court practices, and thirdly, the sample survey of opinion of stakeholders to the Criminal Justice System. The survey for the assessment of the court practices and opinions of the stakeholders had been conducted in five districts representing variables-Saptari, Kathmandu, Syangjha, Banke and Dadeldhura. The stakeholders interviewed during the survey were prisoners, police officers, lawyers, government lawyers and judges. This research is the first of its kind, exclusively reflecting on the Criminal Justice System, and analyzing condition thereof from the point of view of the performance standard of the practice and the institutions involved.

The main objective of the study was to analyze the standard of the Criminal Justice System in the light of the new Constitution of the Kingdom of Nepal 1990- and developments Nepal witnessed following the restoration of Democracy. Those included the ratification of International Human Rights Instruments, promulgation of the New State Cases Act, 1993, Torture Compensation Act 1997 and so on. The study investigated sampled case files in Saptari, Kathmandu, Syangja, Dadeldhura and

Banke, and conducted a questionnaire survey of prisoners and other key informants such as lawyers, judges, police officers and human rights workers, to illumine the following aspects of the criminal justice system:

- The structure of existing criminal investigation, prosecution and trial systems.
- The procedures applied in conducting investigation, prosecution and trial.
- The general time frame of the investigation of an offence, including time spent in pre-trial detention.
- The general timeframe for the trial of an offence in the trial court.
- The standards of mechanisms devised for the protection of detainees from torture.
- The standards of justice upheld by the trial courts.

Among other things, the study also made an attempt to look into the factors and causes that malign the quality of justice. The study reported the following important findings:

- The civic response to crime was not positive. The community generally did not volunteer to cooperate in the investigation of criminal offences. This is obvious from the finding that the public had promptly reported only 9 percent of incidents to the police. A delay in the reporting of criminal incidents can destroy or malign the quality of evidence.
- FIRs were found to have been lodged by victims or close relatives of the victims. This again shows the tendency of civil society to avoid involvement in the process of investigation. Virtually all FIRs were lodged in a written form, and the formalities involved in the preparation of a written FIR were frequently followed. In practice, FIRs are often deemed unacceptable if they do not follow standard formalities (CeLRRd 1999: 87).
- The violation of the Constitution in relation to detention was phenomenal. Suspects were often held in police custody beyond 24 hours without judicial mandate. The study showed that at least 37 percent of suspects were produced before the judicial authority only after the end of the constitutional deadline CeLRRd

1999:90).

- The study found Trial Courts insensitive to the protection of the Human Rights of suspects, as they showed no interest in guarding against unnecessary remands. Remands were frequently granted without proper grounds. In 29% of cases studied, remand was granted more than three times. As shown by the research, in over 87% of cases, trial court granted remand without scrutiny of the investigation process or grounds cited for the extension of detention (CeLRRd 1999: 95).
- In general, junior police officers were found to have been assigned the work of investigation. This showed a lack of interest among senior officers regarding matters of investigation. Prosecution was generally carried out randomly, without scrutiny of facts and evidence gathered by investigators (CeLRRd 1999: 97). Therefore, prosecutors were not found to be alert to the protection of the innocent.
- The investigation lacked coordination with the prosecution, as there were no instructions given by Government Attorneys to investigators. Prosecutors did not scrutinize the legality or fairness of the process of collecting or obtaining evidence (CeLRRd 1999: 98).
- The prosecutors failed to objectively analyze the evidence procured by investigators. Factors like character, age, economic situation, vulnerability and circumstances involved in criminal acts were given no consideration. The general practice of prosecutors while framing the charge sheet was to request the highest sentence available. In only 27% of cases, prosecutors refrained from resorting to a request for the stiffest penalty. Most interestingly, the correlatively of evidence and facts with the penalty was never considered (CeLRRd 1999: 102).
- Confession was extracted from 85% of detainees. Of them, 42% complained in the court that the confession was extracted by use of force. However, the Trial Court convicted 60% of accused, and took their confessions as valid evidence. The fairness of procedure for extracting confession was not considered at all. This shows the foundation of the whole Judicial System on a confession-oriented approach (CeLRRd 1999: 105).

- The right to legal counsel was not protected. Over 50% of the accused had no legal representation when the sentence was declared. Thus the judges' discretion largely prevailed in the sentencing process (CeLRRd 1999: 109).
- Wealth was a determining factor in securing personal Criminal Justice System in a large number of criminal cases. For 94% of accused, the Trial Courts on the condition of a property bond granted bail. This means that a person with no property could have been deprived of personal Criminal Justice System. As such the matter of bail was not set up on fairness of procedure (CeLRRd 1999: 111).
- In a large number of cases studied, the trial was prolonged for a period of over one-year. Only 17% of cases were disposed of within a period of three months (CeLRRd 1999: 115).

These findings compel to conclude that the Criminal Justice System of Nepal is far from meeting the minimum standards set forth by the Constitution of the Kingdom of Nepal and various International Human Rights Instruments. One reason for such a low standard of justice is the insensitivity of actors to the values of fairness of procedure and the Human Rights of suspects and accused.

Procedural formalities and technicalities outweigh the Right to Fair Justice. The values of Justice are ignored due to exigencies or compulsions created by actors' circumstances. Hence, the privileges, convenience and resources of these actors outweigh the right of detainees to personal Criminal Justice System.

The investigation proceeds first with "arrest", then investigation. A large number of people are simply arrested for the convenience of the investigators in the investigation task. This practice is encouraged by a belief that confession is indispensable to securing conviction. Many persons are therefore simply remanded without any grounds. Random arrests, coupled with the grant of remand without scrutiny of grounds, are Human Rights violations of an overwhelmingly serious nature (CeLRRd 1999: 92).

The police have hardly developed any devices to "scrutinize" the objectivity, authenticity and reliability of evidence, and avoid the prosecution of persons against whom the charge is unfounded. In Nepal, investigation is understood to be a process

of collecting information or evidence that will be generally helpful in incriminating the suspect. Hence, it is a common phenomenon that a suspect once arrested is generally remanded and prosecuted. Thus the police investigation does not resolve cases rather it generates them. Since, the prosecution is largely “random prosecution”, an extremely large number of cases are bound to be tried by the courts with high rate of acquittals.

The situation of courts is not congenial for the protection of innocent persons. The courts are logistically and financially deprived. There are no specialized judges. Furthermore, under current circumstances, a large number of suspects or accused are not aware of their rights, and many of them are not capable of hiring lawyers to represent their cause.

The concept of fair justice in principle was largely institutionalized by during the 70s. However, it was not easy to act on scattered legislation. The new Muluki Ain prevailed as a common Law where there was no specific legislation available. This made it quite difficult for actors to ascertain what kind of procedures to apply in the given case. Considering the difficulty and resulting inefficiency and low standard of the system, a Law commission was instituted in 1972 to draft a “Comprehensive and Uniform Code of Criminal Procedures”. The assignment was effectively and efficiently carried out, but mysteriously the code never came into practice. The lack of adequately formulated free and fair procedures together with acute lack of sensitivity on the part of the actors of Criminal Justice subjects the Criminal Justice System of Nepal to the following weakness and gaps:

## Investigation

- The assignment of the investigation of the crimes has not yet been recognized as a professionally specialized responsibility of the police officers. The tendency of delegating or shifting the responsibility to the new, inexperienced and junior level of officers is a common practice in police.
- Formality of procedures outweighs the importance of expertise during the investigation. Hence, innovation in the investigation technique and process has less scope to flourish.
- Crime investigation has not been considered as one of the most sensitive responsibility of the police. The

### Distribution of Police Officers by posts involved in investigation

SN	Designation	Interrogation and deposition of suspected persons	Site Investigation	Witness deposition record
1	Supt. of Police	0.5%	0%	0%
2	District Supt. of Police	2%	1.5%	4%
3	Inspectors	64%	23%	26.5%
4	Sub-inspectors	18%	39%	36%
5	Asst. inspectors	4%	15%	13%
6	Immigration officers	1.5%	1.5%	1.5%
7	Unidentified designations	10%	20%	19%

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 97)

### Distribution of cases by stages of torture for confession

Total number of respondents	Respondents reporting enticement or suggestions for confessing the crime	Respondents reporting the enticement or suggestions for co-accusing other person	Respondents reporting torture for signing the prepared document of confession
Number of respondents	112	20	214
Percentage	34.89	6.23	66.67

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 133)

### Distribution of cases by suspects put into lock-up with or without interrogation

Total number of respondents	Suspects produced before the Investigating officers before being locked up	Suspects not produced before the Investigating officers before locked up	Inerrogation carried out before producing to the Judicial Authority
Number of Cases	100	221	192
Percentage	31.15	68.85	59.81

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 128)

investigation is carried out not as a matter of responsibility of state to free and fair justice; rather it has been taken as a part of the regular responsibility to law and order.

- Police personnel are little sensitive to the human dignity of the detained persons.
- Detention precedes the interrogation as a rule. In this connection, the procedural formalities outweigh the value of fundamental rights of suspects.
- A wrong conception that confession is inevitable and trustworthy evidence for conviction exists as an institutionalized perception among the investigators, and thus much more concentration is given to extract the confession than have innovative approach to discover evidences through other means.
- Torture has been used as a means to extract the confession, so the investigation is completed without sophistication. Extraction of confession relieves the investigators from go-

### Distribution of cases by kind of Torture and Ill-treatment

SN	Particulars	Number	Percentage
1	Use of force during arrest	123	38.32
2	Written order for arrest produced	14	4.36
3	Verbal abuse during arrest	112	24.89
4	Forceful entry at home	23	7.17
5	Threatened torture	109	33.96
6	Family members humiliated	20	6.23

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 139)

### Distribution of cases by Forms of Torture

SN	Particulars	Number	Percentage
1	Beating	215	66.98
2	Threat of harm to family	23	7.17
3	Starvation	14	4.36
4	Electrical shock	12	3.74
5	Exposure to hot and cold	21	6.54

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 139)

ing into other means of discovering evidences.

- The practice of forging or making evidences prevails over use of means and approaches to discover evidence.
- Tendency of evading the constitutional rule of producing the suspects before the judicial authority within 24 hours of arrest and detention is common practice in police.
- Access to remand for detaining the person under investigation for full period of 25 days is exercised as a general practice, and is conceived a privilege.

## Prosecution

- Random prosecution of the detained persons is a common practice. The Government Attorneys do not exercise the legal power granted by the State Cases Act 1993 in order to scrutinize the individual situation of the detained persons.
- Framing of charge sheet is not practical and scientific. The procedural formalities weigh more than the need of respecting and protecting the fundamental rights of

the detained persons. No individual situation of the offender is examined and the law is applied accordingly. Tendency of applying law in random irrespective of the individualized circumstances of offence and situ-

### Incidents of Illegal Detention

SN	Particulars	Persons arrested before FIR is lodged	Suspected persons produced before the judicial authority		Investigating proceedings show likely manipulation of documented date of arrest
			within 24 hrs of arrest	after 24 hrs of arrest	
1	Number of Cases	38	139	83	11
2	Percentage	17	63	37	5

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 91)

### Consideration of age & character when proposing sentence

SN	Particulars	Whilst proposing the sentence the prosecutor proposed	
		Requested for the accused's age and character to be considered	Did not request that the accused's age and character be considered
1	Number of Cases	59	163
2	Percentage	27	73

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 103)

ation of the offenders is phenomenal. This means that no charge sheet is framed based on critical scrutiny and analysis of the available evidences and documents.

- The right of the detained persons is never considered seriously while the charge sheet is framed. No kind of consideration is given to the diversity of the offenders' characters and situation while proposing the sentence. The Government Attorneys move with a mission of subjecting detained persons to the hardest

possible penalty, and this has been taken as the best compliance of the obligation. Prosecuting randomly with application of law providing stiffer penalty has been considered as the best representation

of the state in matters of prosecution.

- The accountability of the prosecution for discharging the burden of proof beyond reasonable doubt is manifestly neglected. The Government Attorneys generally fail to corroborate the allegation made in charge sheet by supplying the essential evidences.
- The Government Attorneys are not serious enough to produce prosecution's witnesses to the court.

## Adjudication

- Remand for detention of the suspects has been granted without scrutiny of progress and need of the investigation. The judges are generally not interested in scrutinizing the process of investigation and its situation while granting the remand for extension of the period of detention.

### Courts attitude to remand

SN	Particulars	Remand for detention granted		Remand for detention denied
		Without scrutiny of investigation process and grounds	With scrutiny of investigation process and grounds	
1	Number of Cases	193	21	8
2	Percentage	87	9	4

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal, P. 95)

### Distribution of cases by privilege given for legal assistance

SN	Particular	Number	Percent
1	Detainees allowed to consult and be defended by Legal Practitioner before produced at the Judicial Authority	0	0
2	Detainees privileged to consult Lawyers after two days	192	59.81
3	Detainees not consulting the Lawyers at all	129	40.19

(Source : CeLRRd, Analysis and Reforms of Criminal Justice System in Nepal)

- The detained persons' right to be heard during the remand process is not taken care by the judges. Hence, no proceeding of hearing for extension of remand detention takes place. Obviously, the right to be defended by a legal counsel is very much neglected by the trial courts too.
- Courts are least concerned with the situation of the detained persons during detention for investigation. The detained persons are never interviewed whether they had been provided with inhumane treatment in the custody or

not. The perception that the remand to detain suspects till legally sanctioned duration, irrespective of the nature of the case and the condition of detained persons, is a privilege of the police and it prevails in the trial court too. Obviously, it is not the fundamental right of the detained persons but the request of the investigating agency for extension of remand for detention is considered seriously by trial courts.

- The courts are not serious to oblige the pros-

ecutors to discharge the burden of proof beyond reasonable doubt. The trial courts are not serious to require the prosecutors to discharge the accountability of onus of proof. The attitude that the detained persons must discharge the onus of innocence is common among the trial judges, only with negligible exception.

- The rampant denial of the constitutional rights of the accused be defended by legal practitioner of choice during the police de-

ention does not concern the courts. The concept that denial of the right to consult the legal practitioner impinges the fundamental rights of the detained persons and as such impairs the access to free and fair justice has not been a matter of concern for trial judges.

- Courts are not concerned with the proper representation of the detained persons, as no copies of the documents are made available during the pre trial session.

## Defense Lawyering

- Lawyers are not interested in representing the persons during the police detention. The perception that the representation only means appearance in the courts for arguments in matters of verdict is prevalent among the lawyers. The Bar's insensitivity towards the denial of the right to the detained person to consult the lawyer is an obvious instance of the perception.
- Lawyers are vulnerable of practicing unethically as there is no mechanism of control for misrepresentation. The lawyers are not accountable to the misrepresentation made. The trial courts are devoid of any control over lawyers for unethical or misrepresentation of the

### State of unethical practices of lawyers

SN	Particular	Lawyers involved	Percent
1	Money asked during the detention	11	3.43
2	Asking for deposit in addition to fees	3	0.93
3	Asking money for something unknown	20	6.23
4	Asking money for gifts for someone	7	2.18

(Source : CeLRRd, *Analysis and Reforms of Criminal Justice System in Nepal*, P. 139)

accused persons.

- Professional expertise of practicing criminal law is generally absent. No specialization training for lawyers are available. No basis criteria for practice of criminal law are laid down. The awareness that the liberty and life of the accused person might be put into jeopardy by inability or incapacitation of lawyer for representation is something not considered so far.

## Political Commitment

As it is clear from the previous chapters, the State has manifestly flunked to present the stronger political commitment to reform the criminal justice system. It is apparent from the following facts:

- The State has failed to realize the importance of impartial, free and fair investigation system. The lack of adequate initiatives to make investigation system professional, has greatly negated the possibility of implementing the Article 14 of the Constitution.

Therefore, the reform of the criminal jus-

tice system has become a snag greatly because of the lack of political commitment of the State. The widespread weaknesses or gaps apparently existing in the criminal justice system could have been resolved through raising professionally specialized investigators with sole accountability of investigation and adequate sensitivity to the fundamental rights of the detained persons. The State's role in this respect is not promising.

- The State has very seriously flunked in its responsibility of ameliorating working con-



ditions of the prosecutors. The Attorney General's office has confessed that its failure rates exceed 57 percent of the cases.

The proportion is woeful. The situation clearly indicates to political unaccountability of the State towards free and fair criminal justice. The adjudication process is obviously impaired by the pitiable condition of the prosecution system. The proper training and facilities needed for efficient prosecution is overshadowed overwhelmingly.

- The judiciary is one of the severely neglected institutions of the State in Nepal. The financial budget the judiciary is extremely low to accommodate the physical and logistic needs for speedy, free and fair trial. The perception that investment in justice system is unproductive is strongly concretized in the mind of the politicians. Hence, the judiciary is rendered crippled to carry out the accountability with efficiency caused by unavailability of the adequate financial resources.
- The lack of political commitment is also apparent from inadequate legislation. The following instances can better reflect on the situation:
  - No legislation concerning compensation of the victims of offences exists so far. The pecuniary penalty paid by the offender's go to the state's revenue. Hence, the victim is left without any kind of support or compensation.
  - The procedures relating to investigation, prosecution and adjudication are lengthy and archaic in nature. The need of enactment of the appropriate legislation was felt quite long ago. The commissions were constituted to draft adequate legislation to govern the matters of criminal procedures and punishment. However, the state did not show interest to promulgate those draft codes. Thus, the State has forced the criminal system being dwindled as an archaic feudal system.
  - There are several laws promulgated in the past that are manifestly contradictory

to the recognized principles of criminal justice. These Acts unduly enable the quasi-judicial institutions to act as investigators, prosecutors and adjudicators at a time. Many of such legislation effectively disregard the jurisdictions of the court of laws to review the judgments thereof.

These Acts apparently stand against the Article 84, 85 and 86 of the Constitution. Thus the State has failed to its role of promoting a society by rationalizing the legal system in accordance with the constitution and international human rights law. As it can be seen from above, widespread violation of the human rights during detention has caused a serious lack of confidence of the people upon the credibility of the Criminal Justice System. In the absence of scientific approach of investigation, the potentiality of the prosecution of an innocent and escape of offenders looms large. In such a circumstance, the adjudication process is bound to be defective leading to miscarriage of justice.

The criminal justice is a three-pronged process- investigation, prosecution and adjudication. Any weakness in the process of investigation necessarily implicates the whole process. The system of investigation being dependent on confession of the detained person as a vital proof for conviction, the prosecution and adjudication systems are necessarily impaired.

As established by the research findings, the unconstitutional and illegal incarceration of the suspects, infliction of torture and cruelty, degrading and inhuman treatment and direct and effective denial of the right to be defended by the legal counsel exist tainting the credibility of the whole system of criminal justice. What is more deplorable is the situation of prosecution and adjudication, where the government advocates and judges never scrutinize what takes place in the policy custody. This is a problem of acute insensitivity to the rights of accused persons. ■

## 2.2. Study on Counter Corruption Legal Framework

- a. Year of Research Conducted: 2000
- b. Research Team Leader: Mr. Yubaraj Sangroula
- c. Research Team Members: Advocate Geeta Pathak, Advocate Tek Tamrakar, LL.M., Advocate Mohan Mani Lamsal, LL.M., Advocate Ashish Adhikari, LL.M.
- d. Surveyors : Kalpana Jha, B.L., Sunita Sharma, B.L., Student.
- e. Advisor : Prof. Madhav Prasad Acharya, Reader
- f. Research Report Published in: English
- g. Brief Description of the Project: CeLRRd conceived a study on “Counter Corruption Legal Framework” as a part of its continuous endeavor to strengthen the rule of law and good governance in support with The Asia Foundation. The report of the study is framed in a way to help various



sectors to understand the counter corruption legal framework critically. The corruption destroys the potentiality of good governance. Inadequacy of law and inefficiency of counter corruption mechanism help institutionalization of the corruption. The Executive Government is always not friendly to counter corruption mechanism. This is very much true in Nepal, as the independence of CIAA is virtually overlooked. The executive bureaucracy controls the function and jurisdiction of CIAA. Believing the issue, a matter of wider public concern, CeLRRd carried out the study to accelerate the process of generating public awareness against situation of widespread corruption in Nepal.

### Definition of Corruption

Question asked	No. of Respondents who identified positively	Percentage of total respondents polled
Distortion of State Property	136	63
Misappropriation of Govt. Budget	56	26
Bribery	120	56
Other	132	61

### Causes of Corruption

Questions	Greed as a main cause of corruption	Cash bribes as a form of corruption	Elites as the source of political corruption	CIAA as a competent institution to report corruption	Expensive elections as a form of corruption	Corruption by misuse of public property
Yes	54.5%	76.2%	49.2%	6.0%	19.5%	34.3%

### Areas of Excess Corruption

Questions asked	Number of Respondents who identified positively	Percentage of total respondents polled
Civil Bureaucracy	96	44
Govt. Corporation	80	37
Politics	172	80
Judiciary	84	39
Others	24	11

*These answers represent independent figures.*

The study consists of review of legislation and relevant cases followed by a sample survey of the key informants. The findings are drawn upon the review of relevant cases followed by a sample survey of the key informants. The findings of the study were shared with intellectuals and experts from both the governmental and non governmental sectors through meetings at Kathmandu, Biratnagar and Nepalgunj and the suggestions thereof encapsulated in the recommendation part of the study.

The major quantitative data of the findings of the study are shown in the tables below:

## 2.3. National Prisoners Legal Aid Program

- a. **Program Chief:** Mr. Yubaraj Sangroula (2000-2001), Mr. Kishor Silwal (2002-), Ms. Geeta Pathak (2003-)
- b. **Project Team:** Mr. Hem Raj Panta (Biratnager), Mr. Prakash K.C. (Janakpur), Sudeep Gautam, Ram Prasad Aryal, Ashish Adhikari and Lila Mani Poudel (Kathmandu), Mr. Kumar Sharma Acharya (Nepalgunj). The team was assisted part-time by a group of lawyers, namely Mr. Gajendra Acharya in Jhapa, Baldev Choudhary in Udayapur, Bishnu Upadhaya in Saptari, Krishna Bhakta Pokhrel in Chitwan, Bhupendra Poudel in Nawalparasi. Ms. Tara Khanal assisted as prison contact person in Kathmandu, whereas Mr. Ratna Bahadur Dulal supported as paralegal. Mr. Yubaraj Sangroula coordinated the over all project.
- c. **Main Activities:** Legal counseling and representation of indigent prisoners was the main activity. However, to strengthen the capacity of legal aid lawyers and build awareness among prisoners of their rights to legal representation, a number of training and awareness program were conducted.
- d. **Major Outcome:** This project has been instrumental in institutionalization of legal support to prisoners. Over 3000 cases nationwide, from Trail to Supreme Court, had been represented. By providing a legal aid support to this



*Peter Vedel Kessing, DIHR*

number, the project has significantly contributed to the promotion of Fair Trail in Nepal. The legal aid project is a pioneer action intervention in the field of Criminal Justice System in Nepal.

- e. **Brief Description of the Project:** CeLRRd's research "Analysis and Reforms of the Criminal Justice System of Nepal" revealed that the majority of the prisoners had never been represented in the court. A number of people were thus simply sentenced without any kind of legal defense during the trial. As shown by the research, none of the 321 prisoners interviewed during survey had the opportunity to obtain legal counsel before or during the interrogation. This situation indicated the violation of the Right to Fair Trail as phenomenal in Nepal. Therefore, the intervention through legal aid to the prisoners had been taken as the most prioritized involvement of CeLRRd in the field of Criminal Justice System. The ultimate goal of the project was to foster the enforcement of the Human Rights in the context of Criminal Justice.

The project was launched in cooperation of Danish Center for Human Rights, DCHR (currently Danish Institute for Human Rights, DIHR) as a follow up activity to the research. A nationwide survey of the prisoners was conducted at the outset, so as to identify the number of prisoners and types of cases urgently requiring the service. There was an establishment of legal aid centers at Janakpur, Kathmandu and Nepalgunj to look after the project activities in the eastern, mid and western regions respectively fol-



*Ms. Geeta Pathak, at PLA Training*

lowed by the survey. Once the priority cases had been identified, the copying of case files was carried out as none of prisoners had documents of their cases. The following considerations had been taken into account for giving priority to the cases:

- Cases where the trial was protracted and the accused had been in prison waiting for trial for a long time.
- Cases where accused were women, especially charged with offence of infanticide, abortion, etc.
- Cases where the sentence involved long term imprisonment,
- Cases where the accused had been imprisoned in district other than the court hearing the case was located.

The outcome of the project in figures is as follows:

Year	Total Number of Cases	Conviction	Acquittal	Partial Conviction	Subjudice
1999-2000	997	206	87	37	657
2001.	2215	306	291	122	1255
2002	2567	678	274	184	1219
Total	3867	1190	652	343	1219

- Cases where the accused was a juvenile.

The project was supposed to be phased out by end of 2002. However, due to unusual circumstance that occurred due to the insurgency between the government and the Maoist party, the number of cases further increased. The extension of the project was thus necessary for two more years.

However, the sustainability and institutionalization of the legal aid program are particularly emphasized under the 2003-2004 phase. To achieve this goal, the following strategic interventions have to be implemented:

- Formation and institutionalization of the national legal aid network. A national symposium is going to be held to formalize the formation of the network.
- Capacity building of the CeLRRd's team of core



*Mr. Yubaraj Sangroula, coordinating the PLA Training*

lawyers is emphasized. This objective is addressed by organizing a comprehensive training on legal

aid concept and promotion of Fair Trial by promoting use of International Human Rights Instruments. As an aspect of the capacity building, an observation visit of sound legal aid programs in other countries for CeLRRd lawyers is being planned.

- For achieving sustainability of the program, the Kathmandu Center has been handed over to the Kathmandu School of Law, where teachers and students have assumed active role to provide legal aid services to prisoners within and surrounding areas of Kathmandu Valley.
- An arrangement will be made to hand over the Biratnager and Nepalgunj centers to local bars along with required equipment and logistic facility.
- Preparation of booklet on the rights of prisoners, and its wide distribution among them.

Currently, the Kathmandu Center of Legal Aid Program is housed within the complex of the Kathmandu School of Law at Dadhikot, Bhaktapur. ■

### 2.2.1. Prisoners Legal Aid Network

Right to legal aid by lawyer is a fundamental right of the prisoners. However, there was no systematic programme as to guarantee these rights and to provide free legal aid to the prisoners who cannot afford to pay the cost of lawyers.

Bearing this in mind, CeLRRd and Kathmandu School of Law under the aegis of Danish Institute for Human Rights (DIHR) initiated a step to develop a Na-

tionwide Network to unite the lawyers with the commitment to effectively work for the Legal Aid Program. As a follow up of the initiation, CeLRRd and Kathmandu School of Law organized a 'Nationwide Conference of Lawyers' in Nagarkot in Jestha 24- 26, 2060. The conference issued a Nagarkot Declaration with the concrete commitment of providing free legal aid.

## Nagarkot Declaration

On

## National Legal Aid Network

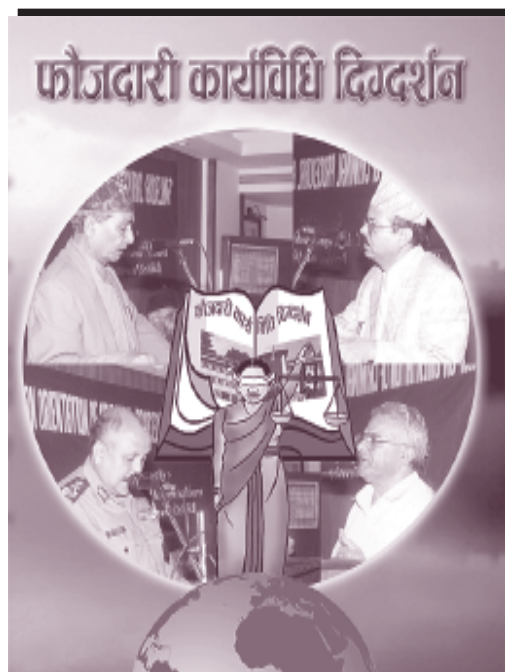
*(Adopted by the National Conference of Legal Aid Lawyers held in 8<sup>th</sup> June 2003)*

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) *Realising 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) *Realising 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) *Internalisation 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.*

## 2.4. Strengthening of Criminal Justice System

- a. **Program Chief:** Mr. Yubaraj Sangroula (2000-2001), Mr. Kishor Silwal (2002)
- b. **Project Team:** Mr. Sudeep Gautam, Mr. Ram Bahdur Khatri, Ms. Ekta Singh, Mr. Laxman Khadka. In the initial phase of the project, a number of government and Judicial Officials supported the project activities. Some of them were, Mr. Ishor Khatiwada, District Court Judge, Mr. Narendra Pathak, Senior Govt. Attorney, Mr. Chuda Bahadur Shrestha, SP, and Umesh Koirala, Section Officer, Supreme Court. Mr. Sailendra Dahal had been engaged in the project to represent the Nepal Bar Association.
- c. **Main Activities:** Development of the “Criminal Procedural Guidelines” and orientation thereon for lawyers, government attorneys, police personnel and judges were the two major project activities in the initial phase. The orientation for more than 600 individuals representing all actors of Criminal Justice System are at the verge of completion. From 2003, the project activities will encompass a number of additional activities targeted to strengthen the Criminal Justice System. Some of those included are:
  - Development of “Criminal Procedural Guidelines for the Community”.
  - Enhancement of the legal education in relation to Criminal Law, Human Rights and Alternative Dispute Resolution.
  - Formation and institutionalization of the



district coordination committee through Court Management Committees.

- Training for court staff on Human Rights
  - Orientation for local authorities on Criminal Procedures.
- d. **Major Outcome:** The development of the “Criminal Procedural Guidelines”, which is a collection and systematic presentation of procedural laws scattered in various Acts, is the most significant outcome of the project. The orientation for actors of Criminal Justice in one platform is equally significant outcome of the project. This project has been the first in Nepal to bring all actors of the Criminal Justice System into one platform for discussion. Obviously, this has tremendously helped to understand the problems being faced in the Criminal Justice System with coordinated approach. By introducing a platform for interaction and sharing views and experiences with each other, this project has heralded a coordinated approach towards reforms of the Criminal Justice System.
  - e. **Brief Description of the Project:** The “Analysis and Reform of the Criminal Justice System



*Participants of CPG Orientation*

of Nepal”, the research carried out by CeLRRd in cooperation with DCHR, had developed a concrete plan of actions as an integral part of the study. At the initiative of DCHR, following a consultation between Yubaraj Sangroula, and Mr. Peter Vedel Kessing, the plan of action was submitted to DANIDA in 1999, and a request was made to take steps towards the development of a project for strengthening the judicial system in Nepal. A “Project Formulation Team” comprising Perter Vedel Kessing and Yubaraj Sangroula was constituted as a response to the request. At the end of 1999, the Project Formulation team worked hard to develop the project. During that course, the team consulted with heads of all institutions involved in the Criminal Justice System. The following problems had been identified as major contributors to weakening the position of the Criminal Justice System in Nepal:

- The interaction and communication among Judiciary, Attorney General, Police department and Bar concerning reforms of the system lacked.
- Each of these institutions was found vulnerable of blaming other for the inefficiency, failure and weaknesses of the system; none of them was prepared to accept weakness, or failure on its part.
- The police and prosecutors, who constituted complimentary to each other, lacked coordination in their works, and it was one of the major reasons for the failure of a number of criminal cases in the courts.
- The procedural laws to be applied in the investigation, prosecution and adjudication of criminal cases were found scattered in a number of statutes and the Muluki Ain (National Code of Law), so that the situation was complex for fair application of procedural law.
- The concept of Fair Trial was almost neglected. The procedural formalism often weighed more than the need of protecting the rights of suspects and accused.
- The cultural relativism towards enforcement and compliance of International Criminal Justice standards was pervasive.

The “Project Formulation Team” faced hard time, as it



*Participants of CPG Workshop*

was a very difficult task to prioritize the areas of interventions. Two schools of thought in this regard were emerging out. One school of thought emphasized priority for intervention through building physical infrastructure and introducing Informational Technology. The “Project Formulation Team” did not find itself convinced with that thought of school. It rather thought that “a changed and pro-active mind” is indispensable for benefiting from better infrastructure and Information Technology. To effect change in the mentality in order to help actors to look at the Criminal Justice System from the changed perspective and development of the human rights concerning fair and impartial trial was thought to be right direction to go. While thinking from the perspective, the following two approaches had been found indispensable for any reform initiatives:

- Constant and consistent interaction among actors of Criminal Justice, which would give a platform for regular discussion and sharing of problems, views and experiences of each actor.
- Compilation of procedural rules along with best judicial practices and international standards.

The project was therefore developed with these two approaches in the mind. After a hectic work for two weeks, a comprehensive report along with objectives, strategies, activities and outcomes had been developed and submitted to the Royal Danish Embassy at Kathmandu. A debriefing meeting with the ambassador and senior staff of the embassy was organized, which did not conclude with a great enthusiasm. The embassy was quite skeptic towards possibility of the implementation of such program; frankly speaking it was viewed as an “ambitious” project. The main rea-

son behind such skepticism was the “wider gape” that existed among actors in relation to the understanding of the problems facing Criminal Justice System. Similarly, another reason for skepticism was the lack of culture among actors to communicate and cooperate for addressing the problem of Criminal Justice System as a matter of common concern of all.

As a matter of fact, the project team was not much optimistic towards the possibility of materializing the project. However, the concept and strategy attached with the project were appreciated by all concerned institutions. The lobbying for the effectiveness of the project took momentum. Several project missions from Denmark visited Nepal subsequently. The heads of all institutions felt quite comfortable to the possibility of the implementation of the project, and readiness to cooperate. Eventually, the result was positive; DANIDA accepted the project without any substantial changes. The following interventions had been thus endorsed:

- Development of the “Criminal Procedural Guidelines”: CPG was an enthusiastic and ambitious project to carry on. The following strategic ap-

proaches had been adopted to implement the project:

- Formation of the “Management Committee” comprising senior managers of institutions involved in dispensation of Criminal Justice System, including Ministry of Law and Justice. This body was envisaged to give policy guidelines for the development of CPG.
- Formation of “Working Group” comprising experts from all concerned institutions, including Ministry of Law and Justice. This group was given responsibility to develop a comprehensive CPG, to be applicable equally for all actors.
- Convening a consultation meeting of experts from all institutions was carried out in order to generate added inputs to CPG.
- Launching of Orientation Workshops nationwide.
- CeLRRd had the responsibility to function as a secretariat for the Management Committee, Working Group, and for implementation of all project activities.

It was thus a huge task to be carried out. The budget was not enough, as the voluntary participation of actors and CeLRRd in many affairs of the project was intensive. For instance, CeLRRd was supported by the project agreement with a monthly salary of Rs. 12,000 for the project secretary, and Rs. 2,500 for a messenger. Additional Rs. 2000 was provided by the project agreement as a stationary cost. However, CeLRRd was committed to have this project successfully implemented, and bring about desired changes in the Criminal Justice System.

### Development of CPG:

A number of challenges had been encountered during the development of CPG. In the initial stage of work, member of working group came with strong institutional biases. Consequently, discussions and dialogues were not always friendly and cooperative. Conceptual misunderstandings to the international standards, Article 14 of the Constitution, and both the independence of the institution and the need of coordination for desired changes were large. In the beginning, each member was either skeptical to the meaningful result, or was not fully aware of the significance or utility of such guidelines. This problem was gradually and consistently addressed.

Another problem related to the modality and methodologies. Since the working members were not re-



*Chief Justice Releasing CPG*



*Mr. Sangroula Handing Over the Copies of CPG to CID Police Headquarters*



munerated separately for the work they were assigned, it was not possible to require them to work full time. Each member of the working group was paid monthly Rs. 3000 for a period of six months. In this perspective, the following modules of works were adopted:

- Compilation of procedural rules exclusively applicable for each actor,
- Compilation of Code of Conduct and other legal provisions regarding their right and duties of all actors.
- Identification of problems facing in connection with that particular institution
- Compilation of judicial developments and international standards in connection with work that particular institute.

Obviously, each member initially prepared a draft CPG reflecting on his or her particular work. Completion of this part of the work was followed observation visit by the group, with Justice Laxaman Kumar Aryal, Supreme Court and Prem Raj Sharma, Appellate Court Judge. The observation visit tremendously helped in number of ways to the working group. One of the major significance of the observation visit was that the members of the group realized that the reform of the system would be possible only through coordinated efforts of all actors, and so that the interactions and sharing of views and experiences from the single platform is indispensable. The cooperation within the group after observation visit thus increased significantly.

In this course, the member of the group had the opportunity to understand the problems of others. This factor also led to the realization of the need of common efforts for strengthening the system. CeLRRd's role in coordinating all activities of the working group was crucial.

Preparation of the final draft of CPG was of course hectic. In this course total five thousands pages of papers were produced. Once the compilation of works carried out by each actor was completed, a editorial team of three persons, which comprised of Mr. Ishor Khatiwada, Narandra Pathak and Chuda Bahdur Shrestha, was constituted. Subsequently, a joint meeting of the Management Committee and Working Group was convened to finalize the draft with necessary improvements. Finally, the Management Committee adopted the draft. The printed version of CPG was publicly released jointly by the then Chief Justice Keshav Prasad Updhaya, Attorney General Badri Bahadur Karki, Police Inspector General Mr. Pradip



*CPG Orientation at Dhankuta*

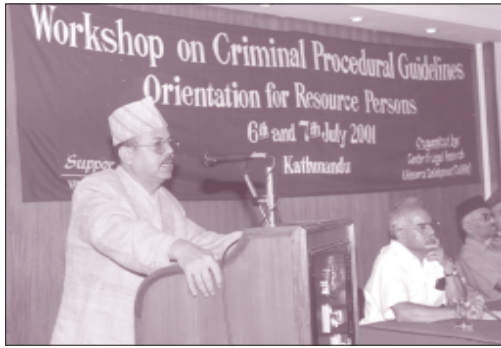
Shumsher J. Rana, and President of Bar Mr. Sindhu Nath Paykurel. Each of these dignitaries urged implementation of CPG through preface. Publication of CPG was taken as a great achievement by the concerned sectors as well as the media.

## Launching of “Nationwide Orientation Workshops” on CPG:

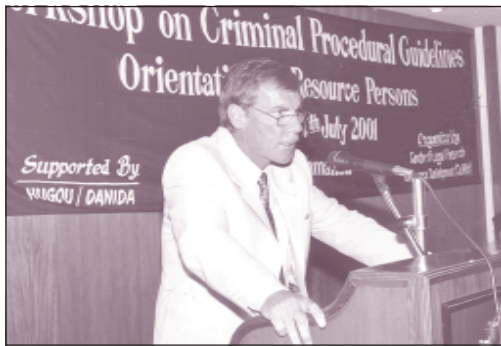
The implementation of Orientation Workshops on CPG was preceded by two day training for a group of 25 Resource Persons, drawn from all partners, including CeLRRd. This training highlighted on the methods of orientation, approaches to build coordination at grassroots level, and promote use of CPG in all stages of criminal proceedings. Till date 24 orientation workshops have been completed in this regard. The following table will demonstrate the comprehensiveness of the program:

The orientation workshops have been catalytic in building coordinated approach towards reforms of Criminal Justice System in Nepal. The following immediate outcomes are noteworthy:

- Cynicism to applying criminal procedural rules with attention to the 14 of the Constitution of the Kingdom of Nepal, and the International Human Rights instruments is reduced.
- Cynicism to proactive cooperation among actors of Criminal Justice System has been reduced.
- Endurance to criticism and motivation to take such criticism positively increased significantly.
- As an outcome of the frequency of interactions through orientation workshop, the Headquarters and the Attorney General's office have come to an agreement to form an coordination committee in



*Attorney General*



*Ib Henricson, Danish Consultant*



*Participants of CPG*

Date	Venue	Number of Participants			
		Judges	Defense Lawyers	Govt. Attorney	Police Officers
6 <sup>th</sup> & 7 <sup>th</sup> July, 01	Kathmandu (TOT)	4	4	4	8
5 <sup>th</sup> & 6 <sup>th</sup> August, 01	Kathmandu	2	4	4	8
7 <sup>th</sup> & 8 <sup>th</sup> Sept., 01	Pokhara	1	7	6	9
5 <sup>th</sup> & 6 <sup>th</sup> October, 01	Dhankuta	2	8	7	8
8 <sup>th</sup> & 9 <sup>th</sup> October, 01	Illam	2	5	8	11
9 <sup>th</sup> & 10 <sup>th</sup> Nov., 01	Chitwan	3	7	6	8
21 <sup>st</sup> & 22 <sup>nd</sup> Dec., 01	Biratnagar	3	4	7	7
12 <sup>th</sup> & 13 <sup>th</sup> Jan., 02	Birgunj	3	11	8	9
18 <sup>th</sup> & 19 <sup>th</sup> Jan., 02	Kanchanpur	2	12	7	7
21 <sup>st</sup> & 22 <sup>nd</sup> Jan., 02	Nepalgunj	3	13	8	9
3 <sup>rd</sup> & 4 <sup>th</sup> Feb., 02	Dhulikhel	2	10	10	12
1 <sup>st</sup> & 2 <sup>nd</sup> March	Rajbiraj	2	8	8	9
4 <sup>th</sup> & 5 <sup>th</sup> March, 02	Janakpur	2	6	7	6
29 <sup>th</sup> & 30 <sup>th</sup> March, 02	Butwal	2	4	8	10
3 <sup>rd</sup> & 4 <sup>th</sup> May, 02	Kathmandu	2	2	8	11
8 <sup>th</sup> & 9 <sup>th</sup> May, 02	National Police Academy, Maharajgunj	3	4	4	36
25 <sup>th</sup> & 26 <sup>th</sup> April 03	Jhapa	1	6	2	19
28 <sup>th</sup> & 29 <sup>th</sup> April 03	Morang, Biratnagar	1	5	2	22
1 <sup>st</sup> & 2 <sup>nd</sup> May 03	Lahan, Siraha	-	5	3	21
28 <sup>th</sup> & 29 <sup>th</sup> May 03	Nepalgunj	1	4	1	19
31 <sup>st</sup> May & 1 <sup>st</sup> June 03	Butwal	-	5	2	13
3 <sup>rd</sup> & 4 <sup>th</sup> June 03	Chitwan	-	4	1	16
9 <sup>th</sup> & 10 <sup>th</sup> Aug 03	Pokhara	1	5	6	14
<b>Total = &gt;</b>		43	143	127	292

order to coordinate between investigation and prosecution, and also to extend cooperation between them for addressing problems and weaknesses. This agreement has now found place in the State Cases Regulations.

- The lack of preparedness of judges for participating in training along with Police Officers, Lawyers and Government Attorneys is largely addressed. They are now prepared to be trained by persons other than judges.
- The exclusion of Bar, as an integral part of the Criminal Justice System, by other actors is largely addressed. This significantly increased the recognition of defense representation as one of the pillars

of the Fair Trial.

- Most importantly, the workshops have been capable of creating a common platform for all actors for discussion and think about effective intervention of the problem marring the Fair Trial in Nepal.

The orientation workshops have effectively addressed the following problems marring Fair Trial:

- There has been a great recognition among police officers that from the very beginning of the investigation no suspect can be deprived of his/her right to have legal defense by lawyer of choice. A number of orders have been issued by the Criminal Investigation Department for strict adherence to

the constitutional provision granting the legal defense to suspects.

- Appearance of lawyers during remand motion is significantly increasing. In the past, no lawyers were allowed to appear on behalf of suspects in such motions. At present, district courts are prepared and entertain arguments of lawyers concerning remand.
- Judges have become more objective in matters of extending the remand period. Previously, there was a practice of acquiesce the request of police for extension of remand for 25 days, but now the same is granted if there are objective grounds for detention.
- The torture and inhuman treatment during detention is in decline.
- Judges Observation of witness examination mo-

tion is significantly increased.

- A Criminal Justice “Steering Committee” has been constituted to monitor the implementation of CPG, and informally coordinate Criminal Justice reform activities. The “Steering Committee” comprises of registrar of the Supreme Court, chief of the Crime Investigation Department of Police, Deputy Attorney General, and the Secretary of Nepal Bar Association. CeLRRd is represented in the committee as secretariat.
- An understanding of constituting “District Coordination Committee” comprising representation of all actors is developed.

The last two developments are of great significance in streamlining the application of procedural rules, and consistent reformation of the Criminal Justice System.

## 2.5. Orientation on CPG for Supervising Police Officers

After implementation of several orientations for actors at district level, a gap was felt at the level of supervision. The police officers at Supervision level were found lacking information on CPG.

To remove this gape, the Police Headquarters had requested CeLRRd to organize a separate orientation for supervisors covering all 14 Zones. Accordingly, a two day orientation for SSP and SP level of police officers had been conducted on 8<sup>th</sup> and 9<sup>th</sup> May, 2002.

In total 52 supervisor level police officers, SP & SSP level, had participated in the orientation for two days in National Police Academy’s conference halls.

At the end, all the participants had been addressed by the then IGP Pradeep Shumesh Rana, AIGP Tirtha Kumar Pradhan, Director National Police Academy, AIGP Ananata Ram Bhattarai, Chief CID Department. On behalf of CeLRRd, Yubaraj Sangroula, coordinator of CeLRRd, had addressed the participants.



*Participation of Police Personnels at the Orientation*

## 2.6. Extension of Criminal Justice Strengthening Programs by Danida

Based on the positive impacts of the CPG and its orientation workshops, DANIDA has agreed to extend the judiciary-strengthening program for five years.

The new phase of the program will have several

additional activities, like development of the Criminal Procedural Guidelines for local authorities, enhancement of the criminal legal education, outer court settlement of disputes, capacity building of court staff, etc.

## 2.7. Research on "Impact of Corruption in Criminal Justice System on Women"

- a. **Year of Research Conducted:** 2000
- b. **Consultants:** Mr. Yubaraj Sangroula
- c. **Research Team Leader:** Mrs. Geeta Pathak Sangroula
- d. **Research Team Members:** Mr. Ganesh Bhattarai, Ram Prasad Aryal,
- e. **Resource Persons :** Prof. Madhav Prasad Acharya, Mr. Kishor Silwal
- f. **Report Published in:** English
- g. **Major Outcome:** Women have no easy access to the Criminal Justice System. Human recourse in criminal justice institutions gender biased, and most importantly the women victims of crime or offenders are vulnerable to sexual harassment during criminal proceedings in all stages. Open courts, stigma to be created by offences on person of victims and lack



*Dissemination Meeting*

of compensation and effective execution of court judgement pose a serious challenge to women for having unrestricted access to Criminal Justice.

- h. **Brief Description of the Project:** This research project was conducted in cooperation of The Asia Foundation (TAF). The research made attempt to look into corruption situation in the context of the Criminal Justice System, the impact thereof on women concerning accessibility to Justice System. The research was conducted in Kathmandu, Nuwakot and Sindhupalchok districts focusing on the crime and Justice relating to trafficking of women for sexual exploitation and rape. The study had three dimensions; firstly, it reviewed the legal framework of the trafficking and sexual offences; secondly, it surveyed the procedural practices, and thirdly, it conducted interview of victims of such

crimes.

The rights of persons to fair and impartial justice are enshrined into constitution and laws of Nepal. Nepal has ratified a number of International Human Rights Instruments, including Convention on Elimination of All Forms of Discrimination against Women (CEDAW). Section 9 (2) of the Treaty Act 1993 has stipulated the superiority of the international law in case the domestic laws get contradicted with.

The study was concluded bringing the following major findings out:

- Reporting of crimes after three days was in common in over 72% of incidents. This indicates that criminal proceedings may be vulnerable to inaccuracies, especially in relation to the crime of rape. After three days, a medical examination becomes meaningless.
- A survey of 71 percent of victims of crimes revealed the following categorical information:
  - 54 percent reported that police had mentally harassed them during their investigation.
  - 27 percent of respondents reported that the police did not promptly register the first information report regarding their case after an allegation of crime had been made.
  - 21 percent of respondents reported that police did not arrest alleged offenders.
- Reporting of sexual crimes to the police is culturally and socially embarrassing for victims. It becomes natural for victims of harassment to abstain from seeking criminal proceedings. This obstructs prompt investigation by police and destroys the opportunity of justice in the courts. The findings plainly show that women have no fair access to justice.
- In offences like rape and trafficking, victims can identify the offenders with full precision. With rare exception, the victims can recognize offenders and provide accurate information of the facts associated with the incident. The victims, as the most direct and acknowledgeable witness to the crime, also provide the most concrete evidence for the conviction of the offender. However, despite this advantage for the prosecution, it is interesting that 41 percent of trafficking and rape cases studied ended in failure to prosecute.
- Prosecution depended on inadequate evidence in 59 percent of cases and this led to a complete fail-

ure in 41 percent of cases, despite the fact that victims can provide identification of the alleged offenders in hundred percent of cases. Such failure to prosecute properly is largely caused by the involvement of concerned authorities in corrupt practices that often favor the offenders.

- 21 percent responded the release of suspects before the completion of investigations. In most of these cases, victim's participation in the investigation had been effectively ignored.
- 57 percent of victims stated that the police were reluctant to initiate investigation as soon as the FIRs had been lodged.
- The government attorneys declined to exercise their legally warranted power to require an additional investigation in 96 percent of the cases.
- In 59 percent of cases, respondents failed to appear in court to testify, due to failure of the government attorneys to inform them of the date to testimony. Thus, a failure of prosecutors in 41 percent of cases is of little surprise.
- 83 percent of victims surveyed received threats on their life and suffered physical assault if they chose to appear in court. However, the prosecutor remained indifferent to such threats. The complaints made by victims regarding such threats were not pursued.

The study shows that the women in Nepal are treated as second class citizens. The defective value system is



*Dissemination of the Research Report*

responsible for burdening women with low-esteem. The negative impact of corruption that has pervaded other spheres of society has also influenced the Criminal Justice System in Nepal. This has a direct bearing on the eventual verdict in offences to women. The plight of victim is accentuated by the overwhelming presence in the proceedings of males who are insensitive to the sufferings of women. This study was landmark on discovering the situation of women in relation to the Criminal Justice System.

The final report of the study was disseminated in Kathmandu, Butwal, Nepalgunj, Janakpur, and Biratnagar. In the dissemination meeting a number of judges, prosecutors, police officers and lawyers have given enthusiastic participation.

## 2.8. Research on Trail Court System in Nepal with Special Reference to the Accessibility of Women to Justice

- a. **Year of Research Conducted:** 2001
- b. **Consultants:** Mr. Eric Jensen, Prof. Robert Moog, Mr. Shahid Hafiz Kardar, TAF
- c. **Research Team Leader:** Mr. Yubaraj Sangroula,
- d. **Research Team Members:** Ms. Geeta Pathak Sangroula, Mr. Kumar Innam, Mr. Bal Krishna Dhakal, Mr. Sudeep Gautam, Mr. Sunil Adhikari, Ms. Rachana Shrestha.
- e. **Resource Persons:** Prof. Madhav Prasad Acharya, Mr. Kishor Silwal
- f. **Report Published in:** English and Nepali.
- g. **Major Outcomes:** This is a multi-dimensional research of the Trail Court System, but in certain aspect the whole Judiciary. The research has established that the Criminal Justice System in Nepal

does not practice the filtering system effectively. Similarly, the funneling of the case load is also lacking. The failure of the prosecution remains in alarming state. The state's investment in the judiciary is in bleak condition. The physical infrastructure of many courts is in dilapidated condition. The per-judge caseload is huge in all tiers of courts. The judiciary lacks financial management system, so that the budget allocation does not correspond to the caseload of the court. Certain number of courts in hilly regions consumes a huge amount of budget each year only for a negligible number of the cases. The civil case load is extremely huge requiring urgent intervention.

- h. **Brief Description of the Project:** This project was implemented in cooperation of TAF as a part

of the continuous efforts to strengthen the quality of justice at the trial court level and to promote accessibility of women to justice. This was one of the most difficult researches ever carried out by CeLRRd. TAF provided the service of the four prominent consultants, namely Mr. Eric Jensen, Prof. Robert Moog, Mr. Shahid Hafiz and Nara Bahadur Thapa. The main objective of the study was to strengthen the conditions of Criminal Justice System of Nepal. Specifically, the study had been conceived to identify weaknesses and strengths of Criminal Justice System, to analyze caseload patterns and types, logistic facilities, resource mobilization pattern and state's investment trends in Justice, conviction and acquittations and overall to access the condition of performance of the criminal justice system. The Research had been primarily based on statistical information of the Supreme Court, Attorney General's Office, Police Headquarters and the Ministry of Finance of HMG. The study had brought out the following findings

The following findings of the research are important:

- As annual reports of Supreme Court's show categorically, the volume of the national caseload of the Judiciary has been found to be increasing every year.

The proportions of the civil cases compared to that of criminal cases are high. The existing scenario of the caseload is primarily consisted of civil cases. In the Supreme Court, the proportion of criminal cases is hardly over 10% of the total caseload. Criminal cases made up 25% of the caseload at Appellate Level and 36% at the District Court level. These figures show that a significant number of criminal cases, compared to that of civil caseload, are filtered out of the system before reaching the Supreme Court. This is entirely the reverse of the situation regarding the civil cases. As the annual reports of the Supreme Court show, in P/Y 2056-57, civil cases made up 64% of the case

load at the District Court level, 75% at the Appellate Level and 90% at the Supreme Court Level. These Figures therefore totally rule out the conclusion of an effective filtering device or funneling system regarding the civil cases.

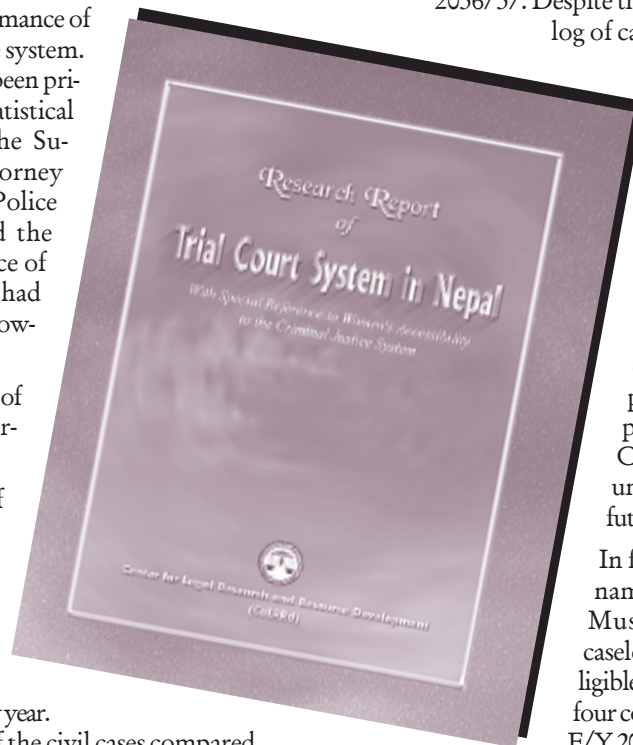
**Backlog of Cases:** Every year a large number of cases are left as backlog. As the studies shows, at District Court level, the backlog of the cases in F/Y 2047/48 was 61.94% of the total case load. This figure was reduced to 41.15% of the total caseload in F/Y 2056/57. In the Appellate Courts, the backlog was 65.94% of the total case load in F/Y 2047/48, which was reduced to 35.57% in F/Y 2056/57. However, in the Supreme Court, Cases disposed of were 43.34% of the total caseload in F/Y 2047/48, and 43.45 % in F/Y 2056/57. Despite the reduction in the backlog

of cases in the lower courts, there was a collection of large number of cases in the Supreme Court. This shows that there is no effective filtering and funneling system in the court system. Cases disposed of by the lower courts is consistently accumulated in the Supreme Court. If the trend persists, the Supreme Court will come to a very unwanted situation in the future.

In four Himalayan courts, namely Rasuwa, Manang, Mustang and Dolpa, the caseload was found to be negligible. The total caseload of all four courts over ten years, from F/Y 2047 to 2057, was 953 cases.

The average annual caseload per judge was 23.6cases. From F/Y 2047 TO 2057, the average monthly caseload ranged from 2.53 cases per month in Dolpa to 0.16 cases per month in Manang. In eighteen hill districts, the monthly caseload was found to be about 10 cases each F/Y 2056/57. The highest monthly caseload was found in Pyuthan, at 14.83 cases, whereas in Dadeldhura it was 4.33 cases. However, the caseloads of these courts are not in proportion to their budgets. Each year, the four Himalayan courts consume Rs. 84,129.83. This is in striking to all other districts, where the average cost per case is Rs. 3,610.75.

**Human Resource and Caseload:** In this era again, date



was only available for the fiscal years following F/Y 2051/52. In F/Y 2056/57, the number of staff in the judiciary at all levels, excluding judges, is 4,530. There is no detailed information available on the categories of human resources at each court level. In the Supreme Court, in F/Y 2051/52, the total number of staff was 259. From this figure, 49.42% were not directly related to the work of judicial function. There is thus an unnecessary burden on the Justice System. The level of professional or highly qualified manpower in Supreme Court is very low, and this must surely have an impact on the juvenile that can be delivered. The quality of human resource is further big problem in the lower levels of court.

**Infrastructural and Physical Facilities Courts:** The situation of court infrastructural in Nepal is very poor. According to a study carried out by CeLRRd in ten districts, only 3 courts had adequate space for work. Only 6 courts had a few books. None of the courts had a library. None of the courts had a fax machine. Only 4 courts had a photocopy machine. In the rest of the courts, the documents had to be copied by hand. This is a very lengthy and expensive process for parties. Only one court observed had a computer. However, 8 courts out of 10 had vehicles. In 4 courts, there was no toilet. This situation does not facilitate fair trial and competent justice. None of the courts observed are given any financial allocation for development by the government. Their budgets cover only salary, allowances and minor expenditures on fuel and stationery.

**Financial Situation of Judiciary:** In F/Y 2058/59, the judiciary received 0.47% of the total national budget. This figure was 0.39 in F/Y 2057/58. However, in F/Y 2058/59, the total budget for 75 District Courts, 16 Appeal Courts, the Labor Court, receives hardly any allowance for development expenditure. In F/Y 2052/53, there was not a single rupee allocated for its development budget. In F/Y 2054/55, it was Rs. 23,744,000. In F/Y 2057/58 it was Rs. 95,000 and in F/Y 2058/59 it rose to Rs. 73,500,000. These figures show that the judiciary is financially handicapped.

Competent justice in such a situation can be nothing but a myth. The data shows the apathy of the State towards judiciary. As the judicial budget is completely controlled by the Finance Ministry, the executive indirectly controls the independence of the court. The executive to control the independence of the courts has financial deprivation as an effective means.

**Population per Judge:** On a national level, there are 98,367 people per judge. At district level, there is one judge per 193,456 people (CeLRRd 2002:107). At appellate level,



there is one judge per 236,885 people. And at Supreme Court level, there is one judge per 1,289,705 people. As mentioned earlier, a large part of the caseload is taken up by civil cases. There is a lack of any effective filtering mechanism for cases of a civil nature. As a consequence, there are fewer resources and less time available to deal with criminal cases. It is in criminal cases that the possibility for violation of Human Rights becomes particularly acute. Overall, the judiciary is under great pressure. There is a large backlog of cases at all levels of the court structure. This must surely contribute to the delay in case disposal. However, the judiciary does not have the human or financial resources to deal with this situation. Its deprivation can be seen in the poor infrastructure and facilities of courts. A judiciary that is in financial stagnation can surely have less chance of delivering competent justice.

This has not been acknowledged by the State. The executive has alienated the judiciary, leaving it without adequate support for its daily affairs, let alone its future development. The confidence of the public in the performance of the Justice System is rapidly decreasing. The nation should realize that Democracy and the Rule of Law cannot survive without an efficient judiciary. There is an urgent need to support the role of the Judiciary, and ensure protection for the rights of all citizens.

The final report of the research was disseminated in Kathmandu, Nepalgunj, Janakpur and Biratnagar. The final report has been updated each year. The report has also been published in Nepali version.

## 2.9. Strengthening the Trial Court System in Nepal

- a. **Project Period:** 2003
- b. **Project Team:** Mr. Yubaraj Sangroula, Consultant, Mr. Prakash K.C, Project Coordinator, Mr. Kamal Pokhrel, Project Secretary, Mr. Ganesh Bhattarai, Training Officer, Mr. Saroj Ghimire, Researcher, Ms. Bidhya Pokhrel, Secretary.
- c. **Experts:** Prof. Madhav Prasad Acharya, President Kathmandu School of Law, Hon'ble Judge Ishwor Khatriwada, Til Prasad Shrestha, Registrar, Appellate Court.
- d. **Project Activities:** The project is the follow-up program of the research on "Trial Court System in Nepal" conducted in the year 2001. The study manifested that the courts are jammed with unnecessary backlogs of cases, the human resource of the judiciary is not trained and skilled, the lower level human resource is huge and the trained-technical human resource is lacking. The investment of state in the judiciary is negligible. The research also exhibited a situation that the attitude of the trial courts is not proactive towards safeguarding the basic rights of the persons, including victims of crimes. The trial courts' judges have no chance of refreshment course, and as such they are often left behind in information of modern concepts. With the objective of addressing many findings of the research report, CeLRRd undertook the project "Strengthening the Trial Court System in Nepal" under the grant of TAF. The project comprises of following activities:
  1. To conduct a Needs Assessment Study and develop awareness training, and other resource materials based on the earlier research and the Needs Assessment;
  2. To involve Trial Court Judges in applied research in association with the Judicial Council and Kathmandu School of Law; and,
  3. Orientation for trial court personnel, including registrars, on out-of-court settlement of civil disputes.

The comprehensive research report on "Trial Court System of Nepal" had exposed the fact that the court personnel in Nepal lack the adequate training for ensuring the fair trial inside the judiciary. However, CeLRRd was aware of the fact that the prioritized intervention should be carried out only after the actual needs were identified. With this objective in mind, the Needs Assessment study was carried out for the development of training materials. Hence, CeLRRd, with the technical support of Kathmandu School of Law, conducted a Needs Assessment Study.

Training material is being developed as per the findings of the Needs Assessment Study. The training material is basically based on the needs of the beneficiaries. After developing the training manual, CeLRRd has conducted three training programs for the Registrars on out-of-court settlement. The training became the forum for the quality discussion for identifying the additional needs supplementing the Needs Assessment Study. The training manual in which CeLRRd is currently working on is largely based on the outcome of the discussion of these training also in addition to the Needs Assessment Study.

## 2.10. Baseline Survey on the Criminal Justice System

- a. **Year of Research Conducted:** 2001.
- b. **Team Leader:** Mr. Yubaraj Sangroula
- c. **Sociologist:** Mr. Badri Nath Bhatta,
- d. **Police Consultant:** Mr. Chuda Bahadur Shrestha, SP
- e. **Prosecution Consultant:** Kedar Poudel
- f. **Field Researchers:** Sudeep Gautam, Ganesh Bhattra, Rosila Gautam
- g. **Resource Persons:** Prof. Madhav Prasad Acharya, Ms. Geeta Pathak, Mr. Kishor Silwal, Mr. Prakash K.C
- h. **Major Outcome:** This research was envisaged to reflect on basic information on performance of the Criminal Justice System in Nepal. It comprehensively examines the legal framework of the Criminal Procedure, and many other sociological aspects of the Criminal Justice System. The research re-



flects, with especial reference to the Kathmandu valley, on performance of the Scene of Crime Officers, which Nepal Police introduced in recent past. The study carried out 10 districts gives a glimpse of the Criminal Justice System.

- i. **Short Description of the Project:** This research project was conducted in cooperation with Human Rights and Good Governance Unit (HUGOU) Danida (Nepal). The main objective of the research was to generate baseline information on the Criminal Justice System of Nepal. The need for such research was felt for interventions in future to necessary reforms in the Criminal Justice.

The survey was conducted in 10 districts, viz. Taplejung, Morang, Kathmandu, Lalitpur, Bhaktapur, Chitwan, Gulmi, Kapilvastu, Jumla, Kanchanpur. These districts represented various geographical, ethnic and population distributions. Moreover, they represented different level of infrastructure, economic and educational development. The research blended the quantitative and qualitative data. The qualitative data were generated by using interview, observation, case study and focused group discussion tools.

The research showed that the trial system is ineffective and inefficient, so that a large number of offenders are privileged to escape the justice, or a number of innocent persons are simply incarcerated and punished for nothing. This circumstance is largely responsible to denigrate the confidence of people over the Justice System. Obviously, the large proportion of failure of the government in prosecution is not only raising a question to the fairness and impartiality of the investigation and prosecution systems, but it also seriously jeopardizes the impartiality of judgments.

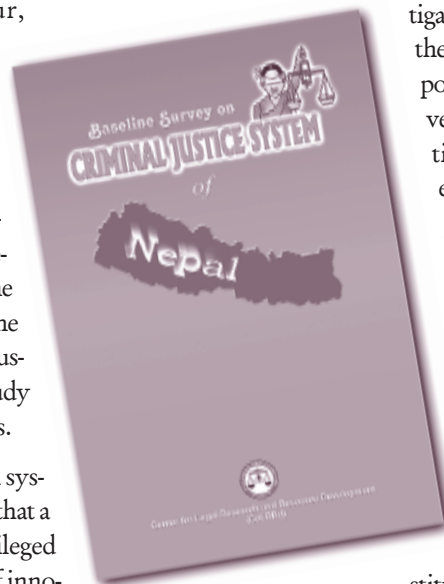
Lacuna in the process of filtering of unnecessary cases was widely noticed, which in the one hand creates a big backlog of cases in the trial courts every year, and on the other hand it unnecessarily subjects individuals to detention, thus violating their Criminal Justice System. The review of the statistics published by the Police Headquarters and the Attorney General's Office

show less than 5 % of filtering of cases. The survey of FIRs in the ten sampled districts presents a further grim situation as the percentage hardly reach 3% of total cases investigated by the police. Although there have been plenty of filtering devices available, the prosecutors seem to be simply not inclined to use them. The research presents a circumstance that the investigation of the criminal offences starts with the information supplied by the FIR registered by someone. The FIR has often been taken as serious evidence against the alleged suspect. The investigation progresses generally without taking into note of the possibility of other peoples' involvement in the commission of crime. The need to extract confession thus becomes an

indispensable element of the investigation. Under the State Cases Act, the government attorneys have the power to keep vigilance over the investigation and instruct the investigators for obtaining additional evidences if required to carry out prosecution. However, the research shows that this power is hardly exercised by government attorneys. They simply ignore such vital affairs, and tend to prosecute all cases they receive from the police.

The overview of available literature and information obtained from various institutions shows that, it is not only

the torture but also the incidents of custodial death and sexual harassment or exploitation frequently happen during the detention period. The condition of prison system is extremely bad. Prisons are not only over-crowded, the buildings are old and, many of them, are in a state of collapse threatening hundreds of lives. Officially, the total capacity of prisons all over the country may house about 7000 people. However, the capacity does not meet the standards set forth internationally. Currently, the number of prisoners exceeds over 10,000 inmates. The situation is obviously pitiful. The government, in terms of financial as well as human resource, has given no serious attention to the poor condition of the prison system. The total budget allocated by the Government to manage 73 prisons hous-



ing over 10,000 inmates, including salary and allowance of staff and medical treatment of prisoners, is Rs. 1,39,565. Over the years' the government has constituted several Commissions for recommending improvements in the jail, however nothing has yet taken place in concrete .

The study reveals that the condition of Juvenile Justice System is extremely in a poor condition, as juveniles have been indiscriminately incarcerated along with adult convicts. Although, in the last two years, there seems to have been a significant activism for ameliorating the condition of Juvenile Justice, it is, however, mainly a NGO initiative. The Supreme Court of Nepal, however, has made positive intervention in this regard, as it has passed several judgments instructing the government to establish the rehabilitation or correction homes, and get those juveniles out of jails.

The present study has made an attempt to explore the socio-economic and residential characteristics of the suspects and prison inmates as causative factors for the social dynamic between them and the different actors of the Criminal Justice System. While doing so the research has given attention to establish the trend between gender and crime, age and crime, caste/ethnicity and crime, educational status and crime, martial status and crime, family status and crime, occupation and crime, income and crime and monthly income and crime. The analysis of these dynamics is carried out based on both the quantitative and qualitative data obtained from the survey in the sampled districts. The findings of the survey show that the gender ratio of crime is 80 and 20 percent men and women respectively.

As revealed by the survey, the population group aged 25-32 years constitute largest segment involved in the crime representing 28% of the total crime. The population group aged between 17 and 24 constitute the second largest group of the prison population. This trend is a possible indicator of an increase in delinquent potential of young people as they progress towards adulthood.

The findings of the survey also showed that the majority of respondents were Chhetris (32%) followed by Brahmin (21%) and Dalit (21%), and Limbu, Newar and others (8%). The majority of respondents interviewed had completed primary education (32%). However, the second largest group was illiterate (26%). It

showed that the lack of education was a significant factor in the emergence of crime. Majority of respondents had been married (72%). Similarly, majority of respondents said that they had less than five members in the family (49%). The majority of respondents (45%) came from the agricultural background. 13% of respondents constituted the population of laborers. All these figures help to generalize certain obvious trends.

Firstly, illiterate population constitutes the largest prison population. Secondly, the dominant class of the Nepalese society, Chhetris and Brahmin, ethnically constitute the vulnerable group in terms of crime. Thirdly, economically backward population constitutes the largest prison population. The question of fair trial in such situation is always serious, as the population facing trial comes from educationally and economically vulnerable groups. These quantitative data had been crossed check with tools of FGD, which, too, explores similar trends. Hence, the quantitative data are supported by the qualitative data.

Another significant aspect of the study related to the mode of criminal proceeding, which is a matter of great concern in terms of Human Rights situation. As the study shows, the male police had arrested 69% of respondents. Although, the State Cases Act provides for female police personnel to arrest and body search or touch physically a female arrestee, yet 30% of female respondents had been physically touched by the male police personnel.

70% of respondents stated that their family had not been informed of their arrest, and 34% stated that they had been insulted and acted rudely at the time of arrest. Moreover, despite the provision of medical check before interrogation takes place and sending to the lock up cell, 80% of respondents had been taken to the detention cell straight away without any medical check up.

The survey also revealed irregularities concerning search and seizure as 69% respondents revealed that the search of body of investigating officers had not been conducted before they initiated the process. However, majority of respondents informed of arrest and detention during day-time, which shows a positive trend. The study also presents a general trend of violation of the rights of suspects to obtain an arrest slip, at the moment of arrest. However, 68% of respondents said

that they had been given such slip only in the police office. However, 51 % of police key informants suggested that they had issued arrest slip to detainees. The police cells are uncomfortable and dirty. 82 of respondents report the same. Although, the health of detainees is one of the key concerns guiding international rules for their institutionalization. However, this is another aspect of the custody which shows very bad condition. 48% respondents report that they had fallen ill during detention.

The Constitution of the Kingdom of Nepal guarantees the right of every individual to a free and fair legal representation by a legal professional of their choice. Although this right is guaranteed in all circumstances, in practice it is rarely afforded. However, it is found from the survey that 69% of respondents had not been aware of their right to consult with a defense lawyer while in custody. Among 26 persons held in custody for charge of murder, more than 70% were not aware of their rights. In the policed custody, for so many reasons, 90% of detainees had no lawyers, which indicates to bizarre situation of Fair Trial.

The police officers within the rank of DSP and above hardly get into the investigation. Normally, the junior and new officers are involved in the process of investigation, particularly in interrogation. The deposition of suspects is generally recorded in the absence of the government attorneys (50%). The right to remain silent is something, which is absolutely denied during interrogation. Out of 75 respondents, 73 had made deposition (2 of them had not been arrested by the police, and had gone straight to court). Most interestingly, 83% of suspects had not been provided with the opportunity to submit their evidences.

Article 14 (6) of the Constitution provides for the production of the arrested person before judicial authority within 24 hours of arrest, excluding the period of journey. However, out of 75, three prisoners had not been produced. The study presents number of problems which are directly related to basic rights of suspects to a Fair and Impartial Trial.

However, it shows a great concern of all actors to address the problem, and raise the standard of the system. One of the most significant aspects of the study was that every key informant realized the mistakes com-

mitted, and the need to improve in their attitude. In the FGD, all resource persons of Criminal Procedural Guidelines and key informants critically accepted the lack of standard of the criminal justice system.

The development of the Criminal Procedural Guidelines and series of orientation thereof have positively contributed to change in the existing condition of the Criminal Justice System. 42% of police respondents stated that they had been observing the guidelines (all of respondents had not yet received orientation). 35% of them however did not know of the guidelines.

Majority of the respondents who had chance obtain orientation stated that the guidelines had been tremendously helpful in making them follow the best practice. 52.6% key informants felt that the guidelines helped them to understand the procedural matters in a true sense. The Government attorneys had similar feelings, as the number of preliminary report concerning crime has significantly gone up.

The judges too have similar feeling, as 86% of respondents stated that there has been a change in the attitude of police after orientation programs.

The judges also stated that 62% of the judges reported that the Police and Government Attorneys adhered to the presumption of innocence. However, their views on the over all capacity and efficiency of Government Attorneys in the conduction of prosecution were of more concern. Only, 15% of judges had full confidence in the performance of the Government Attorneys. The motion and time observation concerning interrogation reveal some interesting findings.

Only very few police offices have separate rooms for interrogation. Interrogation is often carried out by lower level of police personnel. While interrogation continues, suspects are kept standing, sometimes over four hours as observed by the team. Hand cuffing has been used as a rule, and no one is spared. In some police offices, equipments of torture are displayed too.

To sum up, the Criminal Justice System needs to be revamped. The existing conditions are far from satisfaction to meet the standards set forth by the Constitution and International Human Rights Instruments. The attitudinal changes among all actors are a pre-condition for any significant changes.

## 2.11. Formulation of Human Rights Manual for Court Clerks

Under the mandatory of the program “Support to the Justice Sector”, Human Rights Manual for Court Clerks has been prepared. A draft manual has been prepared, after the two days consultation meeting held in 6-7 December 2003, which was participated by various judges and senior administrative officers working in the Judicial Council, Supreme Court, Appellate Courts, District Courts. Other participants of the consultation meeting included representative from Human Rights Cell of Nepal Police, Government Attorney and defense lawyer.



*Participants at the consultation meeting.*





3.

## Strengthening Juvenile Justice System

*CeLRRd is the most strongly involved NGO in reforms of judicial system of Nepal, and as such the juvenile justice system is one of its great concerns. The intervention of CeLRRd has taken instrument of “judicial review and activism” as an effective means of pressing the State to pay active and adequate attention towards need of developing the juvenile justice system.*

### 3.1. Juvenile Justice Project

- a. **Program Chief:** Mr. Yubaraj Sangroula
- b. **Program Officer in KSL:** Ashsish Adhikari
- c. **Project Team:** Mr. Ashish Adhikari, Mr. Sudeep Gautam, Mr. Rishikesh Wagle, Govt. Attorney, Mr. Uttam K.C. DSP Officer (DSP), Biskash Shrestha, Inspector, Tara Devei Thapa, Inspector, Tek Narayan Kunwar, Under Sec. Supreme Court.
- d. **Field Researchers:** LL.B. and LL.M. Students of KSL
- e. **Advisors:** Prof. Madhav Prasad Acharya, Mr. Prakash K.C, Mr. Kishor Silwal.
- f. **Major Outcome:** The project had been instrumental in brining the actors of Juvenile Justice into a single forum. This project had been crucial in sensitizing various departments of the Government as well as the judiciary through developing common understanding to the problems and the approach to address thereof. The international conference that was held as a part of the project had been particularly important to achieve the increased sensitivity of the actors towards the juvenile justice system. The conference adopted Kathmandu principles focusing on need of developing diversion from formal system of justice that requires prosecution of juveniles.
- g. **Brief Description of the Project:** This project was implemented in cooperation with Danish Institute for Human Rights. It was the part of DIHR's international initiative to improve standards of Juvenile Justice. Nepal was one of the partners with four more participating countries in the project; other countries were Uganda, Tanzania, Malawi and Denmark. The project, including international conference, was implemented by Kathmandu School of Law in management coordination with CeLRRd. The project comprised of following components:
  - i. **Review of the Legal Framework:** This part of the research was carried out by Prosecutors' Society. An interaction program was conducted in Kathmandu in order to discuss the findings. This part of the research work was carried out Prosecutor's Society, an independent forum of Govern-

ment Lawyers. Over all facilitation of this part had been assisted by Kathmandu School of Law. The summary of the conclusions and recommendations surfaced by the research were as follows:

- Age of criminal liability in Nepal is not in line with the international standards. Therefore, the law a need to increase this age.
- The Children's Act 1992 makes provision for the establishment of Juvenile Court. However, even after 10 years of the enactment of this Act, the government has not established any Juvenile Court. Though Juvenile benches are formed through an order of the Supreme Court, such benches do not actually serve the purpose. In fact, there is hardly any substantive difference in a regular court and a Juvenile Bench. Therefore, the establishment of Juvenile Court should be made mandatory and it should also be separate from the existing judicial system.
- There is no provision for any type of diversion schemes in law. The government, therefore, must take initiatives to introduce diversion scheme in order to efficiently deal with the administration of Juvenile Justice in the country.
- Children's Act 1992 clearly states that the children to be kept in custody for investigation or upon conviction should be isolated from the adult inmates, and should be necessarily kept in child reform homes. However, in practice, children are kept in police custody or sent to prison and are placed with adult inmates. This



Participants at International Conference

practice should be stopped immediately, and for that training for investigating, prosecuting and adjudicating authorities need to be conducted immediately.

- Where a child is sent to reform centre in lieu of punishment, it is not clear how long he would stay there upon becoming a major. The problem needs to be addressed as it mars the whole purpose of reforming a child in case he is sent to prison upon becoming a major.
  - The Children's Act limits the jurisdiction of the Juvenile court in case where a juvenile and an adult are involved. Such provision should be amended by providing that in such cases ordinary courts shall determine the findings of the facts and the decision shall be given by the Juvenile court.
  - There should be no provision of appeal against the decision of acquittal of juvenile.
  - Court proceedings in Nepal are lengthy. Therefore, there should be continuous hearing of cases involving children, thereby shortening the period of trial.
  - There is a lack of immediate care for child victims in the present Justice System. Therefore, there is a need to establish and maintain a revolving fund for assisting the victim children and providing compensation to them.
- ii. *Baseline Survey on Children in Conflict with Laws:* Kathmandu School of Law and National Police Academy jointly conducted this research. The main objective of this study was to identify the baseline information on trends of acts of children engaged in conflict with laws (delinquency). The research surfaced the following major findings of the study. The situation studied on the basis of information available in the Police Office, Trial Courts and prisons.
- No significant change in the trend of adjudicating children in conflict with laws is found even after the promulgation of Children's Act, 1992.
  - The number of cases is huge in Kathmandu.
  - Maximum number of children are prosecuted under the Public Offence Act.\*

- Out of total cases studied 65% of cases were tried, the District Administration Office, an executive office having power to try cases judicially. This office neither applies procedures applicable for juveniles, nor does it follow any principles Juvenile Justice.

#### (I) Findings from Study of Prison Records:

- The maximum number of children had been jailed by the judgment or detention of order of the Trial Court (District Court) followed by the District Administration Office and the District Forest Office.
- Detention for waiting trial (the final hearing) is the major cause of the children being in prison. Some children were found in the prison for serving the terms of imprisonment, and other had been in the prison for their inability to pay pecuniary fine imposed by the trial court or DAO or Forest Office.
- Majority of children in prison were literate.
- A large number of imprisoned children belonged to the economically poor family.
- A large number of children imprisoned were found not exposed to habit of smoking, drinking, chewing tobacco or use of drugs
- Lawyer's representation was found only in 45% of cases. 55% of cases were tried without representation of lawyers. Out of the 45% cases having legal representation, only 24% had opportunity to obtain free legal aid.

#### (II) Important findings of the case study in district courts:

- Kathmandu District Court recorded the maximum number of cases.
- Maximum number of children had been found charged with crime of theft, followed by murder, rape, dacoit, narcotic drugs and others
- Children in conflict with Law had been privileged to obtain bail with non-monetary bond in 17% of cases, bail on monetary bond in 45% of cases and judicial custody in 38% of cases.
- Out of the 24 cases heard by the Juvenile Bench, judges were present in all cases, however, psychologists' presence was lacking in all 24 cases.

\* The Public Offence Act is a typical law enforced to deal with public nuisance issues. However, it is frequently used in cases of other types.

Social activists were found present in 8 cases.

- Only in ten cases sentences were suspended under Section 50(2) of the Children's Act.

### (III) Trend of Juvenile Delinquency in Kathmandu Valley: With Special Reference to Street Children and School Going Children:

This part of the research was carried out by CWIN. The general conclusions of the study are that the children in the street are more prone to coming in conflict with Laws. Their exposure to the potential environment makes it conducive for the children to get involved in such activities that conflict with Laws. For some children it is the matter of sustenance and survival that compels children to violate Laws. The common reasons for them to get involved are peer pressure, enjoyment of freedom and survival and sustenance.

The most common kinds of delinquent behaviour found in school going children were fighting with friends or outsiders, distracting others in class by talking and joking, non-cooperation, cheating in tests, use of abusive words, impolite and ill mannered behaviour, teasing girls, smoking and drinking alcohol.

The study also includes recommendations to improve the situation.

### (IV) Juvenile Delinquent Procedural Guideline:

The management of this part of the work was done by Kathmandu School of Law and Prosecutors' Society. Team of experts comprising of all actors was constituted to develop the manual. The team was composed of Mr. Devendra Gopal Shrestha (Judge, Kathmandu District Court), Brajesh Paykurel (Govt. Attorney), Mr. Uttam Kumar Karkee (National Police Academy), Mr. Tarak Dhital (CWIN) Yubaraj Sangroula, coordinator of CeLRRd. Mr. Kishor Silwal, Director CeLRRd and Mr. Ashish Adhikari, KSL, The manual gives emphasis on the following:

- Legal framework on juvenile justice
- International instruments
- Judicial Attempt
- Code of conduct of different stake holders
- Role of social organizations dealing with children
- Recommendations

As mentioned during the presentation, the Manual will be implemented by all actors. The manual being developed by the team comprising representatives of all concerned actors has great scope of proper implementation. Since it has been developed collectively, the sense of ownership to the document is great.

### (V) Psycho-social Analysis of Juvenile Delinquents:

This part of the research was carried out by Kathmandu School of Law. The major findings of the study presented were as follows:

- Lack of constitution of Juvenile Bench as required By Section 55(2) of Children's Act 1992.
- Lack of sensitivity amongst judges on issues of Juvenile delinquency
- Judges are not given any regular training to try cases of Juveniles.
- Police are not trained to deal with cases of Juveniles. Only in some districts " Women and Children Cell" are established. However, the police officials are deputed without special training to deal with the cases of Juveniles.
- The survey team could not find a single child psychologist specialized on areas of children in conflict with laws.
- Police officials deny handcuffing children in conflict with laws; however, the children themselves report that they have been handcuffed.
- Investigation officers rarely bring the children before the bench for remand, as required by law.
- Police rarely conduct medical examination of children before they are brought for remand.
- The present Juvenile Justice System in Nepal is full of drawbacks and this has number of adverse effects created on the psychology of children.

### (VI) Code of Conducts of Actors:

A code of conducts of actors involved in the Juvenile Justice has been prepared by CWIN, in technical cooperation of CeLRRd and Kathmandu School of Law.



## (VII) International Conference on Juvenile Justice:

The International Conference was organized by Kathmandu School of Law in cooperation of DIHR, and coordination of CeLRRd, CWIN, Judges' Society, Prosecutors' Society, and National Police Academy. The conference was the continuity of International Interaction on Juvenile Justice. A meeting of participants from five participating countries was held in Copenhagen, Denmark from December 3 to December 7, 2001 (Copenhagen Meeting) under the aegis of Danish Institute of Human Rights (DCHR).

The primary goal of the Copenhagen Meeting was to exchange ideas and perspectives for improving the administration of Juvenile Justice in participating countries. The representatives of participating countries presented papers on the current status of juvenile justice in their respective countries. The Copenhagen Meeting was used as a platform to discuss the problems faced by the participating countries in implementing constitutional as well as international standards and developing ways for solving them. They also discussed ideas of further cooperation between the participating countries and DCHR. Furthermore, the seminar helped DCHR in developing its program of support to the participating countries in the field of Juvenile Justice.

The Copenhagen Meeting agreed to the need of reforming Juvenile Justice System with added focus on diversion programs. There has been an in-depth discussion and agreement that the Juvenile Justice System should not be viewed simply a part of the broader Criminal Justice System, rather it should focus the need of young people in relation to delinquent behaviors and their pragmatic resolution. It was also viewed that each participating country had potentiality of developing stronger diversion system.

Following the mandate adopted at the Copenhagen Meeting, several activities were undertaken in participating countries, the research and compilation of information being the most important one. It came up with conclusions and recommendations for future cooperation in the field of administration of Juvenile Justice. One of the recommendations was to conduct a follow-up conference of the participating countries in



*Participants at Inaugural Session*

Kathmandu, Nepal.

In accordance with the mandate adopted at the Copenhagen Meeting to strengthen the Juvenile Justice System, various action programs were undertaken in Nepal. They were:

- A critical and comparative review of procedures concerning investigation, prosecution and adjudication of juvenile cases in light of the prevalent international standards.
- Critical and comparative review of code of conduct of the Judges, Prosecutors, Police, Lawyers, medical practitioners and probation officers.
- Baseline research on the trends of Juvenile delinquency, treatment of Juvenile offenders at all key stages, like investigation prosecution and adjudication.
- Psychosocial analysis of juvenile offenders during investigation and Judicial custody to understand their state of mind.
- Survey to understand the trends of Juvenile delinquency as well as the underlying factors and causes responsible for the same.
- Lobbying for amendment to the existing legislation dealing with Juvenile Justice, i.e., The Children's Act, 1992.
- Preparation of procedural guidelines concerning Juvenile Justice in line with the existing international instruments.
- Survey to study the feasibility of establishing a Model Court at Kathmandu to deal with cases of Juvenile offenders.

Similar programs were conducted in other participating countries. Outcomes of the programs were extensively shared in the conference.



## Inauguration of the Conference

### Inauguration of the Conference

Chief Justice of the Supreme Court of Nepal, Rt. Hon'ble . Kedar Nath Upadhyay, inaugurated the Conference on January 5, 2003. "Women and children constitute the weakest section of the society and therefore their rights need to be protected." He especially emphasized in his inaugural speech. He further said "Children are more vulnerable than women as they can neither organize nor fight for their rights. The conceptualization of human rights is a great achievement in the protection of their rights. Nepal ratified the Convention on the Rights of the Child in 1990 and to fulfill its obligations under the Convention, it enacted the Children's Act 1992." In his speech Rt. CJ reminded of the Supreme Court's various judgments in recent years that, upholding spirit of Convention of the Rights of Child and the Children Act 1992, helped to create better condition for the protection of rights of children as well as the introduction of the Juvenile Justice. Referring to the Juvenile Justice, he further said that the administration of Juvenile Justice encompasses various aspects and most importantly it should be different from the Criminal Justice System. Then reminding the State of its duty under the Constitution of the Kingdom of Nepal 1990, to protect the rights of the children, he said that the right of children who come into conflict

with law should also be protected. These children should be cared for as to a great extent the society is responsible for their deviant behaviour. In conclusion, he recognised the efforts of KSL, DIHR and other organizations involved in the study and organizing this conference.

**Mr. Yubaraj Sangroula\*** presented the background of the Conference. In December 2001, the Working Seminar on Juvenile Justice was held in Copenhagen, Denmark (Copenhagen Meeting) under the aegis of DIHR. Representatives from



*Mr. Yubaraj Sangroula delivering his speech at the inauguration program.*

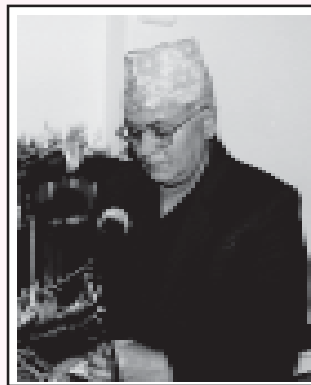
\* Director, Kathmandu School of Law. Coordinator, Center for Legal Research and Resource Development, CeLRRd.

## Inaugration Speech By Rt. Hon'ble Chief Justice of Supreme Court Kedar Nath Upadhyaya

The Chairperson  
Officials of Kathmandu School of Law and Danish  
Center for Human Rights  
Ladies & Gentlemen.

It is my privilege to have this opportunity of inaugurating this International Conference on Juvenile Justice and Human Rights. At the very outset, I thank the organizer, Kathmandu School of Law for inviting me to inaugurate and deliver this speech.

As we all know women and children constitute the weakest section of humanity. Therefore, the strength of human rights initiatives lies on protecting rights of women and children. Human Rights jurisprudence, which grew up fast during the post war period, is now receiving tangible forms. The conceptualization of human rights as a legal concept is one of the greatest achievements, which this generation of mankind can proudly pass on to the coming generations. We are now particularly concerned with the rights of child. As the state of children is more vulnerable than those of women,



for they can neither organize nor complain ,we have additional responsibility on their behalf.

The convention on the Rights of Child 1989 has been a landmark to protect the rights of children as human beings and promote their welfare and well-being. Nepal being a party to this Convention has enacted the

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Denmark, Nepal, Malawi, Uganda and Tanzania participated in the working seminar. The team from each country comprised of government representatives, heads of police, lawyers, NGO representatives, and human rights activists. The primary goal of the Copenhagen Meeting was to exchange ideas and perspectives for improving the administration of juvenile justice in participating countries. The participating countries agreed that it was essential to reveal information relating to the administration of Juvenile Justice in their respective countries. Therefore, to understand the scope of the problem they decided to conduct baseline study in their respective countries of which report will be presented in the conference, he said. The present Conference is a forum to share the research findings and exchange ideas to develop programmes in order to enhance the administration of Juvenile Justice in the participating countries, he added.

**Mr. Govind Prasad Thapa**<sup>□</sup> represented the Police Headquarter in the inaugural session. He opened his speech by highlighting the seriousness of problem of the offences committed against women and children. He said that children due to their age and innocence are ignorant about the Procedural Law and the existing Criminal Justice Sys-

tem. Therefore, taking into consideration their lack of knowledge to foresee consequences, concession in penalties must be given to children. He suggested the review of the following three issues in the context of Juvenile Justice:

1. Institutional building and policy making
2. Public education and awareness
3. Effective implementation and enforcement of existing laws and policies.

He then stressed on the need to develop a cohesive approach for the delivery of justice and cooperation from people at large. In conclusion, he appealed that all existing Laws and policies, educational systems and awareness programmes must be reviewed and reconstructed in light of the international standards in the field of Juvenile Justice.

**Nanda Bahadur Subedi**<sup>♦</sup> said that the Conference was an important milestone as it encompasses the components from civil society as well as state. The gathering is of special importance as it is an unique opportunity to share experience on administration of Juvenile Justice and develop schemes and programmes to address the problem. He stressed to the need of added collaboration among all stakehold-

□ Additional IG of Police.

♦ Acting Attorney General of the Kingdom of Nepal.

Children Act 1992 for more than a decade. We have also made provision for separate hearing for cases relating to children almost 3 years ago. The Supreme Court has also rendered very important decisions as regards to delinquent children and their custodial detention.

In cases where delinquent children are put together with hard-core criminals and compelled to remain in similar prison condition with such criminals, the Court has ordered them to be kept separately in Rehabilitation Center. Following the Supreme Court directives His Majesty's Government of Nepal has recently set up Rehabilitation Center which is a break through in the area of Juvenile Justice Administration in Nepal. The administration of Juvenile Justice covers a wide range of subjects pertaining to different disciplines. The complexity of the subject and intermingling of varied disciplines demands that administration of Juvenile Justice to be treated separately- distinct and apart from aggregate criminal justice perspective.

The constitution of the Kingdom of Nepal in the Chapter of Directive Principle has laid down the promotion of welfare of children as the matter of State policy. Article 26(6) of the Constitution has underlined that the state has the duty to adopt such policies, which would safeguard the rights and interests of children. It is the duty of all the institutions of the State including

Judiciary to look into the interest and welfare of children in view of the directives provided by the Constitution. The law should necessarily protect and treat juvenile offenders and delinquent children in a fair manner which the standard of modern civilization demands. Juvenile offenders and delinquent children are not evil in themselves but should be viewed as the product of the evil of society to which they belong. The evil which the society has to cure.

It is a matter of pleasure and satisfaction that Kathmandu School of Law has put its efforts to organize and coordinate between all actors, both from the state and civil societies working together for juvenile justice and human rights.

I must congratulate the Judge's Society, the Prosecutors Society, the National Police Academy, CeLRRd, the Danish Center for Human Rights and Kathmandu School of Law for undertaking this noble task in putting their mind together in improving the administration of Juvenile Justice. I wish this conference to be a success.

Thank You !

ers to reform the Juvenile Justice system in Nepal.

**Shri Prasad Pandit<sup>±</sup>**, addressed the inaugural session on his capacity of being General Secretary of the Judges' Society, an independent forum of the judges of Nepal. He said that the Children's Act 1992 of Nepal outlines the different activities to be undertaken to improve the Juvenile Justice system in the country. In this connection, he suggested that the judiciary has to take a leading role to protect the rights of the people as well as remind the government of its responsibilities and to respect and enforce the international instruments. He further said that various articles of the Constitution of Nepal specifically deal with safeguarding the rights and interests of children, and the Supreme Court has played vital and positive role in respect of enforcing such rights. He, at this juncture, reminded the role the Supreme Court in securing the administration of Juvenile Justice in the country. Various writs issued by the Supreme Court in order to protect and promote the rights of children to access to fair Juvenile Justice have largely contributed to consolidation of the Juvenile Justice system in Nepal, he said. He then turned to highlighting the common problems in Juvenile Justice System in the developing countries. In conclusion, he hoped that the Conference would be successful in developing new programmes and strategies to deal with the problem.



Hon'ble Justice Twea

**Hon'ble Justice Edward Twea\***, a learned judge from Tanzania, addressed the inaugural session on behalf of all participants. He firstly thanked the Government of Nepal for granting visas at the entry point without delay and any kinds of administrative hassles to all the participants. Then turning to the theme of the Conference, he said that the Conference was organised to share ideas and compare Laws on Juvenile Justice in various countries. He said it was essential to know the present status of administration of Juvenile Justice in various participating countries

<sup>±</sup> Registrar of the Supreme Court of Nepal.

\* Judge, Tanzania.

to understand the scope of the problem and essentially chart a way forward. Problem of child offenders/juveniles is present everywhere. Therefore, there is a need to create a global village to deal with these problems. Then pointing out the gap between the rich and poor, he said that child offenders from rich families are taken away by their parents whereas children from poor families are left to deal with the Justice System all by themselves as this means one less mouth to feed in the family. Therefore, poor children are generally targeted and they go into becoming criminals. Hence the problem of Juvenile Justice needs to be addressed wholesomely by addressing the root causes, such as poverty, to deal with the problem.

**Mr. Gauri Pradhan<sup>o</sup>** opened his address by saying that there are many problems of children and that there is a need to find solutions in socio-economic realities. Tracing history of the Juvenile Justice system he said that in 1899 a group of judges in Illinois had developed the idea that only institutions are not right answer to reform children. He said institutions are not sensitized to meet the needs of children and in reality they harm them. Methods of diversion are very important in reforming children. In conclusion he said that the delegates of the conference should share experiences, learn from each other and also teach each other.

**Prof. Lone Lindholt<sup>\*</sup>**, a senior researcher, from Denmark, said that the area of Juvenile Justice attracts high level of attention around the world. However, the problem identified is only tip of the iceberg and more efforts need to be undertaken to deal with the problems associated with the administration of Juvenile Justice. She thanked the organizer for arranging a platform for people from many countries to share their views, and hoped that it would be proved an occasion to develop a strong tie to address the problem and foster cooperation.

**Mr. Sushil Pyakurel<sup>†</sup>** said that the Conference was a culmination of the efforts of both the governments and the civil societies. It is a forum to exchange ideas and solve problems in the field of administration of Juvenile Justice with the help of each other (i.e. the



*Prof. Lone Lindholt*

delegates from different countries). He then went on to discuss the establishment of the National Human Rights Commission (NHRC) in Nepal and said that the NHRC will be publishing its report soon and said the report also has findings on the status of juveniles in the country.

**Charlotte Flindt Pedersen<sup>‡</sup>** said that DIHR is engaged in field of justice reforms for many years. Juvenile Justice is an important component of the Justice System in a country and the punishment has long-term effects on the children and therefore it is essential to study this area. Then turning to the Conference she said its main agenda was to discuss the present status of Juvenile Justice, the problems faced and the diversion schemes in the participating countries. In addition it will direct how the work should proceed in various countries. She then pointed out that proper administration of Juvenile Justice based on the principles of restorative Justice provides inspiration for change to the Criminal Justice System as a whole. She also stressed for the need of cooperation between the Justice sectors, institutions to reform the system. In conclusion she appealed to all the participants to best utilise the information being presented at the Conference and make the best use of the forum.

**Mr. Madhav Prasad Acharya<sup>\*</sup>** gave the vote of thanks. He said that the problem of Juveniles is a complex problem and therefore needs to be addressed in great detail. The Government of Nepal has been undertaking different obligations at the international forum but it is slow in implementing

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- President, CWIN.
  - ✘ Senior Researcher in Danish Institute for Human Rights, Copenhagen.
  - ➔ Member, National Human Rights Commission, Nepal.
  - ✎ Project Manager, Danish Institute for Human Rights, Copenhagen.
  - President, Kathmandu School of Law.

them. In Nepal the Juveniles are treated with impunity and they are most often kept in prison with the adult prisoners. Therefore there is a need to address the problem of Juveniles and develop better standards to deal with them. In addition he said that the Government should handle the problem wholesomely and understand that investment on education is essential to eradicate the problem. In conclusion he thanked all the dignitaries for giving their valuable time and at the same time thanked all the participants hoping that the Conference would be fruitful.

### Conference Activities:

Delegates from all participating countries in 2001 meeting at Copenhagen, comprising of representatives from government and non-government organizations participated in the conference. In addition, participants were invited from China to join the conference. The main objectives of the conference were to:

- To share of information, the research findings in the participating countries. Each country, which participated in the Copenhagen Meeting made presentation of the findings or progress reports of research activities being carried out.
- To make presentation about situation on juvenile justice system in all countries participating in the conference. Each participating country will be requested to present a situation paper, especially reflecting on:
  - Problems of juvenile delinquency,
  - Legal framework developed to address the problem,
  - Mechanisms to deal with the young people committing delinquency,
  - Programs being implemented, with reference to diversion schemes,
  - Institutions involved, and
  - Possibility of cooperation in future.
- To present expert inputs on diversion schemes, reflecting on recent developments, the most efficient forms of diversion system, and experience in Scandinavian countries.
- To discuss on more questions about research, in order to develop strong baseline information in all participating countries.



*Discussion at the workshop*

### Outcomes of Conference:

The conference ended with the following outcomes:

- The conference held in Kathmandu is expected to head way for improved administration of Juvenile Justice in the participating countries, thereby doing away with the traditional concept of Juvenile Justice System.
- A deep sense of need towards sharing of research inputs, mechanisms developed and successes made in participating countries was materialized.
- Groundwork for future program activities to be implemented in participating countries was prepared.

### Findings of Workshops:

The conference ended with declaration three points Kathmandu Principles.

- The Conference has agreed to pursue with non-formal Justice System (diversion from formal and judicial system) as the main course of Justice for children in conflict with Law. Participants commit themselves to work towards this direction in their respective countries. Police, judges, media etc. in all participating countries will take special attention to refrain from dealing with children as criminals.
- Countries participating in the Conference have agreed to develop a network for exchange of ideas and experiences nationally as well as internationally, and also to help expanding cooperation among other countries.
- Develop database on Juvenile Justice System, and share these findings nationally and internationally.

*Center for Legal Research  
and Resource Development (CeLRRd)*

**4.**

**Contribution on Various Fields**

**C**eLRRd's contribution in various fields like Human Rights, Gender Equality and many other public issues is far reaching. CeLRRd has conducted a number of Human Rights training for lawyers, police officers, government attorneys, and the member of the civil society. The promotion of legal education is another innovative intervention of CeLRRd. Being an affiliate to Kathmandu School of Law(KSL), CeLRRd encourages KSL faculties and students to actively participate in its research and community interventions ...



..... Various programs and innovative steps have been followed to develop every sector of the community.

## 4.1. Drafting of National Human Rights Commission's Regulations on Complaint Handling and Compensation

In the sector of Human Rights protection in Nepal, CeLRRd's contribution to develop the Complaint Handling and Compensation Procedure Regulations of the National Human Rights Commission was outstanding. HMG appointed a Task Force to draft these regulations, before the Commission itself was established. The Task Force, headed by Special Secretary of the Council of Minister, Mr. Bishow Raj Regmi, had formerly requested CeLRRd to conduct research and help to prepare the draft of said regulations. It was a matter of great privilege for CeLRRd to obtain this opportunity.

CeLRRd acted on this request by constituting a group of lawyers namely Yubaraj Sangroula, Kishor Silwal, Geeta Pathak, Ashish Adhikari, Mohan Mani Lamsal and Tek Tamrakar. The group studied regulations of similar commissions from many countries, Australia, Canada, India, South Africa and some states of USA in particular.

The group of lawyers presented a draft version of regulations for wider interaction of stakeholders. The first interaction on proposed agenda and contents to be addressed by the regulations had been conducted in Hotel Royal Singhi on 9<sup>th</sup> February 2000. The interaction had been very sharp and pin

pointed. The interaction was divided on some issues very critically. The main issue raised by number of Human Rights Organizations was that the Task Force "illicit" child of the Government. As some of the prominent Human Rights activists viewed, the act of government forming such task force, and assign it with responsibility to draft regulation was a "deceitful move to weaken the significance of the Commission". CeLRRd rejected the plea as the Commission was fully empowered to adopt the regulations effecting changes, if so required, on the draft regulations. The plea was not sustainable. The Royal Singhi interaction helped CeLRRd to concentrate on many important aspects of the Regulations.

Based on the interaction held at Royal Singhi, the first draft of regulations were prepared and submitted in a wider interaction held at Dhulikhel on 9<sup>th</sup> February 2000, where prominent Human Rights leaders, workers and activist along with Lawyers and government officials participated. Couples of issues strongly debated were related to incorporation of violence against women as an issue of Human Rights violation, jurisdiction of the Commission to investigate Human Rights violation by non-state entity, and the power of the commission to make specific recommendation for compensation and actions. Some participants, mostly representing the government, had been less enthusiastic to empower the Commission in these areas.

CeLRRd team acted with a notion that as a proactive institution, Human Rights Commission must act to protect the Human Rights jealously. The grounding base for this argument was the preamble of the National Human Rights Commission Act, which avowed to protect and promote Human Rights as guaranteed by the International Human Rights instruments. Moreover, the thought that Human Rights Commission could assume jurisdiction and power to investigate Human Rights violations from any sectors if the act does not specifically prohibits



Interaction meeting at Dhulikhel



so. CeLRRd did hard efforts to convince the participants that the said “Regulations” must enable the commission to assert power in real sense, so that it could save itself from simply being a stooge of the government.

The Dhulikhel interaction meeting agreed to major “notions” to be incorporated in the Regulations. However, there had been number of valid suggestions made by the meeting. The meeting ended by forming a “group of experts” in order to discuss all in details of all provisions and adopt the regulations. The meeting was therefore held at Royal Singhi, where the group of experts finally revised the draft to accommodate the suggestions made in the Dhulikhel meeting.

The final version of the “Regulations” had been officially submitted to the Task Force at Council of Ministers, which were then handed over to the Prime



*Participants interacting*

Minister. The regulations were submitted to the National Human Rights Commission once it was established. The National Human Rights Commission adopted the regulations later on with minor modifications.

## 4.2. Promotion of Gender Equality

Promotion of Gender equality has been one of the major concerns of CeLRRd. CeLRRd has been effectively advocating for the gender equality. CeLRRd has made hard efforts to develop jurisprudence for “gender equality” in Nepal. The continuous research on gender issues and the development of the “concept of Defective Value System” as a root cause of the pervasive discrimination and violence against women is the major contribution of CeLRRd in this field. CeLRRd as such has developed the following concepts as basic measures to conceptually fight against the pervasive gender inequality and violence against women:

- The Nepalese society has employed the Orthodox Hinduism as a basis of the societal structure. The Orthodox Hinduism defines women inferior to men, and as such it provides a strong base for patriarchal domination of women.
- Orthodox Hinduism, in its absolute form of patriarchy, deprives, by using a theory of fiction, daughters of their genetic connection with birth family. Daughters are therefore considered not having any ancestral connection with parents’ family.
- The “ancestral lineage” has been laid down as a source of “status” of all persons in Nepal. Since

daughters are by operation of fiction not considered to be connected with birth family, loss the right to membership in the natal family.

- The family membership has been considered as a qualification for any type of right associated with the family. So, not being the member of the natal family, daughters are deprived of right to share the property associated with natal family.

The practice of discrimination against women based on those notions is defined as the defective value system. It obviously defines women’s legal position in terms of martial status. A daughter has been considered in the natal family as a “guest” waiting for the marriage. At the moment she gets married, she obtains the membership in the family of her husband, and so she become eligible for rights associated to that family. However, if she does not remain chaste or faithful to the husband she loses her rights. A woman in the Nepalese society is therefore not considered “an independent perfect person”.

CeLRRd has employed this theory in a number of ways to ameliorate the conditions of women.

- Firstly, the defective value system has been taken as a root cause of the trafficking and all

kinds of violence against women. Using this theory, CeLRRd has been able to “develop the Community Surveillance System against Women (CSSAT)” as an innovative approach to prevent the trafficking.

- Secondly, CeLRRd has used this theory to “reform” the existing legal framework. It consistently advocated against all those laws which define women’s legal position in terms of their marital status and sex.

- Thirdly, CeLRRd has used this theory to justify the “equality of men and women”, and thus to get article 11 of the constitution enforced without any excuses or reservations.

CeLRRd has been involved in advocacy of gender equality in massive way. While educating people for prevention of trafficking, it has trained thousands of women as paralegals. These paralegals are fully aware of the root cause of the discrimination and violence against women.

### 4.3. Representation of Public Interests in the Supreme Court

Representation of Public interest issues in the Supreme Court is one of the most involved areas of CeLRRd. The following important cases, for instance, taken to the Supreme Court have significantly helped the reforms in the system:

- Bablu Godia’s Case: Bablu Godia was a juvenile incarcerated in the Nepalgunj Prison, along with adults. CeLRRd brought the issue in the Supreme Court challenging the detention. The Supreme Court found that Godia’s detention in the jail was against the Children Act. He

was thus set free.

- Representation of suspects at Police Custody: The Supreme Court has issued an instruction to the Government to frame the law.
- Legal Aid Case: Legal Aid Regulations prohibited accused charged with crime of trafficking, narcotic drugs, etc for benefiting from the Government’s Legal Aid Scheme. CeLRRd challenged the law as unconstitutional. The Supreme Court quashed the law as unconstitutional.

These cases have made far reaching impact in the reforms of the Justice System in Nepal.

#### CASE STUDY

(1)

Advocate Ashish Adhikari .....Petitioner

V

H.M.G. Ministry of Home affairs and others.....Respondent

#### Case :- Mandamus

The Children’s Act, 1991, came into force from April 1993. According to S.34 of the Act, Government had to establish child welfare and as per S. 42, it had to establish Juvenile reform home. Government had not done this up to now. As a matter of public interest, petition was filed in the Supreme court, seeking Mandamus in the name of the government & concerned ministers to establish juvenile reform Home child welfare home etc. s per law.

Show cause notice was issued with priority by the Supreme court.

On 058-12-23, Supreme court issued the directives. Which says “ Thus, in the contest of the state having expressed its commitment in international level by rating the child rights convention, 1989, and having exacted the children’s Act 2048 (1991) accordingly, which came into force on may 13, 1991 and of this court having issued on order to carryout the work pursuant tot he Act, a directive order is hereby issued in the name of His majesty’s

government cabinet secretariat to make necessary arrangements towards establishment and operation of Juvenile welfare institutes like orphanage and mentally retard children center under section 43 and juvenile reform home under section 42 according to the capacity.”

**(2)**

**On behalf of Babu Godia, Advocate Ashish Adhikari .....Petitioner**

**V**

**District Court Nepaljunj and others .....Respondent**

**Case :- Habeas Corpus**

Prosecution had charged Bablu Godia, a 14 years old boy, for Dacoity.

According to S. 11(3) of Children Act, 2048, prosecution had asked the court to punish Bablu half of which the adult person would be punished.

S.42(2)(a) of the children’s Act mentions that if a minor has to be remanded to judicial custody for awaiting the trail, he is required to be kept in a juvenile reform Home.

His illegal detention was challenged.

the court held that he was illegally detained and a writ of habeas corpus was issued to release him. The court also issued the writ of Mandamus and orders the district court and district administration office to make necessary arrangements to put Bablu Godia in Juvenile Reform Home.

The court held that. ‘the decision of the Dhankuta District court t imprisoned the petitioner is against article 10(3) of CCPR, S.15 & S.42(2)(b) of children’s Act, 1991. The court also made the order of habeas corpus to release the petitioner from prison and also issued order of mandamus to the government to make necessary arrangements to put the petitioner into the Juvenile reform home.

**(3)**

**On behalf of Keshav Khadka, Advocate Ashish Adhikari .....Petitioner**

**V**

**District Court Dhankuta and others .....Respondent**

**Case :- Habeas Corpus**

A charge sheet was filed against Mr. keshav Khadka, 14 years old, for the commission of an offence of Burglary, and the guild was established by the district court, Dhankuta and he was sentenced with the imprisonment for a period of 22 days and with a fine of Rs. 29,379.00

The petition was filed mentioning the decision of the district court is against S.42 and S.15 of the children’s Act, 1991.

S.15 of the children’s Act, mentions that if a child is punished with an imprisonment for commission of any offence, he shall not be kept together with the prisoners who have attained the age of majority. Similarly section 42(2)(b) of the children’s act mentions that, “any children who has been punished with a term of imprisonment is required to be kept in a juvenile reform home.

The court held that, ‘the decision of the Dhankuta district court to imprisoned the petitioner is against article 10(3) of CCPR, s. 15 AND s.42(2)(B) of children’s act, 1991. The court also made the order of habeas corpus to release the petitioner from prison and also issue order of Mandamus to the government to make necessary arrangements to put the petitioner into the juvenile reform home.

## 4.4. Human Rights Training



*Preparation of Human Rights training manual for court staff.*

CeLRRd in the past has conducted a number of Human Rights training for lawyers, police officers, government attorneys, and the member of the civil society. Training for lawyers on knowledge and skills of using International Human Rights instruments is one the most significant training so far conducted. CeLRRd has so far trained over 100 lawyers in this respect.

## 4.5. Community Mediation Training Program

The program was executed on the mandator of TAF. The Foundation to share in interest in promoting rule of law and government accountability in Nepal through mediation at local-level dispute resolution, urges CeLRRd to run Community Mediation Training program. Concept of mediation is associated with the social process the settlement of conflicts among the members of the society. CeLRRd facilitated to carry out "Community Mediation Training" at Dhading, Banke and Nawalparashi districts.

The objective of the training program is to strengthen the inalienable rights of people ie. access to justice at rural community by the community, Mediation, the base process of ADR, is believe to be the best way for the peace building. The training was organized first time in Nepal in full collaboration with five differ-



*Participants of Community Mediation Training Program.*

ent NGOs. About 258 participants were directly benefited by the training.

## 4.6. Audio Visual Resource Development

CeLRRd has recognized that the mass communication media and audio visual materials are effective instruments of information dissemination to the people. CeLRRd has developed a number of audio-visual materials to address this need.

"Chhori" is the 73 minutes tele drama featured by CeLRRd to educate the mass of "implications of the defective value system". This teledrama has been watched by over one hundred thousand people

from various districts. This drama is taken by a team, from village to village to show to the people. The drama features a painful story of a daughter, which is an outcome of ignorance. It educates the people of the ignorance of women caused by discrimination in opportunity to education.

"Crime and Correction" is a 45 minutes documentary on the existing state of the Criminal Justice System of Nepal. The theme of the documentary relates to the "opportunity" of legal representation. It shows

how Fair Trail is largely ignored and is ineffective in lack of legal representation.

“**Condemned to Exploitation**” is 3 minutes video clip developed to educate the mass about the danger of trafficking.

“**Mela ra Maili**” is a collection of awareness songs. The collection of songs in this album concentrates the roles of society and parents to prevent discrimination against women.

A number of such materials are being produced now.

## 4.7. Recognition of CeLRRd's Works by Government and Civil Society

A number of Organizations have appreciated and awarded CeLRRd for its significant contribution in number of areas. In 2001, Police Headquarters acknowledged CeLRRd with a certificate of appreciation and sum of Rs. 5000 for



continuous involvement in the field of reform of the criminal justice system. Similarly, Newspapers and other civil society organisations awarded it with certificates of appreciation for its works on prevention of trafficking.

Center for Legal Research  
and Resource Development (CeLRRd)

**5. Publications**

**T**he outcome of various research activities are comprised under the publication of CeLRRd. Numerous research reports, books, articles, booklets and other reading materials have been developed in this context. These extensive materials have become the rich resource for every legal profession. Its publication on Trafficking issues and Criminal Justice System in Nepal are outstanding, ....



.....Below is the list of publications published by CeLRRd.

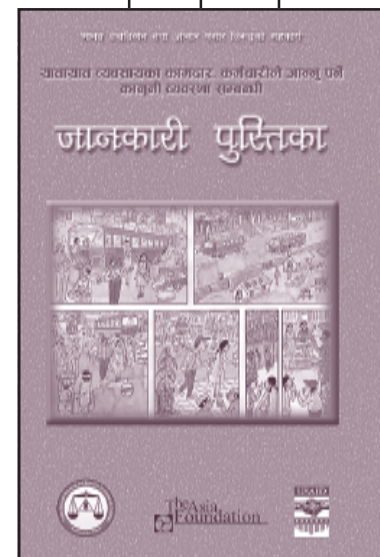
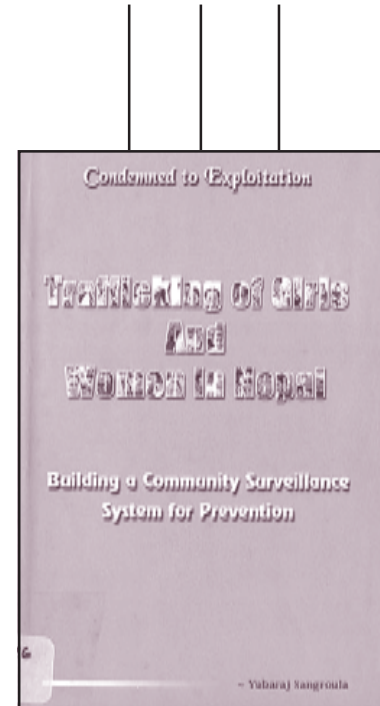
## 5.1. Development of Trafficking Prevention Resource Materials

This part of the program has been supported by TAF, UNESCO, ILO /IPEC & UNICEF.

Under this part of the CSSAT Program, a number of resource materials ranging from legal literacy booklet to paralegal training manual have been developed. The following are the main resource materials developed so far.

- ✦ **Paralegal Training Manual:** This manual is prepared to help local training resource persons to conduct the paralegal training for women & men. Financially it was supported by ILO/IPEC.
- ✦ **Paralegal Resource Materials:** Paralegal Training comprises a number of diverse components reflecting on women's status to the surveillance against trafficking. The resource materials developed under this theme are "Women' Property Rights", "Violence against Women" and "Prevention of HIV/AIDS & Sexually Transmitted Diseases". These materials are developed with financial support of ILO/IPEC.
- ✦ **Legal Literacy Booklet:** There are three sets of Legal Literacy Booklets developed targeting the local women. The first sets of booklets are related with basic knowledge of laws on women's rights, laws on trafficking and procedures of investigation, prosecution and adjudication. The production and development of this booklet was supported by UNICEF. The set of literacy booklet relates to the rights of trafficked women in the context of criminal proceedings. The remaining set of literacy booklet is related with advanced knowledge of laws on rights of women and trafficking and violence. This set of booklet is financially supported by TAF.
- ✦ **Posters:** CeLRRd has developed dozens of posters to be used as paralegal training aids. These posters mainly reflect on defective value system, the birthright and the nexus of migration and trafficking.
- ✦ **Anti Trafficking Awareness Booklet for Transport Workers:** The set of booklet is developed as a training material for the training of transport workers. The booklet was highly used by transport workers. They have started to organize anti-trafficking awareness campaign in their respective areas with the help of these booklets, posters & stickers etc. The development of the booklet was supported by TAF.

CeLRRd has also developed Brochures for mass sensitization program through local taskforce in support with TAF.

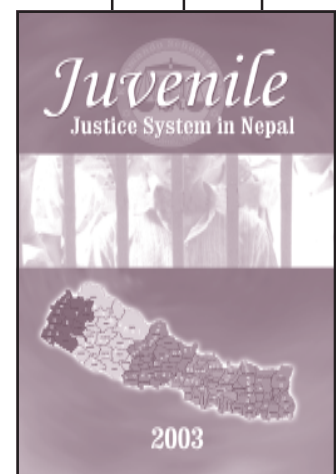
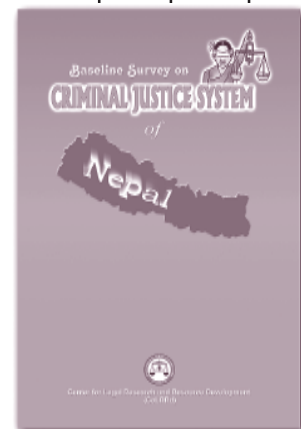
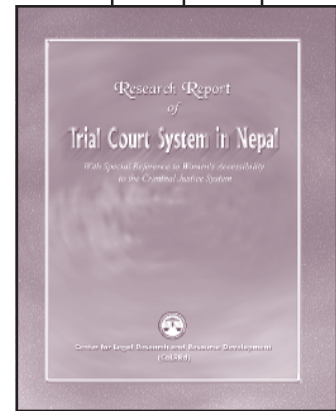


## 5.2. Development of Criminal Justice System Resource Materials

- ✎ **Research Report on Trial Court System in Nepal:** This is a multi-dimensional research study of the Trial court system and of the whole judiciary. The book comprised Institutional Framework and Problems of Criminal Justice System, Quantitative Performance of the Judiciary, Human Resources & Caseload, and Women's Accessibility to Criminal Justice in context of Nepal. The book was published in 2002.
- ✎ **Research Report on Criminal Procedure Guideline (Nepali & English Version):** It is a compilation that presents systematically of procedural laws scattered in various Acts. The preparation and publication of "Criminal Procedural Guidelines" was a landmark from the point of view of strengthening the fairness of criminal proceeding at all key stage. The book was published in the year 01.
- ✎ **Analysis and Reforms of Criminal Justice System:** This report is a result of a research study jointly Commissioned by the Danish Center for Human Rights (DCHR) and Institute for Legal Research and Resources (ILRR) to examine the state of Nepalese Criminal Justice System. As an outcome of the three-part study, this consolidated report has been prepared to reflect on various aspects of the Criminal Justice System in Nepal. The book was published in 2000.
- ✎ **Baseline Survey of the Criminal Justice System:** The research report reflects the basic information on performance of the Criminal Justice System in Nepal. It comprehensively examines the legal framework of the criminal procedure, and many other sociological aspects of the Criminal Justice System. The study carried out in 10 districts gives a glimpse of the Criminal Justice System.

## 5.3. Research Report on Juvenile Justice System in Nepal

The report is a pioneer publication in the field of Juvenile Justice System in Nepal. The publication is an outcome of various research activities conducted in support with different collaborators of the program. CWIN, KSL, CeLRRd, Prosecutors' Society, Judges' Society, National Police Academy are the key organizations of the program. As a consolidated study it contains: *General Overview of Juvenile Justice System in Nepal, Baseline Survey of Juvenile Delinquents, Study on trend of Juvenile Delinquency in the Kathmandu Valley, Psychological Analysis of Juvenile Justice System of Nepal, The International Conference on Juvenile Justice & Human Rights, Juvenile Justice Procedural Guidelines.* The report proved to be an influential resource in the field of Juvenile Justice System in Nepal.



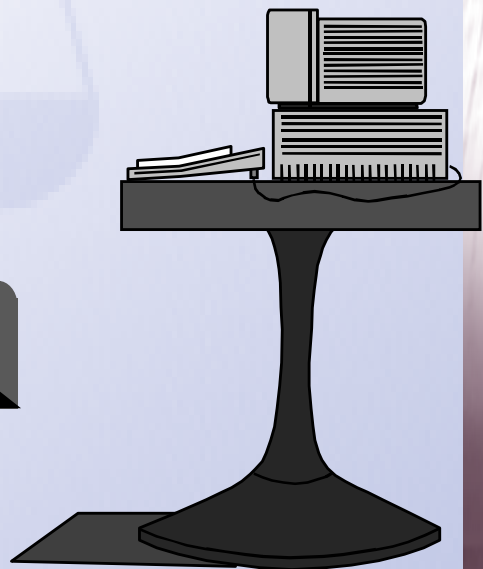
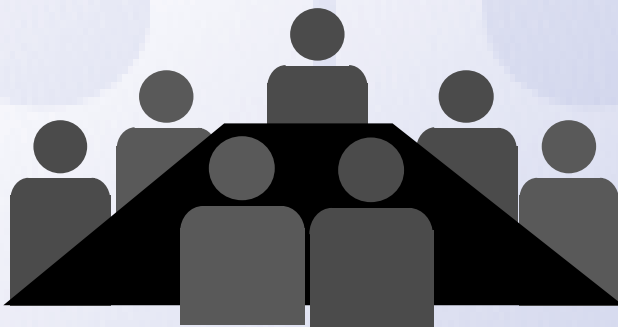


*Center for Legal Research  
and Resource Development (CeLRRd)*

**6.**

## **Administration**

*C*eLRRd operates its administration democratically, with full accountability and transparency. The apex body of CeLRRd in the implementation of programs is the “Executive Board”. The Executive Board decides all policy matters in relation to general as well as the project administration....



...The "Project Committee" set up by the decision of the General Assembly is responsible for trouble-free and efficient implementation of various project activities in a coordinated manner. The roles, responsibilities and authorities of each staff is determined by the "Document on Project Details and Job Description". Financial administration follows strict financial disciplines. It maintains double entry system and double audit system. All individual projects are independently audited, which is followed by institutional integrated audit.

## Project Details and Job Description

### ***Adopted by the General Assembly of Center for Legal Research and Resource Development, (CeLRRd)***

*These set of general guidelines of the project administration have been adopted by the 5<sup>th</sup> General Assembly of the Center for Legal Research and Resource Development. They will come into force immediately. It would be the duty of every staff of CeLRRd to abide by these guidelines.*

#### **1. Preface**

Center for Legal Research and Resource Development (CeLRRd) has comprehensively been involved in activities relating to reforms and development of Justice System in Nepal. Over the last four years, a great emphasis has been given to the improvement of the conditions of Criminal Justice System. To develop the institutional build up and to enhance the quality of the system so as to meet the minimum standards of fair trial has been the main focus of all interventions so far carried out.

Projects like development of Criminal Procedural Guidelines followed by orientations and various research activities carried out have made remarkable impacts in the consolidation of the fair and impartial trial in Nepal.

Prevention of human trafficking for sexual exploitation is another significant area of intervention CeLRRd has undertaken in the past. The development of the concept of "Community Surveillance System against Trafficking" as a community based intervention is a significant contribution of CeLRRd in this field. Involvement of number of lawyers in development of this concept has opened an innovative development of alternative lawyer-

ing. Moreover, the development of resource materials concerning wider access of victims to sexual and trafficking offences to Criminal Justice System. The development of manuals for investigation, prosecution and adjudication of trafficking cases followed by orientation programs is a significant intervention in this regard.

Contribution to the development of the "legal education" is another significant intervention made by CeLRRd over the last four years. Right from the establishment, CeLRRd has made efforts to investigate and introduce a system of legal education that could address need of legal expertise required for strengthening of Judicial System, Rule of Law, Democratization process, open market economy and expansion of International Trade and Commerce. Kathmandu School of Law has been an outcome of sincere efforts to that direction. CeLRRd's intellectual and moral support to the school has made it grow strongly in a very short period of time.

CeLRRd has completed the initial phase of building the institution and introduction of innovative ideas and concepts. It has now arrived at a stage where the added commitment and involvement is necessary. The administration of the project needs to be enhanced and the efficiency of works

strengthened. CeLRRd has now entered a phase where the need of developing of its stronger institutional base and resource capacity to address targeted goals is strongly felt. For this purpose, intervention has to be taken up from two sectors:

- Development of its strength in terms of human resource
- Development of concepts, plans and strategies of reforms and development of the sector of justice, protection of Human Rights and consolidation of the Rule of Law.

CeLRRd is being closely looked up by many partner organizations and associates as an organization having tremendous expertise in the field of above-mentioned areas. The development has equally heightened the professional competition among organizations involved in the similar fields, and, occasionally, such competition may generate adverse comments and jealousy. This phenomenon sometimes may lead an organization towards negative approach in mission and adverse conditions in works. This kind of events is potential of demoralizing staff and sometimes “groupism”. These kinds of problems may weaken the quality of works and solidarity of the organization. Developing professionalism among staff and solidly founded institutionalization of organization are the right solution of these problems. To achieve these goals, adoption and enforcement of concrete regulations and guidelines for development of plan, recruitment of staff, implementation, monitoring and evaluation of project activities, and the standardized financial regulations and practices are required interventions.

In order to address the problem of professionalism in, and institutionalization of, the organization with added emphasis on “efficiency and honesty” in works and disciplines both, this “Project Details and Job Description of Staff” was adopted by the Special General Assembly on 6<sup>th</sup> March, 2003 (22 Falgun, 2059)

## 2. Problem Background:

Characteristics demonstrating the weaknesses in administration and management: The following problems that occur in the transitional phase of the organization are seen in CeLRRd.

### Lack of coordination among project managers:

It is widely experienced that each project is often considered by staff as an independent unit, and consequently no ideas are shared among manag-

ers concerning problems facing the project and needs of promoting efficiency of works and achievement of goal. This problem, in turn, leads to the following unwanted problems:

- Institution itself does not volunteer to face the problem and protect the project from being jeopardized. Rather, people involved in activities other than their own project activities vulnerable of building “gossip”, and consequently the concerned persons involved in serious work are badly discouraged. Yet, such problems are never seen or taken as “problems facing the institution”. This kind of tendency weakens, and sometimes destroys, the practice of addressing problems collectively”; it is rather treated as a problem of “person”. This situation often leads to misunderstanding among staff working in the institution.
- Everyone looks for share in all activities, and often argues that his/her idea is only valid and perfect. This is why there has been a circumstance of “gossip”. This tendency often results in lack of cooperation among the staff. When some one is not invited to the activity where there is no role for him/her, it has been taken as a matter of “isolation” or “humiliation”.
- In events and activities where everyone has to play role, no one feels his/her accountability. In these kinds of events, and activity, often “groupism”, is obviously seen, and personal comments and side talks are common phenomenon too. This kind of tendency weakens the efficiency of the institution.
- Each institution has to maintain certain level of secrecy and confidentiality. However, issues and matters, which need not to be discussed in public, are discussed in public and unnecessary rumors and gossip are created thus seriously hampering the credibility of the institution.
- Often meetings are held and decisions are taken. However, these rules and decisions taken by such meetings are simply ignored. When some stronger efforts are made to implement these instruments, a number of contrary arguments to frustrate such decision are immediately instigated.
- Attempts are made to develop loyalty to individual persons but not to institutions.
- A tendency of “temporary” engagement in work. The “honor and respect” given by the institution to people is often taken immaterial.

Often it is claimed that institution has to give special treatment to him. The notion of obtaining personal gain, in the cost of credibility and development of the institution, is prominent.

These problems are widely felt in CeLRRd too. If these problems are not properly and adequately addressed in time, it is sure that the development of CeLRRd as a professional institution will be seriously jeopardized.

### **3. Terms and References to Promote Institutional Interests of, and professionalism in, CeLRRd:**

To help CeLRRd address these problems before they seriously affect it from growing as a viable professional institution, the following strategic terms and references have been adopted:

#### **a. Project Management:**

Project management system involves the following components or responsibilities:

- Development of Concrete Plan of Action: Each project of CeLRRd shall have its concrete plan of action developed in advance, and adopted by the Project Committee. Any change in plan of action is to be made the coordinator shall be consulted prior to that effect. The project manager has to consult with the coordinator. All activities must be developed and implemented according to the plan of action adopted. The development of plan of actions must be shared by all concerned staff, and it must be implemented accordingly. Each staff is therefore fully responsible to implement project activities in accordance with the plan of action. To achieve the plan of actions implemented smoothly and the project activities get completed in time with success, along with complete team spirit, the following rules of discipline must be observed, without any reservation:
  - No staff can enjoy vacation or any excuses during the period where his/her presence or involvement in the activity is necessary. No staff will be permitted to engage or participate in activities of his/her private consultancy during this period.
  - No staff shall engage in private consultancy work without prior approval of the project committee through coordinator.
  - No staff shall use equipments or facilities

of CeLRRd for any activities or purpose other than that of project of CeLRRd he/she has been involved.

- The protection of equipment like computers, printers, etc. shall be properly maintained by the person who is holding the possession of. Any wrong or destruction or breaking occurs by negligence or lack of proper care, the staff holding the possession shall be responsible to pay the cost of repair or loss sustained.
- Each staff has to volunteer his/her participation in activities. Excuses like "I was not informed or notified" shall not be entertained.
- The confidentiality and secrecy of the project is strictly maintained. No staff will make decision in any matters without prior consultation with project manager.
- Each staff shall be obliged to carry on instructions or suggestions given by the Project Manager.
- Each staff shall work under guidance or directives of the Project Manager.

#### **b. Evaluation and Reporting of the Project:**

To develop a system of transparency of, and accountability to, financial matters and project activities and results thereof, the following mechanisms shall be strictly implemented:

- Each project manager shall produce a monthly report of activities carried out during the month by the end of the first week of the coming month. The copy of the report shall go to the director, coordinator and president of CeLRRd. The director, coordinator and president shall make comments to such report, if any, within a week. The copy of the report, along with comments of the director, coordinator and president if any, shall go to the "Editors" of bulletin for publication. The summary or the full text of the report shall be published in the bulletin without fail.
- The report before submitting to director, coordinator and president shall be discussed among the project team, and thus each staff shall be accountable to such report. The report must contain the details of the following:
  - Achievements /outcomes of each project activity.
  - Problems encountered

- Challenges and risks
- Strategies adopted to face the problems
- Documentation of project shall be proper and efficient. For this the following rules shall be strictly maintained:
  - Project proposal, report and financial report shall be properly maintained, with all due care and confidentiality. The original copy of such document shall be placed in "Official Archive". The copy of such document shall be kept by the Project Manager. A copy of such document shall also be given to coordinator and the account department. For convenience of documentation and record system, the following guidelines concerning record shall be observed:
    - Project Code: For instance, if this project is funded by TAF, the Project Code would be TAF along with project year. (TAF 2002).
    - Project Number: More than one project might be funded by one organization. In such case, the number of the Project would be mentioned. For instance, if two projects are funded by TAF, the Project Number would be 001, 002. (TAF 2002, 001.) respectively.
    - Project Name: The Project name will indicate the area of project activities. For instance, if the project is related with Criminal Justice System, the project name would be CJS. (TAF 2002, 002, CJS). If the project is related with UNICEF, it would be like UNICEF 01, 002, CSSAT)
    - All document files and correspondence should follow this pattern without any kind of exception.
  - Correspondence to and from, relating to the project, shall be properly maintained. The copy of the correspondence, to and from both, shall be given to the Coordinator, and if necessary to Account Department.
  - Draft of correspondence in the computer shall be immediately deleted once the hard copy is produced.
  - No staff shall have the copy of the correspondence or document mentioned above unnecessarily copied and possessed for personal use.

- If a copy of the document or correspondence is reproduced by any staff shall be recorded by the concerned staff in the record file. Reproduction of the document shall be authorized by the Project Manager.
- Misplace of document or correspondence, or the illegal or irresponsible use of documents or correspondence shall be the responsibility of concerned project manager.

### c. Project Staff:

Each project shall have a manager especially designated to look after the project implementation as well as the project administration. He/She will have a project secretary and necessary staffs to support him/her in implementation of project activities or project administration. Each Project Manager shall have his/her record system fully and efficiently established, and shall be perfectly workable. The Project Secretary shall be primarily responsible to maintain documents and correspondence properly. However, the Project Manager must have control over such documents.

Each project management must look after the following personnel administration of the project:

- **Salary:** The Project Manager will negotiate with staff about the salary. He/she can suggest difference of salary based on expertise, experience, management skills etc of such staff. Coordinator will sign the appointment letter on recommendation of the concerned Project Manager and the approval of the Director.
- **Duration of Appointment:** The Project Manager shall decide the duration and type of assignment to be given to the staff.
- **Leave:** No staff can stay in leave without prior permission of the project manager.
- **Action:** Project Manager can take action against staff, if he/she finds that there is:
  - Violation of the confidentiality of the project, institution or any thing, which organization had decided to keep in confidence.
  - Disregard to rules or decisions or instructions or directives of the Project Manager.
  - Improper action, for instance implementation of project activity against the plan of action, or prior approval of the Project Manager
  - Fomenting "gossip" or formed "groupism"

against someone or the institution.

- Lack of cooperation to the Project Manager
- Misappropriation of fund.
- **Procedure of Action:** The project manager must bring the issue of action to the “Project Management Committee” first for discussion along with concrete grounds for actions. The committee must give opportunity to clarification or explanation to the staff before the action is taken. If the Project Committee finds grounds of action established even after explanation is furnished, may recommend for the action suggested by the Project Manager. The final decision in such regards shall be jointly taken by the Committee of Director, Coordinator and President. The Committee may give a chance to the staff for correction.
- **Credentials of Staff:** All the staff members have to furnish their qualification records. Such records will be preserved at Coordinator’s office. No access to any person except Project Manager, Director, Coordinator and President to such records will be given.

#### **d. Roles and Responsibility, and Power of Project Manager:**

Project Managers will be addressed as “Chief Program Officers” in designation. Project Manager is the final authority in all affairs in relation to the implementation of the project activities, i.e. development and launching of project plan of action, evaluation, and administration of staff. He/she shall be responsible to:

- **In Matters of Project Policy, Evaluation and Personnel Administration:** The Project Manager shall be responsible to the “Project Committee. Project Manager, in full details, must present the Plan of Action along with the description of the project activities in the meeting of the Project Committee. The plan of action becomes effective once it is adopted by the Committee.
- **In Matters of Implementation and Financial Administration:** The Project Manager must be responsible to the Director in matter of implementation of project activities. In terms of project guidelines agreed with donor or terms and reference relating to project that are agreed in the project agreement, the project manager is responsible to the Coordinator through director.

- The Project Manager must provide complete information of the cost and expenditure of the project activities to the Director and the copy of the report shall be given to the Coordinator.
- **In Matters of relation with Donor, Financial Planning and Final Project Report:** The Project Manager must be responsible to the director and finally to the coordinator for planning of cost, transfer of earmarked cost to other item, and launching of additional activities or reduction of activities. The financial planning shall be finalized upon approval of the Coordinator.
- No payment to any body will be made without a concrete memo signed by the Project Manager: The counter signature of the Project Manager shall be mandatory for any kind of payment. Hence, the Project Manager must take full responsibility of financial administration. No cheque shall be signed by the Director or Coordinator until and unless the Voucher is approved and counter signature in the cheque is done by the Project Manager.
- No Project Manager shall be deputed to look after more than one Project. Director and Coordinator may take the responsibility of looking after the project as a Project Manager, if it is necessary under some special circumstances as per the decision of the Project Committee.
- The Project Manager shall be appointed by the Coordinator on recommendation of the Project Committee. The Appointment of Director and Coordinator shall be made by the President on recommendation of the Executive Committee.

#### **e. Roles, responsibility and power of Director:**

The Director shall be responsible for day to day administration of the institution in matters of project, personnel and finance. As such, the Director shall perform:

- Supervision, monitoring and evaluation of each project, and its activities. He/she shall require Project Manager to prepare and submit the project report on time.
- Approval of the Project Plan of Action and report, and submission to the Coordinator for advice, and finally to the Project Committee for adoption.
- Publication of Project activities report on time.
- Control of Financial Administration: Director shall establish a system of reporting of all expenses and financial report monthly, and sub-

mitting to the coordinator.

- Approval of the Project activity cost: Approval of the project activity cost shall be taken in consultation with the coordinator.
- Development of the Project Meeting Agenda.
- Institutional Capacity Building, like training of staff, seminar, and interaction programs etc.
- Supervision and preservation of archives, and documentation of the organization.

In relation to the project activities, Project Managers will directly accountable to the Director.

#### **f. Roles, Responsibility and Power of Coordinator:**

The Coordinator shall be responsible for inter-organization, bi-lateral and international relations of organization in relation with project proposal development, funding, capacity building of staff and national and international recognition and cooperation of the organization. As such, he/she shall perform:

- Development of project in consultation with, the project manager and the director.
- Fund arrangement, for the project activities.
- Negotiation and conclusion of agreement with donors.
- Coordination between CeLRRd and Kathmandu School of Law in matters of research, resource development, and academic activities.
- Representation of CeLRRd in relation with project development, international relation and

other affairs.

- Over all supervision, monitoring and evaluation of the project activities.

#### **g. Project Description and Responsibility:**

This part of these directives is subject to change time to time. For the time being, the following projects are managed as follows:

##### ● **Judiciary Development Project:**

Research on Criminal Justice System, professional capacity building of the actors of Criminal Justice System, resource development in relation with the Criminal Justice System, and development of the criminal legal education are the major components of the project. The project administration will be managed as follows:

- Project Manager: Kishor Silwal,
- Project Secretary: planning and reporting: Sudeep Guatam
- Project Secretary: coordination, correspondence and logistic: Ram Bahadur Khatri
- Office Secretary: Ekta Singh
- Messenger: Laxman Khadka

##### ● **Strengthening Trail Court System:**

Research on Trail Court System, development of trial proceeding resource materials, promotion of court referred mediation and development of effective filtering and funneling system of the cases are major areas of work under this project. The project administration will be

*Note: In matters of project discussion, supervision, monitoring and evaluation of the project in the context of relation of CeLRRd with donors, project managers shall be accountable to the coordinator. In matters of final evaluation, annual planning and financial administration of the organization, the Director shall be responsible to the coordinator. In all these matters, Coordinator shall directly be responsible to the President of the Executive Committee. Project Managers, Director, Coordinator and President shall collectively be responsible to the Executive Committee.*

*Coordinator's office shall be managed by a team comprising of the secretary, receptionist and other staff as required. All documents, including electronic mails and other correspondence, associated with Coordinator's office shall be maintained and preserved by the secretary. He/She shall be responsible to the coordinator, and other officers designated by him/her. As he/she maintain direct access to all mails to and from the organization, it shall be his/her responsibility to maintain secrecy and confidentiality without any kind of excuses and reservations. Secretary of Coordinator and Director shall not be allowed to work for any other institution or have business which may have conflict of interest with CeLRRd, without prior approval of the coordinator. Director and Coordinator shall have power to terminate service of their respective secretary without prior approval of the project committee. However, no such person shall be denied to provide clarification.*

managed as follows:

- Project Manager: Prakash K.C.
- Project Secretary: planning and reporting: Kamal Pokharel
- Project Secretary: coordination, correspondence, and documentation and Logistic: Ganesh Bhattarai
- Secretary: Bidhya Pokhrel
- Messenger: Ram Hari Sapkota

● **Prevention of Trafficking for Sexual Exploitation and Domestic Violence:**

Prevention of Trafficking for Sexual Exploitation through empowerment of grassroots women and adolescent girls, and local task force and school children and teachers are the main components. The project administration shall be as follows:

- Project Manager: Ram Mani Gautam
- Project Secretary: Narayan Regmi (Field Officer Chitwan)
- Project Secretary: Bhupendra Poudel (Field Officer, Nawalparasi)
- Project Secretary: correspondence, office system and logistic: Nisha Faiju (Kathmandu)
- Field Supervisor: Mahendra Banstola (Chitwan)
- Legal Aid Lawyer: Phul Maya Rana Bhat (Chitwan)
- Legal Aid lawyer: Rita Mainali (Kathmandu)
- Legal Aid Assistant: Sarmaila Dhakal (Kathmandu)

● **Prevention of Trafficking for Sexual Exploitation:**

Prevention of trafficking through Empowerment of Paralegal Women using income generation opportunities, community learning centers, science and technology are major works under this project. The project administration is carried out as follows:

- Project Manager: Anjan Kumar Dahal
- Project Secretary: Binod Lamichane (Field Officer, Chitwan)
- Project Secretary: Nisha Faiju (Kathmandu)
- Legal Aid lawyer: Rita Mainali (Kathmandu)
- Legal Aid Assistant: Sarmila Dhakal

(Kathmandu)

This project is implemented in cooperation with TAF Project 2002/002/CSSAT. Staffs involved in that project will also be engaged in the following UNIFEM project:

● **Prevention of Trafficking for Sexual Exploitation and Domestic Violence:**

This project under the UNIFEM grant provides support for legal aid service to victims of trafficking and violence. The project will be conducted under guidelines to be developed, which will include the following as primary rules:

- Priority will be given for victims of trafficking, rape, and other sexual offences.
- Cases, which are of civil nature, but originate in relation to trafficking, and other forms of violence will fall within the scope of representation
- Students of Kathmandu School of Law will be fully engaged in Legal Aid service process
- Legal Aid service will essentially include activities like advocacy against trafficking and violence.

● **Legal Aid Project:**

Interviewing, counseling and representation of indigent prisoners, building of national network of legal aid lawyers and capacity building of CeLRRd and Legal Aid clinic of Kathmandu School of Law are major areas of work under this project. The administration of the project is carried out as follows:

- Project Manager: Geeta Pathak (Sangroula)
- Project Secretary: Bhoj Raj Bhatta
- Legal Aid Lawyer: Ram Prasad Aryal (Kathmandu School of Law Center)
- Legal Aid Lawyer: Yamuna Bhattraai (Kathmandu School of Law Center)
- Legal Aid Lawyer: Lila Mani Poudel (Kathmandu School of Law Center)
- Legal Aid Lawyer: Hem Raj Panta (Biratnager Center)
- Legal Aid Lawyer: Kumar Sharma Acharaya (Nepalguni)

This project is implemented as a joint project by CeLRRd and Kathmandu School of Law. The Legal Aid Clinic of the Kathmandu School



of Law will operate as the Kathmandu Center of Prisoners Legal Aid Program. Therefore, the teachers and students of KSL will be fully involved in implementation of the project. The following terms and reference shall be fully observed by both organizations while implementing the project activities:

- Teachers of Kathmandu School of Law will work as legal aid lawyers.
- Students will be engaged as interns
- The administration of the legal aid will be fully managed by the Kathmandu School of Law.
- Kathmandu School of Law shall submit a monthly report to CeLRRd.
- A supervisor will be appointed at Kathmandu School of Law to look after daily activities at legal aid clinic.
- The Clinic will be directly responsible to the Director of the Kathmandu School of Law.

Assistant Legal Aid Lawyer and Student Interns will be selected by the Project Manager.

#### 4. Discipline of Staff:

Staff's discipline in works, relation with management and inter-personal relation is a crucial element for the smooth operation of the institution. Therefore, in order to develop a workable environment within the institution, the following directives are effectively implemented. All managers are obliged to enforce the disciplinary directives strictly:

- All staffs are obliged to follow strict code of conducts in their relations concerning privacy and private matters of others. No one is permitted to talk about personal life behaviors of others.
- Staff will use uniform as prescribed by the management.
- No staff is allowed to interfere in management affairs; neither can they interfere in affairs of project in which they are not involved with. It however, does not mean his/her positive cooperation to successfully launch activities and share his/her views for strengthening of such project will be denied.
- Full time staff of the CeLRRd will not be allowed to work for any other institutions

without the prior approval of the management.

- No staff can divulge decisions or secrecy that are not meant for consumption.
- No staff will use equipments and other facilities of the organization for his/her personal consumption or benefits.
- No staff can remain absent with prior approval, except in case of sickness or accident or some unavoidable circumstances.
- Staffs have to enter the building within prescribed time, and those who do not turn up in time shall be taken action against. The actions will include warning in the beginning, cut off salary and termination finally.
- Staffs who have to work overtime must get permission to stay within the complex. The security guards otherwise will not permit any staff into the office after office time.

#### 5. Use of Assets of CeLRRd:

The equipment, vehicles, and other facilities of CeLRRd will be used upon approval of the Director. The Project Managers, intending to use such facilities, should request the Director, expressing the purpose, for approval. The Coordinator will have power to supervise and monitor the use of such facilities.

#### 6. Project Committee:

The Project Committee shall comprise the Coordinator, Director and the Project Managers. The Project Committee shall be the supreme body for policy matters concerning implementation of the project activities. The committee shall:

- Take policy decision on the strategy of project implementation,
- Decide the mode and scale of payment of allowance and remuneration
- Take decision on appointment and change of department of personnel
- Take decision on action against staff
- Conduct monitoring and evaluation of the project
- Adopt necessary rules, regulations and guidelines concerning implementation of the project.
- The Committee will have separate minute and the meeting of the Committee shall take place in first week of each month.

## 7. Human Resource Profile

CeLRRd has highly qualified and experienced human resource. The unwavering effort of its dedicated and committed staffs has contributed extensively to build CeLRRd as a professionally accountable institution.

### Prof. Madhav Prasad Acharya

President

LL.M., Sheffield University, UK.

Professor Acharya has 27 years experience of university teaching in law. He is one of the most publicly honored law teachers in Nepal, and has made a valuable contribution to legal literature through his articles and books. He is the founding President of KSL and heads the department of Criminal Law. Prof. Acharya lectures in Criminal Law and other associated areas. Prof. Acharya is currently the chairperson of the Subject Committee (Law) and is a Member of the Faculty Board of Purbanchal University.



### Mr. Yubaraj Sangroula

Coordinator

LL.M., Jurisprudence and International Law, Patna University, India.

Mr. Sangroula has been the coordinator of CeLRRd from its foundation. He manages and organizes CeLRRd's international relations and research activities entirety. He is also undertaking responsibility for the monitoring and evaluation of project activities.

He is the Director of KSL. He has over 15 years experience of teaching at university level. Before taking up the post of Director at KSL, he acted as the convener of the LL.M. Program for Jurisprudence in the Faculty of Law in Tribhuvan University, Nepal, and was the founding director of the Faculty's Clinical Legal Education Program. At present, he coordinates the programs at KSL and lectures in Jurisprudence, Legal Research and Human Rights. He is a widely renowned legal researcher, and his research articles and books have made a significant contribution to the legal literature of Nepal. He has published three books in the English language, "Condemned to Exploitation: Trafficking



of Girls and Women in Nepal" and "Gender Laws": The Nepalese Perspective (co-authored with Geeta Pathak) being important ones. In 2002, Nepal Jaycees declared him as one of the ten outstanding youths. In 1992, he was awarded by the "Ashoka Fellowship" for his work towards the protection of the rights of aging persons. For his outstanding contribution to the field of law and justice he was awarded the "National Youth Pride Award" in 1997. Recently, International Biographical Center (IBC) has honored him with "Lifetime Achievement Award" for his contribution to the society and the entire community.

As a public interest lawyer he has provided representation in many seminal cases, which have been on issues such as the abolition of the death penalty, incest, and the rights of the foreign husbands of Nepali women to spousal visas. He has acted as legal counsel for the British Ex-Gurkha Army Servicemen in their movement against discriminatory treatment in matters of pay and pension. [Sangroula@wlink.com.np](mailto:Sangroula@wlink.com.np)

### Mr. Kishor Silwal

Director

LL.M., Criminal Law, University of Pune, India.

Mr. Silwal with a responsibility as Project Director, oversees all the projects. He carries responsibility for the National Prisoners' Legal Aid Program and the project for Support to the Criminal Justice System in particular. He was instrumental in the development of the guidelines on Criminal Procedure, and is now coordinating the orientation workshops in which they are disseminated. Mr. Silwal has 18 years experience as a university teacher. He is a widely known legal academic, and has made a significant contribution to the legal literature of Nepal. He was one of the founding instructors of the Clinical Legal Education Program launched by Nepal's Tribhuvan University. He lectures at Tribhuvan University and KSL. [ksilwal@enet.com.np](mailto:ksilwal@enet.com.np)



### CeLRRd's Human Resource Profile

#### Ms. Geeta Pathak-Sangroula

*LL.M., Gender and Human Rights,  
Hong Kong University.*

*Program Chief, Prisoners' Legal Aid Program.*

Ms. Pathak-Sangroula is one of the few practicing female lawyers in Nepal. She has vast experience of legal research in many areas and has made a significant contribution to Nepal's legal literature. Ms. Pathak-Sangroula is responsible for the project -The Accessibility of Women to the Criminal Justice System and has also been coordinating the Prisoners' Legal Aid Program. At present, she lectures Human Rights at KSL. [geetaps@hotmail.com](mailto:geetaps@hotmail.com)



He is also a lecturer at the Kathmandu School of Law. [akdahal@yahoo.com](mailto:akdahal@yahoo.com)

#### Mr. Sudeep Gautam

*LL.M., University of Pune, India.*

*Legal Expert, Support to Criminal Justice System*

Mr. Gautam is taking the responsibility of Legal Expert for project Support to the Criminal Justice System. Previously, he had been involved in various important research activities conducted by CeLRRd on Criminal Justice System of Nepal. He also lectures at the Kathmandu School of Law. [sudeepgautam@yahoo.com](mailto:sudeepgautam@yahoo.com)



#### Mr. Prakash K.C.

*Diploma in Law, Tribhuvan University, Nepal.*

*Program Chief, Strengthening Trial Court System in Nepal*

Mr. K.C. has been practicing law for over 17 years, and worked primarily in the Appeal Court of Janakpur. He worked as the President of Nepal Jaysees for the year 01. Mr. K.C. is also the Chairman of Youth Campus and Chairman of the Kiddy Convent in Janakpur. He is also a lecturer at Kathmandu School of Law.



#### Mr. Ashish Adhikari

*LL.M., University of Pune, India.*

*Project Secretary, Strengthening Juvenile Justice System in Nepal*

Mr. Adhikari has over 7 years experience of legal practice. His work with CeLRRd involves representation of prisoners in the Supreme Court. He carries the responsibility to oversee the Juvenile Justice Program in KSL. He is also a lecturer in KSL. [lawyer@wlink.com.np](mailto:lawyer@wlink.com.np)



#### Mr. Kumar Sharma Acharya

*Diploma in Law, Tribhuvan University, Nepal.*

*Chief Counselor, National Prisoners' Legal Aid Project,  
Nepalgunj Center*

Mr. Acharya has been practicing law for over 17 years. He has previously been an elected member of the Nepal Bar Council. He is a leading lawyer in western Nepal.

#### Mr. Hem Raj Panta

*Chief Counselor, National Prisoners' Legal Aid Project,  
Biratnager Center-*

*B.L., Tribhuvan University, Nepal.*

Mr. Panta has been a practicing Advocate for over ten years. He is the contact person for the Kathmandu School of Law in Biratnager, the headquarters of Purbanchal University.

#### Mr. Rammani Gautam

*B.L., Tribhuvan University, Nepal.*

*Program Chief, Community Surveillance System against  
Trafficking (CSSAT)*

Mr. Gautam has been involved in CSSAT Program from its inception. He is the Program In Charge of CSSAT Project. He has an extensive experience of work for the prevention of trafficking. At present he heads the Regional Office of CeLRRd at Chitwan district. [rammani@lawyer.com](mailto:rammani@lawyer.com)



#### Mr. Ram Bahadur Khatri

*Project Secretary, Support to the Criminal Justice System*

*M.A., Tribhuvan University, Nepal.*

Mr. Khatri has over two decades' experience of police work.. Before joining CeLRRd, he was a Deputy Police Superintendent in the Criminal Investigation Department, Police Headquarters, Kathmandu.



#### Mr. Anjan Kumar Dahal

*B.L., M.A., Political Science, TU, Nepal.*

*Program Chief, Victims' Legal Aid and Adolescent Girls Rights.*

Mr. Dahal has been working as the program officer for CSSAT program for last 5 years. He has an extensive experience of working for the prevention of trafficking.



#### Mr. Ram Prasad Aryal

*Counselor, National Prisoners' Legal Aid Project, ,  
Kathmandu Center (KSL)*

*B.L., Tribhuvan University, Nepal.*

Mr. Aryal has been a practicing lawyer for 7 years. He also acts as a clinical supervisor at the Kathmandu School of Law.



## CeLRRd's Human Resource Profile

### Mr. Ganesh Bhattarai

*Training Officer, Strengthening Trial Court System in Nepal.  
B.L., Tribhuvan University, Nepal.*

Mr. Bhattarai has worked with CeLRRd in various capacities. He was one of the program officers of CSSAT before taking his present position.



### Mr. Bhojraj Bhatt

*LL.M. University of Lucknow, India*

*Project Secretary, National Prisoners' Legal Aid Project,  
Kathmandu Center (KSL)*

Mr. Bhatt has been involved in various projects under CeLRRd. Presently he has the responsibility of coordinating all project activities running under different PLA centers. He is also a lecturer at Kathmandu School of Law.

### Mr. Lilamani Poudel

*Legal Aid Counselor, National Prisoners' Legal Aid Project,  
Kathmandu Center*

*B.L., Tribhuvan University, Nepal.*

Mr. Poudel has been a practising Advocate for over ten years. Presently, he is the President of the Kathmandu District Bar Association.



### Ms. Yamuna Bhattarai

*Legal Aid Counselor, National Prisoners' Legal Aid Project,  
Kathmandu Center*

Ms. Bhattarai has been practicing law for over 8 years. She is also involved in teaching at Kathmandu School of Law.

### Mr. Rabindra Bhattarai

*M.A./B.L TU, Nepal*

*Project Secretary, Strengthening Trial Court System in Nepal*

Mr. Bhattarai has been actively working as a researcher in various CeLRRd projects before taking his current responsibility. He is also working at Kathmandu School of Law.

### Ms. Sawar Basnet

*LL.M. University of Pune, India, Office Secretary  
Program Officer, Community Mediation Program.*

Ms. Basnet has been actively participating in the Mediation Program since the development of the program. She is working lecturer in KSL.

## Administrative Staffs

### Mr. Rajan K.C.

*Senior Account Officer, M.Com., TU, Nepal.*

Mr. K.C. has been CeLRRd's account officer since the establishment of the organization.



### Mr. Jaya Bista

*Account Officer, B.Com. TU, Nepal.*

Mr. Bista has been handling CeLRRd's account since 1999.



### Ms. Ekta Singh

*M.A. Ongoing, Sociology,  
Planning & Administrative Officer*

Ms. Singh has been working under HUGOU program: Support to Criminal Justice System. She is also teaching at KSL.



### Ms. Bidhya Pokhrel

*Bachelor in Arts and Humanities, Office Secretary*

Ms. Pokhrel has been handling office secretariat & maintains PR of the organization since 2001. She is also involved in developing website of the organization.



### Mr. Maheshor Phuyal

*Computer Expert, Diploma*

Mr. Phuyal is responsible for Computer Section of the organization since 2000.



### ◀ Mr. Laxman Khadka, Mr. Ramhari Sapkota ▶

*Messenger*

