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*Boston University*

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## DRAFT PROJECT DOCUMENT

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### Section A: CONTEXT

I. This section first describes the legal order in relation to problems of governance and development; and explains why this Project Document recommends that the UMDP focus on the courts and the legislative drafting process as strategic entry points for strengthening the legal order. The section then outlines the host country strategy for improving the legal order; the status of prior and on-going assistance to that sector; and the legal order's institutional framework.

#### I. Description of the subsector:

"The constitution of Nepal outlines the basic economic rights of the citizen but the irony is that state can't provide it. Although there is no discrimination on economic rights of citizen, the extent of poverty and prevailing inequality are alarming. Concerning the poverty, over 2/3 of the population live below the poverty line and the women and children are influenced most by the incidence of poverty. It is estimate that food consumption of over sixty percent population are below minimum daily calorie requirement. ..[I]mpressionistic view suggests that the majority of the population do not have basic clothes to protect them against nature. . . . By any standards, health status in Nepal is very disappointing. In spite of government efforts for the past four decades, the formal health system is not accessible to the majority of the people. Only 15 to 20% of the people have access to the formal health sector. All major health indicators, life expectancy, infant mortality, maternal mortality are very disappointing. As compared to other South Asian countries, the life expectancy of 53 is the lowest while infant mortality is the highest."<sup>1</sup>

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<sup>1</sup> Shrestha, Sigdel and Tarak, 'Government Assessment (Nepal),' [Nepal Administrative Staff College, Management Guidance Department, 1998] p. 52. The Rising Nepal of March 11, 1999, reported that, from 1981 to 1998, the availability of food grains per person per year had fallen from 277 kilograms to 178; agricultural output had fallen 23 percent, and the proportion of the population below the poverty line had increased to 49 percent. (L.B. Karki & L. Sherchand, "Pocket Package Programme for Import Substitution.")

II. Nepal's Constitution explicitly requires the State to "...adopt a policy aimed at the upliftment of the standard of living of the general public..."<sup>2</sup> That standard of living remains one of the world's lowest. The general public expects the state to conform to the Constitutional command; if it does not, democracy itself may lie at risk.<sup>3</sup> What does the legal order have to do with the 'upliftment of the standard of living of the general public'?

III. The contrast between Nepal's poverty and the Constitution's command epitomizes the paradox that pervades Nepal's legal framework: The contradictions between paper promise and performance, between law and practice, between law-in-the-books and law-in-action, between reach and grasp. The courts rest on grand Constitutional foundations, but in practice grind so slowly that in their lethargy they deny justice, shot on practically all levels with corruption; the Constitution assigns to the Commission on Investigations of the Abuse of Authority (CIAA) the power and duty to investigate corruption, but CIAA has apparently had little impact in reducing it; many laws prescribe extensive programs for economic development, but annual real growth has averaged only a paltry four percent -- and, in per capita annual growth, half that.

IV. This Part rests on existing, extensive studies by Nepalese and foreign

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<sup>2</sup> Constitution, Art. 26(1).

<sup>3</sup> International Institute for Democracy and Electoral Assistance, Assessment Mission Report: "Consolidating Democracy in Nepal," (Stockholm: International Institute for Democracy and Electoral Assistance, 1997) p. 3 ("In a country where the per capita income is below \$US 200, people expect the political system to contribute to economic development and alleviation of poverty. Signs of extreme response to the situation both from the Left in the form of a growing terrorist movement and from the Right in the form of a revival of interest in an executive monarchy are emerging. If Nepal is to consolidate democracy, those elected in a democratic system must not appear as a hindrance to the development process.")



experts,<sup>4</sup> as well as interviews with leading Nepalese in the judiciary and law-making processes,<sup>5</sup> concerning the nature and scope of that pervasive paradox and the problems that it imposes on the legal order. This Part first relates the legal order to Nepal's efforts to lift itself out of poverty. Preliminarily, it describes the concepts of 'development' and 'good governance'.

a. *In general:*

a. Law-making and implementation

V. Nepal's Constitution commands government to adopt policies looking towards development. Over time, the world around, experience has changed that concept from one of merely increasing the nation's GDP to the notion of *sustainable human development*. That phrase has been defined to mean "the enlargement of people's choices and capabilities through the formation of social capital so as to meet as equitably as possible the needs of current generations without compromising the needs of future ones."<sup>6</sup> In every country, a main part of the burden of creating the enabling conditions for sustainable human development falls on deliberate governmental action. For development to come to pass, that governmental action must prove *effective*, and it must result from *non-arbitrary* governmental decision-making -- that is, good governance. That implies a set of governmental institutions that *effectively* bring about changes favorable to the majority, and that do so through decisions made *pursuant to rules* and by

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<sup>4</sup> See Annex I for the documents reviewed for this study.

<sup>5</sup> See Annex II for the persons interviewed.

<sup>6</sup> UNDP, Sustainable Human Development -- From Concept to Operation: A Guide for the Practitioner (New York, 1994).



*accountable, transparent, and participatory processes.*

VI. Development and good governance hunt together. Long social experience teaches that in development, not to speak of government generally, non-arbitrary decision-making produces better results for the population as a whole. That same experience teaches that without development, social stability lies at risk, and instability wars with good governance. That throughout most of third and transitional countries -- as in Nepal -- good governance and sustainable human development alike have proven difficult to attain reflects, in large part, deep-rooted weaknesses in those countries' legal orders.

VII. Governments' primary tool for creating an enabling development environment consists of the use of state power and law to transform existing institutions. Resources do not allocate themselves. Groups of people, acting in and through institutions allocate them. Nepal's poverty results from the way its institutions now allocate resources to perpetuate poverty and vulnerability.

VIII. That implies that sustainable human development requires transformations in social behaviors. Countries and their different levels of wealth and income differ as their institutions differ. The United States differs from Nepal in their banks, their schools, their courts, their family structures, their prisons, farms, social clubs, legislatures, industries, welfare systems -- in short, everything that constitutes their political, social and economic systems. Banks, schools, courts, families, prisons, farms, social clubs, legislatures, industries, welfare systems: These all constitute *institutions*. To say that countries differ says that their political, social and economic systems differ -- that is to say, their *institutions* differ. *An institution consists of repetitive patterns of behavior.* Development

necessitates transformatory changes in the repetitive patterns of behaviours that together constitute a society's institutions.

IX. How does that development task involve the legal order and the laws themselves? Everywhere governments restate as *rules* their seriously intended, publicly avowed policies: Wherever one looks in government, one sees rules. A government programme that government publicly and seriously proposes to undertake takes sooner or later the form of rules promulgated by state officials: Statutes, subsidiary legislation, administrative regulations, ordinances, bylaws, departmental orders, decrees of a military junta, even unwritten constitutional conventions. That is, they appear as *laws*.

"In all contemporary societies salient elements of state policy have to be formulated in terms of law.... The involvement of law in development planning and practice is no coincidence; neither is it a matter of conscious choice. Development...implies change. In as much as government agencies engage in development planning and implementation, they aim at changing behaviour. In other words, they try to exercise power. ...[S]tate law is the primary source of legitimation for the exercise of power by or in the name of state agencies...."<sup>7</sup>

X. In what sense does a law 'cause' changed behaviours and therefore changed institutions? No conceivable magic could endow mere words on paper with so powerful a function. Nevertheless, Government generally expresses policy in written laws. It does so for two reasons: First, its need for rules to channel the manifold behaviours that constitute a society and its institutions, especially its government; and, second, the legitimacy that the legal order embodies.

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<sup>7</sup> Franz von Benda-Beckmann, "Scapegoat and Magic Charm: Law in Development Theory and Practice," 28 J. LEGAL PLURALISM 129 (1989)



XI. First, in Nepal, as elsewhere, government expresses policy in the form of *rules* because a handful of policy-makers -- 26 Ministers, 265 Members of Parliament, a few very senior public officials -- have the task of *ruling* the country. They must channel in desired ways the behaviours of thousands of public employees (in Nepal, some 370,000<sup>8</sup>) and the citizenry at large. (How the citizenry controls the behavior of that handful of rulers constitutes half of democracy's principal problem not only in Nepal but everywhere -- the other half of that problem consists of ensuring that officials comply strictly with the rules that purport to define their behaviors.). In Nepal, that tiny handful of legislators, Ministers and very senior officials decide whose and what behaviours must change in order to achieve sustainable human development.

XII. Rules describe and prescribe repetitive patterns of behaviour. Drivers in some countries drive on the left. In one sense, that statement constitutes a descriptive rule; in those countries, drivers do generally drive on the left. In another sense, that same statement constitutes a prescriptive rule: Drivers *ought* to drive on the left. A *descriptive* rule states what people *actually* do; a *prescriptive* rule, what they *ought* to do. To bring about changes in repetitive patterns of social behaviours, Nepal's government can only prescribe the desired behaviours, and prescribe official behaviours in ways likely to ensure that the prescriptive proposition also becomes a descriptive one. In that way, a relatively small group of elected and appointed Nepalese officials seek to change a multitude of behaviours. Government without rules could work only in a society so small that it needs neither state nor government.

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<sup>8</sup> Shrestha et al, supra n 1, p. 100



XIII. Second, that those rules appear not merely as 'policy' or prescriptions expressed in speeches and policy papers, but as *laws*, does not happen by chance. As in most countries at most times, in Nepal neither the governed nor officials feel compelled to comply with mere policy -- that is, until expressed as law, mere policy lacks *legitimacy*. Unless officials accept government's directions as legitimate, ones which they must obey, government has no means of controlling the behaviors of its employees; and unless it can control at least those officials' behaviours, government cannot rule. Nor can rule for long if it lacks legitimacy with the population at large; government cannot long endure if it can induce obedience to its commands only through threat of imprisonment or fine. Nepal's government casts its development policies into *rules* because it through them it seeks to prescribe behaviors for officials and citizens; it casts them as *laws* because otherwise not even officials will likely obey them. *Inevitably, laws become inevitably the operative form of development policies.*

XIV. In every state, government uses law to perform many jobs: It allocates rights and duties, it authoritatively states the values that the rulers believe do, or ought to constitute the principal values of the society, it provides forums for dispute settlement, symbolically it states what counts (and who counts) in society. In the development process, government uses law primarily to channel behaviours into new paths.

XV. To initiate behavioral changes, Nepal's government -- like others -- adopts a policy. To move from policy to actual changed behaviors and therefore changed institutions, Nepal's government translates those policies into laws, that is, rules promulgated by the state. A law thus comprises an essential step for government

to facilitate development. Laws, however, exist in better and worse forms; governments use them more or less effectively to foster the development process.

(2) *Implementation as an integral part of the law.*

XVI. Law becomes the operative face of policy. Nepal's paradox between the law-in-the-books and the law-in-action epitomizes a world-wide phenomenon frequently expressed in a common complaint: 'We have good laws, but they are badly implemented.' For two reasons, that phrase constitutes a contradiction in terms. First, a law affects behavior by addressing not one but at least two sets of addressees (see Fig. 1). One, the primary role occupant,<sup>9</sup> constitutes the set of persons whose behaviors the lawmakers primarily aim to change -- citizens (for example, factory owners whom the law forbids throwing industrial waste into rivers or streams), or officials (for example, rules of court procedure addressed to the High Court judges). A law's second set of addressees comprises the government officials charged with implementing the rules directed to the primary addressees (for example, an environmental protection agent who enforces the law prohibiting a factory owner from polluting rivers and stream, or the Supreme Court judges, who by means of the court's appellate jurisdiction implements the rules of procedure addressed to lower courts).

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Figure 1: MODEL OF FACTORS PEOPLE'S BEHAVIOR

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<sup>9</sup> Sociologists denote as a role occupant one addressed by a norm, for example, as a parent, a worker, a factory owner, an official.

## IN THE FACE OF A LAW

country-specific  
constraints and resources

law making institutions

rule

rule

implementing agency    conformity-inducing measures    primary role occupants

country-specific  
and resources

country-specific  
constraints and resources

constraints

feedback mechanism

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XVII. Each of these two sets of rules -- one aimed at the primary role occupant, the other at the implementing agency -- aims to induce the behaviors it prescribes. Of course, in behaving in the face of those rules, the addressees take into account not only the rules themselves, but also the *non-legal constraints and resources in their environment*. In deciding whether or not to obey the anti-polluting law, factory owners take into account not only the law that forbids them from polluting the adjacent river, but also a host of non-legal constraints and resources: the costs of disposing of wastes elsewhere; the technology available to dispose of them otherwise than in the river; their knowledge of the law's commands; their values and attitudes towards preserving the environment. Factory owners likely also take into account the environmental agency's expected behavior in enforcing the law (how likely will the agency catch them in the act?)



What penalty might the agency actually impose for the violation?). The environmental protection agents in turn will take into account not only the law addressed to them, but also relevant non-legal factors, for example, the number of agents available; their technical capacities; the transport they have to take them to the factory sites; their knowledge of the law; their fear that their department head may sack them if they do not enforce the law properly; their attitudes as to the relative importance of profits and pollution; their opportunities to receive, and their receptiveness to, a factory owner's offer of a bribe. The drafters have not drafted a 'good' law, if, *in light of all these non-legal factors*, they have failed to calculate the behaviors the new law would likely induce in both the primary addressee (here, factory owners) *and* the implementing agency (here, the environmental protection agent); and if they did not *include in the law detailed measures likely to affect those factors*.

XVIII. Second, the sentence, 'it is a good law but badly implemented' constitutes an oxymoron because, even more than ordinary citizens, government implementing agencies -- ministries, departments, courts, police, sheriffs, government corporations, and local government employees -- act within a cage of laws. About 90% of the corpus of a modern jurisdiction's statutes and regulations consists of rules addressed not to ordinary citizens, but to officials. A law aims to induce its prescribed behaviors; by definition, a 'good' law succeeds in inducing the behaviors prescribed. How can one call a law 'good' if it fails to induce the official behaviors required to implement it?

### (3) Summary

XIX. The overriding social problem in Nepal consists of poverty and

vulnerability. To solve it, government cannot merely command resources to change their allocations. It must change the institutions -- the repetitive behaviors -- that today tend to misallocate resources. The law constitutes government's principal instrument for inducing desired change. To induce change, however, requires that laws *work* -- i.e., that they induce the behaviors they prescribe. The paradox between high-sounding, well-intentioned laws that do not produce their prescribed behaviors: That constitutes the central problem of both the Nepalese legal order and of Nepalese development. That constitutes a paradigmatic case of insufficient governance.

XX. 'Good governance' includes as a core element the notion of *effective* governance. A 'good' law badly implemented advertises its own ineffectiveness, and therefore its exemplification poor governance. To describe Nepal's `paradox between law and practice describes paradigmatic poor governance. A major explanation for Nepal's poverty lies not in its economic or other substantive policies, but in its governance. What can UNDP do to help Nepalese discover ways to achieve good governance?

*b. Two leveraged entry points: Courts and the bill-creation process*

XXI. This section explains why, out of the legal order's vast compass, this Proposal centers attention on building capacity in the courts and in the bill creating system. A complex institutional system, the legal order consists of the rules of law, the rules' primary addressees, law-making institutions of all sorts (Parliament, appellate courts in their common law function of filling in the interstices of the rules, ministries in their regulation-making functions, local and District rule making bodies and officials, and so forth), and implementing



agencies (ministries, departments, village and district development committees, police, government corporations, and many others, including of course, the courts). Out of this multitude of institutions that together comprise the legal order, most programs concerned with the legal order focus entirely on the courts. This section explains why in Nepal the courts deserve considerable, but not exclusive attention. A second essential and complementary entry point comprises the system of drafting legislation which today seems plagued by the pervasive paradox of high-sounding laws and ineffective implementation. To explain the advantages of a governance strategy focused on both, this section first explains the institutional limitations on courts' role in development; and then reviews the existing system of drafting bills to underscore the importance of improving Nepalese capacity to formulate and implement laws designed to create an development-enabling environment.

(1) *The courts*

XXII. What special role do courts play in development and good governance that seems to merit the proposed focus as one of two key entry points? In Nepal as elsewhere, the judicial system basically performs three different functions: (1) settling disputes in general; (2) implementing commercial laws by settling businesspersons' disputes; and (3) enforcing rules that limit official power and discretion -- that is, helping to maintain good governance. This section briefly assesses these court functions in terms of their implications for a UNDP strategy for strengthening Nepal's legal order.

XXIII. The courts' primordial function consists in dispute settlement. For historical reasons, English-style courts (like the constitutionally-defined courts of



Nepal, that is, the District, Appellate and Supreme Courts) have a number of institutional limitations on what they can do. First, they mainly decide disputes that arise out of events that have taken place in the past. (Occasionally they decide cases involving on-going situations, but, for reasons discussed in the next subsection, they do not manage those disputes particularly well). Second, their principal remedy for a dispute consists in punishment -- in a civil case, money damages; in a criminal case, a penal sentence or a money fine. Third, because courts sometimes try cases of enormous consequences for the parties (for example, capital cases in countries still maintaining the death penalty), in every country procedures in courts of general jurisdiction (that is, courts that can try cases of any magnitude) tend to have detailed, complex, formal rules appropriate for painstaking decision-making. Unfortunately, that makes the courts slow and cumbersome, even in cases that do not warrant such painstaking care. Fourth, those rules' detail and complexity, make an ordinary person dependent on the assistance of a lawyer or other specialized professional. (That makes courts extremely expensive -- and hence inaccessible to the poor majority). Fifth, the English-style courts developed into adversarial forums, based on the theory that out of the conflict of opposing parties the truth arises -- a proposition that scholars have seriously questioned. Sixth, institutionally, courts must take an essentially reactive -- not proactive -- posture. They cannot implement a law unless in the course of a dispute somebody brings an appropriate law suit. Finally, rejecting mediation and compromise, these courts' dispute settlement system relies on applying a rule to a set of facts to reach a winner-takes-all decision.

XXIV. The remainder of this sub-section discusses the consequences of these institutional limitations for the court as an agency (1) for settling the ordinary run of disputes; (2) for implementing business law in contrast to most development

law; and (3) for implementing the law that controls government officials' discretion.

XXV. English style courts 'settle' disputes in a quixotic manner. In any substantial meaning, 'dispute-settlement' implies, as far as possible, dissolving the antagonism between the parties so that social harmony may prevail. In different societies, customary institutions -- a village headman, a council of elders, a religious functionary, sometimes an entire village -- settle disputes, not by rigid application of a relevant rule that ends with winner-take-all, but by mediation and compromise within a framework of relatively vague agreed-upon norms. To 'take somebody to court' in a village community says that one is weary of disputing and wants to resume civil relationships; to take someone to an English-style court declares that one never wants to speak to the defendant again. If the courts' only claim to distinction lay in settling run-of-the-mill disputes within families, between neighbors and the like, one might well question the utility of focussing UNDP's attention upon them.

XXVI. The courts' institutional limits also hinder them from playing an effective role in implementing development laws. For a market-powered economy, the state needs laws to establish what one might call the market's infrastructure. Increased agricultural production for the market likely requires an Agricultural Credit Law, a Feeder Road Law, an Agricultural Extension law, To ensure high-level manpower to facilitate industrial growth probably requires a law to foster education. These kinds of laws, all looking to deep-seated institutional change to enable 'development,' typically employ a wide variety of implementing agencies: Agricultural extension agencies to foster agricultural production; an education ministry for the educational system; hospitals and the ministry of health for health



care delivery; the Ministry of Mines for mining, the Central Bank, the Tax Department, and the Ministry of Finance for fiscal affairs. These kinds of laws rarely look to the courts for their implementation. Almost never does a university law, for example, rise to litigable causes of action; yet, in most developing countries, no law has greater importance than one that trains high-level manpower. Implementation of these kinds of development cannot wait for a court to react to a complainant's suit. Furthermore, implementation of most development laws require expenditures -- but courts have no power of the purse. In short, the courts' institutional limitations rule them out as government's principal agency for implementing most developmental laws.

XXVII. What may appear as dysfunctional institutional limitations on a court's powers to implement some kinds of laws, however, become positive assets for implementing business-related laws. Business disputes frequently involve large sums of money, and merit careful, if slow, procedures. The parties likely can afford competent professional representation, so the adversary system really does likely produce something close to 'the truth'. To hang the court's implementation of the rules on an entrepreneur's initiative in bringing a lawsuit hinges implementation on the private activity of the persons affected, a posture that accords well with free market principles; in businesspeople's affairs, government should intervene only when called in by the parties. That almost always money damages comprise the remedy also accords with market notions which tend to reduce human relationships to a price. In short, for implementing commercial laws in the course of settling business disputes, courts become the implementation agency of choice.

XXVIII. Courts serve as the implementing agency par excellence for laws of great



importance to developing a market-driven economy: The laws that businesspersons rely upon when they do business. Contract law, property law, corporation law, insurance law, banking law, negotiable instruments law, sales law, securities law: All of these depend entirely or in large part for their implementation upon the courts. Courts implement contract law in the course of determining contract disputes. A Securities and Exchange Commission usually oversees many aspects of a securities and exchange law, but a major share of implementation falls also to the courts as part of their dispute settlement function.

XXIX. Although not sufficient, in other words, a competent court system proves a necessary institution for the development of a market economy. If businesspersons have no means of enforcing a contract according to law, they likely will have some difficulty in predicting the outcome of their engagements. For some, that may become a substantial disincentive to invest. Ensuring that the courts move expeditiously and fairly, and decide cases by the impartial application of rules to facts brought to the court's attention by an adversarial, rational process potentially constitutes a highly important point of entry for an aid agency disposed to help a country improve its market conditions.<sup>10</sup>

XXX. Courts also perform an important function in enforcing administrative law: the body of rules that govern the way administrative officials behave pursuant to laws addressed to them -- including those in government agencies that implement development law. As Fig. 1 (para. XX) above demonstrates, *Every*

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<sup>10</sup> That does not say, as some theorists have, that courts constitute the only significant implementing agency in development; for an extreme version of that view, see Richard A. Posner, "Creating a Legal Framework for Development," 13 THE WORLD BANK RESEARCH OBSERVER 1 (1998). The legal framework for a market consists of much more than businessperson's laws. A myopic concentration on courts as the only significant 'legal' institution seems as foolish as ignoring their special contribution towards the development of an hospitable climate for investment.

*law, explicitly or implicitly addresses not only the primary role occupant; it also addresses the implementing agency.*

XXXI. As H.L.A.Hart has pointed out,<sup>11</sup> a government disintegrates unless most of its officials feel an internal obligation to obey the rules addressed to them. For policing the occasional deviant official, governments generally rely upon the sanctions implicit in the employment relationship: A civil servant who too flagrantly defies the rules addressed to his or her position risks getting sacked, or at least a transfer to a far corner of the polity.

XXXII. Officials who violate the rules addressed to them frequently tread on the toes of private individuals. For those individuals, the courts serve as the final bulwark against errant public servants. Other government institutions, like Nepal's Commission to Investigate Abuses of Authority (CIAA), the Judicial Council, and the Civil Service Commission, may help to ensure good governance. For a person whom public employees injure by abusing their powers, however, a court becomes truly 'the court of last resort'. Unlike any other office in government, *a court must open when a litigant knocks*. That alone justifies the courts' special place in the ideology and practice of good governance.

XXXIII. In this respect, the court's law-job does not allow it to substitute its decision for a civil servant's. It does require a judge to ensure that the civil servant made the decision for public-viewing, not private-viewing considerations; that the civil servant took into account only matters authorized by the governing law; that in ordering government action the civil servant stayed within the powers granted

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<sup>11</sup> H.L.A. Hart, THE CONCEPT OF LAW (1962).



by law; and that the civil servant followed the procedural laws concerning decisions of that sort.<sup>12</sup> That in making decisions civil servants must act pursuant to the law both substantively and procedurally constitutes the essence of the Rule of Law: That government itself remains subject to the law.<sup>13</sup>

XXXIV. In short, courts constitute an important implementing agency in ensuring an adequate legal framework for a developing, market-powered economy. Their policing role, however, comes to naught if the existing rules (constitutional or statutory) do not require accountability, transparency, decision by rule, and stakeholders' participation. That underpins the recommendation that, as a second strategy entry point, the UNDP should focus on legislative drafting.

(2). *Legal drafting, development and good governance*

XXXV. Because of their prominence in the popular perception of the legal order, courts become an intuitive point for concentration of donor efforts with respect to good governance. That seems necessary but not sufficient. A second point of entry consists in the bill-creating system -- that is, the process by which a bright idea becomes a bill presented to Cabinet.

XXXVI. The legal order performs many social jobs; in bringing about

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<sup>12</sup> In English law, subsumed under the heading of 'natural justice'; in U.S. law, under the rubric of the applicable Administrative Procedure Act and the rubric of due process of law. In Nepal, of course, the Constitution imposes a basic set of limits on executive and administrative power.

<sup>13</sup> Sometimes the same point is put into 'rights' language: The Court guarantees the rights of the citizens. For every 'right', however, a correlative duty exists, or the 'right' has no meaning. Those correlative duties mainly fall on civil servants. These duties find their definition in rules of behavior prescribed by law: That civil servants shall behave in a way that exercises the powers granted to them in accordance with the law -- not for private-viewing but for public-viewing reasons. Courts do not always constitute the only resort for those whom government oppresses. Frequently, however, courts constitute their last resort.



development and ensuring good governance, however, law's function in channeling social behaviors holds pride of place. In pursuance of that function, as stated above, *every government policy publicly avowed and seriously intended sooner or later becomes a rule promulgated by government -- i.e., a law.* Most of those rules never appear in court: Central bank law, agricultural extension law, education law, transport law, energy law, health care delivery law, forest conservation law, mining law, a whole library of others. Save marginally, improvements to the court system and building judicial capacity will not likely improve the quality of governance with respect to these laws

XXXVII. That fact underscores the two principal reasons for recommending that legislative drafting serve as a second, complementary entry point for UNDP interventions with respect of the legal order. First, a law must contain detailed measures that take into account the existing legal and especially the *non-legal* surround of its primary addressees, and of the agency designed to implement it. The law's words must communicate the rules clearly, unambiguously and understandably. If in either respect the law misses the mark of competent drafting either substantively or technically, it will not likely succeed in inducing its prescribed behaviors. Unless the rules both prescribe behaviors likely to help to resolve the original social problem, and actually induce those behaviors, it cannot ensure the policy's effective implementation -- and effectively implemented policies constitute an indispensable element in good governance.

XXXVIII. Effective rules require competent drafting not only with respect of the form of the words used, although competent form goes a long way to ensuring clarity and unambiguity. Competent drafting also concerns the details put into the law. Unless those details take into account the legal and *non-legal*

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circumstances of the new law's addressees, they will only accidentally induce the prescribed new behaviors. Typically, *deciding those details takes place at the point of drafting the rules*. Writing is thinking. Until required to write down the rules, government officials seldom think through the new law's details. *Policy lurks in the details*; there hides the devil.

XXXIX. Because writing means thinking, a UNDP strategy designed to build capacity among Nepalese officials and government lawyers to draft new rules and regulations that turn policy into law will provide assistance at the point at which they most need that capacity: When they write down the details that determine the operative face of policy. Writing policies into laws constitutes the point in the decision-process when the operative meaning of the policy falls for explication and detailing; by the same token, detailing the policy takes place at the point of writing out the rules that define it.

XL. As two interrelated entry points for UNDP efforts, courts and drafting have two added benefits. First, both have a wide reach that would offer UNDP entry into a wide range of fields of substantive laws or institutions subordinate to those laws which might prove of particular interest to various donors. With respect of substantive law, for example, modules can readily be developed concerning intellectual property law, women's rights, criminal law, commercial law, and so forth, using their drafting and how courts deal with these subjects as entry points. With respect to institutions, modules could be developed for strengthening the prosecutors' office, training judges both generally and in particular substantive fields, improving court management and administration, strengthening CIAA and the Auditor General's department, and many others. All of these projects require an element of drafting; almost all of them, at some point, require some form of



judicial appeals.

XLII. Second, both of these entry points require enabling Nepalese to develop their own capacities to undertake the tasks at hand. As a major reason for Nepal's governance problems, this Report identifies its officials' lack of capacity to draft the laws they need, and the courts' inability to help enforce them fairly and with justice. That calls for building Nepalese capacity: training to enable drafters who, knowing their country's non-legal constraints and resources better than any expatriate lawyer ever could, to draft detailed laws; and training of qualified, independent judges to make just decisions according to the criteria and procedures inscribed in those law.

### Summary

XLII. As two interrelated strategic entry points for helping Nepalese to strengthen the nation's legal order as government's primary tool for combatting poverty and vulnerability, this Project Proposal focusses on improving the courts and the drafting process. The next three sections propose more detailed measures which the UNDP might undertake to improve the drafting process and the courts, while undertaking its potentially crucial role in helping to improve the coordination of donor aid.

#### **II. The host country strategy:**

XLIII. In 1991, in the search for better governance, Nepal transformed its governing institutions. To ward off corruption, its new Constitution created a court system that on paper seemed a very model of judicial independence; established a number of complementary watchdog agencies, including a

Comptroller-General, an Auditor-General, a Commission on Investigations of the Abuse of Authority (CIAA), and a Judicial Council; and gave the Parliament powers of overseeing the government's performance. The Ministry of Law and Justice has established a legislative drafting division which employs about 20 drafters apparently well-schooled in traditional (English) drafting techniques.<sup>14</sup> To date, the Nepalese government's efforts to resolve the paradox that testifies to persistent poor governance mainly seem to consist in trying to make these existing institutions function better.

XLIV. The government seems serious and determined to improve its courts. It established a Judicial Service Training Centre in 1981. It appointed a Court Management Committee that last year submitted an extensive and valuable detailed report on how to manage the courts better.

XLV. The government has welcomed opportunities to improve the skills of its staff of drafters. In 1994, the Asia Foundation held a one week course in drafting in Nepal. Some officials from the MLJ's drafting division have attended courses in legislative drafting techniques in Rome and elsewhere. So far as appears from the material available to us, however, it appears that these training programs aimed to improve the MLJ drafting staff's technical drafting skills, not providing them with the theory and methodology they needed to translate policy into effectively implemented legislation.

### **III Prior and ongoing assistance.**

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<sup>14</sup> Unfortunately, we did not have an opportunity to meet with them, but the Ministry spokesperson briefly described the Division, and we read about their training in the reports listed in the bibliography, Annex I.



**XLVI.** The existing Judicial Service Training Centre has received substantial assistance from the Asia Foundation, funded by USAID. It has held workshops on curricula, and on specific capacities, for example, for district judges, for prosecutors, and for legislative drafters. It also helped Judicial Service Training College to prepare training manuals for various courses. The Asia Foundation recommended that Government upgrade that College to a 'Nepal Judicial Academy'; we understand that the Ministry has drafted a bill to that effect, but we have not seen it, and it seems to remain unenacted. It has prepared useful reports on the needs for judicial and other legal education, both for new appointees and for in-service training. In 1996, the Asia Foundation requested (we presume from USAID) a \$2,385,000 grant for training at the College (and, ultimately, at the proposed new National Judicial Academy. We did not have time to discover the present status of that request.)

**XLVII.** As stated, a number of lawyers in the MLJ have received some training in legislative drafting techniques at various training centres overseas, financed by various agencies. Apparently, the drafting process has not otherwise received attention from donors.

#### **IV. Institutional framework**

**XLVIII.** The Constitution provides for an independent judicial system, protecting judges against removal from office save for cause, and prohibiting the government from reducing a judge's salary or other remuneration during the judge's tenure of office.<sup>15</sup> It empowers the Judicial Council, composed of the

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<sup>15</sup> Constitution, Part 11.

Chief Justice as *ex officio* chair, the Minister of Justice, the two senior judges of the Supreme Court, and one distinguished jurist appointed by the King -- as senior and presumably upright a group as one could gather in the Kingdom -- to recommend appointments, dismissal, transfer of and disciplinary action against judges.<sup>16</sup> The Judicial Service Commission, consisting of many of the same dignitaries, controls other appointments to the judicial service.

XLIX. Nepal's Public Service seems in principal to resemble the British Civil Service. Unlike the British civil service, however, its senior members apparently do not serve at the pleasure of the Minister. Instead, the public service's governing body consists of the Public Service Commission, which must approve all disciplinary measures.

L. To control corruption, Nepal has established a number of watchdog agencies. These include the criminal justice system, CIAA, a somewhat elusive Special Police Unit, the Comptroller-General and the Auditor-General.

LI. The officials who draft legislation -- termed 'drafters', broadly construed -- include the legally-trained personnel in the Drafting Division of the Ministry of Justice and Law; and also the line-ministry personnel responsible for preparing draft rules of laws. These rules may take the form of bills for formal enactment by the Parliament, or draft administrative regulations (sometimes called 'subsidiary legislation') to guide ministry personnel in implementing already-enacted laws.

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<sup>16</sup> Constitution, Art. 93. Prior to the adoption of the Constitution in 1990, lower court judges received their appointments from Government.



LII. The bill-creating system (see Box 1) apparently follows much the same pattern in all the ministries: The ministry officials (usually, the relevant ministry substantive expert) in consultation with the ministry's legal officer, where one exists) write what British practice denotes as a 'layman's draft', and some other governments term a 'concept paper' -- sometimes an actual draft bill, more often a memorandum describing the proposed bill. The ministry forwards that to the Legislative Drafting Division in the Ministry of Law and Justice. That Division prepares a draft bill, which it sends to the originating ministry and other concerned ministries for review and comment. When the bill is settled, the originating ministry sends it to Cabinet.

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### **BOX 1**

#### **THE LAW-MAKING SYSTEM: BILL-CREATING AND LAW-ENACTING DISTINGUISHED**

In this Project Document, by 'the law-making system' we mean the system by which an idea for legislation travels from its point of origin through approval by Parliament and promulgation by the King. By the 'bill-creation system' we mean the part of that process that occurs from the point of origin of the idea for legislation (usually, within a ministry) through its drafting, and presentation to, and approval by Cabinet. By the 'law-enacting system' we mean the process by which the Parliament considers and approves a bill.

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LIII. Two organizations exist that might play a role in the drafting process: The Law Reform Commission and the Bar Association. (In fact, as we discuss below, apparently they do not.)

## **Section B: PROJECT JUSTIFICATION**

### **I. Problems to be addressed; The present situation**

LIV. This section addresses first the difficulties that occasion the present Project, and, second, its explanations.<sup>17</sup>

**a.. The Difficulties**

LV. Long ago, Gunnar Myrdal gave a name -- 'soft development' -- to the difficulty that this Proposal addresses. Nowadays, the development community's term, 'poor governance,' means much the same thing. After describing the problem's superficial manifestations, this section identifies whose and what behaviors comprise it.

LVI. Almost wherever one looks in Nepal, one finds the same phenomenon: laws and regulations that, if implemented, would significantly alleviate poverty and vulnerability; but, as the record shows, they do not induce the changed behaviors required to ensure their effective implementation. Many documents and interviews report the widely-recognized slip between the law-in-the-books and the law-in-action. This section details only a few examples related to development issues; the way the courts function; the civil service; the corruption control agencies; and finally the bill-creating and law-enacting agencies.

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<sup>17</sup> To justify the Project, this Proposal adopts a problem-solving methodology. (See SEIDMAN & SEIDMAN, THE STATE AND LAW IN THE DEVELOPMENT PROCESS, Ch.4). It discusses, first, the principal difficulty in Nepal's system of governance: The paradox between the law-in-the-books and the law-in-action, that is, the lack of good governance indicated by the relative ineffectiveness of so many of Nepal's seemingly beneficent governmental initiatives. Second, it seeks to explain those difficulties in terms of Nepal's legal order. Third, it explains why, of the manifold aspects of Nepal's legal order, this Proposal focusses mainly on courts and on the bill-creating process. Finally, it explains in general terms the Proposal, as a partial solution for Nepal's difficulties. The consultants gathered the information on which this document rests in a series of interviews and discussions in Sri Lanka between 5 January and 22 January, as listed in Annex 1.



(1). *Development laws that don't work*

LVII. Our brief stay in Kathmandu did not give us time to visit line ministries to discuss their problems in implementing legislation relating to development.

Nevertheless, we note several examples that came to our attention of inadequately implemented laws related to development.

LVIII. Article 11 of the Constitution declares:

"The state shall not discriminate citizens on grounds of religion, color, sex, caste, community, or ideology or any of them.

"Provided that special provisions may be made by law to protect or promote the interests of women, children, old people or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially and educationally backward."

LIX. Numerous reports and anecdotes suggest that government officials sometimes may discriminate against women employees in terms of appointments and promotion. In the court system, to give one example, only two women judges have been appointed at the appellate level, and three at the district court level. One senior woman advocate described in some detail how, although by acknowledged rights of seniority she should have received the next appointment to the Supreme Court, the Judicial Council simply selected someone a number of years her junior.

LX. The Rising Nepal March 12, 1999:

"'Lost innocence' by Sushma Amatya.

"We do not have have laws for prostitution but we do have laws for trafficking which need to be effectively implemented...."

"Trafficking is a major issue today. People in important positions have spoken against it. Issues about this has been raised in SAARC meetings....

"(A)ccording to Anuradha Koiral of Maiti Nepal...'Everyday there are about 35 cases of missing girls, domestic violece, rape cases, abandoned children, kidnapping and so on....The laws in the countries of point of origin and point of destination has to cooperate and be effective.'"

LXI. The Rising Nepal (Kathmandu, Mar. 12, 199):

"Despite prohibition by laws to employ children under 14, there have been several cases of violatron of children's rights to health and education.... A recent survey report....found 12,000 children working in *bidi* factories in seven different Terai districts....(The Report's authors) charge the government for not effectively implementing laws regarding exploitation of children and their halth risk under such harmful working conditions, especially in tobacco factories."

LXII. A law requires vehicle owners to have their vehicles inspected and repaired to prevent emission of carbon monoxide fumes. One only needs to step outside the doors of the UNDP office, however, to realize that the responsible ministries have not taken effective measures to enforce this law.

LXIII. Efforts to decentralize government have produced legislation that purports to empower villagers to manage their resources at the local level. Yet a two year field study<sup>18</sup> exposed the reality: The Forestry authorities have continued to enforce measures to protect the forests without making much, if any, effort to consult the local community members about their need to obtain fuel wood, pasturage, and even foodstuffs in the forests.

LXIV. These examples illustrate what appears as a widespread failure of government officials to implement existing legislation designed to protect and advance community welfare. Widespread evidence demonstrates that the paradox

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<sup>18</sup> Cf George Viros' (?) PhD thesis, Indianna University, 1999.



also pervades the judicial system.

(2). *The courts*

LXV. In the U.K. and the United States, lawyers fondly believe that if only courts have the kind of independence guaranteed by Nepal's Constitution, the judges cannot fail to provide an adequate system of justice. In Nepal, that proposition seems problematic. At all levels, three difficulties seem to plague Nepal's courts: Delay, corruption, and inconsistent judgments. From clerks to the justices, the courts exhibit these failings. The district-level judges "suffered from a chronic lack of materials and training, including update of Nepali laws. A former Chief Justice compared the district courts to 'fishmarkets'."<sup>19</sup> In the Supreme Court, the turnaround time for petitions for revision in 1994 was 9 years, 4 months.<sup>20</sup> Despite the constitutional provisions and the apparently impeccable membership of the Judicial Council, several observers have complained about the appointment of judges, which "are being made on political pressure and the result is that the judiciary is being widely criticized for its poor performance."<sup>21</sup>

LXVI. In every field, delay detrimentally affects the courts as dispute-settlement institutions: Criminal law, commercial law, family law, and so on. Judges frequently gave inconsistent decisions; lawyers complain that the law has lost predictability. Bad enough in any case, that unpredictability especially affects

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<sup>19</sup> IDEA, p.22.

<sup>20</sup> Samuel D. Conti and Robert D. Lipscher, "A Review and Recommendations of the Supreme Court of Nepal," The Asia Foundation, 1994, p. 7.

<sup>21</sup> B.P.Bandari, "A Brief Study on Effective Judicial System and Corruption Control Mechanism", (1998) (no publisher cited).

the utility of the courts as an essential institution for implementing businessperson's law. The courts' great claim as an instrument to foster market relationships lies in this, that they enable business people accurately to predict the outcomes of their contracts and other business relationships. Entrepreneurs have enough trouble trying to outguess the market. If Nepal wishes to provide an hospitable investment climate, its courts should help interpret laws as predictably as possible. Inconsistent judgments defy predictability.

LXVII. Corruption -- by all accounts, endemic in Nepal's courts<sup>22</sup>-- also undermines judicial predictability. Here, we distinguish between 'petty' corruption and 'grand' (or 'high level') corruption. Corruption by a clerk who will not advance an individual's papers except for an illegal mulct has different consequences for decision-making than high-level bribery. High-level bribery, in contrast, always involves a transfer of decision-making power from a public official to the private interest that gives the bribe. However annoying and subversive of government's legitimacy, low level corruption at least does not transfer power from legitimate officials to those with enough money and power to bribe. High level corruption not only implicates legitimacy; it shifts the locus of power from legitimate authority to a person with enough money to bribe.

LXVIII. Laws that on their face seem adequate to ensure judicial independence and probity, and therefore an adequate system of justice, belied by delay, inconsistent judgments, and corruption: Those characteristics apparently mark Nepal's courts.

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<sup>22</sup> Shrestha et al., p. 19. We met nobody in government or out of this who contested this statement.



LXIX. Apparently corruption also exists in the police force. The Police Act, we were told, requires every senior officer to declare his or her assets, and permits the Inspector General to investigate any officer's income. According to a high official, however, this regulation, too, remains unenforced.

(3). *The public service*

LXX. The Nepali civil service in principle follows the British model of official neutrality. In practice, at every change in government, the politicians shuffle the senior posts. A detailed assessment by a Nepali team of experts concluded:

"According to rules any positions and careers in the public service are not dependent on political or personal connections. Civil service as a whole is treated as politically neutral; position by law. But in practice, mainly positions such as Secretary, Department Chief, CDO, LDO, DEO, CEO, and other lucrative and easy money making positions such as revenue are dependent on political or person connections. Generally, change of incumbents in these positions takes place with the change in government in power."<sup>23</sup>

LXXI. By law, punishment of a civil servant lies in the hands of the Public Service Commission. "In practice, political influences are used as punishment in the form of posting to remote areas, reserve pool and unimportant positions, and reward in the form of foreign training and posting in the 'lucrative' jobs for politically identified and Afnomanchhe."<sup>24</sup>

(4). *Watch-dog institutions*

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<sup>23</sup> Shrestha et al., p. 94.

<sup>24</sup> Id. at 98.

LXXII. Nepal has created created a number of institutions aimed directly at the issue of corruption. The same phenomenon, however, of laws that on their face seem beneficent, but do not produce action to solve the social problems at which they supposedly aim, appears even in the watchdog institutions created by legislation.

A. The first line of defence against corruption everywhere would seem to lie in the criminal justice system itself: The substantive criminal law, the police, the prosecutors, the judges, the prisons. Nepal has these institutions in place, and laws that detail their duties -- but corruption continues.

B. The Committee for Investigation of the Abuse of Authority (CIAA), (Nepal's equivalent of an Ombudsman) registers complaints from the public on matters of corruption and 'improper' conduct and illegal activities; in 1996/97 it received 1645 complaints, 11 telephone calls registering complaints, and considered 151 items in newspapers concerning possible corruption.<sup>25</sup> Apparently, it has exposed a variety of illegal behaviors. When it discovers an illegal act -- for example, corruption -- it investigates the matter with its own personnel, all of them regular public servants seconded to the Commission, usually for relatively short periods. After gathering evidence, the CIAA, if it deems prosecution warranted, turns the file over to the public prosecutor. The prosecutor carries the laboring oar after that. By its statute, the Commission has the power to recommend to government institutional changes to reduce the possibilities of corruption; on occasion, it has done so.

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<sup>25</sup> Shrestha, *supra* n. , at 70.



C. The prosecutors appear overburdened and poorly paid. As a result, they sometimes let corruption cases languish. When they do prosecute, their preparation of the cases does not always prove adequate, especially when they confront highly-paid lawyers defending wealthy clients accused of corrupt behaviors.

D. A Special Police Department, on instruction from the CIAA, supposedly investigates corruption and complaints of misconduct. No clarity seems to exist as to its responsibilities.<sup>26</sup>

E. Extensive laws appear, on paper, to ensure adequate supervision of Ministry expenditures:

1. Ministries must provide quarterly progress reports to the National Planning Commission and to the National Development Council chaired by the Prime Minister, specifying its officers' activities and expenditures in relation to planned targets.

2. Nepal has apparently adopted the British system of controlling ministerial expenditure. A ministry's Secretary has the responsibility of ensuring that a ministry makes no expenditures except those authorized by law. In principle, the Secretary remains personally accountable to the Parliamentary Accounts Committee for

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<sup>26</sup> Shrestha et al., p. 71, state that "at the instruction of the CIAA, the Special Police Department also investigates corruption and complaints of misconduct cases." We found nobody, neither the CIAA staff nor the senior police consultant to whom we spoke, who could tell us anything about the Special Police Unit.

expenditures made in violation of law.

3. The Financial Comptroller's Office has assigned an accountant to every ministry to provide a double check on ministry expenditures; and reports transgressions to the Auditor General. This process entails many delays as ministries turn in completed reports well after the stated deadline; the Auditor General normally submits his final report to the king 12 or more months after the fiscal year has ended, and then Finance Minister lays it before the Parliament where it goes to the Parliament Accounts Committee (PAC) for scrutiny and debate in the context of existing rules.

4. Composed of 33 MPs and chaired by a member of the Opposition Party, PAC invites ministries and the Auditor General for questioning. It then issues directives and suggestions to the Auditor General's Office and the ministries on the irregularities found.

5. The Auditor General publicizes financial transgressions and various agencies initiate actions to penalize the transgressors in accordance with prevailing laws, but the legal process and procedures seem inordinately long and ineffective. Some ministries apparently simply ignore recommendations, or interpret corruption cases as financial irregularities and therefore do not punish them.

LXXIII. Despite this panoply of laws and institutions supposedly designed to prevent corruption and to ensure the regular and lawful expenditure of public monies, peculation continues at an awe-inspiring rate. In 1997 alone, the Auditor



General's report revealed NRs. 4.5 billion misappropriated; and NRs. 20 billion 'unsettled' -- apparently spent in unaccounted-for ways.<sup>27</sup> Again, the written law does not correspond to the behaviors and institutions that actually exist.

(5). *The actors in the bill-creating system: the drafters.*

LXXIV. The relevant actors in Nepal's bill-creation system consist of the legislative drafters, including ministry personnel. These officials have produced laws that purportedly aim at solving the social problems that plague the legal order. They have made many suggestions for improved legislation and regulations. Apparently, however, they have proven unable to overcome the pervasive difficulties that have hindered their proposed legislation's effective implementation.

LXXV. The Law Reform Commission seems to have fallen on bad times. It does not have a full complement of officials, it has a minuscule staff; government does not, apparently, call upon it for anything. A draft Law Reform Act that would give it more status and make it more useful to government has apparently languished for some years.

LXXVI. Finally, Nepal has some 4580 attorneys working in both public and private spheres. The Nepali Bar Association contains some of the most senior practitioners in the country. Nevertheless, the Government has not regularly called upon its members either to draft or to critique legislation drafted by

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<sup>27</sup> Shrestha et al., p. 11

government officials.

LXXVII. Despite these institutions' efforts, and many more, Nepal's laws stills seem *systematically* to miss the mark. That signals Nepal's failure to meet the first criteria of good governance: *Effectiveness* in managing development programs. Nor does Nepal meet the good governance's second criteriion: *Non-arbitrary decision-making by rule*. Where corruption exists, arbitrary decision-making holds sway.

LXXVIII. Nepal has established bill-creating and law-enacting institutions that no doubt aim to produce *effective, non-arbitrary* laws. The drafters, however, have not produced development-oriented legislation that works, or that transparent, accountable, participatory implementing decisions that decide pursuant to rules.

(6). *The law-enacting system*

LXXIX. **Cabinet.** The Cabinet has responsibility for reviewing, revising as necessary, and ultimately approving bills received from the line ministries for submission to the Parliament. After receipt of a bill from the originating ministry, sometimes, but not always, the Cabinet forwards it to the Cabinet Committee on Legislation for further discussion. CCL holds that discussion with relevant ministerial Secretaries in attendance. CCL then returns the bill to Cabinet whose Secretariat provides some of the materials necessary to assess the bill. If the bill has financial implications, or impacts government policy, the originating Minister explains the bill to Cabinet. The full Cabinet does not always discuss a bill very searchingly. The Local Government Bill, for example, went through Cabinet without much debate.



LXXX. Cabinet's members apparently have no way of using facts and logic to make one crucial political decision: How to prioritize the use of scarce government law-drafting resources to produce bills for forwarding to the Parliament. Furthermore, they have little basis on which to assess whether those bills will likely induce the new, development-oriented behaviors required to implement the detailed measures proposed. Once Cabinet has approved a bill, it goes to Parliament.

LXXXI. **Parliament.** The Parliament comprises two Chambers: the Lower House of Representatives with 205 seats; and the Upper House with 60 seats. The Parliamentary Secretariat includes a Secretary General and one Secretary each for the Upper and Lower House. It has a library, about 20 computers, and an audio system in the parliamentary caucus rooms and the Speaker's office. This Secretariat services the MPs and their committees. Parliament sits twice a year for regular sessions to consider the budget (about three months), and one month for a winter session. The Constitution empowers 25 percent of the Lower House members to petition the King to call a special session, supposedly for an 'emergency' -- presumably, to meet emergencies like civil war, famine, or depression. The special sessions thus convened, however, met for a vote of no-confidence in the government.

LXXXII. The Parliament has 11 Committees, of which the Parliament Accounts Committee has become the best known. Two Committees, recently established in response to public complaints about corruption, include one on Parliamentary Privileges and one on Ethics. The latter, whose members include the Prime Minister and the Speaker, has met twice, but its members appear to have too many

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other tasks to work effectively even to draft rules of procedure. The other eight committees deal with substance: Economics, Foreign Affairs and Human Rights, Natural Resources and Environment Protection, Population and Social Affairs, Development and Communication, State Affairs and Remote Areas. These committees apparently perform a fairly effective role in overseeing ministry activities.<sup>28</sup> MPs may invite government and private experts to meet with the Committees on specific issues, and the Secretariat may suggest others. The Committee members do debate specific bills, although usually behind closed doors;<sup>29</sup> apparently some MPs fear that, if they speak out publicly on controversial issues, they may lose their parties' support in the next elections. The Parliamentary Secretariat, however, provides the full Parliament with reports on the issues the Committees have discussed.

LXXXIII. The MPs apparently mainly comprise local political workers. They seldom initiate bills on their own; since 1991 MPs have enacted only three 'private' bills. The government provides every MP with funds for an office and a staff member in their home areas; but not all of them hire anyone or even return home between sessions. IDEA documented several problematic behaviors on the part of some MPs.<sup>30</sup> Only about 20 percent participate actively in the legislative process. Some exhibit 'a tendency to indulge in horse-trading and defections' and a 'culture of legislative corruption.'<sup>31</sup> Almost invariably, given inadequate facts concerning the causes of the social problems proposed bills claim to address, the

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<sup>28</sup> Apparently the 1994 dissolution of Parliament resulted from a Committee investigation of the Prime Minister and some other senior officials.

<sup>29</sup> Others have criticized this as blocking needed transparency. IDEA reports that 'Certain parliamentary procedures do not appear to be democratic.'

<sup>30</sup> P. 16.

<sup>31</sup> Id.



MPs have little choice but to approve those that seem to conform with their parties' stated positions. On the one hand, that contributes to a polarization of the decision-making process of which observers have frequently complained; on the other, the system does not ensure that proposed bills or regulations incorporate the kinds of detailed measures required to induce the behaviors they purport to prescribe.

**LXXXIV. Local authorities.** Various acts have recently granted subnational authorities (district, towns, and village levels) significant powers in relation to law-making, revenue raising, spending and recruitment and deployment of staff, but small towns and villages have not yet exercised these powers to the fullest. A new umbrella law, enacted by Parliament, remains as yet unpromulgated, but whether it will foster greater local government action seems questionable.

*(7). Summary*

**LXXXV.** Nepal exhibits 'soft development' at almost every point that one looks. A vast gap exists between the law-in-the-books and the law-in-action. Despite laws on their face unexceptionable, development programs do not work very well; environmental laws do not lead to behaviors that protect the environment; despite laws guaranteeing judicial independence, the courts seem slow, on at least the lower court levels, uninformed., and corrupt; constitutionally established watchdog agencies do not seem to prevent corruption on many levels; the institutions of bill-drafting and law-enactment do not produce bills that induce conforming behaviors. This proposal does not aim at the civil service generally, that is, the implementing agencies for most laws dealing with development; we

understand that the Asian Development Bank has undertaken aid to that sector. In the next section, we discuss explanations for these problematic behaviors by courts, drafters, Cabinet and Parliament.

## **b. Explanations**

LXXXVI. This section offers some hypotheses to explain the problematic behaviors that hinder good governance in Nepal. It looks at the possible causes of selected aspects of the problematic behaviors that plague four key institution related to good governance: first, the Nepalese judiciary; second, the existing 'watchdog' agencies; third, the bill-creating; and, finally, the law-enacting systems.

The remainder of this Proposal then builds on these explanations to design a set of solutions.

### *(1) The judiciary: Why delays, corruption, and unpredictable decisions?*

LXXXVII. Over the years, both Nepali and foreign experts have studied the Nepali judiciary. Their analyses provide considerable insight into the causes of the problematic behaviors that plague the judiciary. These causes fall primarily into two categories: (1) the Nepalese circumstances, including the existing rules; and (2) the institutional limits of the courts' potential for implementing the laws.

#### *(a). Nepalese circumstances affecting the courts' performance*

LXXXVIII. The three identified difficulties in the courts' performance -- delay, corruption, and unpredictability -- have different explanations. Delay



results from the action of clerks and other court administrators, as well as the judges. On the Supreme Court level this has received careful attention;<sup>32</sup> others have equally carefully studied the lower courts and the Bar.<sup>33</sup> We do not repeat that analysis here, but merely replicate in the next Part the list of tasks that other researchers have suggested need attention.

LXXXIX. Corruption in the courts in Nepal recalls Mark Twain's remark about the weather: Everybody talks about it, but nobody *does* anything. Before one can suggest a remedy, one must explain the phenomenon. Here we discuss only bribes.<sup>34</sup> That judges or other officials take bribes obviously reflects in part their human weaknesses -- their acquisitiveness, and the loose values and attitudes that apparently condone acceptance of bribes. The law combats those human weaknesses by threats of punishment. The question then becomes why the

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<sup>32</sup> Conti & Lipscher, *supra* n. ??.

<sup>33</sup> Secretariat of the Court Management Committee, Supreme Court, "Summary of the Report on Suggestions made by the Court Management Committee, 2055" (n.p.) (a principal cause of the judiciary's current delays and difficulties in combatting corruption in its own ranks lie in the insufficiency of the existing legal framework within which its personnel administer the system of justice, and the lack of well-qualified personnel at many levels. As to the first, the Management Committee has listed several weaknesses or gaps which the Committee maintains lie in the existing laws governing the courts. For example:

**Error! Main Document Only..** Existing law prevents the underutilized revenue and administrative court authorities' from hearing appeals against officials initial decisions relating to taxes, customs, excise duties and land revenue; contracts between government and individuals; profiteering; punishments of government employees;

**Error! Main Document Only..** even if the parties so desire, Local Authorities have no authority to settle minor cases through arbitration;

**Error! Main Document Only..** no criteria and procedures exist defining a conciliation functions undertaken at the Court's initiative;

**Error! Main Document Only..** Under existing law, the Judges cannot undertake any one of several possible alternatives for reducing delays in court proceedings.

<sup>34</sup> Reported thefts of court property, which require different explanations and different solutions, does not touch so directly on the quality of justice.

criminal justice system and the various watchdog institutions do not catch and punish more corrupt judges and court administrators and clerks, thus deterring their fellows. We discuss that below.

XC. Other explanations exist for corruption in the courts. Corruption results not only because officials prove 'weak,' but also because of *weak institutions*: institutions that do not ensure accountability, transparency, judgment by rule, and participation. Those broad categories, of course, do not suffice. With those categories in mind, to design an adequate set of judicial institutions that make bribery less likely calls for an intensive study, with the judges' and administrators' participation, to redesign the courts so as to maximize those elements of the Rule of Law. The Solutions Part of this Project Document proposes that a useful module for foreign assistance might focus on engaging court officials in the conduct of research as a basis for redesigning the courts to reduce existing opportunities for corrupt behaviors.

XCI. Finally, Nepal's judges apparently make unpredictable judgments. When a judge gives a judgment after a trial, the judge must first find the law that governs the case; second, the judge must find the facts accurately; and, third, the judge must make a correct inference from the rule and the facts to the judgment -- all in a way that seems appropriate to most Nepalese lawyers and judges (that is, in accordance with Nepalese 'legal culture'). To say that the judges make inconsistent decisions means that they have failed at one of these three steps. If they cannot accurately find the law in the law books, they must rely on their own guess about the law. The decisions of the Supreme Court do not seem available to all the judges, so they cannot follow its precedents -- and hence may make inconsistent decisions. If a judge lacks proper training, a decision about the law



can fall beside the mark. If a judge cannot find the facts or makes an incorrect inference from the facts available, either (a) the judge again may lack proper training; or (b) the fact finding institutions do not produce evidence on which a judge could make a proper finding; or (c) the judge has ignored the institution that provides a justification of the necessary inference -- mainly the publication of a written opinion giving the reasons for decision. All three reasons may combine to explain inconsistent judgments. Faced by a complex commercial case, for example, an insufficiently trained judge may well misread the law; fail to make adequate factual findings; or, by not writing an opinion or writing an incompetent one, fail to make a correct inference.

(2). *The watchdog agencies*

XCII. Here we examine the four watchdog agencies created by the Constitution: The Judicial Council; the CIAA; the Comptroller General's office; and the Auditor General. As in other sectors of Nepal's legal system, both Nepalese and foreign consultants have extensively analyzed these agencies' difficulties. Existing laws purport to direct the Judicial Council, CIAA, and the criminal justice system (the police, prosecutors and the courts) to take steps to discourage corruption. None work very well. The Solutions part of this Project Document, again, recommends that each of these institutions might become the subject of a module for donor assistance. Since the first task for a donor-assisted project will necessarily involve working with Nepalese officials to analyze the causes of these institutions' relative lack of success in hindering corruption, this section does not attempt to detail explanations of them. Instead, it focusses on a common weakness inherent in relying mainly on these institutions to prevent corruption.

XCIII. Institutionally, all three institutions mainly seek to employ the criminal law to catch and punish corrupt officials or judges, apparently hoping to prevent corruption by general or special deterrence. All three, that is to say, attempt to alter only one cause of corruption: the corrupt officials' (assumed) personal acquisitiveness and low moral level. Yet experience everywhere reveals that punishment for corruption constitutes a very difficult cure to administer. Bribery, for example, has no victim; it constitutes a *victimless* crime. The two parties -- the briber and the person bribed -- both end up satisfied with the transaction. As in trafficking in women, gambling offenses and drug crimes, no victim calls the police to alert them that a crime has occurred.

XCIV. Unless enforcement agencies become proactive, the perpetrators of victimless crimes very frequently go unpunished. Unless the police vice squad actively searches for cases of trafficking, gambling or drug sales, the police likely never even know that a crime has occurred.

XCV. The CIAA and the Judicial Council rely mainly on public complaints to trigger an investigation of bribery charges. The Judicial Council has no staff to investigate these charges; apparently, complaint letters receive only cursory attention. CIAA does keep a record of complaints, but its investigative staff seems incapable of handling all of them effectively. So far as we could learn, the police have no special corruption investigative unit -- and international experience suggests that investigating corruption requires sufficiently specialized skills as to demand an equally specialized department. No whistle-blower statute provides an incentive for witnesses to corruption to come forward.



XCVI. In principle, two agencies oversee the expenditure of public monies. In light of the very high sums of public expenditures which the Auditor General has questioned, it seems doubtful that they have the capacity to do so effectively. The Financial Comptroller's accountants, for example, know how to discover failures to comply with budgeted line-item expenditures, but do not have the information necessary to assess the prices set on items included in the design of large projects for which only one or two companies bid. The Auditor-General has only some 300-odd auditors to oversee 13,000 government units<sup>35</sup> a per year. Moreover, no mechanism exists by which the government can recover unauthorised payments from the officers concerned; and the Secretary or other accounting officer in the unit apparently can avoid personal liability by making some kind of excuse.

XCVII. Government procurement -- everywhere a significant opportunity for corruption -- apparently takes place pursuant to the Financial Regulations of 1986. The Department and the Ministry of Law and Justice have these under consideration for redrafting to fit the 1999 Financial Procurement Act which together with its Regulations aim to remedy a number of problems evident in the existing regulations. Given time constraints, we did not have time to obtain and scrutinize the Act or the proposed regulations. The causes of persistent corruption, however, seem to lie in Nepali drafters' past inability to produce effectively implementable legislation that, among other things, limits the opportunities for givers and receivers to exchange 'favors;' this comprises an aspect of the larger problem that laws have too often proven difficult, if not impossible, to implement.

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<sup>35</sup> Including national, district and municipal authorities, and government autonomous agencies and corporations.

(3). *Why drafters have not proposed effectively implementable legislation*

XCVIII. The several actors in the bill-creating process -- that is, mainly the drafters, broadly conceived (see Box 1) -- have generally neither produced nor provided adequate justifications to demonstrate the proposed legislation would ensure good governance and facilitate implementation of development initiatives. Available evidence relating to the Nepalese law-making process, considered also in light of other countries' experience, suggests several hypotheses to explain their problematic behaviors. First, Nepal has no rules defining the criteria and procedures drafters and others in the bill-creating process should follow in deciding on proposed legislation; nor do any processes exist that in effect define those criteria. Cabinet, which receives the concept paper from a line ministry, has no defined system, either by rule or custom, for prioritizing the use of scarce drafting resources by ranking the order of drafting bills -- which results in neglect of the necessary in-depth investigations into Nepali circumstances, required to ensure effective implementation measures.

XCIX. No requirement ensures that drafters not only provide seemingly technically proficient bills, but a form of justification (a report on the facts relating to Nepalese circumstances) which undergirds their draft bills' detailed measures. Indeed, the process of dividing the drafting tasks into ministry personnel's preparation of concept papers which the legally-trained drafting officials supposedly cast into acceptable legal forms conceals the reality: (1) The concept paper usually contains insufficient details for the lawyers in the MLJ's Drafting Division to construct the details of the proposed bill; (2) line ministry personnel seldom know how to translate broad policy into the detailed measures required to ensure a bill's effective implementation; (3) the lawyers in the Drafting Division



also have neither the theory nor methodology required to draft legislation designed to change institutions; and (4) in drafting a bill's detailed measures, legally-trained officials frequently have little knowledge of the specific Nepalese circumstances that determine whether the bill's addressees -- both the primary addressees, and the implementing agency's officials -- will obey the new law. Experience elsewhere suggests that, without built-in, on-going cooperation between the ministry experts and legally-trained officials, the resulting bills will not likely take into account the non-legal factors that hinder obedience to a law's prescriptions.

C. Unless these two sets of drafters work together to produce an adequate research report to justify their bills, then for any but the simplest bills, likely most Cabinet members and legislators will neither know enough about the relevant facts nor sufficiently understand the bills' circumstances to use reason informed by experience to assess their likely social consequences. Where the Cabinet Committee on Legislation examines a bill, with the attendance of the Secretaries of relevant line ministries and the Secretary for the Ministry of Law and Justice, CCL members may learn in the discussion about the bill sufficient to understand it; but the fruits of those discussions do not reach Parliament. That CCL discussion aside, it seems that some bills may well pass from the MLJ's Drafting Division into law without anyone scrupulously scrutinizing those bills' likely consequences.

*(4). The law-enacting process: Parliament as a two-way communication channel*

CI. In principle, the law-enacting process consists of Cabinet and the Parliament, together with the formal requirement of Royal Assent. As noted

above, in voting for bills, MPs have almost always followed Party lines. Unless they have a basis in fact and logic on which to assess a bill, inevitably their debates over the bills degenerate into polarizing party partisanship. In these circumstances, it does not appear surprising that individual MPs conclude that the debate really matters little, so they might as well act to reap their own personal benefits (as apparently some do, by defecting or accepting bribes).

CII. As another important function, MPs ought to serve as a two-way communication channel between the Center and their constituencies. Presumably, MPs receive funds to employ staff members and set up offices back home to enable them to perform this role. For, unless the citizens at large know *and understand* a law, they cannot evaluate either its implementation or its social impact. Unless MPs' constituents can evaluate a law's implementation, they cannot through their Parliamentary representatives provide feedback about the law's actual effect to the lawmakers, thus contributing to necessary revisions. For citizens' participation to become more than symbolic, they must learn not only about the existence of a law, but about how to assess it.

CIII. Utilizing Nepal's new district and local government structures, MPs might develop into a two-way transmission system between the Center and the their constituents. Apparently, they do not do that now. We do not here try to offer a complete set of hypotheses to explain why they do not; we suggest only a single, partial explanation: Unless the MPs themselves have the facts and logic they require to assess a bill, they cannot readily provide them for their constituents. Given that they do not receive very thorough well-structured written reports to provide the detailed information on which specific bills rest, few if any MPs can



help their constituents learn to use reason informed by experience to evaluate either proposed bills or the ultimate laws' social impact. Another module for donor assistance might concentrate on strengthening the MPs' capacity to play their potential role as two-way communication channels to their constituents.

(5). *Overlapping donor activities*

CIV. Given the extensive international assistance to many sets of actors in Nepal's legal order, the danger apparently exists that some donor activities may overlap or to frustrate each other. For example, apparently, donor agencies have already given considerable assistance designed to improve the capacity of the relevant actors in the law-making process.<sup>36</sup> Parliament has received Danish aid to assist in improving the structure and equipment of Parliament's Secretariat and the work of the legislators. In the past, other donors provided some training for the MPs, but terminated the program for lack of funds. The Asian Foundation, in addition to extensive aid in the form of consultants in formulating training programs for the judiciary, provided some aid to Parliament. Apparently, the DIFD, too, had proposed to help establish a research and information center, but withdrew to avoid duplication of DANIDA's efforts. This experience, perhaps duplicated in other sectors, suggests that lack of coordinated donor assistance may not only result in the wastes of duplication, but also the withdrawal of much-needed aid under the mistaken apprehension that other donors seem engaged in providing it.

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<sup>36</sup> As background concerning the government's position on donor aid, the Cabinet Secretary explicitly stated that a (apparently confidential) regulation requires that every aid project, wherever conceived and by whatever donor provided, must receive Cabinet clearance. That, as we understand it, some officials have suggested UNDP play a role in coordinating donor aid, suggests that this mechanism has not worked very well.

## **(6) Summary**

CV. This section has suggested some tentative explanations for the problematic behaviors of five sets of actors: The courts; the watch-dog agencies; the drafters in the bill-creating process; MPs in their potential role as a two-way communication channel; and the donor community with respect to overlapping and conflicting aid programs in the area of governance. The remainder of this Project Document details the proposed program to address these causes.

### **II. Expected end of project situation**

CVI.. At the end of the project, UNDP assistance will have accomplished the following tasks, all aimed at addressing the causes identified for the difficulties that plague Nepal's existing legal order.

A. A Legal Framework Donor Coordinating Committee of leading Nepalese legal personnel and donor organization representatives will exist to coordinate and advise on assistance to strengthening the Nepalese legal framework. It will hold regular round table discussions to identify the obstacles that hinder efforts to strengthen Nepal's legal order, and to analyze and find effective measures to overcome their causes. In cooperation with the line ministries, it will help develop modules designed to strengthen various aspects of the legal order for which donors might provide assistance; and it will evaluate the progress made. In particular, it will work with the line ministries to identify priority legislation and undertake the necessary participatory investigations to ensure the resulting laws will effectively enhance Nepal's development-enabling environment; for example, by increasing farmers' productivity and marketed



output; improving small enterprises' ease of entry and production; strengthening the Nepalese transportation system; increasing adult literacy; rationalizing the welfare system; and other projects to build the infrastructure of a market-driven economy.

1. The Coordinating Committee will have adopted guidelines for donor and Nepalese organizations joint efforts to formulate and implement projects to aid Nepali efforts to strengthen the national legal framework to foster good governance and self-reliant development.

B. Capacity in MLJ and the line ministries to develop effective legislation to foster good governance and development will have increased, and a learning process will have begun to continually increase that capacity.

1. A minimum of ten drafters from the Drafting Division of MLJ, and twenty-five officials from the several line ministries will have attended a three week workshop in Nepal where they will have studied intensively how to develop legislation for development and good governance.

2. In the course of that workshop, they will have developed, at least in outline form, five or priority bills and research reports that demonstrate their likely social impact.

3. At least five drafters from the Drafting Division of MLJ, one lecturer from the Administrative Staff College, one lecturer from the University's Faculty of Law, and eight officials from the several line ministries will have completed an intensive four months' training program in legislative theory and

methodology, legislative drafting techniques, social science research techniques for drafters, methodologies for non-formal education, in the course of which they will have completed draft priority bills and research reports, and undertaken an intensive program of supervised reading in the foreign law and experience concerning their bills.

4. The Administrative Staff College and the Law Faculty will have instituted courses in legislative theory and methodology and in legislative drafting techniques.

5. MLJ will have produced a drafting manual in Nepali to guide drafters not only in drafting clear and unambiguous bills in simple Nepali, but also to guide them in writing adequate research reports to explain and to justify their bills.

6. MLJ will have produced for Cabinet approval a draft Cabinet Memorandum prescribing the bill-creating process, including a requirement that for all significant bills drafters produce a research report and a social impact statement.

C. The UNDP will have taken initiative to encourage and coordinate donors' responsibility for aiding specific modules related to the Nepalese efforts to strengthen the courts and the dispute settlement system, and other institutions related to the national legal framework. These will include, among others:

## **CVII. MODULE 1: ADDRESSING DELAY AND POOR MANAGEMENT**



## IN THE COURT SYSTEM<sup>37</sup>

- A. Submodule 1A: Drafting regulations for lower court administration
- B. Submodule 1B: Drafting regulations for appellate court administration.
- C. Submodule 1C: Drafting regulations for Supreme Court administration.
- D. Submodule 1D: Providing and installing computers for the courts of Nepal.
- E. Submodule 1E: Training court administrators and clerks in new systems of court administration.
- F. Submodule 1F: Drafting a new Civil Procedure Code. (By all accounts, the present procedure Code needs redrafting in many different ways. Part of that might include procedures designed to cut down on the courts' case load and therefore delay, perhaps by providing for court-sponsored mediation).
- G. Submodule 1G: Drafting a bill to develop community-level alternative dispute resolution institutions

## CVIII. MODULE 2: ADDRESSING CORRUPTION IN THE COURT SYSTEM

- A. Submodule 2A: Drafting regulations designed to reduce low-level court corruption. (Reducing low-level corruption depends in large part on reducing opportunities to manipulate calendar, lose files, etc., matters addressed in Submodules 1 A-E).
- B. Submodule 2B: Drafting a law to reduce high-level corruption in the courts (probably as a Code of Judicial Conduct; and see below,

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<sup>37</sup> Note: Funded by USAID, the Asia Foundation sponsored a consultancy in 1994 by Samuel D. Conti and Robert D. Lipscher; the report is available. We have no knowledge about the extent to which the Nepalese authorities have proceeded on this report. The Report on Suggestions made by the Court Management Committee, 2055 also contains useful suggestions.

Submodule 3A)

**CIX. MODULE 3: MAKING CONSISTENT JUDICIAL DECISIONS**

- A. Submodule 3A: Drafting a law requiring that judges write adequate opinions (perhaps as part of the Code of Judicial Conduct ,mentioned in Submodule J2B)
- B. Submodule 3B: Training judges in selected areas of law:
  - a. Commercial law, and business person's law generally
  - b. Criminal procedure
  - c. Human rights law
  - d. Constitutional law
  - e. Civil procedure
  - f. Writing opinions
  - g. Evidence
- C. Submodule 3C: Building physical capacity at the (proposed) Judicial Training College (books, computers, Internet access, etc.; to be available to the private bar as well as judges and others)
- D. Submodule 3D: Building teaching capacity at the (proposed) Judicial Training College (training for teaching staff; supplying lecturers on secondment; building curriculum).
- E. Submodule 3E: Providing computer equipment, software, and training to facilitate the availability to all interested persons of information relating to existing laws and regulations, cases and court decisions;
- F. Submodule 3F: Developing a court-reporting system to ensure that Supreme Court decisions and new statutes and regulations systematically are distributed at least to judges and lawyers.



## **CX. MODULE 4: IMPROVING THE CRIMINAL JUSTICE SYSTEM**

- A. Submodule 4A: Drafting selected reforms of the substantive criminal law (after consultation, determining specific crimes that need redrafting -- e.g. the law of conspiracy)
- B. Submodule 4B: Drafting selected reforms of the criminal procedure law
- C. Submodule 4C: Building capacity in the prosecutorial service (after consultation, holding workshops or short courses in specific areas of prosecutorial work, e.g., problems of bail; introducing forensic evidence; ethical codes for prosecutors; trying rape cases; trying trafficking cases; trying corruption cases; etc.).

## **CXI. MODULE 5: CONTROLLING CORRUPTION**

- A. Submodule 5A: Drafting a new anti-corruption law (to set in place a mechanism for reducing the new opportunities for corruption that have emerged as Nepalese have become increasingly caught up in global commerce: Foreign exchange transactions; contracts with multinationals; trafficking in women and drugs; ministry officials' unauthorized increased expenditures on travel abroad; and to make reporting of corruption more probable).
- B. Submodule 5B: Establishing a mechanism to ensure that, in drafting a law to empower a ministry to undertake a program, the drafters specify criteria and procedures that make more likely decisions by rule, and transparent, accountable, and participatory procedures.
- C. Submodule 5C: Training and increasing the numbers of auditors available to the Auditor-General's Department.
- D. Submodule 5D: Examining and redrafting as necessary the CIAA law.
- E. Submodule 5E: Training investigators for the CIAA.
- F. Submodule 5F: Establishing a SAARC unit on international prices

and information about international practices that all regional government auditors need to know in order to effectively police international transactions.

## **CXII. MODULE 6: IMPROVING THE CLIMATE FOR INVESTMENT**

- A. Submodule 6A: Drafting selected reforms of 'businessmen's laws'
- B. Submodule 6B: Drafting a commercial arbitration law.

## **CXIII. MODULE 7: INCREASING EQUITY IN DEVELOPMENT<sup>38</sup>**

- A. Submodule 7A: Gender and the law (redrafting selected laws to provide better protection for women's rights, e.g. property law; research into areas of gender discrimination as necessary)
- B. Submodule 7B: Drafting and institutionalization of a social impact statement requirement for all new laws and regulations; the impact statement to specify the consequences of the proposed new rule on women, children, the poor, minorities and the environment.
- C. Submodule 7C: Decentralization and the law: (A program to increase local community members' participation in governance at local levels, including the formulation and implementation of local legislation within the context of the existing national legal framework; and where necessary recommending changes in existing national laws to facilitate more effective local community actions).
- D. Submodule 7D: A program in 'street law' (or 'know your rights') (Preparing and distributing a guide to people's rights when arrested, rights of free speech, what a policeman may and may not do, etc.; training teachers in the subject; and introducing a teaching program in the subject, perhaps in the school system).

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<sup>38</sup> Note: In reality, existing law as an expression of government's policy affects every development project. It may either facilitate or impede the project participants' progress; in turn, every development project inevitably generates ideas as to possible changes in the law (and its implementation) which might improve the enabling environment for those the project seeks to empower. The UNDP Coordinating Committee will have made decisions as to which of these or other possible modules might best contribute to improving the impact of Nepal's legal order in shaping the Nepalese people's life opportunities.



#### **CXIV. MODULE 8: STRENGTHENING PARLIAMENT**

- A. Submodule 8A: Strengthening Parliament's role in the law-making and implementing process. (Providing training and facilities for the Secretariat, especially more research capacity to provide the MPs and their committees with greater information related to up-coming legislative matters.
- B. Submodule 8B: Strengthening the MPs' role as two way communicators to assist their constituents to understand and assess specific laws' social impact.

#### **CXV. MODULE 9: A COMMUNITY LAW-AWARENESS PROGRAM:**

- A. Submodule 9A: Introduction of educational programs in the schools and media to increase community awareness of how Nepalese citizens might participate in ensuring the realization of law's potential as an instrument for facilitating development.

#### **CXVI. MODULE 10: INITIATING A SAARC GOVERNANCE PROGRAM**

- A. Submodule 10A: To stimulate regional exchange of experiences, and lay a basis for developing regional training and research facilities to enhance Nepal's and the other participating countries' efforts to strengthen their national legal frameworks, a series of regional workshops on ways of strengthening regional judicial systems and institutionalizing more open, accountable and participatory law-making processes .

#### **CXVII. MODULE 11: COMPUTERIZATION AND THE LAW**

- A. **Submodule 11A:** A review of existing computer facilities to identify the possibilities, and to create an adequate, centralized data base available to anyone seeking information about the law; and to provide greater training and access by all interested persons.

### **III. Target beneficiaries**

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**a. Target beneficiaries**

CXVIII. Target beneficiaries will include litigants in the courts, who will have greater opportunities to enjoy more prompt and equitable justice; businessmen, who will find in an improved legal framework a more hospitable investment climate; and all Nepalese citizens, who will have access to and will participate in more transparent and accountable systems of governance and development.

**b. Direct Recipients:**

CXIX. Direct recipients will include:

1. Members of the judicial system, who will receive adequate training to perform their jobs promptly and efficiently in the context of clearly-stated rules that specify criteria and procedures designed to ensure fair and equitable justice.
2. Legislative drafters in the Ministry of Law and Justice, and line ministry officials responsible for draft legislation who will acquire the necessary legislative theory and methodology required to translate government policy into effectively implemented legislation.
3. Line ministry officials responsible for draft legislation, who will acquire sufficient legislative drafting techniques to participate meaningfully in assessing draft legislation and in drafting preliminary drafts of bills.



4. Members of Parliament who will acquire the skills required to assess legislation and effectively perform their tasks as two-way communicators between their constituents and the legislature.
  
5. Selected faculty members of the University School of Law and the Administrative Staff College who will receive the training necessary to institutionalize an on-going learning-by-doing legislative drafting process to train future drafters in the course of producing bills.

**c. Programme:**

CXX. The programme will involve the following main strategic moves:

1. The programme will organize the Legal Framework Coordinating Committee, which in turn will help interest potential donors in the several Modules, especially those strengthening the judicial system. Depending on availability of funds and the priority accorded them after discussions with the Coordinating Committee, UNDP may wish to undertake one or more of those Modules itself.
  
2. The programme will see to the drafting of bills, including legislation to strengthen the judicial system, using the occasion to introduce drafters and national ministerial personnel, lecturers in law and public administration institutions, and members of parliament and Provincial Councilors to legislative theory and methodology.
  
3. The programme will provide intensive overseas training in legislative theory, methodology, social science research techniques for drafters, appropriate teaching techniques and, on selected topics in foreign law and experience to selected drafters in the drafting division of the Ministry of Law and Justice, selected officials from the several line ministries, and

one faculty members from the Administrative Staff College and from the Law Faculty. On their return, those trained will cooperate with the Administrative Staff College and the Law Faculty to institutionalize an in-service learning process for drafters in the MLJ and officials in the line ministries in the materials they studied in the intensive course, and to institute courses in legislative theory, methodology and drafting techniques in the College and the Law Faculty.

**A. Project strategy and implementation arrangements.**

1. The project shall be subject to annual evaluation, according to a proposed organization, terms of reference, and timing decided after consultation between the parties to the project document plus any associated donor agencies taking part in the Coordination Committee.
2. The Project will be under national administration, with the Ministry of Law and Justice assuming executive responsibility. The Coordination Commission will serve as advisory commission for the project.
3. The project budget will include \$ \_\_\_\_\_ to finance a final evaluation. The provisions for evaluation may not be reduced without written agreement by all parties to the project document.
4. A time schedule of reviews, reports and evaluation is attached as Annex II.

**Section C: Development Objective**

CXXI. This Project has the following development objectives:

- A. To strengthen the bill-creating and law-enacting capacity of the Nepalese government to design and draft effective, implementable transformatory laws that, in accordance with the requirements of good governance, induce a high degree of accountability, transparency and popular participation in governmental decision-making;



- B. to see to the drafting of priority bills and their accompanying research reports; and
- C. to strengthen the judicial system's capacity at all levels to overcome endemic delays, corruption, and inconsistent decisions in accord with clearly stated rules relating to criteria and procedures.

## **SECTION D: IMMEDIATE OBJECTIVES, OUTPUTS AND ACTIVITIES**

### **1 Immediate Objective 1.**

To establish an advisory committee composed of MLJ and selected Nepalese and donor agency representatives to advise MLJ on the Project to strengthen Nepal's legal framework.

#### **1.1 Output**

1.1.1 Regular meetings, two or three times a year, to advise MLJ on Project.

1.1.2 Preparation of guidelines for donor assistance to Project.

#### **1.2 Success criteria**

1.2.1 *Regular meetings of advisory committee.*

#### **1.3 Activities**

1.3.1 Appointment of advisory committee members by May, 1999.

1.3.2 Arrangement of meetings, beginning May, 1999.

1.3.3 Appointment of committee to prepare guidelines for donor assistances, June/July, 1999.

1.3.4 Preparation of guidelines

1.3.5 Presentation of draft guidelines to Advisory Committee, July,

1999.

1.4 Responsible party

1.4.1 MLJ

1.4.2 MLJ, UNDP

1.4.3 MLJ, UNDP

1.4.4 MLJ, UNDP (CTAs as advisors)

1.4.5 MLJ

2 Immediate Objective 2

To enhance the intellectual capacity of national and provincial drafters and line ministry officials to draft high quality transformatory bills responsive to national needs that meet the requirements of good governance, that is, that maximize accountability, transparency, and participation, and make government by rule more likely.

2.1 Outputs for Objective 2

2.1.1 In the Ministry of Law and Justice's Drafting Division (MLJ), the establishment and institutionalization of an on-going in-service learning process to enable its drafters and ministerial officials in the course of drafting high-quality priority bills to learn legislative theory and methodology, and, for ministerial officials, elementary legislative drafting techniques, led by five overseas-trained senior drafters.

2.1.2 In the University School of Law, the establishment and institutionalization of a course in legislative theory and methodology, taught by a faculty member with overseas training in the subject, to teach students how to design legislative programmes; and, on request, to equip MPs with knowledge of how to assess bills and the social



consequences of enacted laws and statutes.

2.1.3 In the Administrative Staff College, establishment and institutionalization of courses in legislative theory and methodology of drafting, taught by a faculty member with overseas training in these subjects, to teach them to potential future ministerial officials and drafters.

## 2.2 Success criteria.

2.2.1 *The production of high-quality draft bills, research reports and social impact statements in the course of the training described.*

2.2.2 *Increased capacity of MLJ personnel to draft high quality transformatory bills and research reports, as evidenced by the quality of the bills and the persuasiveness of the research reports.*

2.2.3 *Increased capacity of personnel passing through the Administrative Staff College to develop legislative programmes with a high probability of inducing behaviors consonant with development and good governance, and to draft laymen's drafts and research reports to carry out those programmes.*

2.2.4 *Increased capacity of graduates to develop legislative programmes with a high probability of inducing behaviors consonant with development and good governance, and to draft laymen's drafts and research reports to carry out those programmes.*

## 2.3 Activities

2.3.1 3 week workshop in Kathmandu, June-July, 1999

(a) *Content:* Participants will write first drafts for at least five priority bills and research reports, and in the process to begin to learn legislative theory and methodology, and, for line ministry officials, elementary legislative drafting techniques;

and to learn foreign law and experience relevant to drafting each priority bill. The CTAs will lead the first two weeks of the workshop, helping participants develop skills and knowledge in legislative theory, methodology and legislative drafting techniques, and how to write a competent research report and social impact statement. In the last week of the workshop, specialized consultants in the subject-matter of each bill will conduct small seminars consisting of the members of that bill's drafting group.

(b) *Leaders*: CTAs (first two weeks); specialized consultants and CTAs (last week).

(c) *Participants*: At least 5 MLJ staff drafters, 6 to 8 senior officials from each of at least five relevant ministries, and 2 faculty members each from Faculty of Law, University Law School and Administrative Staff College.

(d) *Bills*: MLJ to specify four priority bills for workshop.

(e) *Selecting consultants*: UNDP will expeditiously advise the consultants of the bills for drafting at the workshop. Time permitting, the CTAs will forward to UNDP expeditiously their names and cvs of three possible consultants for each bill, together with the CVTA's recommendations. MLJ in consultation with UNDP will make the final selection.

#### 2.3.1.1 Responsible parties

(a) MLJ in consultation with the relevant line ministries and the UNDP Coordinating Committee for strengthening Nepal's legal framework, to select priority bills related to for the subject-matter of the workshop.

(b) MLJ to select participants.

(c) CTAs to lead the first workshop.

#### 2.3.2 Identification of a four-month overseas training program that offers courses in legislative theory and methodology for



designing transformatory law; social science methodologies relevant to assessing available evidence for justifying proposed bills; and teaching methods to enable the participants to prepare materials and establish a learning-by-doing process in their respective institutions; and specialized tutorial instruction in foreign law and experience in the area of specified priority Nepalese drafting projects.

#### 2.3.2.1 Responsible parties

MLJ and relevant officials from law school and Administrative Staff College to select the overseas institution from a list submitted by UNDP.

2.3.3 5 MLJ drafting division staff, 1 staff member each from the University Law School and the Administrative Staff College, and 8 selected line ministry staff members to attend overseas program selected pursuant to 2.3.1.2. Each participant from the MLJ Drafting Division's staff and from a line ministry to come prepared to draft a priority transformatory law; each participant from the teaching institutions to come prepared to draw up a syllabus and teaching materials for courses in legislative theory and methodology. Participants to come prepared to help write a text in Nepalese for Nepalese students in legislative theory and methodology and legislative drafting techniques. **All participants to be bonded to remain at their present institutions for not less than three years after receiving training.**

#### 2.3.3.1 Responsible parties

(a) MLJ to select five staff members to attend overseas training institution; dean of School of Law and Principal of the Administrative Staff College to select one member of the staff of each to attend that institution; the Secretaries of 8 line ministries each to identify one senior official who will, on return, provide leadership in

equipping ministry personnel with the tools required to translate policies into effectively implemented laws.

(b) The same officials to assign bills and subjects for the participants to develop during their overseas training.

#### 2.3.4 Three week workshop, Nepal, June, 2000.

(a) *Content*: To write first drafts for at least five priority bills and research reports, and in the process to begin to learn legislative theory and methodology, and, for line ministry officials, elementary legislative drafting techniques; and to learn foreign law and experience relevant to drafting each priority bill. The returned facilitators will lead the first two weeks of the workshop, helping participants develop skills and knowledge in legislative theory, methodology and legislative drafting techniques, and how to write a competent research report and social impact statement. In the last week of the workshop, specialized consultants in the subject-matter of each bill will conduct small seminars consisting of the members of that bill's drafting group.

(b) *Leaders and facilitators*: The returned facilitators from the overseas training course referred to in 2.3.1.3 (first two weeks); consultants selected as per 2.3.1(e) (third week).

(c) *Participants*: 5 Drafting Division staff drafters, 6 to 8 senior officials from each of at least five relevant ministries, and two faculty members from the Law School and from the Administrative Staff College; two members of the Parliamentary Secretariat.

(c) *Bills*: Drafting Division and Line Ministries to specify at least 5 priority bills for consideration by workshop.

(d) *Consultants and advisors*: CTAs to serve as course consultants and evaluators; consultants selected as per 2.3.1(e)

##### 2.3.4.1 Responsible parties



(a) Drafting Division and line ministries to select at least five priority bills.

(b) Returned facilitators from overseas training course, as leaders.

(c) Drafting Division and relevant ministerial secretaries to select participants.

(d) CTAs (consultants, and as course evaluators).

(e) CTAs to nominate, and MLJ with UNDP to select, consultants.

2.3.5 In July, 2001 repeat activity 2.3.4 for at least five new bills, without CTAs as consultants.

2.3.6 Introduction by Drafting Division of internal procedures to ensure transfer of knowledge about legislative theory and methodology from facilitators to other MLJ Drafting Division staff.

2.3.6.1 Responsible parties

With CTAs' assistance, MLJ to develop procedures and prepare an internal memorandum concerning them.

2.3.7 Law Faculty and Administration Staff College participants in 4 month overseas program prepare draft syllabi for inclusion in the Law School curriculum and the training of senior public officials at the Staff College, together with readings; complete by June, 2001.

2.3.7.1 Responsible parties

Staff overseas participants from the two institutions

2.3.8 Pilot use of workshop syllabi, manual and readings in July, 2001, 3-week workshop in Nepal as per 2.3.5; revision

for use in subsequent workshops for Division and line-ministry drafters.

2.3.9 Pilot use of syllabi, manual and readings in 2001 Law School and Administrative Staff College courses, and revision for use in subsequent courses.

### 3 Immediate Objective 3

In the MLJ, the establishment of institutionalized procedures ensuring maximum feasible participation in the bill-creating process, and that, each transformatory bill comes accompanied by an adequately researched and written research report justifying the bill, and by a social impact statement describing the bill's anticipated impact on women, children, the poor, minorities, the environment, and good governance.

#### 3.1 Outputs for Objective 3

3.1.1 Institutionalized procedures for the drafting process, supported by written regulations, requiring maximum feasible public participation in the bill-creating process, and that drafters support bills with research reports justifying them, and social impact statements describing the bill's anticipated consequences for women, children, the poor, minorities, the environment and good governance.

#### 3.2 Success criteria for Objective 3

3.2.1 *Cabinet regularly receives high quality bills and informative research reports and social impact statements that permit Cabinet intelligently to assess bills submitted to Cabinet.*

#### 3.3 Activities for Output 3.1

3.3.1 During 1999 four month overseas program, 2 drafter-facilitators from Drafting Division will review relevant foreign law and experience and prepare first draft of new regulations for the legislative drafting process, accompanied by a research report, providing for:



(a) Regular appointment of drafting groups including representatives of concerned ministries and the MLJ's Drafting Division for each transformatory bill;

(b) opportunity for stakeholders and the public to make inputs into the drafting process; and

(c) requiring research reports and social impact statements in an appropriate, specified form for all transformatory bills.

3.3.1.1 Responsible parties

MLJ participants in overseas training program

3.3.2 Review and revision of draft amendments, regulations and research report at July, 1999 workshop in Nepal

3.3.2.1 Responsible parties

Workshop facilitators; CTAs as consultants and advisors

3.3.3 Submission of draft rules and research report to Cabinet for further action.

3.3.3.1 Responsible parties

MLJ

4 Immediate Objective 4

Write a Manual of legislative Drafting Practice in Nepal, to include not only details about legislative drafting techniques for drafting bills and pother laws, but also for writing competent research reports and social impact statements

4.1 Outputs

4.1.1 A legislative drafting manual that includes not only details about legislative drafting techniques for drafting bills and other laws, but also for writing competent research reports and social impact statements

4.2 Success criteria

4.2.1 A legislative drafting manual as described in 4.1.1.

4.3 Activities

4.3.1 Prepare a legislative drafting manual as prescribed.

4.3.1.1 Parties responsible

Overseas participants from MLJ, as assigned by MLJ.

5 Immediate Objective 5

Computerization of drafting process and consolidation of all national and provincial laws, amendments and subsidiary legislation.

5.1 Outputs

5.1.1 A computerized database of all Nepalese laws, subsidiary legislation, regulations, and other rules promulgated by the government, in a form available to the general public with computer access.

5.1.2 At least one-half of all government lawyers and judges sufficiently trained in the use of computers that they can access the database.

5.2 Success criteria

5.2.1 *The computerized database in existence and available to the general public with computer access.*

5.2.2 *At least one-half of government lawyers and judges trained to access the data base.*



### 5.3 Activities for Output 1.4

5.3.1 Identification and appointment of qualified experts to begin work immediately to prepare soft ware programme for consolidation of all national and provincial legislation.

#### 5.3.1.1 Responsible parties

UNDP with consent of MLJ to supply experts (NOTE: Not included in the present budget; see Module 11 above).

5.3.2 Selection of a qualified firm to establish and provide equipment for centralized computer system for all officials and teaching institutions responsible for improving national and provincial capacity to produce high quality transformatory legislation.

#### 5.3.2.1 Responsible parties

See 5.3.1.1.

5.3.3 Training for all legal staff of MLJ Drafting Division in use of computers for drafting and access to consolidate Nepalese legislation and internet.

#### 5.3.3.1 Responsible parties

MLJ

## 6 Immediate Objective 6

Persuading senior concerned officials of the desirability of the Project and its proposed outcomes, and their participation in its formulation, to the end that they 'own' the project.

### 6.1 Output 6.1

At least two brief workshops for senior officials on the project's

objectives, and its theory and methodology

## 6.2 Success criteria

*Senior officials have enough familiarity with what the Project aims to do with respect of coordinating foreign donor aid in this area, improving the court system, drafting bills, and the underlying drafting theory and methodology, that they support the project as strongly as possible.*

## 6.3 Activities for Output 6.1

6.3.1 During the period of the July, 1999 workshop, a morning workshop followed by luncheon for senior leaders on the theory and methodology of the Project, led by the CTAs and the MLJ Drafting Division staff.

6.3.2 Ditto, during the period of the June, 2000 workshop.

### 6.3.2.1 Responsible parties

MLJ and UNDP to arrange meetings and luncheons; national project director and CTAs to explain project

## 7 Immediate Objective 7

Building capacity in leading members of Parliament.

### 7.1 Output 7.1.

A substantial number of MPs and of the Parliamentary Secretariat will have some ability to use legislative theory and methodology to help them assess a bill.

### 7.2 Success criteria

*At least 60 MPs with at least two days' training in how to assess a bill; at least two members of the Secretariat who have attended a three-week workshop in these subjects.*



### 7.3 Activities for Output 7.1.

7.3.1 During July, 1999 visit of CTAs, CTAs to conduct a two-day workshop for 30 MPs on how to assess a bill, using as examples three priority bills being drafted at the July 1999 workshop.

#### 7.3.1.1 Responsible parties

MLJ with cooperation of Parliamentary Secretariat to organize a two day-workshop; CTAs to coinduct it.

7.3.2 During July, 2000, visit of CTAs, lecturers from Law School and Administrative Staff College to conduct a two day workshop for MPs on how to assess a bill, using as examples three priority bills selected by the MLJ and CTAs to serve as consultants and evaluators.

## SECTION E: INPUTS

### Government

a) Ministry of Law and Justice staff.....Rps \_\_\_\_\_ lahks

#### (b) Training

Costs of running 3 three week workshops in Nepal  
.....Rps \_\_\_\_\_ lahks

Costs of introducing legislative drafting training  
in University School of Law.....Rps \_\_\_\_\_ lahks<sup>39</sup>

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<sup>39</sup>

Including staff and administrative personnel salaries attributable to

Costs of introducing legislative drafting courses  
in College of Managemtn.....Rps \_\_\_\_\_ lahks

(c) Land and buildings

MOLJ Drafting Division.....Rps \_\_\_\_\_ lahks

Workshop training location.....Rps \_\_\_\_\_ lahks

University School of Law class rooms, library.Rps \_\_\_\_\_ lahks

Management college class rooms, library.....Rps \_\_\_\_\_ lahks

(d) Equipment.....Rps \_\_\_\_\_ lahks

(Equipment now available or to be procured for Project use, including  
expendable supplies, operational costs, computers)

UNDP

a) Personnel.....\$129,336

CTAs to conduct two learning-by-doing training workshops for MLJ and  
ministry drafters, and University Law School and Administrative Staff  
College faculty members in Nepal

legislative theory and methodology;

available substantive information concerning foreign law and  
experience relevant to priority bills prepared at July '98, March '99  
workshops.

One foreign consultant for each of five bills for one week of the two three  
week learning-by-doing training workshops<sup>40</sup>

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course.

<sup>40</sup> This estimate includes, for each of ten foreign consultants, \$3000 for travel; \$700 per diem for seven days; and (assuming \$250 per day for five days) \$1250 as an honorarium. The



Mission costs

b) Training overseas.....\$270,000

Four months overseas training for 5 MLJ Drafting Division officials, 8 senior line ministry officials, and 2 faculty members from University Law School and Administrative Staff College.

c) Equipment.....\$190,000<sup>41</sup>

\*Centralized computer system

\*Software for consolidation of laws, amendments, and subsidiary legislation

(Specifications for major equipment items are provided in Annex IV)

SECTION F: RISKS

Potential risks

1. At the outset of the Project:

This proposal if completed will bring about some deep-seated changes in the judicial system as well as the bill-creating and law-enacting procedures in Nepal. Extensive discussions with leading government officials and advocates indicate their recognition that that kind of change seems necessary to strengthen the judicial system in particular as well as the legal order in general. To deepen these officials' understanding of the Project, it is proposed during the first three week workshop to invite them to

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advantages of bringing foreign experts to the workshops would include enabling all members of the drafting teams for each bill to learn about relevant foreign law and experience and its potential implications for their bill. The foreign donor financing the module which proposed that bill might pay the costs of the relevant consultant. Alternatively, the donor might provide a consultant at a later period, after further consultations about the initial draft in Nepal. Or the team might rely on relevant materials provided for Nepal's legal library by the donors and through internet.

<sup>41</sup> The Legal Framework Coordinating Committee could seek a donor who would finance this essential computerization.

one or two day workshops to inform them of its aims and progress.

## 2. During Project:

Given the essential role of trained core drafter-facilitator personnel and teaching staff in the relevant training institutes, introduction of a system of bonding for a period of three years for those who go overseas for training may help to ensure they will take the essential initial steps in developing on-going training programs for the relevant ministerial personnel and in the Law School and Management College. Beyond that, to retain their services, the Project proposes improving all drafters' incentive structures and career paths.

Because leaders change, it is essential that if new leaders take the place of those who presently support the Project, these new leaders be as soon as possible brought to 'own' the project by explaining to them its objects, purposes and underlying methodology and theory.

## SECTION G: PRIOR OBLIGATIONS AND PREREQUISITES

### Prior obligations

None

### Prerequisites

The Drafting Division has a long standing tradition and the well-qualified personnel required to administer all aspects of the proposed Project. Once having their staff trained to teach the new courses, the Law School and Administrative Staff College seem well positioned to carry out formal instructional functions.

The MLJ and the relevant teaching institutions have agreed to send the requisite qualified personnel for overseas training and, on their return, to assign them to conducting regular, on-going workshops and courses in legislative drafting theory and methodology.

The relevant national authorities have agreed to cooperate with the MLJ in the assignment of well-qualified senior officials to drafting teams for



priority transformatory bills.

The Project Document will be signed by the UNDP, and UNDP assistance will be provided only if the prerequisites stipulated above have been or are likely to be fulfilled. When anticipated fulfillment of one or more prerequisites fails to materialize, the UNDP may, at its discretion, either suspend or terminate its assistance.

## SECTION H: PROJECT REVIEWS, REPORTING AND EVALUATION

1. At each stage, the CTAs, the MLJ, and the Project participants will conduct evaluations of the specific features of the project (ie at the end of each set of outputs/activities listed in the Preliminary Workplan; the 2 workshops in Nepal; and the overseas training, as well as the courses in the School of Law and the Managment College.)
2. The project will be subject to tripartite review (joint review by representatives of the Nepali MLJ, the UNDP, and the CTAs) at least once every 12 months. The first such meeting will take place within the first 12 months of the start of full implementation. The MLJ shall prepare and submit to each tripartite review meeting a Project Performance Evaluation Report (PPER). If necessary, additional PPERs may be requested during the Project.
3. A terminal project report will be prepared for consideration at the terminal tripartite review meeting. It shall be prepared in draft at least four months prior to the terminal tripartite review to allow review and technical clearance by the MLJ.

(Who prepares this? Should this proposal include recommendation for an outside evaluation mission, with costs included in the Project budget????????????????? (see p. 135 of 'How to Write a Project Document')

SECTION I: LEGAL CONTRACT (see p. 137 for form which depends on whether or not the government has signed UNDP Standard Basic Assistance Agreement)

## SECTION J: BUDGETS



## BUDGET FOR PROPOSED NATIONAL LEGAL FRAMEWORK PROJECT

Country: Nepal  
 Project Number: \_\_\_\_\_  
 Project Title: National Legal Framework

### Project Budget Covering UNDP Contribution (in U.S. dollars)

<u>Description</u>	<u>Total</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Project personnel				
CTAs <sup>42</sup>	29,000	11,250	11,250	7,500
Consultants/ bill	19,500	9,750	9,750	
Sub-component Total	42,000	17,250	17,250	7,500
Travel <sup>43</sup>	60,000	25,000	25,000	10,000
Mission costs	10,836		3,612	3,612
Component Total	<u>129,336</u>	<u>49,112</u>	<u>49,112</u>	<u>21,112</u>
15 Training Fellowships	270,000	270,000		
Component Total <sup>44</sup>	<u>270,000</u>	<u>270,000</u>		

<sup>42</sup> CTAs = 1.5 m/m per year (includes supervision of training overseas and three weeks each year in Nepal, conducting workshops and evaluating institutionalization of project).

<sup>43</sup> Estimated cost of round-trip, Boston-Nepal business class, \$5,000 for each CTA.

<sup>44</sup> Tuition, board and room estimated at \$16,000; travel at \$2,000, totalling \$18,000/fellowship.

Equipment				
Non-expend- able equip	190,000	190,000		
Component				
<u>Total</u>	<u>190,000</u>	<u>190,000</u>		
Miscellaneous	24,000	8,000	8,000	8,000
Component				
<u>Total</u>	<u>24,000</u>	<u>8,000</u>	<u>8,000</u>	<u>8,000</u>
<hr/> Grand Total	<hr/> 603,336 <sup>45</sup>	<hr/> 517,112	<hr/> 57,112	<hr/> 29,112

**Project budget covering Government contribution  
(in lakhs of Rupees)**

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<sup>45</sup> Of this total, foreign consultants for each of five bills at two workshops account for \$49,500, and computerization accounts for \$190,000. If the UNDP can find other donors to provide funds for these purposes, these costs to the UNDP might be reduced or eliminated.