

Terms of reference for national consultant -- strengthening the rule of law: supporting the judicial system in Nepal

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UNDP

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Terms of Reference for National Consultant

Strengthening the Rule of Law: Supporting the Judicial System in Nepal

1. Background:

The Government has indicated interest to utilise UNDP's advantage and experiences to improve the judicial system in Nepal. Judicial reform has been identified by UNDP's Policy on Governance as one of the target governance institutions to receive support by the organisation.

UNDP has been supporting the initiatives of the Government to improve local governance to strengthen decentralisation and for poverty alleviation in Nepal. On-going initiatives are expected to build the basis for local self-governance and the institutional basis for sustainable human development. The sustainability and impact of local initiatives are assured, however, only with strong linkage and appropriate environment for transparent governance and administration at the central level. The role of the state, constitutional organs, legal and regulatory mechanisms (policies), markets, civil society are very important to ensure accountable, effective governance for the development of Nepal.

The first election since the restoration of democracy was held in 1991, leading to the establishment of the Parliament and Government under the Constitutional monarchy. The people have exercised their sovereign authority by electing their Representatives to the Parliament, thereby giving the parliament and government the authority to govern for the common good.

However, frequent changes in the Government and their short-duration of existence have resulted in extensive transfer of government staff, rent seeking opportunities, politicisation of the bureaucracy, weak infrastructure and response to local needs, and delays in implementation of development programmes. Clarification of the roles and functions of Ministers, Secretaries, Ministries, Departments, Local Authorities and various constitutional organs would significantly contribute to establishment of a clear line of authority for efficient administration and dispensation of justice.

Although the judicial system is considered fairly strong through its constitutional provision, the overall perception towards the judicial system is not positive. Independent groups, such as human right activists, advocates, responsible officers in government, journalists and members of the general public have voiced concern about the lack of impartiality and independence of the justice system. Similar concern is also expressed in the long delays in providing justice. Some of the key problems are; rapid expansion of judiciary resulted in poor court management; insufficient legal aid to the poor and disadvantaged; high legal expenses; staff management problems; and influence of politics and socio-economic factors on court activities; lack of integrity of judges and corruption in court.

Overall court management system is rather loose and there is prevalent corruption at every level of judiciary process. Forensic evidence reports could go 'missing' in the system. Cases can be 'lost' in the court office and the penalty for the loss is a few rupees. Cases can be dropped at prosecution lawyers' discretion. There is almost no prosecution mechanism or legal framework for bribery or corruption in the system. Pervasive corruption can only be curbed if criminal justice system becomes more solid and effective.

Efficient legal drafting and legislation works are indispensable for the justice system to be effective. However, adequate resources are not available for legal drafting works at the Ministry of Law and Justice. There is shortage of manpower and a staff often lacks expertise in the relevant field. Bills are prepared in haste and extensive discussion is not given in their preparation. Bills review committees at the Parliament are conducted behind closed doors, therefore legislation process are not transparent and accountable to the public. While there is only few experts in committees, no provision has been made for public hearing in the review process.

Constitutional bodies such as the Commission for Investigation of Abuse of Authority (CIAA) has the power to investigate into the irregularities committed by the Government. The Government has the tradition of establishing different commissions and committees to investigate dishonest activities as well. However, the different committees, including the CIAA, have rarely succeeded in bringing the culprits to face justice. There is no communication or co-ordinated efforts among Ministry of Law and Justice, Ministry of Home, Police Department, Attorney General, and other constitutional bodies to tackle issues of corruption.

There is no political will to develop a proper judiciary system. The Government and politicians do not wish to reform the system. Public funds disappear in 'leakage' from government departments, taxation and finance. Watchdog bodies are reluctant to do anything as it might result in their demotion or termination. At present, the Government and politicians' actions are not censured by the justice system.

Poverty alleviation will not be achieved without reform of judiciary system and eradication of corruption.

2. Tasks of the National Consultant:

A national consultant will be responsible to lay the groundwork for an international mission that will be fielded at a later stage to formulate the technical assistance programme to assist the Government in developing capacity and improving the judiciary system in Nepal. The consultant will prepare the terms of reference (TOR) for the international mission. Another output of the consultant will be the comprehensive analysis report on previous and on-going assistance and intervention by donor agencies, NGOs, INGOs, government bodies and other relevant parties in the field of judiciary reform and the eradication of corruption. Lessons from previous initiatives should be

drawn to help the international mission identify the best entry points for the technical assistance programme.

The consultant should pay particular attention to the following issues and assess how the previous and on-going initiative have succeeded or failed to achieve their objectives, when preparing the report.

- Roles, functions and jurisdiction of the judiciary, especially in the area of criminal justice,
- Issue of corruption at every level of judiciary process,
- Efficiency of overall court management system,
- Independence of judges,
- Training and education facilities for judges and other court staff,
- Status of legal education,
- Information facilities for judges to access up-to-date legal texts,
- Costs of justice,
- Political and economic influence on judiciary process,
- Review of landmark cases,
- Integrity and transparency,
- Reform of entire criminal justice system providing for more public participation,
- Relationship between the court and the police, including reporting procedure by the police,
- Public access to justice,
- Quality access to legal support by the poor and disadvantaged,
- Gender equity in access to justice and in the judiciary,
- Legal drafting,
- Collection and handling of forensic evidence,
- Capacity and efficiency of forensic laboratories.

The analysis should cover current strengths, weakness, opportunities and threats (“SWOT”) to identify high leverage points of entry to reform criminal justice system and develop strategies to support a strong, transparent and accountable judicial system and eradicate pervasive corruption.

3. Methodology:

Approach

The national consultant will combine a literature review with research and analysis in order to assess, analyse and prescribe a series of interventions on judiciary reform and issues of corruption.

I. Preliminary Work

- Gain familiarity with donor organisations, NGOs, INGOs, and national and international agencies involved in initiatives related to judiciary reform and issues of corruption.
- Review the past strategies and methods and identify best practices and demonstrated impact.

II. Needs Assessment

- Review secondary literature.
- Identify key areas for further inquiry.
- Conduct preliminary needs assessment.

III. Analysis and Prescription/Recommendations

Analyse results of above I. and II. and recommend intervention strategies. The output of this component should be a report encompassing the following:

- Analysis of problems.
- Summary and evaluation of past and on-going interventions.
- Discussion of findings.
- Recommendations on overall programme strategy.
- Recommendations for implementing modality.

IV. Programme Presentation

- Presentation of the reports to UNDP senior management.

4. Duration of the Process:

The consultant will have one month (thirty working days) to complete the tasks stipulated in this terms of reference.

5. Reporting and Responsibility:

The consultant will be responsible for the implementation of the complete terms of reference and will report to the UNDP senior management as well as GIN Unit.