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Evaluation report relating to term's work of four Nepali visiting scholars -- Fall, 1999

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EVALUATION REPORT RELATING TO TERM'S WORK OF FOUR NEPALI VISITING SCHOLARS Fall, 1999

I. OBJECTIVES

To learn legislative theory and techniques, four officials from Nepal's Ministry of Justice participated in the Boston University (BU) Law School's Program on Legislative Drafting for Democratic Social Change. The program proposed to build capacity for the four officials to play a significant role in achieving the objectives of the UNDP-Ministry of Law and Justice Project:

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.

Their participation had two objectives. First, in the course of drafting significant bills, the officials aimed to improve their own skills in conceptualizing and translating policy into effectively implementable legislation. Second, they engaged in planning how, on their return to Nepal, they would contribute to the institutionalization of an on-going learning process. That process proposes to equip Nepalese legislative drafters with a theory and techniques likely to ensure good governance and the Rule of Law. Based on the four officials' own evaluations and our observations, this report evaluates their participation in the Program in light of those objectives.

II. THE PROGRAM

The Program engaged the four officials in a learning process comprised of five units: Legislative theory and methodology, legislative drafting techniques, social science research techniques for drafters, methodologies for non-formal education, and the foreign law and experience related to the two specific bills the officials had in hand. The learning process rested on the premise that, to learn legislative drafting, one must engage in research on, and drafting real bills, accompanied by reports that, incorporating the research findings, justify the bills' detailed measures. For this purpose, the four officials decided to divide into teams of two¹ to conduct research and draft two bills. One addressed judicial corruption; the other, implementing existing child labour legislation. In addition, the four officials learned basic computer skills.

III. ASSESSING THE PROGRAM

A. The Choice of Bills:

Ideally, the Ministry should have decided the bills on which the officials would work, and ensured that, before they came to Boston, they had in hand relevant ministry files. In the event, drawing on their own knowledge of Nepal's problems, the four officials made the choice. Because corruption appeared as a pervasive problem -- concern with it in part triggered the Project -- they chose to work on a bill to reduce corruption in the judiciary. To learn how to translate policy relating to broad social issues into effectively implementable law, they chose to work on a bill to improve implementation of Nepal's existing child labor law.

In order to understand these problems in their Nepalese context, and to write research reports concerning their nature and causes, the two teams worked diligently to gather what

¹ Two of the officials spoke and wrote English quite well, while the other two remained less confident. By working together on two bills and research reports -- rather than each one working on one -- and discussing the issues in Nepali, they felt that they could all learn more and produce a better final product.

information they could about them. The Ministry of Labour sent some background information relating to child labor. We had on hand files relating to corruption we had obtained during our Mission to Nepal. In addition, the professors with whom the officials studied foreign law and experience provided the teams information concerning relevant comparative law and experience concerning similar problems. Some informational gaps remain. On their return, the officials will need to fill those gaps (principally, we suppose, by discussion with relevant ministry officials). Also, because they themselves had to choose which problem areas their bills would address, we remain uncertain as to the extent that their efforts will lead to actual legislation. Using the bills and accompanying research reports as case studies, however, did prove indispensable in helping them to think through the implications of the legislative theory and techniques they learned.

B. The Program Seminars:²

1. Law and Development Seminar: This seminar, in which Boston University law students and the Nepali officials participated, consisted of two parts. The first part consisted of participants' presentation and assessment of the alternative available theories relating to the use of law for development purposes. In the second part, each participant, in turn, presented a draft paper (essentially a research report designed to justify proposed bills). The other participants, as assigned, drew on their understanding of legislative theory and methodology to critique each paper in terms of specific aspects of its substance and form. Several participants wrote reports describing efforts to use law in other countries to deal with problems similar to those tackled by

² . As an assignment, the Educational Methods seminar (see 4. below) had suggested that the four officials should evaluate the program in terms of its potential for helping participants learn the theory and techniques required for drafting effectively implementable legislation. At the end of the program, as part of that evaluation, each official filled out an evaluation form (see Appendix I). That form used a scale of 1=very poor; 2=poor; 3=mediocre; 4=good; 5=excellent, for each course. It included space for additional comments. Few officials made any detailed written comments. On the last day before they left, we met with them to discuss any further comments they had..

the two Nepali bills. For example, three BU students wrote about various aspects of corruption in Sierra Leone, South Korea, and Haiti. One wrote about India's efforts to use law to curb child labor. Their papers contributed background information about those countries' laws and experience of potential use for the Nepali officials' research reports. The discussions stimulated by the detailed critiques of the papers helped the participants think through the best way to use legislative theory and methodology to structure available information to demonstrate that a proposed bill will prove effectively implementable and help to resolve the problem it addresses. The readings for the seminar included Seidman & Seidman, *State, Law and the Development Process*; a collection of articles on law and development theory and practice; Seidman, Seidman and Abeseykere, *Manual of Legislative Drafting Techniques for Democratic Social Change*, especially the first 7 chapters; and the participants' research reports (including those of the Nepali officials).

Three of the four Nepali officials evaluated this seminar, overall, as 'excellent', and the critique sessions as 'good'; the fourth assessed the overall seminar as 'good,' and the critique sessions as 'mediocre'. In general, their written remarks indicated that they found the seminar, including the critique sessions, helpful in thinking through how to develop a research report to justify a bill. In particular, one emphasized the importance of the seminar's emphasis on analyzing the nature and causes of the problematic behaviors, since law at most can try to solve problems by changing the behaviors that comprise them. One participant judged the seminar useful as a kind of participatory learning process, but suggested that Visiting Scholars like themselves should receive assignments in the first part of the seminar, as well as the critique

sessions.³

2. Legislative drafting techniques seminar: In this seminar, the four officials studied how to ensure that the architecture of a bill serves the requirements of those most likely to use it; and the detailed techniques of drafting the bill. It focused on specifying clearly and precisely *who* should do *what*: The new behaviours prescribed both for social actors and for implementing agencies. The readings primarily consisted of chapters 8-14 of Seidman, Seidman & Abeyesekera, *A Manual on Legislative Drafting for Democratic Social Change*. To ensure that the form of their bills adequately captured the bills' intended substance, the participants completed the exercises in the Manual, and critiqued and revised the details of their bills' architecture and sentences.

The same three officials rated this seminar excellent, while the fourth rated it good. One emphasized the value of studying the details of techniques as a basis for drafting bills likely to prove effectively implementable. None offered any suggestions for its improvement.

3. Social Science Research Methods. For the most part, to prepare research reports concerning the nature and causes of the problems their bills addressed, drafters must rely on facts available in the relevant ministry's files and the heads of that ministry's officials. National and international research institutes and private researchers may provide additional information about the problem, both as it appears in Nepal and in other countries. This seminar aimed to equip the officials with a sufficient knowledge of social science techniques to make them 'competent consumers' of these kinds of research findings: How to assess their quality and utility, and how

³ Because they arrived a week after classes had started, and we were not sure how easily they could cope with English, they did not receive assignments to present the alternative theories, although they did participate in the discussion of them. As teams of two, they took assignments to critique their colleagues' papers.

to structure them in a research report to reveal a problem's nature and causes. The readings for this seminar comprised articles and chapters of books, and Chapter 6 of the Manual. As case studies, the officials discussed the readings in terms of their implications for assessing the information relevant to their own bills, and structuring that information into their research reports.

Again, three judged this seminar 'excellent,' the fourth, 'good.' It apparently helped them to organize the available evidence as to problematic behaviors' nature and causes. It also helped them prepare a research justifying a bill's detailed measures.

4. Educational Methods. This seminar aimed to equip the four to give leadership in institutionalizing an on-going learning process to strengthen Nepali drafting capacity. The readings consisted of several articles on the importance of creating a learning environment in which the participants could critically analyze what they learned in terms of its utility for their own tasks. For the four officials, that meant institutionalizing a problem-solving learning experience designed to enable drafters to draft effectively implementable bills and research reports, and to enable legislators to assess a bill. (We include in the term 'drafters' not only officials from the Ministry of Law and Justice, but also relevant officials from other Ministries, assigned to help develop transformatory legislation). As part of their own learning experience, the four officials assumed responsibility for critically reviewing the teaching methods used in the BU Program, asking what they might find useful for institutionalizing the proposed learning process in Nepal.

To begin thinking about that learning process, the two teams planned curricula and detailed syllabi for workshops and courses to strengthen Nepalese drafting capacity (including the capacity to prepare research reports). They considered how to transfer what they learned in

the Program to --

- (1) drafters in the Ministry of Law and Justice;
- (2) officials assigned by ministries to work on particular bills and research;
- (3) legislators who need to assess bills and research reports on which they must vote, to explain laws to their constituents and get their feedback on those laws' social impact, and, whether necessary, to participate in drafting specific bills; and
- (4) law students, in the area of legislative drafting.

Self-evidently, now that they have returned to Nepal, the four officials will have to discuss with the responsible authorities how their proposed draft curricula and syllabi might, with necessary revisions, fit into existing institutions and programs.

As in the case of the other units, three officials reported this seminar 'excellent,' and one, 'good.' They did not have any suggestions for improving the seminar. Their 'work product' -- the curricula and syllabi they designed, revised and implemented in light of discussions with the relevant authorities -- should provide some evidence as to what they learned.

5. Tutorials with experts: To give them an opportunity to discuss in depth what they might learn from other countries' laws and experience in dealing with similar problems, the two teams met separately with professors with expertise in those areas. These professors guided them to additional reading materials and information. One professor met with a group for an hour a week to review the implications of those materials for their own bills and reports. Only one found these tutorials 'mediocre;' three found them 'excellent.' The one who termed them 'mediocre' pointed out that the professors' main expertise related to industrialized country experiences, not those of developing countries like Nepal.

6. Individual consultations: The teams went over the details of their bills and research

reports individually with the Seidmans. They all rated these consultations as 'excellent.'

7. Computer skills. The Project Document emphasizes computerization, both to facilitate drafting and to provide easy access to Nepali and foreign laws, regulations and judicial decisions. The Program gave the participants opportunities to use computers in the course of preparing their bills and research reports. They actually drafted and redrafted their own research reports and bills on computers provided by the Law School. In addition, with the help of the Law School's library staff and a student teaching assistant, they learned to use Internet and Lexis to investigate the social problems their bills addressed and relevant foreign law and experience. Two reported the library, office, and computer facilities as 'excellent,' two as 'good.'

IV. LIVING CONDITIONS

The living conditions constituted the least satisfactory aspect of the Program. Given a tight student housing situation, the University housing authority requires notification in the spring for provision of student housing in the fall,⁴ and generally prefers not to provide graduate student housing for one term programs. In the context of a major rental housing 'boom' in Boston, the Nepali participants' stipends could not cover the cost of a furnished apartment. Instead, like most BU graduate students, they rented an unfurnished apartment and furnished it with second hand furniture. All four rated the living conditions 'poor' and recommended advance arrangement for furnished apartments for future Program participants.

V. GENERAL COMMENTS

In general, the four officials seemed to find the Program useful. Two made no

⁴ The arrangements for the Nepali Visiting Scholars to come were only completed in August.

suggestions for improvement. One suggested holding the program for three months during the summer when it would be warmer and would not require absence from important Nepali festivals. Another recommended that the program focus primarily on drafting and the research necessary for writing bills.

VI. OUR EVALUATION

The four participating officials came to the Program with quite different backgrounds. Two have been working in the Ministry of Law and Justice drafting unit for several years. Two had never done any drafting before. One had worked with the Legislature and the Judiciary. The other had served for many years as Secretary to the Minister of Law and Justice. Two read, spoke and wrote English reasonably fluently, while two apparently found speaking English quite difficult. By working and discussing the relevant issues in teams, however, they seemed to overcome this hindrance.

All seemed to work hard to complete their research reports and bills, and in the discussions about these they seemed to grasp the main tenets of the legislative theory and drafting techniques. The teams also seemed to work effectively together in preparing draft curricula and syllabi for institutionalizing the proposed on-going Nepali learning process. With the cooperation and suggestions of the Ministry of Justice and other responsible authorities, we believe that the four participants will be able to contribute significantly to building Nepali capacity to the draft, assess, and enact the kinds of legislation needed to ensure good governance and strengthen Nepal's legal framework and the Rule of Law.

