



## REVIEW VIA THE WEB DISCUSSION FORUM - BACKGROUND AND GUIDE

The **overall aim of the review and validation process** is to promote ownership of the Handbook by APJRF members, and maximise the quality and relevance of the Handbook's content via a coordinated review and networking approach based on both remote and direct engagement strategies.

The **objectives of the review of first chapter drafts** are to:

- Provide chapter authors with objective feedback and constructive guidance on the *technical aspects* of their chapter contributions - to promote intellectual rigour and honesty throughout the Handbook's drafting.
- Promote *relevance* of the Handbook within the region by providing the APJRF's members with an opportunity to engage the Handbook's development.

### **Practical Guidelines in Providing Feedback:**

1. **Scope of Drafts:** the development of chapter drafts is the culmination of a comprehensive consultation process with the APJRF's membership. Chapter topics and scope have been developed in consultation with the membership and approved by the member's representatives, the Project Board.

Contributions are still *drafts*, and consequently, they are largely unedited. Authors, however, should provide a comprehensive self-evaluation of why/why not the reform activities they are discussing were successful - and the implications of this.

2. **Scope of Comments:** comments provided should be informed by the 'Core Concepts Underpinning the Handbook.' These are based on the philosophy articulated in the Manila Declaration and the discussions at the APJRF round table meetings. They are, to:
  - Promote *standards of justice* established in international instruments.
  - Contribute to developing a *shared vision* across the region.
  - Empower and *enable reform actors* throughout the justice system.
  - Create a *practical tool* for exchanging learning and use by each other.
  - Describe our actual *experiences of common challenges*.
3. **Framework for Comments:** this has been developed to structure, and maximise the relevance of, the feedback received. It is intended as a *guide* for reviewers:
  - *Description* - is content clear, interesting and relevant for the reader?
  - *Communication* - are structure, format, writing style and words simple, concise, clear and compelling for the reader?
  - *Effectiveness* - does the content inform, provide insight, stimulate consideration to adapt and implement locally?
  - *Analysis of the Local Experience of What Works / Doesn't Work* - is there sufficient critical self-evaluation using (self-identified) criteria?
  - *Transformation of 'Know-how'* - are the 'Key Messages' relevant to others in region?
4. **Timing and Submission:** all comments on first drafts need to be submitted via the APJRF's on-line forum (<http://www.apjrf.com/discussion/>.) The forum will close at 5:00 pm, 14 March Australian eastern summer time (GMT +11 hours.)



# ***Judicial Reform Handbook -***

## **Draft Chapter 5: Judicial Education and Skills Development for Judges and Court Staff**

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## ABBREVIATIONS AND ACRONYMS

ADB	-	Asian Development Bank
CCWB	-	Centre Child Welfare Board
CLE	-	Continuing Legal Education
ENM	-	Ecole Nationale de la Magistrature
EU	-	European Union
EWMI	-	East-West Management Institute
GTZ	-	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Cooperation)
JICA	-	Japan International Cooperation Agency
JSTC	-	Judicial Service Training Centre
NGO's	-	Non-government Organisations
NJA	-	National Judicial Academy of Nepal
RAJP	-	Royal Academy of Judicial Profession
RGC	-	Royal Government of Cambodia
RSCC	-	Royal School for Court Clerks
RSJP	-	Royal School for Judges and Prosecutors
SC	-	Supreme Court of Nepal
SCM	-	Supreme Council of Magistracy
TNA	-	Training Needs Analysis
TOT	-	Training of Trainers
UNDP	-	United Nations Development Programme
UNICEF	-	The United Nations Children's Fund
UNTAC	-	United Nations Transitional Authority in Cambodia
UQ	-	University of Queensland, Australia

## GLOSSARY

Dalits	-	Nepal's so called 'untouchable castes'
Janajatis	-	Colloquial for Nepal's minorities
Muluki Ain	-	The National Code of Nepal
Naya Muluk	-	New Nepal
Pradhan Nyayalaya	-	Supreme Court of Nepal



## KEY MESSAGES FOR THE CHAPTER

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*Judicial education is foundational to promoting standards of justice. Education programs provide knowledge and skills for continuous improvement and reform. Training institutions should represent the interests of all stakeholders. Programs should be monitored and evaluated to ensure they deliver results. Training programs should be designed to address local needs. Programs should also learn from regional/global experience. There is a need to develop the capacity of training institutions to perform these roles.*

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***Judicial education is foundational to promoting standards of justice*** - judicial Education is the foundation and key for promoting the standards of justice. Judiciaries all over the democratic world are required to address numerous challenges that arise from within the system and outside it. Internal challenges include the concept and definition of 'justice', judicial culture, and the issues of impartiality, competence, efficiency, and effectiveness of judicial officers. External challenges are caused by emerging international economic, human rights and legal orders.

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***Education programs provide knowledge and skills for continuous improvement and reform*** - periodic review of the effectiveness of the justice delivery system followed by suitable legal and institutional reforms is vital. Judicial education by providing critical knowledge and skill inputs strives at continuous improvement of the quality of judicial service, provides a vehicle to inform and undertake such reforms. By bringing to the fore issues of ethics, integrity and accountability it helps the judiciary to preserve the integrity, impartiality and assists it in becoming worthy of public trust.

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***Training institutions should represent the interests of all stakeholders*** - judicial education should be guided by a vision of continuous capacity enhancement, providing the required knowledge and skills for fair and efficient performance of legal and judicial responsibilities in imparting accessible justice. Institutions created for this purpose, must bring the various actors in the justice sector to a common forum. Only in this way is it possible to assist judges and other pillars of the justice sector to improve systems through suitable and informed policy and strategic interventions.

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***Programs should be monitored and evaluated to ensure they deliver results*** - a critical element of such strategic interventions is the establishment of effective monitoring and evaluation systems. Judicial education and related interventions must be progressively reviewed and monitored to ensure that they successfully contribute to broader justice reform and promote the public's trust. When informed by demand side considerations, judicial education can empower judges and the pillars of the justice system to design strategies and systems that better protect basic human rights. This then, leads to the realisation of constitutional aspirations of ensuring justice for the people, and promoting standards of justice in society.

55  
***Training programs should be designed to address local needs (demand-side considerations)*** - when informed by local needs, judicial education can empower judges and the other pillars of the justice system to design strategies and systems that better protect basic human rights in a particular context. This then, leads to the realisation of



constitutional aspirations of ensuring justice for the people, and promoting standards of justice in society.

55 When designing the institutional structure for introducing judicial education policy makers  
should take note of: the challenges faced by the justice system in a particular country;  
identify actors involved in the system; and the knowledge, skill and behaviour related  
needs within the system. In this way, a suitable legal and institutional framework can be  
developed for judicial education. This, in conjunction with close collaboration with other  
pillars of the justice system, can enable and empower judicial officers in their pursuit of  
60 delivering justice in an efficient and effective manner.

***There is a need to develop the capacity of training institutions to perform these roles*** - often, the success of judicial academies or training institutes is shaped by  
institutional characteristics and societal needs of ensuring justice and the rule of law. In  
65 order to act as reform vehicles, such institutions must be effective and efficient. A focus  
on developing the internal capacity of an institution's management staff and faculty and  
strengthening of related recruitment and appointment policies is critical. Additionally,  
strengthening of research capacity is also vital. Research capacity supports initiatives to  
maintain and improve the quality of education, and also enables policy makers to make  
70 informed interventions with the broader objective of promoting improvements in  
standards of justice

***Programs should also learn from regional/global experience*** - the need for judicial  
education is gaining importance in every country. It is, and must be, primarily guided by  
75 local domestic needs and planned in a country specific context. However, as the legal  
systems are influenced by growing internationalisation - of human rights values, and  
emergent international norms of trade, commerce and services - insulation and  
compartmentalisation of domestic legal systems is slowly becoming a matter of the past.  
Every country, while developing policy, approaches, strategies and methodologies for  
80 judicial education based on the local context, can learn from comparative, regional and  
global initiatives. Synergistic relationships based on experience can be developed with  
an increasingly globalised world supplementing national efforts through the cross  
fertilisation of ideas.

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## JUDICIAL EDUCATION AND SKILLS DEVELOPMENT FOR JUDGES AND COURT STAFF - THE CAMBODIA EXPERIENCE

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### 1.0 DESCRIPTION OF REFORM EXPERIENCE

#### 1.1 PROJECT CONTEXT

95 Cambodia's recent history dictates that the rebuilding of the professional competence of  
the judicial corps is an immediate and major national imperative. As a post-conflict  
country, Cambodia has been striving to rebuild its judiciary from scratch. There were only  
6 Cambodian survivors who has received legal training before Khmer Rouge come to  
power, and consequently, in 1982, the Cambodian government established a School of  
Public Administration and Law for training legal and judicial officers. The graduates from  
100 that School were appointed to hold governmental positions or to be judges, prosecutors.  
These judges and prosecutors had undertaken either three-month or six-month courses  
on politics, administration and law. The provincial and municipal courts have been  
established in 1982.

105 The concept of independence of the judiciary was just introduced to Cambodia after the  
signing of Paris Peace Accords in 1991 by all Cambodian fractions, the arrival of United  
Nations Transitional Authority in Cambodia (UNTAC) and the adoption of Transitional  
Provision regarding justice system, criminal law and criminal procedure. Prior to that  
time, the Ministry of Justice played significant roles in administering justice in Cambodia,  
110 including reviewing judicial judgements. This role was taken away from the Ministry of  
Justice only after the establishment of the Supreme Court in 1987.<sup>1</sup>

115 In 1993, Cambodia adopted its new Constitution which enshrines the concept of  
independence of judiciary, protection of fundamental individual rights and the separation  
of powers.

120 From 1993 to 2002, judicial education was principally conducted by the Ministry of  
Justice (MOJ) for practising judges, prosecutors and court officers. While in the 1980s  
most of judges, prosecutors and court officers were trained in Cambodia, Vietnam or  
East of Europe, the Ministry of Justice has continuously introduced in its training the  
concept of liberal democracy, rule of law and protection of fundamental human rights  
enshrined in the 1993 Constitution and other international human rights instruments. The  
Supreme Council of Magistracy (SCM) which was established in 1994 also appointed  
125 new law graduates who hold Masters Degrees in law and had worked at least three year  
for the Ministry of Justice as judges in the provincial, municipal and appeal courts.

130 The principle of Separation of Powers is bedrock of the democratic society. By this virtue, the  
2002 Legal and Judicial Reform Action Plan of the RGC prioritised the reform of the judiciary,  
especially to enhance its institutional and capacity building. Consequently, the Royal School  
for Judges and Prosecutors (the "RSJP") was established on February 5, 2002, and solely  
mandated to provide both initial and continuing trainings of high quality.

135 There is a paradigm shift in the area of judicial training. Training of Judicial Officials  
appeared to be a peculiar potentiality of the transformation of the Rule of Law society in both  
Common Law and Civil Law countries. Cambodia, in spite of its mixed legal and judicial

<sup>1</sup> Dolores A. Donovan, the Cambodian Legal System: Overview (Undated)



140 culture, has adopted French Model of Judicial Training with main supports of French National School for the Judiciary (*Ecole Nationale de la Magistrature, ENM*) in Bordeaux and French Cooperation. With these foundational supports, the RSJP was able to set up its training programme, renovate and equip the building, train supporting staffs and trainers. Nonetheless, the school is expanding its legitimate ambition to have partnership with more donors and judicial training institutions in the globe.

145 The of RSJP is administered by a director and a Council of Administration who have broad power to handle training activities within the framework determined by the 2002 Sub-Decree and the school internal rule. The Council of Administration as appointed by *Anukret* No. 359 dated July 22, 2003 is composed of the following personalities: Deputy Prime Minister, Minister in charge of the Council of Ministers as chairman, Minister of Justice as Vice-chairman, RSJP director as plenary member, one representative of the SCM, one representative of the Ministry of Economy and Finance, one member of the Council of Jurists, one judge of the Supreme Court, and one judge of the Appeal Court.

155 The RSJP director ensures the daily operation and administration of the school, supported by a secretary general, a team of training department and a secretariat. Training is conducted by fourteen Cambodian trainers who are experienced judges from all levels of the Cambodian courts. The school invites also experienced judges, prosecutors, judicial trainers and educators from other countries, including France, Japan, Australia, Canada, USA and others to train students and practising judges.

160 In January 2005, the RGC established the Royal Academy of Judicial Profession (RAJP) which absorbed RSJP. Following the establishment of RAJP, RSJP's Council Administration was transformed into the board of RAJP by including the director of Royal School for Court Clerks (RSCC). The administration of the RAJP is ensured by the president of RAJP, the director of RSJP, the director of RSCC, and the secretariat of RSJP. The RSCC provides continuing legal education for existing court clerks. The Royal Government is also planning to establish a Royal School for Bailiffs.

170 At present, RSJP is training the third intake of students, practising judges, prosecutors while RSCC has just completed the training program for practising court clerks. RSCC is also preparing the examination for recruiting students who will be appointed as court clerks after the graduation from the school. Since the training of court clerk and the establishment of RSCC, this chapter does not examine experience from training court clerks.

## 175 1.2 PROBLEMS/CHALLENGES

180 It is the first time in the history of the Cambodian judiciary that a professional school for training judges and prosecutors has been established. It follows that not only does the competence of the judiciary need to be rebuilt but, at the same time, the capacity of the training institution needs to be built to perform this role, also starting from scratch.

185 When the school was established, the Royal Government of Cambodia appointed a board of directors, director and supporting staff that did not have sufficient experience in judicial training. The school director, trainers and supporting staff also don't have experience in a professional training school. Therefore, the management and operation of the school depends largely on the efforts and commitment of the school leader and support from foreign experts.



190 The initial training program of the RSJP was undertaken by both local trainers and international trainers. For local trainers, although they have acquired a great deal of practical experience in their own courts and have good knowledge of judicial proceedings, they have not adequate experience in training practising judges as well as student judges. Therefore, the quality of training was largely compromised. For those who are legal educator, they tend to avail themselves of techniques and tools used for training students at university, and structure their lectures to the extent of their own knowledge of existing laws and regulations and the practice adopted by the courts. For international trainers, some had experience but some didn't have, they are from different legal and judicial culture.

200 Cambodia lacks human resources in legal and justice sector. This makes it difficult for the RSJP to identify appropriate local trainers amongst practising judges and prosecutors, especially to recruit competent and reputable judges to give lecture. There are no permanent trainers at the school. All trainers are practising judges and prosecutors who are also required to perform their main jobs at their own courts. Therefore, the training schedule would sometimes have to be postponed when it coincides with the hearing date of the trainers and the availability of the trainers to prepare their lectures, training materials, and to undertake training is very limited as well. Additionally,

210 The school faculty does not have adequate availability to conduct research to develop and improve their training or materials. All trainers are required to prepare their training materials. The quality and standard of these materials, therefore, very much depends on the education and experience of each trainer. The school does not have the capacity and means to standardise textbooks and training materials to be used by trainers. The school also does not have sufficient resources to provide financial support to trainers to conduct research, prepare textbooks and to purchase textbooks from other countries. Each trainer would try to develop the content of his or her lecture by using all resources available to them. For instance, he may use the cases that he has personally decided at the court as case study or using his or her own lecture-notes which he or she had prepared for teaching students at university. In this regard, RSJP has also requested to the Supreme Court for some precedents that can be used to teach students and at the same time, commences the translation of some lecture books written in French or English. What this means, in practice, is that RSJP is often dependent on 'taking the best it can get' from busy judges and lawyers who are willing to serve as trainers, and this sometimes means that training methods and materials are unavoidably compromised.

### 1.3 ACTIONS TAKEN

#### 1.3.1 Strict Recruitment Procedures

230 Admission to the RSJP can only be achieved through a strict competitive recruitment examination. This examination is organised in two phases with a view to testing the writing and argumentative abilities of applicants at the written examination; and personality, technical knowledge, and oral argumentative abilities at an oral examination. All applicants must have at least bachelor's degree of law. Those applicants who have at least 5 years of seniority in the ministries or public institutions are rewarded with a 10% bonus at the examination.

235 A three-day examination is allocated to cover subjects of general culture, civil law, and criminal law respectively. The preparation of examination subjects is strictly confidential.



The written examination enables the school to select applicants who obtained an average of 30/60 of total examination scores.

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The written examination is followed by an oral examination. The oral examination is organised in the form of a jury: one jury of public law; one jury of commercial law; one jury of labour law; one jury of French language; one jury of English language; and one Grand Jury. The members of those juries were appointed by the chairman of the Board of Directors, and are composed of high Cambodian officials from the council of ministers, courts and other public institutions. There is some freedom for each member to prepare their questions; however, questions must focus on the scope of laws and regulations in force in Cambodia.

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The final result is attained by the addition of total scores obtained at the written and oral examinations. Admitted applicants are from various backgrounds, ranging from new law graduates, practising lawyers or students of lawyers training centre, officials of the Ministry of Justice, court clerks, and Non-government Organisations' (NGOs) staff.

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### 1.3.2 Development of the Contents of Curriculum for Initial Training

The RSJP has taken useful model and experience from *Ecole Nationale de la Magistrature (ENM)* in Bordeaux in France for developing its curriculum. Curriculum was initially designed with extensive assistance and support by French judges and experts, with some adaptation to suit Cambodian context. The contents of the curriculum are also confined to the availability of both national and international trainers.

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The curriculum for initial training is divided into a number of phases:

**Phase 1** - It would take approximately one and half months to finish introductory subjects.

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These subjects include the roles of judges as determined in national substantive and procedural laws and international instruments, the importance of judges in a democratic society by virtue of the principle of the separation of powers and other principles recognised by a democratic constitution, their places in the judicial structure, etc.

270

RSJP invites both national and international trainers to give lecture or to conduct workshops on various topics which are relevant to improve the skill and behaviour of judges and prosecutors. Those topics would include both theoretical and practical matters. When preparing the contents of the topics, it is necessary for trainers to bear in mind that the trainees are law graduates, law lecturers and legal practitioners such as court clerks and lawyers. They have already acquired high level of theoretical education at the university or practical experiences at their workplace. Therefore, the trainers must conduct their lecture in the way that both types of trainees can learn harmoniously.

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**Phase 2** - This phase would take approximately another two months. Here is where the teaching of substantive laws which, due to their necessity, may directly or indirectly affect the judicial integrity and hence all judges and prosecutors should have acquired to some extent their concepts and relevancy; those substantive laws would include criminal law, civil law, administrative law, labor law, commercial law, constitutional law, international economic law, media law, land law, human trafficking, international and regional legal framework, etc.

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Upon the completion of 8 months schooling, each trainee is required to undergo an internship program for a period of 12 months at provincial/municipal courts throughout the country.



290 **Phase 3** - It requires approximately three and half months to master knowledge of students in respect of judicial methods. This phase focuses mainly on procedural law and judicial methodologies. Students will be taught civil procedure, criminal procedure, civil and criminal judgment writing, case management, etc.

295 **Phase 4** - Specialisation phase over a period of 4 months at RSJP. At the end of their internship, students are required to return to the RSJP and make presentation of the outcomes of their internship to their classmates. This phase is also an opportunity for students to raise some practical questions and challenge they faced during the internship and seek solutions from their trainers or make recommendation and suggestion to  
300 RSJP's management to improve the training curriculum and methodologies. At this phase, RSJP provides additional training aiming at giving students a specialisation as wither judges or prosecutors. The training mainly focuses on substantive laws which are necessary for judges and prosecutors. Those laws would include forensic investigation, criminology, special criminal law, forestry law, human trafficking and so forth.

305 At the end of the specialisation phase, it would consume all remaining one month to let students have direct contact with specialised agencies and look at technical materials available in the Kingdom of Cambodia. Some study trips and excursions to ministries, courts, United Nations Agencies, Specialised International Organisations, Non-Governmental  
310 Organisations, law firms and other private enterprises will be organised. At this stage students should learn to do experiments on some matters which require specific and high-technical skills, such as to how to handle drug trafficking cases, to deal with medical test etc.

### 1.3.3 Development of Continuing Legal Education (CLE)

315 Furtherance to initial training program, RSJP is also organising CLE for practising judges and prosecutors aiming at assisting them to acquire knowledge of the development and evolution of legislation and related matters and to give them an opportunity to meet, discuss, and exchange their experiences with their peers from different courts. At the time when the RSJP is established, there is no means of ensuring that Cambodian  
320 judges are kept abreast of developments in laws or are able to maintain an acceptance level of professional competence and development new judicial skills. Therefore, it is essential that RSJP conducts CLE program.

325 Before organising the CLE, RSJP proposes particular topics and send them out to all courthouses together with an application form to be filled by judges and prosecutors who are interested in a particular training topic. The interested judges and prosecutors can fill out the application by electing their preferred themes before sending the form back to the RSJP. Given the rapid development of legislation and requirements for updating  
330 knowledge and skill for practising judicial officers, it is compulsory for all judges and prosecutors to participate in the CLE program.

335 CLE is conducted in the form of lectures, workshops or conferences on technical, ethical and cultural topics. The RSJP retains flexibility in the organisation of CLE programs in terms of topics and the duration of activities. It is acknowledged that it has been the experience with most jurisdictions, judges would find it difficult to leave their courts for any period of time to undertake the CLE. In addition, many would have difficulty attending the school from the provinces of Cambodia. Therefore, the school invited all interested judges and prosecutors to participate in the training for a certain period of time, taking into account the prerequisites determined below.

340 a) The regularity of court performance: at present, because there is a shortage of judges and prosecutors to ensure appropriate work loads in every court, it is not



practically possible for people to be away from their office for long time.

Some older judges and prosecutors are also not willing to leave their families or their homes for long time to undertake CLE.

345 b) RSJP is a practical school. It is working to provide training on procedure related techniques and judicial ways of thinking which forms party of the professional practice of judges and prosecutors. In other words, the RSJP does not provide training on legal theory.

350 c) In reality, there are several tasks which require specialised techniques to deal with in the court's performance - and no single judge can be practically or legally responsible for all. Cambodian procedural law categorised judges into three types: Judging/sitting judge, prosecuting/standing judge, and investigating judge. Nonetheless in current practice, most provincial and municipal courts have paid little attention to such specialisation, especially as regards investigating judges.

355 CLE programs are mostly led by Cambodian trainers who are judges and prosecutors because only these trainers could have an insight into the problems of their peers. Themes for training are selected on the basis that they should relate to two or more  
360 judicial roles (i.e., connected roles of prosecutors and judicial police officials). In this way, training can be jointly made (e.g. co-lecturing by a prominent prosecutor and a prominent judicial police officer). Such themes include ethics and code of conduct, impartiality of judges and prosecutors, sexual crimes and bloodshed crimes, criminal procedure, courts and judicial police, criminal evidence and scientific development, listening to minors' responses, public policy in combating drugs, violence and juvenile crimes, incest and  
365 court, civil procedure, divorce, succession, labour law, hearings, Universal Declaration of Human Rights - Application of European Convention on Human Rights, etc.

It is generally agreed that judges must be equipped with many skills in order to dispense justice. Judges must be able to analyse situations, apply principles of the law and deliver  
370 judgments cognisant of the law and respectful of human rights. Cambodian judges facing numerous challenges in respect of the development of legislation and complexity of legal and judicial matters. For instance, in 2003, the RGC entered into an agreement with the United Nations to establish an Extraordinary Chamber within the Courts of Cambodia (ECCC). This court is of hybrid nature, meaning that the operation and proceedings are  
375 governed by Cambodian laws and international laws. The purpose of the ECCC is to prosecute most senior leaders of Khmer Rouges for the offences committed in the period of 1975-1979. Such offences are embedded in either Cambodian laws or international instruments ratified by Cambodian government. By virtue of the establishment of ECCC, RSJP has to collaborate with the administration office of the ECCC to conduct several  
380 training sessions in 2004 and 2005 for Cambodian judges and prosecutors on international criminal law, international humanitarian law and other international human rights instruments.

### 1.3.4 Training of Trainers

385 After the RGC decided to establish RSJP, French cooperation has commenced its technical and financial support for the preparation of training infrastructure, preparation of training curriculum and training of trainers. Through such assistance, an old building was renovated to be used as training school for judges and prosecutors. Furthermore, RSJP had selected and appointed its first batch of five trainers to get further training at the  
390 *ENM* in Bordeaux.



As a result, three training-of-trainers programs have been held. The first was undertaken by five RSJP's trainers for training in France, with the subsequent training undertaken by inviting professors from *ENM* to the RSJP. United Nations Development Programme funded visits of trainers. The trainings of trainers were also conducted in Cambodia or in other development partners' countries by inviting trainers from overseas or organising visits of Cambodian trainers to those countries to see the actual training. For example, RSJP's trainers made official visits to see judicial education institutes in Philippines, and Judicial Training Center in Japan.

There is a clear preference at the school for judges to train judges. In 2005, the school avails itself of the services of 15 judges who performs their roles of trainers. However, it is generally noted that many of them are not experienced in delivering competency based skills training. Consequently, many simply talk and the level of their skill and knowledge is not consistently high.

None of the trainers at school are full-times or have dedicated resources, and their engagement is very ad hoc. All trainers hold additional positions elsewhere, as judges, prosecutors, university lecturers, advisers and so on. Whilst the trainers draw on their experiences in other roles, there is insufficient time for them to focus on their roles as trainers at the school.

The school also uses some assistants; they are not formally bonded to the school, are not permitted to use the school's resources, are not uniformly instructed, or paid to attend the sessions they have prepared for. Overall, their involvement is insufficiently organised and appreciated, therefore, morale and productivity levels are generally low.

There are insufficient funds available to pay for more staff and to remunerate existing trainers competitively. As a result they do not focus on their work at the school. Because of this lack of focus and commitment, there have been numerous incidences of trainers not being able to attend the school to deliver scheduled training sessions. This is disruptive not only to the schedule but reduces the students' motivation to study as any preparation they do is wasted, and, they are not then able to prepare for any substituted session if there is one. There have also been alarming incidents of trainers failing to develop training materials.

According to the assessment in 2005, many of the trainers interviewed recognised the limits of their ability to provide a high level of judicial education, including the use of modern technologies. Generally they were receptive to the idea of training the trainer program. Therefore, a number of training of trainers sessions have been conducted in conjunction with development partners, however, they have remained ad hoc conferences rather than sustained program. The conduct of training of trainers has met with varying success for a number of reasons:

- The domestic and international trainers are extremely busy and did not have time to engage in capacity building because it was not the primarily focus of their work.
- Development partners want to come, deliver their projects and leave.
- Reluctance on the part of domestic trainers.
- Donors are not usually willing to pay the domestic trainers to participate in capacity building and preparation for training. There is consequently no incentive for them to give up their time.
- Language barriers.



### 1.3.5 Development of Training Materials and Resources

445 Resources available to students generally are scant. There are many instances where students do not have access to current laws. In order for students to make decisions based on the law, and for them to be able to take advantage of recent thinking on the law, resources must be available.

450 It was noted that in many instances training materials were not made available prior to the training, and times were not made available at all. The students can neither prepare for classes, nor study afterwards. Even when materials are available they are not of a consistently high standard.

455 To develop training materials, RSJP entered into cooperation with JICA in 2003. Through such cooperation, JICA dispatched its long-term experts and short-term experts to assist RSJP in the development of training materials on civil procedure and civil code.

460 The library at the School contains a handful of texts and textbooks, most of which are not in Khmer. Minority of students are able to have access or use internet for their research during their study.

465 It is also noted that language is also a barrier for students to study and do research. Despite the use of Khmer, French and English being prevalent throughout Khmer society, generally there is a lack of English/French language ability amongst students. All classes when taught by foreign trainers must be consecutively or simultaneously translated into Khmer from French or English. The quality of translation work conducted for the school has generally been inconsistent. A great deal of information has been miscommunicated or not communicated. Whilst many of the translators are amongst the best in their field, the field is small and does not have access to international standards of best practice. This reduces and greatly limits opportunities for academic and experimental development. The school needs a pool of specifically trained legal language facilitators for translating training materials and the teaching of foreign judges.

### 1.3.6 Partnership and Coordination in Undertaking the Training

475 A number of development partners have been supporting RSJP either on permanent basis or on occasional basis. It is a challenging mission for RSJP to coordinate the partnership and support of the development partners. It has to figure out what kind of support they would need, when and how such support is provided.

480 As the first judicial training school in the post-conflict country, RSJP faced some many challenges, including shortage of human resource, financial resource and materials. Therefore, RSJP welcomes all kinds of supports necessary for properly and smooth operation of the school. Nevertheless, RSJP has prioritised the assistance on the development of human resources (including training of trainers and support for hiring competent supporting staff) and training facilities (such as books and office equipment.)

490 On a permanent basis, French cooperation and JICA have dispatched their long-term experts to assist RSJP in producing training materials, conducting training, advising on preparation of curriculum and coordinating other technical and financial supports to RSJP. Occasionally, AusAID, GTZ, European Commission, United Nations for Children Funds, United Nations Development Program, East-West Management Institute, and ILO are also supporting RSJP in the conduct of training on some specific topics such as



gender issues, intellectual property rights, code of judicial ethics, human trafficking, drug trafficking, human rights, labour law, etc.

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RSJP plays crucial roles in coordinating the partnership with these development partners. RSJP cooperates with French cooperation in relation to training on criminal code and code of criminal procedure and with JICA in respect of the training on civil code and code of civil procedure. In addition to the ongoing cooperation with these two development partners, at the beginning of each academic year, RSJP seeks cooperation with other development partners to confirm their support and participation in the training on particular topics based on their specialty and the main areas of activity in which such partner involves. The allocation of time and topics for training is determined by taking into account the actual need of the judiciary, the availability of the resource for training on a particular topic, and the appropriate schedule for training with a view to ensure the quality of training.

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It is also challenging for RSJP to coordinate the contents of training provided by each development partner. There are some instances where the contents are overlapping with each other. Sometimes, the trainers from common law jurisdiction and trainers from civil law jurisdiction adopted different training methodologies. In this regard, RSJP's management would require trainers to provide the contents of their lectures or talk notes in advance so that it can ensure that the lecture or talk would not be so much difficult for students to follow and it is appropriate for RSJP's students taking in consideration the capacity of students and the legal and judicial system of Cambodia. Often, RSJP provides the trainers some guidelines and principles on the conduct of training and some legislative texts which can be used as reference for trainers to develop their lecture or talk notes.

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Whilst all support has been of benefits to the RSJP in some way (s), it has not been coordinated to respond directly to the need of the school, but rather, to respond to project designs of the development partners. This has meant that assistance has been piecemeal, lacking a holistic approach to building the capacity of the school to become a sustainable institution which can produce efficient judges.

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Based on the needs assistance in 2005, there is a need for better donor coordination to ensure that no duplication occurs and no development gaps are missed. It is difficult to gain the trust of students and trainers alike. Consequently, when donor consultants come to the school for short periods of time, the success of their intervention is limited by the brevity of their visit.

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Although the school is receptive to many forms of donor assistance it has found it difficult to meet its narrative and financial reporting obligations. Donor have however set neither a high standard nor a consistent precedent. On numerous occasions they have failed to supply the school with reports about work undertaken with or for the school.

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To reduce the said difficulties, at the beginning of the schooling year, the school invites all development partners who are interested in the judicial training to brief them about the planning and invite their participation in the program. Each development partner is allocated a specific subject. For example, GTZ provides training on domestic violence, UNICEF on child rights and protection, ILO on labour law. Nevertheless, to effectively coordinate work in such environment, there must be a team who has acquired knowledge of various legal and judicial cultures (e.g., Civil law, common law).

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545 **1.4 OUTCOMES**

**1.4.1 Improvement of Curriculum**

550 With concerted support from experts, development partners and Cambodian trainers, RSJP has been able to finalise a relatively comprehensive training curriculum as outlined in **Sections 1.3.2** and **1.3.3**. The curriculum is modelled on French judicial education system and was developed by choosing subjects depending on their relative weight according to what had been successfully received in France and what was considered would be useful in Cambodia. The subjects and their time allocation are as showed in the table below.

<b>Criminal Law</b>	<b>Hours</b>
Prosecution	30
Investigation	30
Methodology of judgment	30
Criminal cases study	15
Simulation	15
<b>Total</b>	<b>120</b>

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<b>Civil Law</b>	<b>Hours</b>
Comparative study of drafts of Civil Code and Code of Civil Procedure with civil law in force	30
Preparatory procedure (oral argument)	15
Hearing and judgment writing	15
Roles of judges in land dispute law	15
Intellectual property rights	15
Civil cases study	15
Simulation	15
<b>Total</b>	<b>120</b>

<b>Conferences</b>	<b>Hours</b>
Khmer society	40
Social science	40
Legal and Judicial reform	30
Human rights	30
Legislative evolution	73
<b>Total</b>	<b>213</b>
English	96
French	96
Computers	75
<b>Total</b>	<b>267</b>

**Total: 120+120+213+267= 710/8months**

560 Although RSJP tried to stick to the pre-established training subjects and time allocation, it remains flexible in relation to the adjustment of the above list depending on the availability of trainers and budgets. RSJP occasionally tried to take advantage of the availability of some prominent foreign and local trainers who can come to give talk about a specific topic relevant to judicial practice and social issues.

565 **1.4.2 Improvement of Training Facilities**

**Expansion of school building and infrastructure** - RSJP is located in the same campus with the Royal School for Administration, sharing a part of this school. The building originally consisted of 6 classrooms. After renovation it has made into three



570 classrooms, five offices, one computer room, and one extra-room. The classrooms are too small to accommodate 55 students.

575 In 2004, with financial assistance from GTZ, RSJP was able to build a dormitory for female students containing a library and conference hall. In 2007, with financial assistance from Japanese government, RAJP has constructed a three storey building for training judges, prosecutors, and court clerks. At present, the school is well equipped with furniture and tools necessary for training and administration.

580 To improve quality in training, RSJP has been doing: insisting on professional practices to cover a major part of the curriculum of the School; opening a library at the School; improving the communication with the courts which receive the interns; establishing a website of the School, improving of judicial system needs, that can contribute to reduce the corruption that shelters in the justice; appointed some graduates of the first intake to join the school; establishing a working group to prepare teaching materials; launching some attractive policy to keep the trainers; integrating the opinion from the Supreme  
585 Court to be more largely exerted to help resolve some principal legal issue; integrating court presidents to systematically be recipients of information and instructions relating to internship in court; publication of the School leaflet, for example quarterly, which contains a schedule of activities or other information, which interest the judges and prosecutors.

590 **Development of training materials** - the legal framework in Cambodia is evolving. When RSJP is established, Cambodia lacked both substantive and procedural laws. The two fundamental codes (code of civil procedure and code of criminal procedure) which ensure the due process and fair trial are currently still in draft form. Therefore, the contents of the training will need to be adjusted to include both, existing procedural law  
595 and practice, as well as the new principles which will apply after the adoption of these two codes.

600 Late 2007, several training materials were adopted as standard training materials to be used for training students soon after the adoption of code of civil procedure and code of criminal procedure. The training materials on code of civil procedure were prepared with the collaboration of Japanese lawyers and judges whereas materials on code of criminal procedure were developed by French cooperation. In addition, RSJP avails itself of new graduates and local trainers of the school by forming a working group for them to develop training materials. As a result, the prepared training materials are considered to  
605 be standardised and useful for the present training.

610 **Upgrading training techniques and methodologies** - according to the need assessment in 2005, students interviewed were not familiar with critical thinking and analysis methods. Students also need time to reflect and research, which at present is not possible within the confines of the current curriculum. The lecture based training is not adequate for students to acquire necessary skills and knowledge for the practice of a judge and prosecutor.

615 Therefore, the school has improved its training methodology by providing a mixture of participatory and interactive methodologies, which encourage students to apply their knowledge in a practical way rather than analysing it theoretically. For example, the school has organised a mock trial scenario in both criminal case and civil case.



### 1.4.3 Increase in Number of Qualified Judges and Prosecutors

620 Prior to the period of UNTAC (United Nations Transitional Authority in Cambodia), a  
number of those serving as judges and prosecutors were trained in Vietnam and other  
former Soviet bloc countries. Between 1994 and 2002 the Ministry of Justice had the  
main responsibility for judicial training. In 2002 the training of judges and prosecutors  
was made the responsibility of the RSJP, now part of RAJP (itself established in 2004).  
625 In 2005, RAJP graduated its first class of 55 judges and prosecutors. At present there  
are 227 judges and prosecutors actively at work in Cambodia. It is the first time in  
Cambodia history that judges and prosecutors are properly trained by a judicial  
professional institution. The 55 graduates carried with them knowledge and skills to  
practise their judicial profession. Obviously, they contribute greatly to the development of  
the judiciary in Cambodia. In other words, justice is better served to the people.

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### 1.4.4 The Way Forward

The RGC expressed its desire to increase the number of judges and prosecutors from  
227 to approximately 500 in the whole country. Therefore, RSJP/RAJP will continue its  
mandate to train newly recruited students and practising judges and prosecutors. Facing  
635 new and rapid development in judicial practice, social change and newly passed  
legislations, RSJP/RAJP would be required to continuously revisit and review its existing  
curriculum, improving its training facilities and methodologies, and consider its roles in  
improving justice in the country.

640 As for the training curriculum, according to the need assessment conducted in 2005, it  
was mentioned in the interviews conducted that most lectures focus on substantive legal  
areas, despite many students not understanding the basic principles applicable to the  
skills and disposition required of a judge. Therefore, it is recommended that the school  
should focus on the development of skills and disposition in addition to substantive law  
645 topics. These tools will, even without in-dept knowledge of a substantive legal area,  
enable students to find an answer based on fact and logic, and run a matter through their  
courts. This means that the curriculum must include both theoretical training on the  
different areas of the law and instruction to develop practical skills such as advocacy  
techniques and how to draft various documents including judgments. Consistently, the  
650 need assessment conducted in 2006 also showed similar outcomes. The skills based  
curriculum which consists of the following skills should be included: critical thinking, legal  
research and analysis, decision-making, legal writing, interviewing, examination of  
witness, collecting, preserving and weighing the importance of evidence, investigating a  
case, managing a trial, alternative dispute resolution, and so on.

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As for its faculty, RSJP/RAJP would need to involve more local trainers and international  
experts who have practical experience in legal and judicial training. The experience  
shows that it is more preferable to have a pool of permanent experienced trainers who  
can commit themselves and focus on their efforts on the preparation and training at the  
660 RSJP. Doing so, RSJP would need to increase its budget and provide more support to  
trainers such as legal assistants, translators, textbooks, materials necessary for training.  
Without reasonable and competitive pay and support, it is hard for RSJP/RAJP to  
engage experienced practising judges and prosecutors to work extensively for the  
school.

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It is important for RSJP/RAJP to continue to set up and implement effective mechanism  
for monitoring and evaluating its performance. In addition to the need assessment for



670 training of students, RSJP would consider to do evaluation in conjunction with  
other relevant judicial leaderships on the performance of the graduates after taking their  
work at court. Their performance would include the working relationship with their fellow  
judges and prosecutors, their contribution to the improvement of the existing practice of  
the courthouse and their relationship with other court users. Without proper mechanism,  
the contributions of RSJP/RAJP to improve the justice in the country would merely be  
confined to the increase in the number of judges and prosecutors annually.

675 With a view to improve the effectiveness of judicial education and the state of justice, it is  
essential that RSJP/RAJP works closely with other judicial leadership such as CLJR,  
MOJ, SCM and courts of all levels. More discussions and debates should be conducted  
in order to identify challenges and issues facing the judiciary so that all relevant judicial  
680 institutions can consistently and coherently participate in the judicial reform and the  
justice is better served to the people. Furthermore, RSJP/RAJP would continue to play  
its leading role in coordinating and mobilising all technical and financial support from  
development partners and other stakeholders. With these supports, RSJP/RAJP can  
expand and accelerate its activities in educating judges and prosecutors as well as  
685 participating in other public interest activities.

## 2.0 ANALYSIS/EVALUATION OF EXPERIENCE

### 2.1 ANALYSE SUCCESSES TO IMPLEMENTATION AND WHY

690 Since its establishment, RSJP has made tremendous efforts to work hand in hand with  
government agencies and development partners in order to mobilise partnerships and  
funds required for the implementation of judicial training. The progress and development  
of RSJP/RAJP training program and other activities depend very much on the concerted  
efforts of all stakeholders.

695 The RGC is strongly committed to support the initiative taken by the leader of RSJP. The  
Board of Directors of RSJP is composed of leaders of relevant legal and judicial  
institutions. They are Deputy Prime Minister in charge of the council of ministers and  
chairman of the CLRJ, Minister of Justice, President of Appeal Court, representatives of  
700 the Council of Jurists, President of the Bar Association of the Kingdom of Cambodia,  
French expert, and the director of the school. The chairman and members are very well  
aware of the situation of the legal and judicial system of the country and they have great  
responsibility to organise and implement the judicial policy in the country in an  
appropriate way.

705 The success of judicial education at RSJP does not entirely rely on the commitment of  
the judicial leadership. The funding agencies such as French cooperation, JICA, GTZ,  
UNDP, ILO, UNICEF, EWMI, USAID, have also greatly contributed to that success.  
710 These organisations provide financial support and experts to assist RSJP in establishing  
training program, teaching and training of trainers. The knowledge and skills students  
and local trainers learned from foreign experienced legal professionals and judges are  
extremely useful for them.

715 RSJP has implemented strict recruitment procedure. Although the quality of legal  
education provided at universities does not meet international standard RSJP was able  
to recruit highly capable law graduates from state and private universities through a very  
competitive examination process. Some of them obtained master degree of law or LLM



720 from internationally recognised universities in other country, such as South Korea, Singapore and France. Recruited students are talented and able to learn and acquire new professional skills necessary for the practice of judges. They have demonstrated their competence through presentation, argumentation at mock trial, written and oral examination. The quality of students contributes largely to the success of judicial training at RSJP.

725 RSJP's management and supporting staff have also played crucial roles in assisting the administration of the school, facilitating the faculty in respect of class preparation, communication with students, translation and distribution of documents, coordinating with different funding agencies, liaising with government agencies. The continued commitment (albeit low pay) has also contributed to the success of the education.

730 The commitment and contribution of the faculty are also contributing to the success of the training. It is noted that they are very busy with their work at courts and RSJP is not able to provide a competitive pay for them comparing to what they may earn from other work, they are willing to do research, prepare their lecture and teaching regularly at the school. Some of them are very senior judges, court president and high ranking officials of the MOJ. They have greater responsibility in their workplace but they have enthusiasm about teaching students at the school.

740 It is generally noted that both existing judicial officers and newly graduates from RSJP are conscious about the reform of justice. They are somehow aware of the challenges and problems facing at their own jurisdiction. Therefore, they have adopted a pro-reform behaviour and some of them are prone to change to meet the demand of the users.

## 745 **2.2 ANALYSE DIFFICULTIES/CONSTRAINTS TO IMPLEMENTATION AND WHY**

Although RSJP/RAJP has successfully implemented its judicial training program to a large extent, the state of justice in Cambodia is slowly improved. There are several identifiable constraints to the implementation of RSJP's education program.

750 It is noted that RGC is strong commitment to reform its judiciary and support the judicial education program of the RSJP. The financial support from the RGC for a judicial education institution to function well is not sufficient. RGC would need to increase budget for RSJP so that it can hire competent staff, facilitators and competitively pay for experienced trainers. With sufficient support, RSJP would be able to have its permanent local trainers and produce proper training materials to be used at the school. When RSJP has permanent faculty, it is much easier for the school to provide training for them on substantive law and teaching methodologies and they would be able to focus extensively on their teaching with a view to improve the quality of judicial education of the school.

760 Both the management staff and supporting staff have little experience in judicial education. They seem to depend largely on the assistance and support from external funding agencies. However, the funding agencies often change their experts and staff. This makes RSJP difficult to deal with new comers who have less knowledge of the needs and operation of the school. In some instances, the funding agencies have attempted to impose RSJP to accept their project design which is not realistically so relevant to the need of the judicial education in Cambodia but the school has to accept



their proposal in order to maintain good relationship with those organisations and to gain support for other activities as well.

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In 2006, the 55 graduates of first class were appointed to work at provincial and municipal courts in the whole country. It is noted that they are facing numerous challenges when working with other practising judges and prosecutors. Most of them are young graduates while their fellow judges and prosecutors are elder, senior or superior.

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The elder, senior and superior do not often welcome the initiative of the younger and often they cannot to change their old practice. Most of them have not received proper law education and their knowledge and skills are not updated to catch up with rapid development of legislation and judicial practice. This situation has prevented the newly appointed judges and prosecutors to apply their knowledge and skills to improve justice

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in the country.

It is generally observed that there is a lack of culture of judicial professionalism in Cambodian judiciary. Judicial officers at all court levels are not properly trained before being appointed to take their work. They have adopted a practice by taking the best of what they have and what they feel comfortable with in performing their judicial functions. They lack of substantial knowledge for conducting research on the best practice of other countries or other fellow judges and prosecutors who are better educated. At this stage of legislative development, judicial officers have large freedom to adopt their own practice which is not often reviewed and scrutinised by the MOJ or SCM.

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RGC has not been effectively implementing its plan of actions as adopted in reform strategy. Although the plan of action is very well prepared and the strategic actions are clearly identified there is a lack of persistence and coordination in the action of the implementing agencies. For preparing the plan of action and implementing the prioritised actions, RGC established the Council for Legal and Judicial Reform (CLJR) in 2002 given the mission to initiate and encourage the process and to follow up the implementation of legal and judicial reform policy and programs in accordance with the objectives of the Supreme Council of State Reform, and it is supported by a Permanent Coordinating Body (PCB) made up of the key line-ministries and institutions of the justice sector is in charge of the relations with the political level to ensure the ongoing commitment of the process. The CLJR and PCB have not been as persistent and effective as they should be. Their actions are often confined to the availability of the human resources, budgeting and the collaboration to the extent that relevant ministries and judicial institutions can provide. It is often seen that there is difficulty in the collaboration between CLJR/PCB with MOJ and SCM. Similarly, the Supreme Court, Appeal Court and courts of first instance are not well informed of the reform action and policy instructed from its superior institutions. Consequently, despite RSJP/RAJP has good standard of judicial education, its contribution to the improvement of justice in this country is still minor.

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### 2.3 KEY QUESTIONS/KNOW-HOW

Constraints and challenges in providing judicial education are still large. Historically, Cambodian governments seem to regard justice sector as less priority comparing with other sectors for the government's development agency. This would also be the case in other post-conflict country where political stability and national reconciliation would be higher priority. However, whilst there is lack of technical and financial resource for

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rebuilding the judiciary, Cambodia can manage those constraints and challenges by trying to get the best of what it can have.

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It is necessary for government to firmly commit itself to the improvement of the justice sector. The judicial education would not be effective without strong support and commitment from the RGC and other judicial leadership. For this purpose, the government would need to establish a clear policy which can be effectively implemented by all relevant stakeholders.

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The judicial education institution would need to look into the regional and international experiences in order to prepare for its own training. External experience would help to provide direction and enable the new institution to better understand its own need as well.

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The management of the judicial education institution should have personal experience in judicial training and have broad knowledge of local and international relevance of the training. With such experience and knowledge, it can identify and prepare an appropriate approach and methodology which fit its own context. Whilst existing judges prosecutors and other judicial leadership seem to regard judicial training as less important than their actual work, it is important for the management of the school to take strong leadership to encourage them and mobilise them to support the training.

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## 840 JUDICIAL EDUCATION AND SKILLS DEVELOPMENT FOR JUDGES AND COURT STAFF - THE NEPAL EXPERIENCE

### 1.0 DESCRIPTION OF REFORM EXPERIENCE

#### 1.1 PROBLEMS/CHALLENGES

845 Nepal is a small, poor and conflict ridden country in the Himalayan region of South Asia  
trying to shape its constitution and improve its justice system. The first democratic  
Constitution of 1990 and the Interim Constitution promulgated in 2007 aspires to  
establish an independent and competent system of justice.

850 But securing justice for the people and promoting standards of justice in all walks of life  
has been a continuous challenge in Nepal. The judicial system seems to be afflicted by a  
series of problems such as deficient laws, delays and procedural anomalies giving rise to  
855 docket congestions in several courts. The lack of research supporting judicial reforms  
and absence of communication, and collaboration among various actors and scarcity of  
financial resources has impeded the effectiveness of the system. The low morale of the  
judiciary created by the decade long conflict and continuing suspicion about its  
impartiality, integrity and fairness has further compounded the problems. It is not very  
long ago that the judicial leadership in Nepal began to give serious attention to systemic,  
860 legal and human resource related problems.

The judiciary began to introspect and inquire into the management aspects in the courts  
in the late 1990s,<sup>2</sup> it drew out a comprehensive the Strategic Plan (2004-08) and also  
865 took the initiatives to establish National Judicial Academy (NJA) in 2000 which fructified  
with its formal establishment in 2004. In what follows we will examine a number of  
challenges that surfaced prior to and following the establishment of the NJA in Nepal.

##### 1.1.1 Initial ADB Support and Withdrawal

870 The initiative to establish the NJA was taken in 2000 under the Asian Development Bank  
(ADB) funded project titled "Corporate and Financial Governance". Under this, UniQuest  
Pty Ltd, a parastatal of University of Queensland was appointed in July 2002 as a  
consultant/contractor to work for the establishment of the NJA. A number of good  
875 initiatives such as trainers' training to draw the front line faculty, training need survey and  
analysis (TNA), development of curricula in a number of sectors, preparation of draft NJA  
Act and a few training programs for judges on business law were undertaken by the  
UniQuest team with active engagement of the three judges drawn from the Judiciary.  
However, reasons yet to be fully explained to the NJA, the ADB withdrew its support  
before the NJA could really establish itself.<sup>3</sup> This was a serious setback. The  
880 establishment of a competent judicial academy for handling institutional, legal and  
human resource related issues only from the government resources was difficult if not  
impossible.

<sup>2</sup> See Ananda M Bhattarai & Kishor Upreti, (2006), *Institutional Framework for Legal and Judicial Training in South Asia*, Law and Development Working Paper series 2, World Bank at p 7.

<sup>3</sup> The Project was handled by a Project Implementation Team (PIT) led by the Registrar of the Supreme Court with representation from the other sector. The NJA virtually had no say in the project. Therefore, what went on between the PIT or the Government and the ADB is not communicated to the NJA. What was seen at the NJA was that the project was first scaled down and then withdrew on Aug 2006.



### 1.1.2 Identification of the Target Community

885 In order for imparting judicial education to all major actors of the justice system, doe  
streamlining reform initiatives under one umbrella and also for making rational use of  
scarce resources and avoid duplication, the identification of the target community is  
necessary. The judicial power in Nepal is exercised by a multiplicity of actors including  
the courts, tribunals and other quasi judicial bodies. Investigation in criminal cases is  
890 carried out by the police while prosecution is the responsibility of the government  
attorneys. The Bar obviously defends the accused. Institutions such as the Police  
Academy or the Judicial Service Training Centre (JSTC)<sup>4</sup> and the Nepal Administrative  
Staff College were providing training to the police, officials of the judiciary including  
government attorneys and officials of the quasi-judicial bodies respectively. There was,  
895 however, no training centre for judges and practising lawyers. Therefore, the question  
facing the policy makers was; who should be included in, or excluded from the target  
community of the proposed NJA. Training of judges by a wing of the Executive was  
repugnant to the very idea of judicial independence but creation of multiple training  
institutions was also not a very desirable thing in a resource starved and conflict ridden  
country.

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### 1.1.3 Objective and Focus of Judicial Education

The objective and focus is primarily determined by the pre-existing knowledge and skills  
in the target community. If the community had a sound academic background in law then  
the obvious focus would be "how", rather than "what" expects of law. Even though all the  
905 judges in Nepal and an overwhelming number of judicial officers and government  
attorneys do have a law degree, and some professional exposure either in the Bar or in  
the Judiciary prior to assumption of judicial duties, the poor quality of legal education had  
a serious impact on their performance. Besides, many para-legal staff of the courts who  
were involved in the processing of case files did not possess any law degree. Therefore,  
910 making a proper balance of knowledge, skill and behaviour-related inputs and adopting  
the right methodology in judicial education were critical questions to be answered.

### 1.1.4 Judicial Education in Deficient Legal Environment

915 Even though Nepal experimented with many constitutions over the last sixty years, little  
attention was given to a comprehensive review of laws. The *Muluki Ain* (national code), a  
150 year old legal code, with patchy amendments, continues even today and is applied  
in civil, criminal and family matters. This code has a very narrow canvas. For instance,  
there are no laws in many areas such as disappearance, abduction, extortion, criminal  
assault on property, organised crimes, sexual harassment, domestic violence etc.  
920 Similarly, the victims of the crimes are totally neglected by the criminal justice system.  
There is no comprehensive law on compensation which could be applied in civil wrong  
and other disputes where the payment of compensation or payment of costs to the  
winning party is required. Procedural anomalies and obsolete provisions of law and the  
absence of adequate and justice-oriented laws often times put the justice system in  
925 peril.<sup>5</sup> The high impunity resulting from frequent amnesties also impeded the  
effectiveness of justice. Where laws are the culprits, it would be difficult for judicial  
education initiatives to achieve desirable results.

<sup>4</sup> Established in 1982 as a department of the Ministry of Law and Justice, the JSTC conducted some programs for the judges prior to 1990. But after promulgation of the 1990 Constitution the judges had stopped going to the JSTC.

<sup>5</sup> See Ananda M Bhattarai, (2006), *The Judicial System of Nepal: An Overview in Fifty Years of the Supreme Court of Nepal*. Golden Jubilee Publication of the Supreme Court, 13, 31



### 1.1.5 Research and Judicial Education

930 Research is a necessary concomitant of judicial education and judicial reform. Prior to  
the establishment of the NJA there was no culture of conducting research on law and  
justice related issues where reform was necessary. Even though the Supreme Court  
(SC) had established a research division its activities were confined to the preparation of  
annual reports. The Law Commission, due to structural and financial constraints was  
935 virtually non-functional and research at the university and the non-governmental level  
was sketchy. In such a situation it would be very difficult for the NJA to launch effective  
education programs and also for the courts to impart efficient and effective justice without  
conducting systematic research in law and justice areas.

### 940 1.1.6 Institutional Challenges

The policy makers also faced challenges in drawing out an appropriate institutional  
framework. They had to face issues such as who should lead the NJA, how and from  
where should its faculty be drawn, should it have a permanent faculty or rely on judges  
and officers drawn from different wings of the judiciary on secondment and create a  
945 wider pool of extended faculty who could be invited to the NJA as and when necessary.  
As judicial education was a new area for the judiciary, and there was no pre-existing  
experience. There were no judges or officers with management degree or background  
who could look after training management or generate resources for the institutions  
sustainability. Infrastructure development was another serious challenge especially in  
950 light of the withdrawal of the ADB from the NJA project. Unless the NJA received liberal  
investment, it would not be possible for it to develop its own infrastructure and logistics.

### 1.1.7 Demand-side Considerations

This refers to both internal and external demands: how should the NJA respond to the  
955 internal demand for capacity building and external demand of a more balanced and  
effective justice. The internal demand could be catered by conducting periodic TNAs,  
developing curricula along the new findings and conducting training accordingly. But  
how would the NJA respond to issues such as the access to justice or the issues relating  
to fair and impartial, and effective justice that the society demanded? In a society with  
960 barely 48.6 percent literacy, huge poverty and marginalisation of every sort affecting  
women<sup>6</sup>, *Dalits*<sup>7</sup> and other minorities,<sup>8</sup> access to justice was a very serious problem.  
Then there are demands created by emerging international legal and economic order  
which the NJA needed to address.

### 965 1.1.8 Enhancing Public Trust through Judicial Education

The judiciary in Nepal was maligned by a series of allegations of irregularities. The image  
of the judiciary was and is still low not only in the public eye. Many judges also had a low  
self image. The issue of low self image could be addressed through judicial education  
but unless all the responsible organs collaborated in addressing issues pertaining ethics

<sup>6</sup> Gender inequality is high in the country. In terms of gender related development index (GDI), Nepal ranks 134th. See the Kathmandu Post Nov 29, 2007 at [www.ekantipur.com](http://www.ekantipur.com)

<sup>7</sup> Comprising 4.6 million or 20 percent of the population, *Dalits* (the so called untouchables) and 80 percent of Nepal's ultra poor, have been systematically discriminated against and exploited on the basis of caste. See Sixteenth Periodic Report of Nepal on Committee on the Elimination of all Forms of Racial Discrimination (CERD), 75,CERD/C/452/Add.2, (July 30, 2005)

<sup>8</sup> Minorities, colloquially called *Janajatis* are said to comprise 37 percent of the population.



970 and accountability and free it from actual or allegation of corruption it would be  
difficult to improve the situation only by imparting judicial education and help the judiciary  
to deliver impartial, efficient and effective justice.

## 1.2 ACTIONS TAKEN

975 In a situation where the system of justice is mired in an array of problems, the challenge  
before the policy makers deliberating on judicial education was to thrash out the mandate  
for the NJA, determine its institutional structure and create sufficient space and  
autonomy. It was also necessary to ensure that the newly created NJA could interact and  
980 collaborate with justice sector and other actors both within and outside the country and  
develop synergies for judicial reform through capacity enhancement of the human  
resource associated with the judiciary.

985 In view of the above, the NJA was created as an autonomous statutory body under the  
leadership of the Chief Justice and to be led by either a sitting or retired judge.<sup>9</sup> The NJA  
Act provided for representation of all the pillars of the justice sector in the Executive  
Committee.<sup>10</sup> The following main objectives were set out for the NJA to:

- work towards enhancing competence and professional development judges,  
government attorneys, court officials and other officers of the Nepal judicial  
990 service and private law practitioners by developing programs of judicial education;
- undertake research in areas of law and justice; and
- establish itself a legal information centre.

995 Thus, the NJA was not only an institute for judges and court staff, it under its sweep also  
brought government attorneys, judicial officials and government legal officers working in  
different government departments and also the private law practitioners. This, in other  
words mean that the NJA should provide on the job education to 256 judges working in  
different tiers of the court, 314 court officers, 3000 other para-legal staff, 238 government  
1000 attorneys, and 130 government legal officers and over 10,000 private practitioners in  
Nepal.<sup>11</sup> Further, the NJA was also required to work for enhancing efficiency and  
professional skills of personnel performing legal tasks in quasi-judicial bodies.<sup>12</sup> The Act  
also provided the opportunity for the NJA to bring major justice sector actors under its  
umbrella and to work continuously for their capacity enhancement in a coordinated  
manner. Major Activities undertaken by the NJA in the last three years can be  
1005 summarised as follows:

### 1.2.1 Faculty Development

In line with the idea of not creating an empire, the NJA now works with a small core  
faculty and a wider pool of extended faculty. The core faculty consists of three court

<sup>9</sup> This is generally in line with the models of judicial academies in South Asia. See Federal Judicial Academy Act of Pakistan, 1997; See also the institutional structure of Judicial Administration Training Institute (JATI), 1995 at [www.minlaw.gov.bd/jati](http://www.minlaw.gov.bd/jati)

<sup>10</sup> The Executive Committee is chaired by the Executive Director in which the Law Secretary, Secretary to the Judicial Council, The most Senior Deputy Attorney General, Registrar of the Supreme Court and Secretary of the Nepal Bar are members.

<sup>11</sup> See Strategic Plan of the Nepali Judiciary, 2004 at p 30; Strategy Plan of the NJA 2006 at p 4. The human resource in the judiciary is likely to increase in the years to come. Both Attorney General's office and the Law Ministry have a couple of hundred junior support staff.

<sup>12</sup> The two pillars excluded from the sweep of the NJA are the police and the jail and correction authorities. But as the NJA is required to make justice prompt, easy, and accessible, it can very much link these sectors in its activities. For the function and duties of the NJA see the Strategic Plan of the NJA 2006.



1010 appeal judges, one senior government attorney and a district judge. Besides,  
 there are at least three officers who work as their assistants. As of now it has provided  
 training-of-trainers (TOT) on adult learning skills, preparation, presentation, facilitation,  
 use of learning tools and allied subjects to over 160 judges, government attorneys,  
 lawyers and other officers of the justice sector. Besides, it has imparted training on  
 1015 curriculum development to 36 persons and content based TOT on Gender Justice, Ethics  
 and Accountability, Evidence and Constitutional law to 62 persons. For faculty  
 development, the NJA also got a small grant from the Public Sector Linkage Program  
 (PSLP) of the AusAID in 2007, under which two of its faculties went to University of  
 Queensland (UQ) and participated Content based TOT. The idea behind organising  
 1020 content based TOT is to strengthen the grip of the trainers on subject matter.

### 1.2.2 TNA and Curriculum Development

For any successful training it is necessary to identify the training needs of the target  
 community. The training need analysis (TNA), among others, takes note of the  
 1025 organisational need and its approach to reform, training need of the human resources  
 associated with such organisation as well as the societal need of accessible and  
 effective justice. It involves the adoption of both doctrinal and empirical methods such as  
 review of the existing documents such as strategic plan, and consultation stakeholders,  
 survey of the prospective participants, feedbacks from workshops, small group  
 1030 discussion and focused group discussion following which recommendations are made  
 prioritising areas and types of the training programs. The TNA is a continuous exercise in  
 judicial education. The NJA has conducted the TNA, once under the ADB project, and  
 another in 2006 under the USAID/ARD Rule of the law project. The latest TNA identifies  
 both knowledge, skill and behaviour related subjects in the priority list. The NJA  
 1035 frequently refers to the TNA while developing basic curriculum for short term training for  
 district court judges, government attorneys, judicial officers, bench officers and  
 government law officers. It is also developing curriculum for private law practitioners.

### 1.2.3 Training and other Capacity Building Exercises

1040 Within the span of three years the NJA has reached out to all the judges, government  
 attorneys and the judicial and legal officers. It has also launched many programs for  
 private practitioners. The highlights of activities of the NJA are summarised below.

<b>Impartiality, integrity and accountability (leadership and attitude focused) related</b>	<b>Competence Related (knowledge focussed)</b>	<b>Efficiency Related (both knowledge and skill focused)</b>	<b>Effectiveness Related (more skill focused)</b>
<ul style="list-style-type: none"> <li>• Judicial ethics, integrity, accountability</li> <li>• Access to justice, legal aid</li> <li>• Preventing and combating corruption,</li> <li>• Good governance</li> <li>• Team building, appreciative inquiry</li> <li>• Protocol and Etiquette, Self</li> </ul>	<ul style="list-style-type: none"> <li>• Courses on substantive, procedural and constitutional law, law of writs evidence law, Human rights law</li> <li>• Forensic science/DNA typing and profiling</li> <li>• Law and development</li> <li>• Transitional justice</li> <li>• Legal research and web based research</li> </ul>	<ul style="list-style-type: none"> <li>• Court management</li> <li>• Case flow management, Bench and court room management</li> <li>• Record management</li> <li>• Mediation</li> <li>• Information and communication</li> </ul>	<ul style="list-style-type: none"> <li>• Judicial skills,</li> <li>• Judgement and order writing,</li> <li>• Human rights, gender justice, e</li> <li>• Execution of judgement,</li> <li>• Writing charge sheets, appeals, written memorials,</li> <li>• Correct Nepali</li> </ul>



awareness • Understanding Leadership Roles, • Team Work/Team Building, Interpersonal Relationship, Learned Optimism	• New Public Management in the Judiciary, • Women, Children, Dalits, Indigenous and Minorities Issues, WTO, Victims and their rights	technology • Fair trial • Calendar system and delay mitigation	Writing • Legal Profession & Administration of Justice, • Art of Advocacy, Art of Drafting, writing legal opinion
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1045 Source: Based on NJA Annual Reports (2004-07)

### 1.2.4 Research and Publication

1050 There are a host of reasons for including research as a prime activity of the NJA. First, it supports judicial education. Second, it is a necessary precursor for designing policy interventions and reforms. Besides the NJA is mandated to provide advice and consulting service to the courts, the government and other agencies for '*...correcting the drawbacks, weaknesses and mistakes identified in the field of law and justice*' and '*disseminate information on various subjects regarding law and justice*'<sup>13</sup>, it needs to undertake research. Since its inception, the NJA has prioritised research and publication.

1055 The work completed so far can be categorised into three broad groups:

- Research in problem areas affecting speedy and effective justice,<sup>14</sup>
- Research for improving the quality of judicial education,<sup>15</sup> and
- Policy research for judicial reform.<sup>16</sup>

### 1060 1.2.5 Activities in Specifically Focussed Areas

The NJA has undertaken a number of programs in sectoral areas such as gender justice<sup>17</sup>, juvenile justice<sup>18</sup>, programs on *Dalit's* rights<sup>19</sup> and commercial and banking law.<sup>20</sup> These are the areas where significant constitutional and legal changes are

<sup>13</sup> See NJA Act 2006 S. 5

<sup>14</sup> Under this, three research initiatives namely research on *Current Status of the Directives Issued by the SC: (2006)*, *Study of the Case Flow at the SC: (2007)* and the study on *Execution of Judgment: Current Problems and Possible Way Forward: (2007)* are noteworthy.

<sup>15</sup> Under this head two research brought out in 2006 namely *Gender Justice: Collection of Cases and International Instruments* and *Trafficking of Persons: Report of the proceedings* and two other research conducted in 2007 namely *Current Court Practices in Juvenile Justice: Case Study Report and Juvenile Justice: Source Book and Manual* are noteworthy. Besides the NJA has also published NJA Law Journal (2007).

<sup>16</sup> Under this the NJA has completed the Mid-term Review of the Strategy Plan of the Judiciary (2007): and also prepared the Guidelines for in-camera hearing (2007)

<sup>17</sup> The NJA has conducted training for judges and also contributed in policy formulation in gender justice. For this it has worked with Delhi based INGO SARI/Equity, and local leading NGO-FLWD and Gender Mainstreaming Project of the UNDP.

<sup>18</sup> Juvenile Benches were established in 12 of the 79 districts in 2006. The NJA conducted five training programs for judges, court officers, government attorneys, police and child rights activists in partnership with the Centre Child Welfare Board (CCWB) of the government. In 2007, it conducted six more programs for judges. Following interaction with judges, a *Juvenile Justice Procedure Rules* has already been issued by the government and the new the Children Act is being introduced to the Parliament.

<sup>19</sup> The NJA has already conducted four sensitisation programs for judges on the untouchability issue in partnership with a Dalits rights organisation, LANCAU. More interactions on policy formulation and designing judicial response to cases against Dalits are planned.

<sup>20</sup> Following the SC's decision on Mahalaxmi Sugar Mills case in 2006 a hostile media reaction greeted the judiciary. Questions about impeachment of the SC judges handing down the decision in that case were raised in Parliament. At this point the NJA with the permission of the SC, conducted a half-day interaction between the bankers and the Judges. This opened up avenue for further collaboration such as curriculum design and training on commercial and banking law for appellate court judges who hold jurisdiction on commercial matters.



1065 happening in Nepal. In selecting these programs the NJA was primarily guided by  
 the demand side considerations-both internal and external. Internally, there was a need  
 for the NJA to design specifically focused program away from general orientation, it also  
 required to take up issues of Women, Juveniles and *Dalits* who are vulnerable and where  
 access to justice was a serious challenge, due to discrimination, neglect and  
 marginalisation. While access to justice was most acutely felt in case of *Dalits*,<sup>21</sup> the  
 1070 dispensation of justice in other areas was also marred by legal, institutional and  
 procedural wrangling and anomalies. In areas of gender and juvenile justice many  
 landmark judgements handed down by the Supreme Court also needed to be taken  
 down to the district court level. Similarly, the program on commercial and banking law  
 was the priority of the government, banking, industrial and international institutional  
 1075 sector who are lobbying with the government to establish commercial bench in Nepal.  
 Therefore this is a preparatory capacity building exercise taken up for judges who might  
 be appointed in commercial benches. In all of these areas the NJA is also involved in  
 some ways in appropriate policy formulation for accessible and effective justice.<sup>22</sup>

1080 **1.3 OUTCOMES**

The action taken in the course of establishment of the NJA and afterwards have produced some positive outcomes. We will mention a few of them here.

1085 **1.3.1 NJA, a Permanent Institution for Judicial Education and Research**

After two rounds of re-issuing of the NJA Ordinance, the NJA got a permanent Act in 2006 which gave it a permanent status as an autonomous body. Getting through the Bill in Parliament was not an easy task. A major issue that came up in Parliamentary hearing was the budgetary gap created due to the withdrawal of the ADB from the NJA project.  
 1090 Question was raised as to how funding requirements would be met for NJA's activities. Then there were departmental preferences. For instance, the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) was in favour of continuing with the JSTC, some section of the SC preferred a structure of NJA acted as a department of the SC. Meanwhile, the NJA got a strong backing of the Full Court of the SC which compelled the  
 1095 government agree to pay for judicial education. This opened the door for Parliamentary endorsement. Following the enactment the NJA is now recognised as a as a common institution of three pillars of the justice sector - the court, the government attorneys and the Bar. It is also the institute for government law officers. It is now accepted also as a nodal institute for judicial education and research in the judiciary.

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<sup>21</sup> There are 4.6 million Dalits, the so called untouchables in Nepal constituting around 20 percent of the country's population. But their use of the court service for securing justice was almost nil. In Annual Report of the Supreme Court or the Office of the Attorney General cases filed by Dalits are almost non-existent, in a recent study conducted by LANCAU, a Dalit rights organization there are only 36 cases filed by persons belonging to Dalit community challenging various types of discrimination. See LANCAU, Study Report on Untouchability filed in Court, 2007(draft).

<sup>22</sup> For instance, the abolition of gender discriminatory laws for which an Act is issued in 2007 had a strong judicial input. The NJA and the Supreme Court were directly involved in framing Juvenile Justice Court Procedure Rules and the improvement in the Draft Children Act. Similarly the NJA facilitated the work of the Task Force to study the establishment of commercial bench. On Jan 12, 2008 it conducted a multi-sectoral discussion program establishing commercial bench and strengthening commercial dispute resolution. It submitted the report to the SC for policy formulation. It is also planning to assist the Dalit Rights community in improving an anti-untouchability law.



### 1.3.2 Emerging Local Ownership

1105 Even after the withdrawal of the ADB, the NJA decided to pick up the cord where the  
UniQuest team had left it, and continue with the program. And now after three years of its  
operation, there is local ownership emerging at the NJA in terms of curriculum  
development, training and production of training materials. It has now prepared curricula  
for short term training for groups such as District Judges; Officers of the Court; District  
Government Attorneys; Assistant District Attorneys; private attorneys, bench officers and  
government legal officers with engagement of the stakeholders and experts. The NJA  
1110 conducted 21 training program in the first year(2004-05), 25 programs in the second  
year(2005-06) and 31 programs in the third year(2006-07). These programs are  
conducted with active engagement of the stakeholders.<sup>23</sup> Through these programs, the  
NJA has now reached to all of its primary target groups, namely; the judges, the  
government attorneys and the government law officers. It has also done some training  
program for private practitioners. However, as their number is very huge, these are at  
1115 best symbolic gestures on capacity building.

1120 While designing the curricula for district level officers and judges, the NJA aims at  
imparting knowledge and skill which prepare them for duties, guaranteeing better  
predictability and uniformity in the work, and providing new tools for work. The programs  
for the base level are therefore relatively longer but for senior judges and officers they  
are shorter and more focused on skill and leadership than with knowledge per se. The  
identification of problems and coalition building for bringing about reform is also the  
priority for senior judges and officers. Emphasis is also given to leadership related topics  
that cater to the need of individual participant as well as the institutional need of  
1125 improving the quality of its human resource and creating momentum for reform. Now the  
NJA as well as its target community has come to understand the difference between the  
university and judicial education.

### 1.3.3 Momentum for Legal Reforms

1130 Even though the impact of judicial education on the work of the participant is yet to be  
properly conducted, it is now felt that the education program launched by the NJA have  
helped the judges, attorneys and other officers better understand the limitation of the  
prevailing laws and brought to the fore the issue of getting a robust legal framework for  
making the dispensation of justice more accessible and effective. Judges are now arising  
1135 issues of legal reform at different for a. This has in some ways also contributed in  
creating a positive environment for the promulgation of separate penal code, civil code  
and procedural codes which had for long remained a low priority of the Executive and the  
Legislature. The NJA also has a sense that the inputs received in trainings are slowly  
getting reflected in work by target community in terms of improvement of the quality of  
1140 judgements and adopting court management techniques.<sup>24</sup>

<sup>23</sup> While there is the representation of all the stakeholders in the Executive Committee which oversees the program of the NJA, the judge faculty leads the design and execution of program for judges, the government attorney does the same in the program for attorneys. For this purpose, a senior joint attorney along with an officer have been deputed by the AG's office to the NJA. Similarly, MoLJPA gets involved in the execution of the program for government legal officers.

<sup>24</sup> NJA has traced many good judgements on juvenile and gender justice written by district court judges who had participated in the program on Juvenile Justice. It has now begun collecting judgments written by district court judges for systematic recording and publication. Besides initiatives are now being taken for preparation of calendar system in the courts. See Mid-term review of Strategic Plan, 2008.



1145 Some programs conducted by the NJA have made instant impact on policy  
formulation. One such program which requires special mention is the TOT and training  
on Judicial Ethics and Accountability conducted in collaboration with UQ. After the  
conclusion of the program this issue got instant attention. Many Supreme Court Justices  
asked for the reading materials. The judges' community took the initiative to revise the  
prevailing code of conduct in line with the Bangalore Principles. One of the faculties of  
the NJA, who participated in the in-Australia training on the subject and later collaborated  
with the UQ team in Nepal, has now been called to work on the review team to finalise  
1150 the Code of Conduct of Judges in Nepal.

### 1.3.4 Growing interest and attention

1155 The activities of the NJA and the methodology adopted by it are getting more attention in  
the target community outside it. For instance, in 2007 the SC justices showed interest to  
participate in the TOT, not because the Justices wanted to be trainers of the NJA but  
they saw merit in getting tips on effective communication and presentation which they  
have to do on numerous occasions on or off the bench. Accordingly, a program was  
designed and a couple of skills of adult learning such as effective communication,  
presentation and facilitation skills, adult learning principles and process, participatory  
1160 training/learning methods and accordingly these subjects were discussed in the retreat  
program organised for them. This was very much in the interest of the NJA as many SC  
justices are invited to take sessions at the NJA. A couple of other sessions such as  
appreciative inquiry, leadership building, DNA typing, transitional justice have gotten  
cross-sectoral interest. The research publications of the NJA, have received good  
1165 market.<sup>25</sup> Over time the NJA is merging as a centre for judges, jurists and scholars.  
Many judges and jurists have given talks and discourses on various aspects of law and  
justice.<sup>26</sup> These visits and emerging strategic alliance with organisations such as the  
UNIFEM, International Commission of Jurists, Geneva are likely to add more economic  
and other values to the work the NJA.

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## 2.0 ANALYSIS/EVALUATION OF EXPERIENCE

### 2.1 ANALYSE SUCCESSES TO IMPLEMENTATION AND WHY

1175 The NJA has just completed just three years of its operation and within this period it has  
certainly taken some positive directions in terms of capacity building of the judicial  
community, research and publication, and creating a positive environment for improving  
the dispensation of justice in Nepal. It has established itself as a nodal institution for  
judicial education and research in the justice sector. But three year is too short a period  
for evaluating the success of any institution. And in a country mired in multiple  
1180 challenges the term "success" in itself is an illusion. Then again, success or failures are  
relative concepts based on set of premises. Once the premise is changed then perhaps

<sup>25</sup> Here, the research report on the Status of SC Directives, Collection of Case Law on Gender Justice and more recently the NJA Law Journal have gotten very popular reception in the market. In one book review of the NJA Law Journal in the Law Magazine Kanoon, No 66, Dec 2007, the reviewer said that with this publication the NJA has really become "National".

<sup>26</sup> In 2007 alone two eminent justices Justice PN Bhagwati, former Chief Justice of India, who was the pioneer of public interest litigation in South Asia and Judge, Radar Randall of the US, Court a Circuit Judge in the United States Court of Appeal for the Federal Circuit, an internationally known expert on IP law gave a talk at the NJA. Other visitors included Prof Suri Ratnapala, University of Queensland, professor of Constitutional Law and Jurisprudence Prof Surya Subedi, professor of international law at Univeersity of Leeds and Dr Gunthar Bachler, an internationally noted Swiss Peace Building Expert who gave talk to Nepali legal community at programs organized by the NJA.



what is said to be a success may not look so. In what follows therefore a few factors contributing positively for what the NJA has achieved so far are mentioned.

### 1185 **2.1.1 Support of the SC and Other Stakeholders**

The NJA has been getting support of the SC from the beginning and throughout both at the institutional and individual level. The SC has given office space to the NJA. The SC and the AG's Office have also deputed Judges and Officers to the NJA to work full time whose salary is born by them. The SC is now lobbying with the government to find a building and space for the NJA within prime locations in Kathmandu. The SC and other stakeholders have been supportive in nominating the participants for the training and also in making available documents for research.

### 1190 **2.1.2 Government giving Financial Support**

1195 Though not sufficient a major source of funding for the NJA is the government which is used to pay the salary of employees appointed by it and for implementing the annual programs.<sup>27</sup> The money for partnership activities comes from partner organisations. Now, around one third of its activities are partner supported.

### 1200 **2.1.3 Effective Leadership and Team Work**

The credit for whatever the NJA has achieved up to now goes to the dynamic leadership that the institution has been getting all along. The first Executive Director was a judge with impeccable track record who was known for his commitment to the cause of human rights and the rule of law. After he was elevated to the SC, the present Executive Director, who also had had a long tenure as Professor of Law and Dean at the Faculty of Law and also a judge at the SC, was appointed. For a large part of the period under review, members of the first batch of the core faculty, who had a very good chemistry among themselves worked at the NJA. Besides, broad abidance to many practices adopted by the UniQuest team such as thrashing out the objective and expected outcomes of the program, developing modules and sessions, identifying appropriate resource person, calling a meeting with such persons before the actual training, conducting end of session evaluation, and end of the program evaluation, documenting reporting and reviewing also helped in maintaining the quality of the programs.

### 1215 **2.1.4 Broad Consensus on Training Methodology**

1220 There is a broad consensus on the methodology used in the training and interaction programs employed. For each training program a faculty member is designated as coordinator who enjoys sufficient autonomy in the design of training plan of a particular program. The plan is then submitted to the faculty meeting and once approved it is executed.

1225 The NJA uses the adult learning method and problem based discussion that recognises the experience of the participants and emphasises on learning rather than teaching. The resource persons and facilitators are asked to leave sufficient space for interaction, design group works to be followed by presentations. Practical sessions such as writing judgment and orders, peer review of judgments are also designed and implemented for certain groups such as judges and bench officers. In some programs the participants are

<sup>27</sup> In 2007-08 the annual budget of the NJA is Rs. 1,20,00,000.00 (equivalent to US\$ 1,90,476, one US\$= Rs 63)



1230 taken on visit to centres such as the reform house for juveniles or shelters for the  
survivors of trafficking, DNA lab etc where they get an opportunity to talk with other  
stakeholders. This gives them an opportunity to find for themselves what is working well  
and what is not in the dispensation of justice.

### 2.1.5 Goals identified through strategic and training plans

1235 The NJA prepared a Strategic Plan and the Training Plan in 2006 with the support of the  
USAID. The Strategic Plan set out the vision, mission and values, strategic and  
operational goals of the NJA. Similarly the training plan identified areas and topics for  
training for each of the prime target group of the NJA. Even though due to budgetary and  
other constraints the NJA has not been able to strictly implement the plans, they have  
helped the NJA to get direction towards which it needed to march.

1240

### 2.1.6 Growing interest and support

As mentioned before, the withdrawal of the ADB was a serious set back. But when the  
NJA began to move on small support began to trickle down to the NJA either in terms of  
logistical support or partnership in training. For example the NJA got some computers  
and other equipments from the USAID, it conducted a few programs with the support of  
UNIFEM, SARIQ (a regional NGO). In 2007 it got a small but very meaningful grant  
assistance from AusAID under its Public Sector Linkage Program and conducted TOT  
and training programs, prepared training manuals and reading materials in partnership  
with UQ. While the AusAID support is likely to continue, very recently the National  
Planning Commission is showing interest to support the NJA. In monetary terms these  
support activities are small, however, they indicate a positive attitude of donors and are  
adding value to the NJA's work.

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## 2.2 ANALYSE DIFFICULTIES/CONSTRAINTS TO IMPLEMENTATION AND WHY

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In the above three sections discussion is made about the challenges facing the NJA,  
action taken amidst the challenges and outcome of those actions. The outcomes at best  
indicate only some positive trends and achievements in selected areas. The NJA faces  
numerous difficulties and constraints. Major constraints are enumerated below.

1260

### 2.2.1 Resource constraints in achieving vision and mission

The vision and mission set out in the strategic plan of the NJA is "*to become a capable  
institution*" and its mission is to become establish a "*professionalised system of  
continuing judicial education*" for providing required knowledge, skill and other  
professional development opportunities and addressing the respective needs of judges,  
attorneys, judicial officers and others who are involved in the administration of justice and  
meet the "*quality needs of the national judicial system which strives for an impartial,  
competent, inexpensive, speedy and accessible justice.*"<sup>28</sup>

1265

1270 The Strategic Plan identifies many activities to strengthen the institutional capacity,  
capacity of its human resources and to develop networking and coordination with various  
stakeholders in order for providing quality training, conducting excellent research and  
establishing and strengthening legal information system by 2010/11. Similarly, the  
Training Plan has identified the list of professional training programs identified by each of

<sup>28</sup> See NJA, Strategic Plan (2063/64-2067/68) at p 4.



1275 the prime target groups. In order to execute the activities and programs identified  
by the strategic and training plan the NJA requires huge human and financial resources  
for executing the plan which is absent today.

1280 This apart, the NJA Act itself mentions several functions and duties which are yet to be  
implemented. For instance, it is yet to establish legal information centre or develop plans  
or mechanisms for linking judicial education with judicial administration or tying it up with  
career development or acting as liaison agency with the government and international  
agencies on matters relating to judicial education. As of now it has not conducted any  
1285 program for low level court staff or the staff of attorney general office of the law  
ministry.<sup>29</sup> Currently this job is being selectively undertaken by the JSTC. Here also  
resource is a serious constraint. Even though the Act empowers the NJA to own, own,  
generate and raise funds through grants or loan with prior approval of the government,  
as of now it has not been able to do so. Considering the vast demand for its services, the  
existing funds and human resources are insufficient to meet these challenges.

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### 2.2.2 Very Broad Mandate

A corollary issue is the broad mandate of the NJA. One can understand the rationale  
against creating multiple training institutions for training judges, government attorneys,  
and court staff and government law officers, but requiring the NJA to train officials of the  
1295 quasi judicial bodies who are not appointed by the Judicial Council and private  
practitioners who have a totally different need or interest, is too diverse a function that a  
single institution can shoulder. With the current institutional set up it seems too onerous a  
responsibility for the NJA. Either it needs to enhance its institutional capacity or trim up  
its mandate.

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### 2.2.3 Physical Infrastructure and Facilities

One of the difficulties for NJA in completing or even honestly pursuing its mission is the  
lack of appropriate infrastructure and facilities. Whereas many judicial academies in  
South Asia have well developed physical facilities, the NJA has only modicum of  
1305 facilities. A parcel of land has been allotted to the SC by the government for the  
construction of the NJA complex. But the land is in the outskirts of Kathmandu and road  
link is very cumbersome. If the NJA is to act as a non-residential institution in today's  
institutional format it needs to be centrally located. It is lobbying for a building and office  
space within the ring road areas in Kathmandu. The matter is in the consideration of the  
1310 government but any concrete result is yet to be achieved.

### 2.2.4 Faculty Development Challenges

As mentioned before, the NJA today operates with the support of a small group of core  
faculty and a resource pool of extended faculty. The core faculties and a great majority of  
1315 extended faculties are drawn from judges, attorneys and officers of Nepal judicial  
service. There are a number of advantages in including such a group for judicial  
education. The faculties keep themselves abreast with latest developments in their  
respective areas of interest and expertise, and besides training the participants, also use  
the knowledge and skill while performing their jobs in their offices. They also better  
1320 understand the strategic goals of judicial education and develop a sense of belonging to  
the vision, mission, goals and activities of the NJA.

<sup>29</sup> The number of these staff is around 5,000.



An extended faculty may also at some point be drawn to work as core faculty and vice versa. That way a unique synergy is built here.

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However, over-reliance on the extended pool has its own problems. Once a faculty member is transferred out of Kathmandu communication between the participants and the NJA. This creates several complications in meeting individual needs of the participants, designing supplementary or advanced programs or maintaining calendar.

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### **2.2.6 Training Materials and Publications**

Preparation and publication of training material is a necessary component of judicial education. As of now the NJA has been able to prepare training/reading materials and trainers' manuals only in a couple of areas. There is a need to produce materials in electronic form for meeting the needs of current participants as well as for running distance education programs, in the absence of human, physical and financial resource not much has been done in this regard, he/she is either not available or it is economically costly to invite him frequently as resource person. Besides quality control is a great challenge while working with extended faculty in a hierarchical environment of the Nepali judiciary. Therefore recruitment plans of trainers and staff does seem very critical.

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### **2.2.5 Nomination of Participants**

Currently the participants to the programs organised by the NJA are nominated by respective organisations.<sup>30</sup> While these organisations do not have human resource training plan the NJA has no say in deciding who should be trained. There is no direct

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### **2.2.7 Monitoring and Evaluation of the Impacts**

One of the serious constraints to measuring the success of the NJA is the absence of effective monitoring mechanism. During the initial phase, some exercises such as pre-session discussion with the resource persons, end of the session and end of the training evaluation was rigorously undertaken, but down the pre-session discussion has virtually been discontinued and there is some laxity in using the evaluation of resource person for the next training. Even though the NJA has begun to collect, document and where desirable publish the decisions, it lacks any systematic monitoring and evaluation system.

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### **2.2.8 Demand-side Considerations**

This refers to both the demand of participant and institutions as well as the demand of the people for accessible and effective justice. NJA has undertaken a couple of activities in this regard but there is a need to systematically work and steadfastly move for judicial reform keeping in mind the demand side considerations, especially in the light of emerging constitutional order embracing federalism in Nepal.

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### **2.2.9 Behavioural change, ethics and integrity issues**

Bringing about behavioural change and keeping the target community alert on ethics and integrity issue is one of the objectives of judicial education. Developing a uniform ethical framework of the judiciary and the justice sector institution is critical where judicial education institutions can play very meaningful role. The NJA has introduced the topic to

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<sup>30</sup> The SC nominates the judges and court officers, the Attorney General's Office, the MOLJPA, and the Bar Association nominate the participants from their offices.



1370 the target community, but there is a long way to go in this regard. A coordinated effort of the SC, Judicial Council, Judicial Service Commission and the judges and other employees required to achieve tangible results in this area.

### 2.2.10 Stakeholder Engagement and Donor Support

1375 The NJA now operates from the capital city of the country. As a result, it does not have direct linkage with regional level institutions where much needs to be done. Direct engagement of these stakeholders is very essential for enhancing the capacity of the justice sector. Similarly it also does not have a systematic plan for donor engagement in its activities. Given that judicial reform is also a priority of the donor community, it is imperative to develop plans and strategies for soliciting more donor support.

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## 2.3 KEY QUESTIONS/KNOW-HOW

1385 Judicial education in Nepal is a very recent experiment. But it is an interesting case study on the subject. The Nepali legal and judicial system is at a unique confluence where common law norms are blended local legal tradition and where international and domestic legal systems closely interact. The country was affected by conflict for more than a decade during which the judiciary was worst hit. Now peace is dawning in the country in instalments and the judiciary is trying to wake up with reform agenda. The NJA is one such vehicle created for judicial reform. Nepali experiment on judicial education is guided by local concerns but some issues might be of interests to reformers and judicial educators in the Asia-Pacific region. We discuss a few of them here.

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1395 The judiciaries in all the countries and more especially in developing societies are facing enormous internal and external challenges. Many old values and notions of justice need to be recast with new meaning- justice not just in a formal sense helping the society to maintain status quo, but substantive justice that empowers the marginalised and helps them to realise the rights and be equal partner in ushering and benefiting from national development. For this, the justice needs to be understood in its expansive connotation. The promotion of just conduct in society and establishment of a humane and peaceful order that proscribes discrimination and exploitation of any kind, accords highest respect to human rights and facilitates national development by promoting good governance and healthy economic development, should be the quest of justice. Such a quest brings within its sweep what was traditionally left to the distributive realm of justice. Conflicts and social discords reduce the chances of people getting justice. The judiciary in Nepal and many other countries in South Asia are uniquely situated to embrace the wider meaning of justice, develop judicial culture and deliver accessible and effective justice. Judicial education institutions should, therefore, work for expanding the notion of justice nurturing its inherent values and be abridge between courts and societies.

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1410 Judicial education institution should impart desirable knowledge and skills not only for meeting existing demands but for bringing about desirable reforms as well. It is more true for an evolving system like Nepal but equally true for all legal systems. While there is a need to continuously improve the quality of service through judicial education and make justice more accessible to people, judicial education institutions should act as reform vehicles and contribute to the policy reform in the justice sector. Judicial education by bringing to the fore issues of ethics, integrity and accountability, can also help judges and court staff work in a more responsive manner and win public trust.

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1420 In many developed countries there are multiple institutions working for continuous  
education of the justice sector pillars each catering to the needs of one particular sector.  
But this becomes a luxury for many developing countries. Bringing the pillars of justice  
1425 under one institutional framework of continuing education not only saves scarce resource  
but also orients the human resources in a coordinated manner towards achieving the  
overarching objective of justice and shoulder duties more responsibly imposed on them  
by the constitutions and laws. However, caution should be taken in bringing too diverse  
communities to one platform. It might dilute the focus of judicial education. Sectoral  
interests sometimes may also work at cross purposes.

1430 A key question in judicial education is monitoring and evaluation without which the quality  
of service provided by judicial education institutions and its actual impact on the  
performance of duties of the participant cannot be measured. In the absence of  
evaluation there are chances of judges and others taking judicial education only as a  
formality and an excuse to spending time off duty. But it is also true that participants in  
1435 judicial education especially the judges detest being subjected to evaluation. In case of  
Nepal as the NJA is statutorily required to tie up education to career development of the  
participants and also link it with judicial administration, development of monitoring and  
evaluation system is a must.<sup>31</sup> A few tools are available for monitoring the quality of  
continuing education. The commonly used methods in adult learning environment often  
1440 used for evaluating judicial education, are pre-and-post training objective test, peer group  
review, observation of participation, study of judgement and orders etc. Judicial  
education institutions in South Asia including Nepal are yet to develop concrete  
monitoring and evaluation methods which work both in the short, intermediate and long  
term. The educators and reformers should, therefore, collaborate in developing  
1445 appropriate methodology and tools for monitoring and evaluation of educational inputs on  
the participants.

1450 Often the judicial education institutions identify training needs by conducting training  
need survey and analysis. The TNA takes note of both institutional and individual of  
capacity enhancement needs as well as societal need of accessible and effective justice.  
But as the TNAs only broadly categorise participants in terms of their duties such as  
appellate court judges and district court, government attorneys or the court officers and  
the like. It only gives a rough idea of how judicial education programs should be  
1455 designed and implemented. The educators should go further to dig individual needs and  
assess demand side considerations and tailor the program accordingly. The challenges  
faced by a justice system in a particular country also provide useful insights for  
identifying actors who can provide useful leadership in the delivery of service and  
eventually work for reforming the system. The challenges also guide the policy makers to  
draw a suitable institutional framework for judicial education and bring relevant actors to  
1460 common fora and provide necessary inputs and devise judicial education as a corollary  
activity of the overall legal and judicial reform.

1465 Another issue that needs to be highlighted is research. Research is a necessary  
concomitant of judicial education. Research is required for identification of the training  
needs, for assessing the impact of judicial education and maintaining or improving the  
quality of judicial education. In case of Nepal, it falls within the statutory mandate of the  
NJA. It is asked to conduct research in areas of law and justice and advise the  
government for correcting the draw backs, weaknesses, and mistakes in the field of law  
and justice. In countries where systematic research is yet to be institutionalised, judicial

<sup>31</sup> See NJA Act 2006 S.5



1470 academies, which get regular feedback on the working of law through interaction with practitioners such as judges, government attorneys, law professors and lawyers, are ideally suited to conduct research in matters pertaining to law and justice. That way, they can positively and effectively influence reforms for the improvement of justice.

1475 Institutional capacity building is a serious challenge not only in case of infant academies like Nepal but many countries in the developing world. Prevalent view in many common law jurisdictions is the adoption of peer group model making it necessary for judicial education institutions to be led by a judge. But even here involvement of law professors is not despised. In many academies law professors have played important roles.<sup>32</sup>

1480 Rather than who leads the organisation a more important question for judicial academies is, therefore, the enhancement of institutional capacity to plan, design and effectively implement programs of judicial education, arrange resource and strive for sustainability. Increased dialogue with courts and other stakeholders for capacity enhancement of their human resources and with donors for soliciting support in its activities remains critical. The judicial academies on their part should also be

1485 representative of the constituency they work for and should reflect this in their recruitment plans.

1490 Judicial education institutions must be primarily guided by local domestic needs and planned in a country specific context. However, as systemic specificities are vanishing and the legal systems are influenced by growing internalisation - of human rights values, and emergent international norms of trade, commerce and services - insulation and compartmentalisation of domestic legal systems is slowly becoming a matter of the past. There are many areas where judicial academies can share experience and benefit from each other. For instance, in areas such as judicial procedures and process, case

1495 management, mediation and judicial skills, use of judicial tools, information on case laws, judicial education methods, information dissemination systems, exchange of training materials where the institutions can benefit from regional collaboration. Every country, while developing policy, approaches, strategies and methodologies for judicial education based on the local context, can learn from comparative, regional and global initiatives.

1500 Synergistic relationships based on experience can be developed with an increasingly globalised world supplementing national efforts through cross fertilisation of ideas.

1505 Finally judicial education, in order to usher judicial reform, needs to be supported by visionary leadership. Unless the judicial leadership is clear about the reform goals, puts its weight for reform, and takes the deliverables of the judicial education institutions to improve court management and dispensation of justice, judicial education becomes a lonely walk. The Nepali judiciary, through the design of strategic plan seems to be moving towards introducing reforms, but much ground is yet to be covered for winning public trust. The judicial education institutions can at best be only a pro-active partner

1510 and facilitator in this regard.

<sup>32</sup> For instance the first Director of Federal Judicial Academy of India was a retired Law Professor who is now succeeded by another law professor. NJA, India also has created two posts for professors. In case of NJA Nepal, not only a sitting or retired judge but any person who has the qualification to be a judge can be the executive director.



## ANNEX ONE

### A1.0 COUNTRY CONTEXT AND BACKGROUND: CAMBODIA

#### A1.1 COUNTRY CONTEXT

##### 1515 A1.1.1 Historical Overview of Cambodian Legal System

The Cambodian legal system has evolved over time through a series of contributions from various legislative sources, and social and political changes. Prior to French protectorate, Cambodia was ruled by King who applied customary and religious rules as legal basis for governing the country. During French protectorate (1863-1954), French authority had imported some legal rules to implement in Cambodia. Consequently, Cambodian legal system was largely influenced by French legal system. Even when French protectorate ended, Cambodian legal system remained unchanged. Cambodian civil code, commercial code and court system were modelled on French codes and judicial system.

1525 The influence of civil law system in Cambodia was interrupted when Khmer Rouge took control over the country from 1975 to 1979, at which time both legal and judicial systems were abolished. The Khmer Rouge transformed the country into collectivism.

1530 After the collapse of Khmer Rouge in 1979, Cambodia was governed by a socialist government (1979-1991) where the legal system was inspired both Soviet socialist system and Vietnamese socialist legal concepts. During this period, Cambodian government established provincial/municipal courts and the Supreme Court. There was no proper separation of powers. The administration of justice was mainly ensured by  
1535 MOJ.

In 1991, four political fractions in Cambodia entered into a Paris Peace Agreement with the participation of large international community. Consequently, in 1991 the United Nations decided to send its missions to Cambodia to organise in first time a democratic  
1540 election. From 1991-1993 Cambodia was governed by a Supreme National Council which is composed of representatives of four political fractions with the supervision of United Nations Transitional Authority in Cambodia (UNTAC). UNTAC and SNC passed some laws and regulations for implementing during the transitional period. Nevertheless, whilst there is no sufficient legal rules, Cambodian courts have adopted a practice which  
1545 is a kind of mixture between socialist legal concept and remaining French civil law concept.

#### A1.1.2 Current State of Judicial Reform

1550 In 1993, a liberal democratic constitution was adopted and the democratic government was formed as a result of free election. The government adopted a liberal democratic constitution which enshrined basic concepts of separation of powers, rule of law, independence of judiciary, liberal democracy and protection of human rights. However, the implementation of these concepts was somehow interrupted by remaining civil war between elected government and Democratic Kampuchea.

1555 The RGC was able to adopt a comprehensive action plan for implementing the legal and judicial reform in June 2003. The reform action plan has set out some principal objectives such as to improve the protection of individual rights and freedoms, to modernise the legislative framework, to provide better access to legal and judicial information, to



1560 enhance quality of legal processes and relative services, to strengthen judicial services, to introduce alternative dispute resolution methods, and to strengthen legal and judicial sector institutions to fulfil their mandates.

1565 To prepare and implement its reform action plan, RGC had established the Council for Legal and Judicial Reform and RSJP in 2002 and passed numerous legislations to ensure the function of judicial institutions. In 2007, a comprehensive code of civil procedure and code of criminal procedure were adopted. This adoption of these two codes contributes greatly to the smooth functioning of the court and to ensure better access to justice.

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## **A1.2 JUDICIARY AND THE COURTS**

### **A1.2.1 Constitutional Council**

1575 The Constitutional Council consists of nine members with a nine-year mandate. Three members are appointed by the King, three members by the National Assembly and the remaining three members by the Supreme Council of Magistracy. One third of the members are replaced every three years.

1580 The Constitutional Council has the duty to safeguard respect for the Constitution, interpret the Constitution, and the laws passed by the Parliament. The Constitutional Council also has the right to examine and decide on contested cases involving the election of parliamentary members.

### **A1.2.2 Ministry of Justice**

1585 Pursuant to Articles 109 and 111 of the Constitution, the judicial power is an independent power, it is not granted to the legislative or executive branches. From these provisions, it is very clear that the Ministry of Justice should not exercise any form of jurisdiction over the exercise of judicial power and over the filing and conduct of the public prosecutions.

1590 The Ministry of Justice though has no power to interfere with the judgement of the judges it has the role to assist in the administration of justice. All court clerks are appointed by Ministry of Justice. The Ministry can also do inspection on the regularity of the performance of judicial officers including the judges and prosecutors.

### **A1.2.3 Supreme Council of Magistracy**

1595 The King is the guarantor of the independence of the Judiciary. He presides over the Supreme Council of Magistracy. The SCM makes proposal to the King for appointing judges and prosecutors or taking any disciplinary action against them. The SCM is composed of the President of the Supreme Court, General Prosecutor of the Supreme Court, President of Appeal Court, General Prosecutors of the Appeal Court, Minister of Justice and judges representatives of provincial and municipal courts.

### **A1.2.4 Courts**

1605 Cambodia has twenty two provincial and municipal courts or courts of first instance, one appeal court and one Supreme Court located in the Capital. The court of first instance has jurisdiction over all types of lawsuits including administrative disputes.



1610 The courts of first instance, appeal court and Supreme Courts are composed of sitting judges and prosecutors or general prosecutors. The sitting judges and prosecutors are supported by court clerks who do secretarial work for the judges and prosecutors during the court proceedings or for the administration of the court houses.

1615 The Appeal court hears all types of appeal. It re-examined both the law and the facts of the cases. The Supreme Court only examines the application of laws by lower court for the first appeal. However, if there is second time appeal to the Supreme Court on the appeal court decision the Supreme Court would re-examine both the application of the laws and the fact of the case.



## A2.0 COUNTRY CONTEXT AND BACKGROUND: NEPAL

### A2.1 COUNTRY CONTEXT

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Nepal, a small landlocked country in the Himalaya sandwiched between India and China. In the South, East and West, she is bordered by India and in the North by China. Today, Nepal is spread in five regions and 75 districts for the administrative purposes inhabited by 25.8 million people comprising some 100 ethnic groups. In the Human Development Report Nepal now ranks 142 out of the 177 countries, and in the human poverty index 84th among 108 developing countries. The general life expectancy is 62.2 years where 17.4 percent people do not survive past age 40.<sup>33</sup>

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Nepal was unified into one Kingdom some 238 years back at the initiatives of the Kings of Gorkha, one of the small princely states in the middle mountains, who through series of military expeditions weaved more than 50 small principalities into one country. It was a time when British Empire was making massive inroads into the Indian subcontinent. The Britain effectively checked the Gorkhali drive for unification in the Himalayas through a protected war between 1814 and 1816 AD. In this war Nepal not only lost a huge area in the West, East and South, she was also by and large squeezed to the present size through the Treaty of Sagauli in 1816. While the treaty permanently ended the antagonism between the two expanding forces, it opened up a new kind of relation between them as well. Britain got a trusted ally in Nepal and the latter retained her independence throughout the former's rule in the Indian sub-continent when hundreds of Indian Maharajas (*Kings*) had succumbed to the British military might.<sup>34</sup>

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During the most part of the 19th century and the first half of 20th century Nepal remained isolated from the external world. She began to open up only after overthrowing the feudal *Rana Rule* (1846-1950) through the First People's Movement in the 1950. She tried to install democratic rule within the country with constitutional monarchy and multiparty democracy and an independent system of justice but her owe did not end here. The King usurped the power and installed his direct rule in the 1960 after overthrowing a popularly elected government and banning all political parties. The Second People's Movement in 1989/1990 brought back democracy by compelling the King to accept his earlier agreed position of constitutional monarch, but this attempt also got maligned by the failure of governments to promptly deliver the goods to the people and growing Maoist insurgency in the country. For a short the interregnum Nepal again saw the direct rule of the King in 2005/06.

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After the signing of the Comprehensive Peace Agreement (CPA) with the Maoist in Nov 2006 Nepal currently is in transition. The 238 years old institution of Monarchy is in question and the first meeting of the Constituent Assembly is set to decide the fate of the institution. In the meantime, [interim] Legislature-Parliament, [interim] Government and Interim Constitution are functioning in the foundation of the CPA and the presence of the United Nations Mission in Nepal to implement the mandates of arms and army management, monitor the election of the constituent assembly, human rights situation and assist the Government to implement the CPA. At present, Nepal is a unitary State,

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<sup>33</sup> See UNDP, Human Development Report, 2007/08

<sup>34</sup> The recruitment of Gorkha soldiers began after the Indian Mutiny of 1857 during which Gorkali soldiers, siding with the British crushed the mutiny. For this assistance the British also obliged Nepal by returning a small portion of lost territory in Western Nepal which is even today euphemistically called *Nayamuluk* (*New Nepal*.)



1665 but a major political consensus has been reached to make the country federal one.<sup>35</sup> A series of agreements have been signed with forces crying for federalism and the Interim Constitution has been amended accordingly.

## A2.2 JUDICIARY AND THE COURTS

1670 The Nepali judiciary today stands on the constitutional foundations laid down by the 1990 Constitution which is mostly replicated in the Interim Constitution. The judicial power of the State is exercised by the courts, tribunals and other judicial institutions of the country as per the Constitution, laws and '*recognised principles of justice*.'<sup>36</sup> The expression '*recognised principles of justice*' keeps the potential of internalising values developed in international and comparative setting for evolving a competent system of justice in Nepal.

1675 Besides, the Treaty Act also accords a prestigious position to human rights norms which could be used to give further force to the rights recognised by the Constitution and the laws.

1680 The legal and judicial tradition of Nepal owe much to Hindu religious texts such as *Shrutis* and *Smritis*, and *Vyabhahara* where religion and justice were blended in one and supposedly protected and administered by the Kings and his courtiers who applied the scripture based law even though minorities following other religions historically lived side by side with the Hindus. The first codified law of Nepal, the *Muluki Ain* (the national code) which is still a major law on civil and criminal matters, promulgated in 1854 AD during the early phase of the *Rana Rule*, bore strong imprints of the Hindu tradition.<sup>37</sup> This law was

1685 amended several times to give it secular and equalitarian tone and temper. Besides, there are a host of other laws that govern the civil, criminal, family, social and economic matters.

1690 The attempts to establish an independent judiciary fructified in 1950 following the overthrow of the *Rana* oligarchy, Attempts were made to establish a democratic government that respected the separation of power. The movement of 1950 also began to transport external values into the Nepali legal system, primarily resulting in gradual internalisation of the common law due to Nepal's cultural and educational proximity with

1695 India. So much so that the first Chief Justice of the post 1950 *Pradhan Nyayalaya*, (Supreme Court) was an expatriate Nepali practicing law in India.<sup>38</sup> The Supreme Court began to establish and entrench the rule of law by issuing prerogative writs and also review legislations and play the role of guardian of the Constitution.<sup>39</sup> And since that time the system of justice has grown consistently and continuously, despite

1700 political upheavals in the succeeding several decades that experimented with several Constitutions.<sup>40</sup> This should however, by no means be understood that the judiciary is free from challenges.

<sup>35</sup> See Nepal Interim Constitution 2007 Art 138.

<sup>36</sup> See Nepal Interim Constitution 2007 Art 100. The expression is of immense importance as it empowers the judiciary to internalise values recognised in international and comparative setting.

<sup>37</sup> This is more visible in family law and other property related laws such as the trust law, financial transaction, and some criminal laws such as incest, bestiality, or killing of cows etc.

<sup>38</sup> At least eight Chief Justices after him were law graduates from India.

<sup>39</sup> See Ananda M Bhattarai, *The Judicial System of Nepal: An Overview In Fifty Years of the Supreme Court of Nepal* (published by the Supreme Court of Nepal on its Golden Jubilee), May 2005 at p 13,17.

<sup>40</sup> Nepal issued the first Constitution in 1948 during the last leg of Rana rule. An interim Government Act, a Constitutional text in nature was issued in 1950 and in 1950 a new Constitution was issued just to be withdrawn in 1960 and replaced in 1962. The 1990 Constitution lasted for 17 years and now Nepal has a new Interim Constitution issued in 2007.



1705 Today the Judiciary consists of a three tiered system comprising the Supreme Court, 16 appellate courts and 75 district courts in a hierarchical order. Besides, there are at least 8 other tribunals and special courts to hear specific cases. The constitution of benches hearing specific cases is a growing practice in the country. While there are juvenile benches in district courts the government, on the advice of the Supreme Court, envisages establishing commercial benches in the Appellate Courts to hear commercial disputes.<sup>41</sup>

1715 The Chief Justice is appointed by the Prime Minister on the recommendation of the Constitutional Council while all other Judges are appointed by Chief Justice on the recommendation of the Judicial Council and following a confirmation hearing at the Legislature-Parliament.<sup>42</sup>

1720 The Supreme Court is the final court of appeal. All the courts and judicial institutions except the Constituent Assembly Court are subject to it. It has the final authority to interpret the constitution and the laws in force.<sup>43</sup> The precedents established by the Supreme Court are as good as the law.<sup>44</sup> The court is vested with extraordinary powers to issue prerogative writs. It exercises the power of judicial review and also entertains public interest petitions.<sup>45</sup>

1725 Below the Supreme Court are the appellate courts geographically dispersed in different regions of Nepal. As the name suggests, they are basically appellate courts which hear appeal against the decision of the district courts and quasi-judicial institutions such as the chief district officer, land revenue officer, forest officer, warden of the wildlife parks and reserves etc. Besides, the appellate courts also issue writs such as *habeas corpus*, mandamus and injunctions.<sup>46</sup> The district courts are general jurisdiction courts hearing civil, criminal and family matters. The quasi-Judicial bodies, in a number of cases are the trial courts, however, they do not directly fall under the control and supervision of the judiciary.

1735 Currently, there are 256 judges, 314 officers and around 4000 para-legal staff associated with the judiciary, around 238 government attorneys and around 10,000 practising lawyers in Nepal. All the judges are law graduates with practical experience either in the Bar or the justice sector for a number of years but competence is affected by poor quality of legal education.

1740 In a nutshell the Nepali justice system has evolved over time learning more from its own experience than blindly following any model of justice. Today it is based on strong constitutional foundation and has a right focus. The courts are independent from the executive and also enjoy functional autonomy. The fact that the Constitution enshrines a very bold and comprehensive framework of rights, also by virtue of Nepal's commitment to human rights, the judiciary now is a central institution for processing constitutional, legal and social disputes and ensuring abidance to the rule of law, human rights.

<sup>41</sup> At the moment the commercial benches will hear cases under the Companies Act 2006, Secured Transaction Act 2006, Insolvency Act 2006 and the Competition Act 2006, but the NJA is engaged in conducting multi-sectoral discussion to explore the possibility of increasing the jurisdiction of these benches both in the short and the long term.

<sup>42</sup> See Nepal Interim Constitution, Art 103,109, 155

<sup>43</sup> See id, Art 102

<sup>44</sup> Nepal Interim Constitution, Art 102

<sup>45</sup> Nepal Interim Constitution, Art 107, This provision was also there in Art 88 of the NEP CONST 1990.

<sup>46</sup> Judicial Administration Act of Nepal S 8.



1750 Amicable settlement of disputes through court referred mediation is a newly prioritised agenda of the justice system today. All the courts now have internalised mediation as one of the mainstream strategy of dispute settlement. The medium of court business is Nepali. However, the effectiveness of the justice system is affected by a very narrow canvas of law procedural wrangles and low investment in the judiciary. Periodic review of the legal framework is yet to become a prioritised agenda of the Legislature or the Law Commission.

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