Terms of Reference - Outcome Evaluation

Country Programme Outcome: Responsive and accessible justice systems promote gender equality, social inclusion and the rule of law, including formal and informal processes.

1. Background and Context

National context

Nepal has been working towards peace since the signing of a Comprehensive Peace Agreement (CPA) in November 2006 by the Government of Nepal and the Communist Party of Nepal, Maoists (CPN/M). This historic agreement ended a ten-year armed conflict which killed about 13,000 people, brought about a major set back in the development process, and most importantly, weakened social cohesion in communities across Nepal.

At the root of the armed conflict in Nepal lay persistent inequality and exclusion from state mechanisms and development opportunities, and legal, economic, and social arrangements which restricted the influence and prospects of a large proportion of Nepal’s women and girls, Dalits, Janajatis (Indigenous Peoples), Madhesis (groups of plains origin), religious and cultural minorities, and the poor in general. More specifically, a study conducted on "Access to Justice during the Armed Conflict (2005) concluded that lack of access to justice by the poor and disadvantaged was among the roots of the conflict, and that in conflict, access to justice is as vital to saving people’s lives as access to food and water. The report further concluded that access to justice will be key to peace-building.

Nepal’s leaders have recognized the importance of access to justice and human rights for sustainable peace. The November 2006 CPA calls for a:

...political system that complies with universally accepted fundamental human rights, multiparty competitive democratic system, sovereignty inherited in people, supremacy of the people, constitutional check and balance, rule of law, social justice, equality, independent judiciary, periodic election, monitoring by civil society, complete press freedom, people’s right to information, transparency and accountability in the activities of political parties, people’s participation, impartial, competent, and fair concept of bureaucracy.

Likewise, the CPA also mentions the importance of protection and promotion of human rights and of international humanitarian law. Furthermore, the CPA mandates
the National Human Rights Commission (NHRC) to be an independent oversight body to monitor the implementation of the human provisions enshrined in the CPA.

The Interim Constitution of Nepal 2007 also recognizes the importance of human rights, with Part 3 devoted to human rights. Rights regarding justice, including free legal aid and the right to constitutional remedy, are recognized as fundamental rights. The Interim Constitution has upgraded the NHRC as a constitutional body to ensure the respect, protection and promotion of human rights and their effective enforcement. Part 10 of the Interim Constitution calls for an independent judiciary to exercise the powers related to justice.

The Three Year Interim Plan (2007/8-2009/10), in Chapter 6 on Social Justice and Inclusion, states the Government’s objective:

To improve the human rights situation of the people and communities at risk and those made to be at risk by putting into practice the commitments made in the national and international levels by the State, for alleviating poverty and ending all forms of social and economic discriminations, deviations, crimes, exploitation and misbehavior.

and:

To institutionalize a well developed human rights culture, by controlling violation of human rights in all sectors.

Chapter 10 of the Interim Plan highlights the long term vision for improved governance and access to justice:

The long term vision is to make public, judicial and development administration more competitive, participatory, transparent, service-oriented, result-oriented, accountable, inclusive, disabled-friendly and gender equity oriented.

Following the 2008 national Constituent Assembly elections, which also led to the declaration of a secular, federal republic, the elected Constituent Assembly is in the process of drafting a new Constitution for the “New Nepal.” The Assembly has formed 10 thematic committees, two of which, the Fundamental and Directive Principles Committee and the Committee of Judicial System, are tasked with preparing a draft report on fundamental rights and directive principles of the state and judicial system. The committee on the judicial system finalized and submitted its report to the Constituent Assembly. The report has mainly recommended the three federal structures of the court system including the different special courts i.e. family courts and local courts to look into the issues of women and local people at large. Likewise, the CA Committee on Fundamental Rights and Directive Principles and State Policies also submitted its report to the CA and recommended an independent and competent judiciary and the National Human Rights Commission as the watchdog body of rule of law and human rights.
**UNDP Support to Access to Justice**

UNDP has been providing support in the area of justice through legal and judicial reforms and human rights since the year 2001. UNDP’s Second Country Cooperation Framework (CCF) (2002-2006, extended to 2007) specifically mentioned that UNDP would focus on enhancing capacities within the NHRC and the preparation of a National Human Rights Action plan (NHRAP). The CCF also committed to support the Government’s efforts to develop a transparent and efficient system of justice and to strengthen the rule of law.

This work was carried out by the following projects:

- **Strengthening the Rule of Law Programme (ROL; 2001-2005)** - The ROL Programme was designed to support reform at two levels: one, at the local level, to bring justice closer to the people through the promotion of alternative dispute resolution (ADR) by strengthening arbitration boards, and, two, at the central policy level, by supporting the Ministry of Law and Justice (MoLJ) in drafting civil and criminal codes and building capacity of its staff on legislative drafting and treaty negotiation. Drafts of the Civil Code, Civil Procedure Code, Penal Code and Criminal Procedure Code were prepared through the support of this project. (Work is continuing under the new Country Programme to support the MoLJ in finalizing the drafts of civil and criminal codes and their procedures. The draft civil code has already been prepared and submitted for the regional level consultations.)

- **Reform of the Judiciary Programme (ROJ; 2002-2007)** - The ROJ Programme focused on improved and closer access to justice by people by enhancing the efficiency of justice delivery and providing justice seekers qualitative, speedy and inexpensive justice through the operation of pilot courts in seven districts, and through further legal reforms and capacity building of judges and court staff. Work is continuing under the new Country Programme to further strengthen the pilot courts to ensure access to justice of women and the socially excluded groups. Furthermore, capacity building of judges, lawyers, police, and government attorneys will be also carried out.

- **Enhancing Access to Justice through Mediation in Court Cases and Strengthening the Community Mediation Practices (A2J Programme; 2002-2007)** - In an effort to further expedite justice and reduce costs especially for the poor, the A2J Programme, funded through the Democratic Governance Thematic Trust Fund (DG/TTF), included a study of community mediation practices, necessary training support to community mediators and initiation of court referred mediation in Nepal. With an objective to institutionalize the indigenous, community and court referred mediation systems, the project also supported MoLJ to draft a mediation bill. The draft mediation bill was submitted to the Cabinet in December 2009. The Cabinet has sent it to the CA for the final process of enactment with some comments.

- **Capacity Development of the National Human Rights Commission (CDNHRC, 2002-2008)** - The CDNHRC project, supported by a large number of donors, helped the commission establish itself as a force for protecting and
promoting human rights, during the difficult context of the armed conflict. The project supported the commission to set up its basic infrastructure, its management and IT systems, and a network of four regional offices and five district contact offices for monitoring the human rights situation across the country. This included setting up a system for the commission’s core task of handling complaints and monitoring human rights violations. The project also assisted the commission to fulfill its mandates given by the Human Rights Commission Act 1997. In this regard, the project mainly supported the commission to review the laws in line with international human rights standards, conduct human rights awareness and review the implementation status of international human rights instruments. The project also supported the commission to formulate internal rules and regulations and map out its priorities and future activities in strategic plans, host discussions and report on the human rights situation, produce human rights education materials. However, the lack of Commissioners for close to a year in 2007 seriously affected the pace of reforms and work of the NHRC.

UNDP, under its current Country Programme (2008-2010), is supporting the process of making Nepal’s new constitution, as well as promoting initiatives to increase access to justice, amend discriminatory laws, and promote human rights, building on the achievements of the past projects. The intended outcome of the Country Programme is: **responsive and accessible justice systems promote gender equality, social inclusion and the rule of law, including formal and informal processes.**

To achieve this outcome, UNDP is focusing on the following:

- Further support to the seven pilot courts which are to become models for replication including benchmarks on making the courts pro-poor, women-friendly, and inclusive in their service delivery;
- Improved access to legal services at the local level, including through the creation and strengthening of para-legal committees and expansion of mediation;
- Support to review and amend legislation to meet international standards and treaty obligations;
- Providing access to justice for the victims of gender based violence by establishing legal aid desks and building awareness of the implementing authorities and people at large on the recently-passed anti-domestic violence law.
- Strengthening the National Human Rights Commission in monitoring, investigation, documentation and reporting of human rights violations
- Strengthening the human rights treaty divisions,
- Developing human rights audit plan and indicators for the promotion of civil and political rights and socio-economic and cultural rights
- Reviewing the laws in line with international human rights obligations

The results framework for this component of the Country Programme is summarized below:
<table>
<thead>
<tr>
<th>Intended Outcome</th>
<th>Responsive and accessible justice systems to promote gender equality, social inclusion and the rule of law, including formal and informal processes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcome Indicators</td>
<td>Selected existing discriminatory laws are reviewed and amended Ratio of human rights cases resolved out of the total no. of cases submitted to NHRC</td>
</tr>
<tr>
<td>Intended Output 1</td>
<td>Pilot court models graduated and ready for replication, and mediation system strengthened for enhanced access to justice for women and excluded groups.</td>
</tr>
<tr>
<td>Output Indicators</td>
<td># of months from filing to court decision in civil cases # of months from filing to court decision in criminal cases % of disputes solved by paralegal committees % of total cases submitted to paralegal committees submitted by women % of total cases submitted to paralegal committees submitted by Dalits % of cases submitted by Dalits solved by the paralegal committees</td>
</tr>
<tr>
<td>Intended Output 2</td>
<td>NHRC capacity strengthened in monitoring, investigation, documentation and reporting of human rights violations</td>
</tr>
<tr>
<td>Output Indicators</td>
<td># of complaints of human rights violations investigated # of recommendations submitted to the Government # of reports published by the NHRC on monitoring and investigations # of discriminatory laws reviewed by the NHRC on human rights grounds and recommendations for amendment proposed # of public hearings organized by the NHRC on discriminatory laws and on emerging issues</td>
</tr>
<tr>
<td>Intended Output 3</td>
<td>Selected existing laws reviewed and amendments drafted and new legislation drafted as required by Nepal’s treaty obligations and other international human rights standards</td>
</tr>
<tr>
<td>Output Indicators</td>
<td># of revisions and new legislations drafted # of discriminatory laws amended or abolished</td>
</tr>
</tbody>
</table>

To produce these outputs, UNDP is currently supporting two projects – 1) Enhancing Access to Justice for Consolidation of Peace in Nepal (originally entitled Enhancing Access to Justice through Legal and Judicial Reforms), 2) Strengthening the Capacity of the National Human Rights Commission.

One of the areas of BCPR support under the new Strategic Partnership Framework is Rule of Law. As a result, the Enhancing Access to Justice through Legal and Judicial Reform project was revised and renamed the Enhancing Access to Justice for Consolidation of Peace in Nepal project. This revised, comprehensive project is designed to strengthen the justice system in order to support the ongoing peace process in the country. The revised project will strategically address the areas of 1) transitional justice; 2) gender justice; 3) access to justice at the local level and 4) law reform. The objective of the project is to raise national capacity to carry out transitional justice processes through enhancing execution of court decisions, victims support and witness protection programmes, and provide technical assistance to the Ministry of Peace and
Reconstruction (MoPR) for the establishment of Commission of Enquiry on the Enforced Disappearance (CED) and the Truth and Reconciliation Commission (TRC). In this context the efforts will also be directed towards integrating gender justice into peace-building agenda through capacity development of rule of law actors to respond to conflict-related women’s human rights abuses, including sexual violence. Efforts will also support awareness raising on legal recourse including under the recently-passed Anti-Domestic Violence. At the local level, the project will concentrate on conflict-affected regions to provide a comprehensive set of services for access to justice to the most vulnerable population including women and socially excluded communities. Programme components at local and grassroots level will include providing free legal aid and mediation services, strengthening local paralegal capacities and engaging with traditional justice mechanisms in conjunction with the ongoing UNDP livelihoods project.

The Strengthening the Capacity of the National Human Rights Commission project was jointly developed with OHCHR as the key provider of specialized technical assistance. This project will support the NHRC in implementing its Strategic Plan 2008-10. The project will support improvement of the capacity of NHRC in the areas of i) auditing human rights compliance issues in legislation, policies, plans, practices and procedures which will ensure respect for human rights by state actors, ii) ensuring the effective implementation of the international human rights instruments to fulfill state obligations, iii) ensuring human rights in the forthcoming constitution and iv) protecting and promoting the civil, political and socio-economic rights. This project will support the NHRC to build both its capacity to work with stakeholders and to meet its accountability and obligations through public opinions, inclusive work processes and reporting.

In addition, there are potential synergies between the work done under the Justice Outcome, and the work being done under the Peacebuilding component of the Country Programme. The latter includes support to the constitution-making process, through the Support to Participatory Constitution Building Project, which, among others, is building the capacity of Constituent Assembly members to produce a new constitution. Other work is being initiated to strengthen local capacities for peace committees.

Currently, several UN agencies present in Nepal, among which UNDP, are exploring the ways of engaging in a more coordinated fashion (as part of UN coherence) under the new Rule of Law initiative launched by the Rule of Law Coordination and Resource Group lead by the Deputy Secretary General of the UN.

**Challenges and constraints**

Support to access to justice and human rights has been challenging, in part due to the need to strengthen partnerships with and build consensus between a wide range of actors. The new Access to Justice project was delayed during long consultations with multiple partners to agree on an implementation modality, and the project to support the NHRC was also delayed until July of 2009.

Although the conclusion of the CPA between the CPN(M) and the GoN in November 2006 marked the ending of a ten-year long armed conflict, various forms of violations
of human rights including intimidation, extortion, abduction, property seizing, and beatings still persist across the country. Impunity is prevalent. The threat of another armed conflict in the region remains. Likewise, daily strikes and demonstrations affect the implementation of project activities.

The whole nation is in the process of constitution building. Constitution making is the key agenda at this moment and many other agenda are taking a back seat. As a result, the activities regarding law reforms such as finalizing mediation bill and civil and criminal codes have been delayed. Likewise the human rights commission bill is still pending in the cabinet.

Another implementation challenge has been the frequent transfer of government staff. For example, many trained pilot court judges were transferred to non-pilot courts which adversely affected on the justice delivery system.

2 Evaluation Purpose

The purpose of this outcome evaluation is to measure initial progress towards the intended outcome, assess UNDP’s contribution thereto, and make recommendations for adjustments to the programme and targets, in light of an anticipated extension of the Country Programme by two years (till 2012) and of the new UN Rule of Law initiative, in order to strengthen the programme’s relevance and potential impact on the peace process and the building of the “New Nepal,” as well as UNDP’s partnership strategy in this area.

3 Evaluation Scope and Objectives

UNDP has been working in the areas of access to justice and human rights since the year 2001, and the work under the current Country Programme is an extension of that work done under the previous programme period. Thus, the evaluation should look back as far as 2001 in order to assess the groundwork laid for the current programme and the lasting results of that early work. However, as the context has changed considerably over the last eight years, the evaluation will focus more on the period since the signing of the Comprehensive Peace Accord in November 2006. The overall objective of the evaluation will be to assess the results, achievements, relevance to the overall peace process, and constraints to UNDP’s interventions in the justice and human rights sectors since 2001, and most particularly since the end of the armed conflict, as well as to measure progress towards the outcome as defined by the new Country Programme. As this is only the beginning of the third year of the Country Programme, it is not expected that the outcome of the current Country Programme will have been achieved, and the evaluation will help UNDP adjust its programme in the remaining years of the extended country programme.

Taking into account the new areas of intervention planned under the BCPR support, the evaluation will also assess the relevance and coherence of the additional interventions, and indicate if any other outputs would be required to achieve the outcome.
The evaluation should also look at other interventions in the sector by other key actors and assess the extent to which UNDP and partners have built on each other’s respective strengths to achieve the outcome or to which they are currently overlapping.

4 Evaluation Questions

Relevance of UNDP’s interventions

In the context in which UNDP began its support to improve access to justice (2001 onwards), and particularly in the Post-Peace Agreement context (late 2006 onwards), to what extent and in which way has UNDP’s support to the justice and human rights sectors been relevant?

Has UNDP’s support been relevant for women and people from traditionally excluded groups?

Has UNDP been able to adapt its programming to the changing context to address priority needs in the country?

Has UNDP done sufficient peace-building analysis to guide its work in the justice and human rights sector?

Is the revised access to justice project likely to be even more relevant? Will it be even more likely to bring benefits to poor women and people from traditionally excluded groups?

Outcome analysis

Are UNDP’s interventions designed to achieve the outcomes?

Are UNDP’s interventions on track to achieve the outcome? Are the timelines realistic?

What progress has already been made towards the outcome? Has that progress benefitted women and people from traditionally excluded groups?

What are the challenges to reaching the outcome? Identify any factors that are adversely affecting progress towards the outcome.

Assess UNDP’s contributions towards the outcome through advocacy, partnership and donor-coordination.

Have the synergies between the work in Access to Justice under the interventions described, and UNDP’s work under the Peacebuilding component of the Country Programme, including the Support to Participatory Constitution Building Project, been adequately realized? How could this be further strengthened?

Output analysis
Are the defined outputs necessary and sufficient to achieve the outcome? Are they all relevant to the outcome? Can UNDP’s outputs be credibly linked to the outcome? Are other outputs likely to be required to achieve the outcome?

What progress been made towards achieving the outputs?

Identify the factors (both positive and negative) affecting realization of the outputs.

Have UNDP outputs involved the targeted beneficiaries, particularly women and traditionally excluded groups?

What have been the immediate outcomes or results of these outputs for the beneficiaries?

**Sustainability**

How sustainable (or likely to be sustainable) are the outputs and outcomes of the UNDP interventions?

Do the UNDP interventions have well designed and well planned exit strategies? What could be done to strengthen exit strategies and sustainability?

**Partnership strategy**

Has UNDP’s partnership strategy in the justice and human rights sectors been appropriate and effective?

Are there current or potential overlaps with existing partners’ programmes’?

How have partnerships affected the progress towards the outcome?

**The way forward**

What changes should UNDP make in order to make its interventions more relevant and more effective?

What changes should UNDP make in order to better reach and benefit women and people from traditionally excluded groups?

5 **Methodology**

Overall guidance on outcome evaluation methodology can be found in the UNDP Handbook on Planning, Monitoring and Evaluating for Development Results. The Evaluation team will determine the specific design and methods for the evaluation, however the following is suggested:

- Desk review of relevant documents (Country Programme documents, project documents, project evaluations and reviews, annual reports, and other reports; see Annex)
• Consultations with UNDP staff at the Country Office
• Consultations with project teams
• Review of latest data for all indicators
• Interviews with key partners (Supreme Court, Ministry of Law and Justice, National Human Rights Commission, Office of the Attorney General, Nepal Bar Association)
• Interviews with development partners (including Denmark, UK, SDC, Finland, Norway, Canada, USAID, Aus-Aid and JICA)
• Interviews with key INGOS and NGOs active in the areas of access to justice and human rights
• Interviews with UN agencies including OHCHR, UNICEF, UNFPA, OHCHR, IOM, UNODC, and UNIFEM
• Field visits to selected pilot courts, paralegal committees, community mediation centers, court referred mediation centres, legal aid desks, and NHRC regional/sub-regional offices

6 Evaluation Products

The evaluation team is expected to produce the following deliverables:

• Evaluation Inception Report detailing the evaluators’ understanding of what is being evaluated and why, showing how each evaluation question will be answered, a proposed schedule of tasks; the report will be shared with and discussed with an “Evaluation Management Team” to be established by UNDP.
• Draft Evaluation Report to be shared with UNDP and relevant stakeholders for feedback and quality assurance
• Evaluation debriefing meeting with UNDP and key stakeholders where main findings will be shared
• Final Evaluation Report
• Evaluation Brief (a concise summary of the evaluation findings in plain language that can be widely circulated)

7 Evaluation team composition and required competencies

**International Team Leader:** responsible for overall coordination of the evaluation team, and for the overall quality and timely submission of the evaluation report to the UNDP Country Office.

Competencies: Advanced university degree in law, human rights, and/or other relevant subject; strong understanding on rule of law concepts, at least ten years experience in access to justice, rule of law and/or human rights programming in conflict and/or post-conflict contexts, experience in conducting evaluations, excellent analytical and English report writing skills, knowledge of the political, cultural and economic situation in Nepal or ability to quickly acquire such knowledge, ability to meet tight deadlines.

**National Legal Expert:** responsible for reviewing documents, analyzing the progress, issues and challenges, draft, edit, supplement, correct and/or revise
selected chapters of the evaluation report as assigned by the Team Leader, and assist the International Team Leader to ensure the overall quality and timely submission of the evaluation report to the UNDP country office.

Competencies: advanced university degree in law, human rights or other relevant field; at least seven years experience in rule of law, access to justice and/or human rights, excellent analytical and English report writing skills, ability to meet tight deadlines; experience in conducting evaluations and thorough understanding of gender and social inclusion issues in Nepal assets.

**National Gender and Social Inclusion Expert:** analyze the degree to which programme design and composite interventions have addressed the needs of women and traditionally excluded groups; ensure that gender and social inclusion dimensions are incorporated into all steps of the inquiry, analysis and evaluation reporting; draft, edit, supplement, correct and/or revise selected chapters of the evaluation report as assigned by the Team Leader, and assist the International Team Leader to ensure the overall quality and timely submission of the evaluation report to the UNDP country office.

Competencies: advanced university degree in law, sociology, gender studies, development studies or other relevant field, at least five years experience in gender and inclusion-sensitive programming, rule of law, and/or access to justice, thorough understanding of gender and social inclusion issues in Nepal, excellent analytical and English report writing skills; experience in conducting evaluations an asset.

Potential evaluators will be expected to provide their complete curriculum vitae, writing sample and references.

All evaluators must be independent and objective, and therefore should not have had any prior involvement in design, implementation, decision-making or financing any of the UNDP interventions contributing to this outcome. In addition, to avoid any conflict of interest, evaluators should not be rendering any service to the implementation agency of the projects and programme to be evaluated for a year following the evaluation.

8 **Evaluation Ethics**

The evaluation will be conducted in accordance with the principles outlines in the UN Evaluation Group “Ethical Guidelines for Evaluations.”

9 **Implementation arrangements**

To facilitate the outcome evaluation process, UNDP Nepal will set up an Evaluation Management Team (EMT) headed by the Country Director and including the Assistant Resident Representative, Governance, the Programme Analyst (Justice and Human Rights), a representative from the M & E team, and representatives from the two main national implementing partners. The EMT will review this Terms of Reference with the Evaluation Team and agree on any necessary amendments; share all relevant
documentation; review, provide feedback and accept the inception report; assist in identifying stakeholders; review and provide feedback on the draft report; assist in organizing the debriefing meeting for key stakeholders; and, accept the final report. A wider “reference group”, including representatives from other UNDP Programme units, UN agencies, donors, and civil society, will be invited to key meetings and the final debriefing.

The Governance Unit will assist with logistics, arranging meetings and field visits.

10 Time-frame for the evaluation process

The evaluation is to be conducted in the month of July 2010, based on the following time frames:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desk review and preparation of evaluation design (home based)</td>
<td>3 days</td>
</tr>
<tr>
<td>Briefing of evaluators by UNDP</td>
<td>1/2 day</td>
</tr>
<tr>
<td>Finalizing evaluation design, methods &amp; inception report</td>
<td>1 ½ days</td>
</tr>
<tr>
<td>Sharing and discussion of inception report with the Evaluation Reference Group for feedback</td>
<td>2 days</td>
</tr>
<tr>
<td>Stakeholder meetings, interviews, field visits</td>
<td>17 days</td>
</tr>
<tr>
<td>Preparation of draft report; presentation of draft findings to the Evaluation Management Team</td>
<td>4 days</td>
</tr>
<tr>
<td>Stakeholder meeting to present draft findings</td>
<td>1 day</td>
</tr>
<tr>
<td>Finalize and submit report (home based) and evaluation brief</td>
<td>2 days</td>
</tr>
<tr>
<td>TOTAL</td>
<td>31 days</td>
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</tbody>
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11 Use of Evaluation Results

The findings of this evaluation will be used to guide the extension of the CPAP in the area of access to justice and human rights. The evaluation report should therefore include specific recommendations for adjusting programme design to achieve results and for updating the M & E framework.

12 Annexes
1. Project Document of the Access to Justice
2. Project Document of the Enhancing Access to Justice for Consolidation of Peace Project
3. Project Document of the Capacity Development of the National Human Rights Commission (CDNHRC)
4. Project Document of the Strengthening the Capacity of National Human Rights Commission
5. Evaluation report of the CDNHRC project
6. Evaluation report of the pilot courts
7. Evaluation of the Mediation
10. Concept note of the ROL initiative under the DSG