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ROUND HALL

Lawyer training programme in Nepal

Aileen Donnelly SC

On looking at the peaks of the Himalayas rising above the clouds as I flew towards Kathmandu, I had little idea that it would be almost 2 months before I would see those same peaks from ground level. Monsoon season was in full swing when I arrived and not a day went by without ferocious rain making it impossible to tell the potholes from the rest of the road. This was Nepal but there was never a hint of disappointment as the 9 weeks I spent there were some of the most exciting, enjoyable and rewarding that I have ever spent. Having been appointed as an International Fellow (IF) with the International Legal Foundation – Nepal, it would be my job, in combination with the other IF, to supervise, mentor and train Nepali lawyers who worked for the ILF-Nepal as criminal defence lawyers. The ILF is a non-governmental organisation, established in New York, which aims to ensure that in post-conflict societies, there is a focus on the provision of effective criminal defence. The provision of such effective and proactive criminal defence ensures that there is a focus on justice and the rule of law. In Nepal, the ILF office operates as an independent public defenders office. While there is provision for legal aid in Nepal, it is fair comment to say that in general this representation lacks effectiveness.

When I began with ILF-Nepal there were 6 lawyers employed in the Kathmandu office and 2 lawyers in Janakpur in the southern Terai (plains) region. While there, I was involved in the interviewing and training process for 4 new lawyers who would work, after 4-6 months training/working in the Kathmandu office, in the cities of Biratnagar and Nepalgunj which are situated in the far South East and South West respectively of Nepal. All of the lawyers are of many years standing but wish to take advantage of the opportunity for learning and improvement that ILF-Nepal presents.

The work was a curious mixture of the very familiar and the wildly different. As I sat in a courtroom at the District Court of Kathmandu (full original civil and criminal jurisdiction for the District), while striving to hear my translator above the cacophony of rain pelting the corrugated roofing which in turn was vying with the whirring fan, peering through the gloom towards the Judge who sat in front of a Hindu calendar (he apparently had not got the memo about the 2007 Interim Constitution

declaring the once Hindu state to be a secular one), there was a momentary disorientation. Then as I looked around the court and out through the open door into the courtyard where people were sheltering under the covered parts, I was struck by the familiarity of the scene - mainly young men, some trying to look cool and unconcerned while others smoked incessantly and nervously with the women, be they wives, girlfriends or mothers, fretting around them. There were the huddles where lawyers took instructions. Prisoners handcuffed together in threes interacted easily with their armed guards. There was an endless stream of clerks who went back and forth across the courtyards with files for court. Time to pay attention to the case at hand however, a “jailbail” hearing for a woman accused of murdering her daughter-in-law. Our lawyer, Neelam Poudel had been to talk to the doctor who dealt with the deceased in hospital and he had given his opinion that it was a suicide. Such proactive defence is new to Nepal and this information is being placed before the Court. Ultimately, bail is granted to our client, this is a rarity for such a charge in Nepal. While the reasoning for the decision may have been fudged there is no doubt that ILF-Nepal made a difference for this woman.

Constant case-reviews with the lawyers means that every client of the office is guaranteed at least 2 legal minds working on the case. The lawyer must work out a strategy for dealing with the case and this is reviewed by the international fellow. Are there witnesses to speak to, crime scenes to visit or further instructions to take? Is this a case where a habeas corpus is warranted? Is the evidence inadmissible? Was the warrant properly executed? Part of the case-review may be to assist in the preparation of the cross-examination of witnesses or the final submissions in the case. You may “moot” the arguments to be submitted to the Appellate or Supreme Court by the lawyer. Going to court provides the opportunity to critique the lawyer’s performance. Continuing Legal Education sessions were given by the IFs every week. Crimes being dealt with vary from public order type offences (which in reality can carry lengthy loss of liberty for the most minor of offences) which are dealt with by a non-judicial person (the Chief District Officer), to rape, robbery, human trafficking (a major problem in South Asia) and murder dealt with by the District Court. There are no jury trials and the regular motorcycle theft cases can be dealt with by the same judge who deals with the murder cases.

ILF-Nepal provides the IF with a comprehensive practice manual about the operation of Nepal criminal law and practice (with an emphasis on the ideal practice) and a separate folder containing relevant Statutes, the Constitution and International Covenants. As a common law country with a written modern Constitution and a commitment to following its many ratified international treaties, it is a legal system ripe for positive development. As with many countries, practice at the coalface is far from the ideal. The right to remain silent and to be represented by counsel does not stop the client being directly pressurised in court to make a statement. However, the Supreme Court has taken a positive approach towards fair trial rights and no doubt this will eventually filter down to the judges who actually run the trials.

Working with the ILF was also a learning experience, there

were aspects of Nepali law that would be great additions here e.g. the 2007 Interim Constitution contains provision for the bringing of public interest litigation – no worries about *locus standi* for these types of cases, and the attitude to international treaties was refreshing. The US approach to criminal defence, ie. aggressively proactive in defence, that was fostered by the ILF, was a good reminder of just why and how it is necessary in every case. Working in Nepal presented an opportunity to learn about the people and the country in a way which never happens when you are a tourist. It is a fascinating country with its mix of ethnicities, castes and religions, fabulous temples, shrines and stupas, the highest mountains in the world and, in Kathmandu, a really fun city. ILF-Nepal is recruiting volunteer lawyers for next year so hurry – now is your chance to be part of the action! For more information, check out their website: www.TheILF.org ■



Pictured in Nepal, during the ILF program are Aileen Donnelly SC, (having just received a blessing or “tika”) are as follows: Advocate Kalayan Chettri Karki, me!, Adv. Neelam Poudel, Adv. Bimala Yadav, Adv. Bir Bahadur Khadka, Adv. Shyam Bishwakarma, Translator Guneshwor Ojha