

PARTNERSHIP FOR JUSTICE

Success stories of accessible and accountable Justice

न्यायका लागि साभेदारी



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Foreword

Partnership for Justice

Success stories of accessible and accountable justice in Nepal

The State and Non-State Partnership for Inclusive Justice project aims to enhance access to justice in Nepal. It has trained informal justice actors on human rights, Nepali law and gender equality enabling them to integrate these principles into their practice. It has supported dialogues between informal and formal justice actors to strengthen their collaboration. Moreover, it also facilitated reforms in the formal justice sector through advocacy and discussions. This project has in particular helped women, poor, vulnerable and marginalised people to access responsive justice.

This booklet is a collection of success stories of accessible and accountable justice emerging from the project. It includes photos and stories from Mahottari, Banke and Kailali, three of the six districts in which the project was implemented. This initiative, funded by the European Union and Swiss Agency for Development and Cooperation, is a strategic partnership between International Alert, Forum for Women, Law and Development and the Legal Aid and Consultancy Centre.

न्यायका लागि साभेदारी

पहुँचयोग्य र जवाफदेही न्यायका लागि भएको सफल अभ्यासहरू

पहुँचयोग्य र जवाफदेही न्यायका लागि साभेदारी कार्यक्रम नेपालको न्यायिक क्षेत्रमा सुधार र परिवर्तन खोज्ने एउटा पहल हो । यस कार्यक्रमले न्यायमा पहुँच बढाउनका लागि औपचारिक र अनौपचारिक न्याय क्षेत्रमा काम गर्ने विभिन्न संयन्त्रहरूलाई एउटै थलोमा ल्याएर बहस र छलफल अधि बढाएको छ । औपचारिक तथा अनौपचारिक न्यायिक क्षेत्रको भूमिका र जिम्मेवारीका बारेमा अभि बढी स्पष्टता पैदा गर्न तथा अनौपचारिक न्यायकर्ताहरूलाई मानवअधिकार, न्यायका सिद्धान्तप्रतिको सम्मान र लैंगिक समानताको सिद्धान्त अनुसरण गर्नका लागि पनि यसले सहयोग पुऱ्याएको छ । खासगरी गरीब, महिला, सीमान्तकृत र जोखिममा परेका समूह र समुदायप्रति न्यायक्षेत्रको पहुँच र जवाफदेहिता बढाउन यस कार्यक्रमले पहल थालेको छ ।

यो तस्वीर पुस्तिका पहुँचयोग्य र जवाफदेही न्यायका लागि भएका सफल अभ्यासहरूको सँगालो हो । यसले कार्यक्रम संचालन भएका जिल्लाहरूमध्ये महोत्तरी,बाँके र कैलालीका केही तस्वीरहरू र ती तस्वीरहरूसँग जोडिएका कुराहरूलाई उल्लेख गरेको छ । युरोपियन युनियन तथा स्वीस सरकार विकास सहयोग एसडिसीको आर्थिक सहयोग रहेको यस परियोजनामा ईन्टरनेशनल अलर्ट, महिला,कानून र विकास मञ्च तथा कानूनी सहयोग तथा परामर्श केन्द्र साभेदार रहेका छन् ।

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“You are also the judge of the village. Not all disputes need to come to the district court. Most disputes can be resolved in the village itself.”

You are your own judge

During a training programme with informal justice actors including mediation committees, ethnic and religious leaders, Kailali District Judge Yagyraj Bhatta said: “You are also the judge of the village. Not all disputes need to come to the district court. Most disputes can be resolved in the village itself.” He added, “But you should not deal with all disputes. Don’t try to settle the cases of criminal nature and other cases that cannot be settled in the village.”

“तपाईंहरू पनि गाउँका न्यायधिश हुनुहुन्छ । सबै विवादहरू अदालतमा आउनु हुँदैन । धेरै विवादहरू गाउँ समाजमा नै मिल्न सक्छन ।”

गाउँका न्यायधिश

कैलाली जिल्लाका गाउँवस्तीमा अनौपचारिक न्यायक्षेत्रमा काम गर्ने मध्यस्थता समिति सदस्य, थारु र मुशलीम समुदायका अनौपचारिक विवादहरू हेर्ने जातीय समूहहरू भलमनसा र मौलानाहरूको लागि दिइएको तालिममा जिल्ला न्यायधिश यज्ञराज भट्ट भन्दै हुनुहुन्थ्यो-“तपाईंहरू पनि गाउँका न्यायधिश हुनुहुन्छ । सबै विवादहरू अदालतमा आउनु हुँदैन । धेरै विवादहरू गाउँ समाजमा नै मिल्न सक्छन ।” यसो भनिरहँदा वहाँले थप्नुभयो-तर सबै विवादहरूमा हामीले हात हाल्नु हुँदैन । फौजदारी प्रकृतिका र गाउँमा मिलाउन नसकिने विवादहरू गाउँमा मिलाउने प्रयास नगर्नुहोला ।



**“Gone are those days,
times have changed.”**

Gone are the days

There was a time when virtually every case was settled at the community level in Ganapur village in Banke district. Rulings of the Maulana, the religious leader, would be final in this predominantly Muslim village. Maulanas would pronounce verdicts according to religious traditions. But things have changed. Now the Maulanas have been trained in Nepali law and human rights principles. This has brought new working styles and decision making patterns. Verdicts are not issued like they used to be previously. Mohamad Anif, a 72 year old local says, “Gone are those days, times have changed.”

“उहिलेको कुरा खुइले, अब नयाँ समय आयो ।”

उहिलेको कुरा खुइले

बाँकेको गनापुर गाउँमा कुनैबेला सबैजसो विवादका मामिलाहरू गाउँमा मिल्थ्यो । मुशलीम समुदायको बसोवास रहेको यस वस्तीमा मुशलीम समुदायमा रहेका धर्मगुरु (मौलाना) ले गरेका निर्णयहरू नै अन्तिम हुन्थे । मौलानाहरू पनि धर्म अनुसार मात्र निर्णय गर्दथे । तर हिजोआज यही वस्तीमा तालिम लिएका मौलानाहरू छन् । तालिम लिएपछि उनीहरूको काम गर्ने तौरतरिकाहरू पनि फरक भएका छन् । अब पहिले जस्तो निर्णय पनि हुँदैनन् । ७२ वर्षिय मोहम्मद अनिफ भन्छन् - “उहिलेको कुरा खुइले, अब नयाँ समय आयो ।”



“ We know which cases we should handle and which we should not.”

Changed by training

Maulanas have understood the different roles of formal and informal justice mechanisms and are discussing their changing role in the community. They have started to consider legal aspects when settling disputes. Mohammad Ali Nau, who is also a teacher at the local Madrasa, says, “Before we used to settle any case. After the training, now we know many things about which we were clueless before. We know which cases we should handle and which we should not. With the help of such training we are changing our ways of doing things”.

“तालिमले गर्दा हाम्रो काम गर्ने तरिकामा आकाश र जमीनको फरक भएको छ ।”

काम गराइ फरक

बाँकेको गनापुरमा रहेका मौलानाहरु हिजोआज फरक छन् । न्यायको औपचारिक र अनौपचारिक क्षेत्रको भूमिकाको बारेमा थाहा पाएपछि उनीहरु समुदायमा आफ्नो भूमिकाबारे छलफल गर्न थालेका छन् । आफूकहाँ आउने विवादहरुलाई उनीहरु कानूनी आधारमा हेर्ने गर्दछन् । तालिम अधि र पछि उनीहरुले गर्ने कामहरु फरक भएका छन् । स्थानीय मदरसामा शिक्षक समेत रहेका मोहम्मद अली नाउ भन्छन्- “पहिले हामी जस्तो पनि घटना जस्तै मिलाउने गर्दथ्यौं । तालीम पाएपछि अब हामीलाई कुन घटना मिलाउन मिल्छ, कुन मिल्दैन धेरै कुरा थाहा भएको छ । तालिमले गर्दा हाम्रो काम गर्ने तरिकामा आकाश र जमीनको फरक भएको छ ।”



“ We are always there to settle minor disputes that take place in the village.”

Ready to help

The members of the mediation committee in Sitapur VDC of Banke district are highly adept at handling disputes. Previously, almost all village disputes would come to the paralegal committee and they would try to settle them all. But now, following training and guidance, they are clearer about which kinds of disputes they are expected to resolve. Sita Biswakarma says, “In the past, we tried to settle rape and criminal cases as well. After this training we have come to know that was a mistake. However, we are always there to settle minor disputes that take place in the village.”

The capacity of mediators, Bhalmansa, Maulana etc. has been enhanced through knowledge and skills gained from the training. Women’s participation is another important aspect of such processes. Knowledge and skills received from the training are improving their confidence and encouraging them to work for the community.

“गाउँमा परेका स-साना विवादहरू मिलाउन हामी हाजीर छौं ।”

हामी हाजीर छौं

बाँके जिल्लाको सीतापुर गाविसमा रहेको पारालिगल समितिका सदस्यहरू हिजोआज आफूले हेर्ने विवादका प्रकृतिहरूमा निकै सजग रहन्छन् । पहिले पहिले गाउँमा हुने सबै खालका विवादहरू पारालिगल समितिमा आउँथे र उनीहरू पनि सबै खालका विवादहरू मिलाउने प्रयास गर्दथे । तर अब उनीहरू आफूले हेर्ने विवादहरूबारे स्पष्ट छन् । सिता विश्वकर्मा भन्छिन -“पहिले त हामीले फौजदारी र बलत्कार जस्ता मामिलाहरू पनि मिलाउने प्रयास गर्थौं, तालिम लिएपछि थाहा भयो, त्यस्तो कुरा गल्ती रहेछ । तर गाउँमा परेका स-साना विवादहरू मिलाउन हामी हाजीर छौं ।”

मध्यस्थकर्ता, भलमनसा र मौलाना जस्ता समूहहरू तालिम र सीपबाट प्राप्त ज्ञानबाट आफ्नो क्षमता बढाइरहेका छन् । महिला सहभागिता यस्ता समितिहरूको अर्को महत्वपूर्ण पक्ष बन्न पुगेको छ । तालिमबाट प्राप्त ज्ञान र सीपले उनीहरूमा समुदायका लागि काम गर्ने आँट र आत्मविश्वास बढ्दैछ ।



“ We would be taking decisions even without knowing the legal dimensions of such decisions. Now we know what we should and should not.”

Jagannath’s awakening

Jagannath Rana is a Bhalmansa – a Tharu traditional leader - of Beladipur VDC, Kailali district. Before the training, he would focus on forging reconciliation between two parties, no matter what type of case he was dealing with. But Jagannath no longer works in the same way. He says, “Now I realise that back then we would be looking into criminal cases as well. They are not under our jurisdiction. We would be taking decisions even without knowing the legal dimensions of such decisions. Now we know what we should and should not.”

“अब के गर्नु हुन्छ र के हुन्न भन्ने कुराको जानकारी र ज्ञान हामीलाई छ ।”

जगन्नाथको जागरण

जगन्नाथ राणा कैलाली जिल्लाको बेलादेवीपुर गाविसका भलमनसा हुन् । तालिम लिनु अघि र पछि उनको काम गराईमा धेरै फरक भएको छ । समुदायमा हुने गरेका धेरै विवादहरु समाधान गरे पनि पहिले गर्ने निर्णयहरुमा सामाजिक रुपमा मेलमिलाप गर्ने कुरा नै मूख्य हुन्थ्यो । अब जगन्नाथको काम गराइमा फरक आइसकेको छ । भन्छन्-“त्यतिबेला कतिपय फौजदारी प्रकृतिका मामिलाहरु समेत हामी हेर्ने रहेछौ । जुन हाम्रो अधिकारक्षेत्र हैन रहेछ । पहिले हामी कानूनी कुरा थाहा नपाएर पनि निर्णय गर्ने रहेछौ । अब के गर्नु हुन्छ र के हुन्न भन्ने कुराको जानकारी र ज्ञान हामीलाई छ ।”



“It is our primary duty to find the middle path so as not to cause harm to the disputing parties ”

Win-win situation

When minor disputes are resolved in the village, a win-win solution for both disputing parties is generally reached. Through a court process, disputants either win or lose. Resolving disputes by facilitating consensus among the parties is a key characteristic of the informal system. Om Prakash Chaudhary, Bhalmanasa of Kailai district says, “It is our primary duty to find the middle path so as not to cause harm to the disputing parties. But it is necessary for us to understand legal matters even while taking decisions on minor issues.”

दुबै पक्षलाई हानी नहुने गरी समाधानको बाटो खोज्नु नै हाम्रो मुख्य दायित्व हो ।”

दुबै पक्षको जीत

स-साना विवादहरू गाउँमा नै मिल्नु विवादका पक्षहरूको लागि जीत-जीतको अवस्था हो । अदालती प्रक्रियामा जाँदा एउटा पक्षले जित्छ र अर्को पक्षले हार्छ । मध्यस्थता र अरु अनौपचारिक तहका न्यायका तरिकाहरूमा विवाद समाधानको लागि बीचको बाटो खोजी हुन्छ । दुबै पक्षलाई सहमतीमा ल्याएर विवादलाई निरुपण गर्नु नै यसको विशेषता हो । कैलालीका भलमनसा ओमशंकर चौधरी भन्छन्-“हामीले साना विषयमा केही निर्णय गर्दा पनि कानूनको कुरा बुझ्न जरुरी रहेछ । दुबै पक्षलाई हानी नहुने गरी समाधानको बाटो खोज्नु नै हाम्रो मुख्य दायित्व हो ।”



“This facilitation has been fruitful and has helped to push advocacy for justice.”

Facilitation helps

District Justice Facilitation Groups(JFGs) have become effective mechanisms for imparting justice. They have involved the district court, the Bar Association, legal professionals and informal justice actors to advocate for quick, accountable and accessible justice. In this way, they work as bridges in instituting changes. Through dialogue, JFGs are advocating for measures such as continuous hearing, camera-court hearing, victim's privacy protection etc. to ensure speedy and responsive justice. Initiated by the JFG group's advocacy, now Mahottari district has started "continuous hearing sessions" to resolve a backlog of cases. Members have also started debating the need for justice system reform. Bijay Thakur, President of Mahottari chapter of the Nepal Bar Association states, “This facilitation has been fruitful and has helped to push advocacy for justice.”

“यो सहजीकरण फलदायी भएको छ । यसबाट न्यायका विषयहरू वकालत गर्न बल पुगेको छ ।”

सहजीकरण फलदायी

पहुँचयोग्य र जवाफदेही न्यायका लागि साभेदारी कार्यक्रम संचालन भएका जिल्लाहरूमा जिल्ला न्याय सहजीकरण समूह एउटा प्रभावकारी संयन्त्र भएको छ । न्यायलाई सर्वसुलभ, छिटो र सर्वसुलभ बनाउन प्रक्रियामा अदालत, बार एसोसिएसन, कानून व्यवसायी, सर्वसाधारण र विवादित पक्षहरूको पुलको रूपमा सहजीकरण समूहले काम गरेको छ । समूहले संवादका माध्यमबाट पीडितलाई छिटो र छरितो रूपमा न्याय प्रदान गर्नका लागि लगातार सुनुवाई, क्यामरा-कोर्ट सुनुवाई, पीडितको गोपनीयताको सम्मान जस्ता विभिन्न विषयहरूमा बहस सुरु गरेको छ । यसैको पहलमा महोत्तरी जिल्ला अदालतमा अहिले न्याय प्रकृत्यालाई छिटो र छरितो बनाउनका लागि लगातार सुनुवाई प्रकृत्या सुरु भएको छ । यस्ता छलफल र संवादले न्याय प्रणाली सुधार सम्बन्धी बहस पनि गराएको छ । नेपाल बार एसोसिएसन महोत्तरीका अध्यक्ष विजय ठाकुर भन्छन्- “यो सहजीकरण फलदायी भएको छ । यसबाट न्यायका विषयहरू वकालत गर्न बल पुगेको छ ।”



“No other women should have to bear what I had. My goal is to ensure that this does not happen to others.”

Raj Kumari's Story

Raj Kumari Rana, the inhabitant of Beladipur 8, Kailali district, was subjected to barbaric abuse after being accused of witchcraft. The casemade newspaper headlines. The District Justice Facilitation Committee played a crucial role in taking her case to court. Dr. Janaki Tuladhar, the Kailai JFG Coordinator said, “We kept pushing for justice. This has helped in speedy and accessible justice.”

Raj Kumari has now started a social battle against witchcraft accusations and violence against women. She says, “No other women should have to bear what I had. My goal is to ensure that this does not happen to others.”

“मैले जुन समस्या भोगें, त्यस्तो अब कोही महिलालाई नहोस । मेरा पाइला त्यसैका लागि तयार छन् ।”

राजकुमारीका पाइलाहरू

कैलाली जिल्लाको बेलादेवीपुर ८ की राजकुमारी रानामाथि दुईवर्षअघि बोक्सीको आरोपमा ठूलो यातना भयो । यो विषय राष्ट्रिय संचारमाध्यमहरूमा समेत ठूलो चर्चाको विषय बन्यो । यसलाई कानूनी बाटोतिर लैजाने क्रममा जिल्ला न्याय सहजकीरण समूहको ठूलो योगदान रह्यो । कैलालीको जिल्ला न्याय सहजकीरण समूहकी संयोजनकर्ता डा. जानकी तुलाधरको अनुभव छ- “हामीले यसलाई अदालतको ढोकासम्म पुऱ्यायौं र न्यायका लागि हामीले प्रयासहरू जारी राख्यौं । यसले न्यायलाई छिटोछरितो बनाउन सहयोग गरेको छ ।”

आफ्नो जीवनमा परेको क्षतिको लागि उनी अझ न्याय खोज्ने प्रक्रियामा छिन् । कुनैबेला बोक्सीको आरोपमा दुख बेहोरेकी उनी हिजोआज भने बोक्सी र महिला हिंसाको विरुद्धको सामाजिक लडाईंमा छिन् । भन्छिन्- “मैले जुन समस्या भोगें, त्यस्तो अब कोही महिलालाई नहोस । मेरा पाइला त्यसैका लागि तयार छन् ।”



“ we have settled nineteen cases within a few months and only seven have been transferred to this new year.”

Continuous hearings

The process of "continuous hearing" of pending cases has started in 22 districts of Nepal. "Continuous hearing" is a process where the case, filed upon the completion of the investigation, is heard continuously until the final verdict is reached. It is mainly cases where the state is a party, such as human trafficking, violence against women, rape etc., that are heard under this process in order to provide timely and effective decisions. It has worked well in districts like Banke, Mahottari and Kailali. The case backlog is diminishing and victims are seeing results. Mahottari District Court Judge, Prakash Kharel, notes: "In the few months since the process of continuous hearing was started with the assistance from Justice Facilitation Group and others, we have settled nineteen cases within a few months and only seven have been transferred to this new year."

“निरन्तर सुनवाईको प्रक्रिया थालेको केही महिनामा नै राम्रो अनुभव हासिल भएको छ ।”

लगातार सुनवाइ प्रभावकारी

नेपालका करीव २२ जिल्लाहरूमा लगातार सुनवाइको प्रक्रिया सुरु भएको छ। अनुसन्धान सकेर मुद्दा दर्ता भएदेखि फैसला नहुन्जेलसम्म लगातार रुपमा सुनुवाइ गरेर फैसला चाँडो दिने प्रकृतिलाई लगातार सुनुवाइ भनिन्छ। यसमा सरकारवादी मुद्दा जस्तै मानव वेचविखन, बलात्कार, महिला हिंसा लगायतका जरुरी विषयका मुद्दाहरू अदालतले लगातार सुनवाई गर्दछ। कार्यक्रम लागू भएका महोत्तरी, बाँके र कैलाली जिल्लाहरूमा यसको प्रभाव राम्रो देखिएको छ। महोत्तरी जिल्ला न्यायधिश प्रकाश खरेलको अनुभव छ -“न्यायका सबै सरोकारवालाहरूको सहयोग र न्याय सहजीकरण समूहको सहयोगमा निरन्तर सुनवाईको प्रक्रिया थालेको केही महिनामा नै राम्रो अनुभव हासिल भएको छ।”



“ It has created an enabling environment for the quick resolution of cases.”

Active policing

Active police support has helped to make continuous hearings a success. The police mobilised its forces to gather evidence for cases under continuous hearing. In many districts they have provided food and travel allowances to disputants and witnesses. This has helped to ensure their presence in court and enabled police to gather the required evidence. Mahottari District Superintendent of Police Ram Prasad Shrestha says, “The police has started to work in a different way to gather evidence since continuous hearing started. It has created an enabling environment for the quick resolution of cases.”

“यसले फैसला छिटो हुने वातावरण तयार गरेको छ ।”

प्रहरी सक्रियता

लगातार सुनवाईका मामिलाहरूमा प्रहरी सक्रियता यसको सफल पाटो बनेको छ । निरन्तर प्रक्रियामा समावेश भएका मुद्दाहरूको प्रमाण जुटाउने लगायतका सवालहरूमा प्रहरीले आफ्ना संयन्त्रहरूलाई परिचालन गरेको छ । कतिपय जिल्लाहरूमा विवादका पक्षहरूलाई दैनिक भ्रमण भत्ता समेत दिएर अदालत सामु प्रमाणहरू छिटो पुऱ्याउन यसले सहयोग गरेको छ । महोत्तरी जिल्लाका वरिष्ठ प्रहरी उपरिक्षक रामप्रसाद श्रेष्ठको अनुभव छ- “निरन्तर सुनवाई सुरु भएपछि प्रहरीले अनुसन्धान गर्न र प्रमाणहरू भिकाउन बेग्लै खालका कामहरू गरिरहेको छ । यसले फैसला छिटो हुने वातावरण तयार गरेको छ ।”



सर्बजित भवन

“Successful implementation of the third strategic plan will transform the current status of the country’s judiciary.”

Strategic reform

Timely delivery of justice is a major concern for the justice sector. So, too, is making justice accessible and accountable. This has become the main objective of the third judiciary strategic plan. Acknowledging the hitherto slow justice delivery process, the plan has recommended the justice sector to implement reform such as public outreach programme, review and revision of costs incurred in the court etc. The Supreme Court Assistant Spokesperson notes, “Successful implementation of the third strategic plan will transform the current status of the country’s judiciary.”

“तेस्रो रणनीतिक योजनाको सफल कार्यान्वयनले न्यायपालिकाको वर्तमान अवस्थामा ठूलो सुधार ल्याउनेछ ।”

रणनीतिक पहल

छिटो न्याय पाउनु न्यायक्षेत्रको एउटा महत्वपूर्ण सवाल हो । यसलाई न्यायिक क्षेत्रले समेत उच्च प्राथमिकता दिन थालेका छन् । अदालती न्यायप्रणालीमा रहेको ढिलासुस्तीलाई स्वीकार गर्दै यसलाई सुधार गर्न न्यायपालीकाले तेस्रो रणनीतिक योजना बनाएको छ । यसले न्यायक्षेत्रलाई पहुँचयोग्य, सुलभ र छिटोछरितो बनाउनका लागि नागरिक पहुँच कार्यक्रम, अदालती शुल्क पुर्नविचार जस्ता विभिन्न सुधारका कदमहरु समावेश गरेको छ । सर्वोच्च अदालतका सह-प्रवक्ता बाबुराम दाहालको विचार छ -“न्यायपालिकाको तेस्रो रणनीतिक योजनाको सफल कार्यान्वयनले न्यायपालिकाको वर्तमान अवस्थामा ठूलो सुधार ल्याउनेछ ।”

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