

TECHNICAL ASSISTANCE  
TO THE KINGDOM OF NEPAL FOR  
ESTABLISHING ECONOMIC POLICY NETWORK  
ADB TA 4288-NEP

**PROCEEDINGS OF THE WORKSHOP ON  
THEMATIC POLICY PAPERS  
(Workshop #4)**

April 2006

## I. Introduction

Workshop 4 of the Economic Policy Network was held on March 30, 2006 at Nepal Administrative Staff College, Jawalakhel. Two policy papers were presented at the workshop in sessions.

As per the decision of the Steering Committee meeting on January 23, 2006, the policy papers, with the incorporation of comments from the workshop, are taken to the respective Advisory Committee for final validation. The final report is then forwarded to all concerned ministries and agencies for implementation. The drafts as well as finalized reports are also posted under the 'Economic Policy Network' link within the Ministry of Finance for accessibility of the general public.

The two policy papers presented at the workshop were: (i) Strategies for promoting industrial property licensing in Nepal; and (ii) A policy study on PPP led ICT enabled services in Rural Nepal. The workshop was divided into two sessions to discuss each paper. Each session followed (i) a presentation by the consultant, (ii) comments by the reviewer, and (iii) open floor discussion. The sessions were chaired by former Finance Minister Mr. Madhukar S.J.B. Rana.

## II. Strategies for promoting industrial property licensing in Nepal Presentation

### A. Presentation of Paper

The study was carried out by advocate Mr. Sajjan Bar Singh Thapa on behalf of the Confederation of Nepalese Industries (CNI). The commentator on Mr. Thapa's paper was Dr. R.K. Timalseña.

The presentation basically summarized the chapters as per the TOR of the consultant:

- Introduction of concepts
- Industrial property (IP) licensing in Nepal
- Technology transfer and foreign investment
- Problems of industrial property licensing (barriers)
- Possibilities of industrial property licensing (improvement)
- Recommendations for policy intervention

### B. Commentators' Remarks

Dr. Timalseña gave an example of a case which involved a discovery in the spleen during an operation in the United States. The issue was who had the property right to the discovery, the doctor who made the discovery while performing the operation or the patient whose spleen the operation was being performed on.

He explained that Patent, Design and Trademark Act (1965) has not been able to progress much in the past 40 years. It does not have specific provision for licensing except recommendation of permitted use provision for trademark. The law is not at par with international standards. Right to property safeguard not addressed, and no place for registering copyright patent. Similarly, there is a lack of expertise to carryout testing and certification. The need for capacity building is crucial. Awareness should be raised for understanding the status of IP in Nepal.

He suggested the National Planning Commission (NPC) to address IP while devising industrial policies; Universities to be mobilized for laboratory testing; Autonomous body

under the jurisdiction of the Department of Industry (DoI) to administer IP regime; introduction of IP related curricula, creation of a roster of IP experts, and availability of scholarships to IP students.

He also cautioned against possible monopolies due to IP regime and stressed the need to ensure competition in the market and consumer protection.

Pointing out that lawyers and law enforcement personnel are not always knowledgeable on IP issues, he stressed the need to train them. An IP Board was also suggested to look into IP related cases. Citing a lack of a designated point to lodge complaints on IP related cases, he suggested formulating directives to address this. Foreign Investment and Technology Transfer Act would also be strengthened when an effective IP regime is in place. Full use of information and communication technology (ICT) should be used to promote, facilitate and protect IP regime. Public and private responsibilities must be clear. Licensing through specific legal provision suggested instead of contract law. Clarity on how to address IP rights on those items that may cause a threat to the public must also be included in laws. Citing inadequate safety nets for consumer protection he also suggested to have a new IP charter with provisions to address these issues. There is also a necessity of bringing out a Regulation to implement the provisions of the existing Act.

### **C. Deliberation from the audience**

Following the commentator's remarks, the chairperson opened the floor for discussion.

- Mr. Tana Gautam thanked the Economic Policy Network (EPN) and the consultant for highlighting IP licensing. He expressed that there are only 50–60 patents registered currently in Nepal while the number of designs registered is even lower. Of around 25,000 trademarks registered, half are owned by Nepalis. These have to be renewed every 7 years but effective monitoring is lacking to ensure this. The IP Cell within the DoI is currently staffed by only 5–6 persons and retaining trained staff is difficult. Also, in-depth analysis of the problems in IP licensing is weak in Nepal. In Japan patents not being commercialized is a problem, but in Nepal registration itself is a problem much less commercialization.
- Mr. Stalin Man Pradhan expressed that there has never been any amendments in the Act since its promulgation. In lack of appropriate mechanisms for IP licensing Nepalis are forced to go abroad to acquire licenses to safeguard their patents, designs and trademarks. He gave the example of a German company which had acquired a design patent on carpet designs, which barred Nepali carpet manufacturers to use those designs. Diplomatic channels were used to solve the problem. He also suggested introducing a new separate department within the Ministry of Industry, Commerce and Supplies to look into IP regime.
- Mr. Suresh Pudasaini highlighted the positive role that ICT can play in facilitating the IP regime. He also expressed that Nepali mentality has to change from a quantitative thinking to a qualitative one. Identify the status and weaknesses before introducing any laws. Lack of coordination between line ministries and proper identification of stakeholders.
- Mr. Krishna Hari Banskota opined that IP licensing must come under the jurisdiction of the private sector and the Government must limit its role as a facilitator. Government should arbitrate litigation and dispute resolution. Government should discuss on IP related issues during WTO negotiations. Government must make Acts to discourage piracy.
- Dr. Krishna Prasad Pant pointed out that IP licensing is to facilitate economic exploitation by the inventor. Tax incentives should be avoided.

- Dr. Puspa Kandel preferred tax incentives over tax holiday. He requested the consultant to include IP licensing arrangements in other SAARC nations in the report to the best possible.
- Mr. Suresh Kumar Basnet opined that licensing should be done by the private sector or through a public-private partnership arrangement. He also suggested forming a special court for dispute resolution regarding IP. We must also promote design patenting of handicrafts and carpets which are unique products of Nepal.

The Chairman thanked everyone for the discussions. He expressed that commercialization is low in Nepal, and lack of competitiveness and management expertise are major constraints to IP licensing in Nepal. He expressed the need to have a clear picture of where we stand and where we want to go, focusing on the level of development and stressed the need to move ahead stepwise. He also requested the consultant to list patents and trademarks registered in Nepal, and the types of disputes related to IP that have been raised in Nepal.

The meeting was adjourned for tea.

### **III. A policy study on PPP led ICT enabled services in rural Nepal**

#### **A. Paper Presentation**

The policy study was carried out by Prof. Dinesh Chapagain on behalf of Kathmandu University. The commentator on Mr. Chapagain's paper was Mr. S.K. Pudasaini.

The presentation basically summarized the chapters as per the TOR of the consultant:

- ICT enabled services for sustainable development of rural Nepal
- Status of policy and structural support for ICT enabled services in Nepal
- Provisions, concepts and issues on ICT enabled services
- Policy constraints and recommendations

#### **B. Commentator's Remarks**

Mr. Suresh Pudasaini expressed that the paper covers a broad field. He opined that the major problem in Nepalese bureaucracy is administrative culture. Policy formulation must be transparent without any vested interests. Policies must be to the point and clear and not left ambiguous as is the practice in Nepal. The Ministry of Law and Justice does not always ensure the compatibility in language of policies and the corresponding Acts and Regulations. He expressed the need for inter-ministerial coordination and review of existing and past documents while formulating policies. He was also of the opinion to have authority with independent agencies to pursue PPP in specific activities to suit mutual interests of the partners.

He opined that the Telecommunications Ministry should have been empowered to take up the developing fields of ICT instead of scattering the responsibilities in different institutions. The Nepal Telecom (NT) puts in computers wherever phones are installed, therefore the responsibility of computer information system could be effectively addressed by NT. This would minimize the need to establish separate offices of each ministry in the Districts. In a scattered framework of responsibilities within various ministries, inter-

ministerial coordination should be promoted to merge the different offices in one location for cost effectiveness and efficiency through better coordination.

He also stressed the need to harmonize the provisions in various Acts to ensure implementation by the Ministry of Finance. Processes and procedures must be institutionalized.

### **C. Deliberation from the audience**

Following the commentator's remarks, the chairperson opened the floor for discussion.

- Mr. Balaram Rajbhandari stressed the need to promote and facilitate public private partnership. Coordinate with FNCCI to launch ICT in rural areas.
- Mr. Dileep Agrawal explained that the development of internet services in Nepal was quick and driven by the private sector. He expressed that the Nepal Telecommunications Authority (NTA), which has been enacted to regulate the telecommunications sector is not taken seriously by the Government. For example, if NTA recommends and approves customs exemption on certain goods, why is the recommendation from the Ministries necessary? Customs duties on expensive communications equipment is high, driving up the cost of doing business. Such policies discourage the development of efficient fiber optic networks. It is also a major barrier to expansion of ICT into rural areas. He was also in favor of a license free regime.
- Mr. Santosh Upadhyay emphasized on contracts not being legally accepted in the absence of sealed and authorized signature. He cited an example of contracting through email on an ICT project.
- Mr. Min B. Karki expressed that the demand of ICT in urban market is high but in rural market it is difficult to drive demand and make it sustainable. So in order to create demand the government should create an environment and provide incentives for private sectors so that they can play in the market. Furthermore ICT can be used as an intermediary to sell the products in the market, even introduction of internet advertising could play an important role.
- Mr. Chiranjibi Nepal emphasized explained that, present Nepali economy is sustained by remittance. The remittance is highest in Myagdi (one of the rural areas), so there is a need of development of ICT in such area. The main focus has to be on the consumer benefits through the utilization and proper implementation of ICT. ICT acts and policies need to be flexible. ICT has to be user friendly and should create awareness among the customers.
- Mr. Krishna Hari Baskota stressed on the ineffective use of website because the culture to use the internet has not developed fully in Nepal yet. He further explained that custom duties on ICT equipments are necessary to collect revenue for the Government.
- Mr. Stalin Man Pradhan expressed his view that BOO is better option than BOOT in case of ICT in Nepal.
- Mr. Puspa Kandel explained the remittance economy of Nepal and suggested to elaborate on ICT in Nepal focusing on the Kerala model.
- Mr. Iswer Raj Onta expressed that an enabling environment for ICT and power are important aspects of ICT development. Education, awareness, power and infrastructure are very important for rural areas.

The Chairman thanked Prof. Dinesh Chapagain and all the participants for the presentation and participation. Furthermore, he emphasized on coordinated policies. He highlighted the fact that globalization is driven by ICT. He added that ICT development

plays a significant role in the development of Nepal. For ICT enabled practices, the need for coordination between ministries, and public-private partnerships are a must.

The Chairman recommended umbrella Act for the proper implementation and coordination of ICT enabled services. He also stressed the need to look at ICT from the viewpoint of national security. He further suggested that ICT could be the quickest means of GDP growth and quickest means of investment, and could help to increase youth employment—a major means of conflict alleviation.

He expressed that postal services could be managed through ICT and the Government must take a bold step to make this sector efficient. He focused on the need to delegate the authority to the private sectors by the Government.