

Working Conditions and Procedures for INGOs and NGOs in Nepal: Requirements and Code of Conduct

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Annual Nepal NGO Meeting

The Eleventh Nepal NGO Meeting organised by the German-Nepal Friendship Association (GNFA) was held on September 10, 2005 in Cologne, Germany. As in the past, this annual meeting of the nongovernmental organisations (NGO) working for Nepal brought together a large number of people representing some 35 NGOs and other organisations. The main topics of discussion for the day included the changing working condition for NGOs in Nepal, the effects of the political change of February 1 on development cooperation, and Nepal's new *Code of Conduct for Social Organizations and Institutions 2005* (CoC). The discussions also focused on the potential effects that the CoC might have on the work of the German international nongovernmental organizations (INGO) and their partner organisations in Nepal.

The German Ambassador to Nepal, Franz Erwin Ring, sent his greetings and thanked the representatives of the German NGOs for continuing their work in Nepal in spite of the unfavourable present conditions in the country and for taking personal risk in doing their work. The Nepalese Ambassador was repre-

sented by Minister Counsellor Prahlad Prasai, who expressed great appreciation for German NGOs for their continued commitment and important work in Nepal. The speakers of the day were Jochen Kenneweg, head of the Department for South Asia of the Federal Ministry for Economic Cooperation and Development (BMZ), Annette Lohmann from the Working Group on Development and Peace (FriEnt) in the BMZ as well as Birgit Starkenberg from the German Agency for Technical Cooperation (GTZ).

Marei John from Friedrich-Ebert Stiftung (FES) described her impressions from her last visit to Nepal and reported on the local activities of FES in Nepal. She observed that the political parties in Nepal seem to have come closer together in the present situation, and that a generational change seems imminent and necessary for them to regain credibility. The unions also seem to be coming closer together. Thus, general willingness to enter into dialogue seems to have grown for some groups. At the same time, local elections have been announced. Whether such elections will be a precursor to other moves toward the recreation of democratic conditions

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at least on some levels of society, or whether they are doomed to fail in the present situation, remains to be seen. Topics such as crisis prevention and civil conflict management have generally grown in importance in recent years in the work of Friedrich-Ebert-Stiftung. In several Asian countries, such as Nepal, the work in FES projects has been tailored to be conflict-sensitive. This was done on the basis of previous conflict analyses. FES continues to focus on conflict management and the maintenance or establishment of a democratic political culture. Thus, activities take place on a national as well as on grass-roots level - partly in Kathmandu and partly in the various districts - sometimes as high-level political dialogue and sometimes as individual training sessions.

The new website of the NGO-Forum Nepal (www.ngo-forum.de) was presented by Ram Pratap Thapa, President of GNFA, who had opened the discussion. The website includes an updated list and descriptions of all German NGOs working in Nepal. As all information on the website is regularly updated, NGOs were asked to make sure to communicate any changes or supplemental information to be added to the NGO-Forum Nepal.²

Germany's development participation

Jochen Kenneweg gave a brief appraisal of the present situation in Nepal and summarized the reactions and attitudes of Nepal's international partners and that of the local population. More than half a year after the King's takeover of the government, the Maoists still control large parts of the country, especially in the mountain regions, where they have succeeded in imposing their own administrative structures. The army

continues to be largely reactive and focuses on the protection of Kathmandu Valley and district capitals. The attitude of Nepal's important partners - mostly India, the U.S. and Europe - continues to be a critical one, and there is unanimity in insisting that Nepal restore the multi-party system, improve the human rights situation and fully apply civil rights. Nepal's population seems divided in its opinion about the King and the new government. An especially critical attitude is taken by a number of journalists, human rights organisations, student organisations, and party activists.

Nepal's development partners are continuing their development activities, albeit with some reductions and cutbacks due to security reasons. The view prevails that those already impacted by the conflict should not be further disadvantaged. It has been decided, in accordance with the EU, that under the present conditions no new commitments will be made for further projects. As far as Germany's participation in development is concerned, there are at present no such decisions to be made since the last two-year commitment was given in November 2004. Germany will continue to carefully observe the situation, and a regular exchange of information and opinions will continue. The present activities in the focal areas of health, renewable energies and strengthening of civil society are ongoing.

Distribution of Basic Operating Guidelines

The *Basic Operating Guidelines* (BOG), based on international law, were created in 2003 by ten bi-lateral development organisations and embassies.³ It consists of a 14-point list, which explains, first, why and how the bilateral donors

² Based on the manual *NGOs für Nepal* published by Ram Pratap Thapa and Iris Kobek, Köln, 2003.

³ The ten signing parties include: SNV (Holland), DANIDA (Denmark), DFID (Great Britain), GTZ (Germany), JICA (Japan), CIDA (Canada), SDC (Switzerland), NORAD (Norway), EU and the Embassy of Finland.

and implementation organisations work in Nepal, then outlines the minimum requirements which are demanded of the conflicting parties by the donor organisations to be able to continue their work. The BOG ultimately defines the limitations of development cooperation as regards staff safety and non-partisanship of the ten members of the group. Thus there is a great emphasis that the guidelines spelled out in the BOG are known to all conflicting parties and that they be accepted and observed. The government of Nepal has pledged to abide by the BGO as of July 2005. The Maoists have also received the BGO and a positive feedback is expected from them.

The BOG group has charged a local NGO with the task of distributing, explaining and discussing the BOG vis-à-vis representatives of local NGOs in the Eastern development region of the country, in order to create solidarity between INGOs and NGOs and also to enhance the sense of self-confidence of NGOs. This has been done successfully and with positive feedback in nine of the 16 Eastern districts.

Birgit Starkenberg of GTZ emphasised in this context that when working under the present crisis conditions, the safety of their own staff as well as that of the Nepali partners and target groups is of utmost priority. She described an incident in Kalikot, in April of 2005, where two NGO staff working for GTZ were detained by Maoists, brutally hit and intimidated. A joint fact-finding mission of DFID (Department for International Development, UK), GTZ's Risk Management Office (RMO),⁴ and GTZ project personnel went to the crisis region to help the victims and to learn more about

⁴ RMO advises and trains personnel of both organisations in the area of personal safety and conflict-sensitive project design: it offers constant information about the up-to-date security conditions.

the background conditions. At the same time, contact was made via different channels with the Maoists. It was decided to suspend development activities in Kalikot for as long as there was no apology from the Maoists and/or acceptance of the BOG on local and national levels. This decision was taken to ensure staff and project safety in the long run. The government was informed about the suspension of activities and a press release was published in the local print media. The work in the region remains suspended to this day.

Enhancement of conflict-defusing activities

Annette Lohmann of the FriEnt working group, an initiative founded in 2001 by seven governmental and nongovernmental organisations and networks, reported on the group's activities, including those already concluded and those still under way.⁵ FriEnt devised a partner structure analysis called Joint Assessment of Selected Sectors of Development Work in Nepal and its Impacts on Conflict and Peace,⁶ in which the different sectors are observed and recommendations for action are given with the goal to intensify the conflict sensitivity of government and nongovernmental parties and also to exclude unintentional intensification of the conflict. It is planned to employ a conflict mapping method, which can be used to work out the different actors, their positions and

⁵ This includes BMZ, German Agency for Technical Cooperation (GTZ), Friedrich-Ebert-Stiftung (FES), the church development organisations Misereor (German Bishops' Organisation for Development Cooperation) and the Church Development Service Evangelischer Entwicklungsdienst (EED), the two networks „Konsortium Ziviler Friedensdienst“ and „Plattform zivile Konfliktbearbeitung“ as well as the Institut für Entwicklung und Frieden (INEF).

⁶ „Joint Assessment of Selected Sectors of Development Work in Nepal and its Impacts on Conflict and Peace“ published by EED, FES, GTZ, MISEREOR und SEQUA, May 2005.

their relationship in the local conflict context.

Legal fundamentals for NGOs in Nepal and the new Code of Conduct

On July 14, 2005 a revised and supplemented version of the Social Welfare Act of 1992⁷ was passed. With this law, the Social Welfare Council (SWC)⁸ that so far played a largely supporting role for NGOs, now has a much more controlling, supervising and defining role with regard to the NGOs. This has been criticised by civil society. Part of this law will be the CoC draft, which has long been planned and also been included in the Tenth Five-Year Plan (2002-2007). Both local NGOs and INGOs as well as other organisations were made to feel disconcerted and unsure by the sometimes questionable supplements to the Social Welfare Act, the subsequent hasty replacement of all board members of SWC, and the rather sudden creation of the CoC. Development experts and representatives of some umbrella organisations feared that there would be drastic infringements on the present way of working for local NGOs, as well as a conscious repression of the work of human rights organisations and more general repression of civil rights. There is also a danger that NGOs might lose their time-proven independence and that their development work might be undermined.⁹

⁷ The „Social Welfare Act“ defines creation, structure, function and tasks of the Social Welfare Councils (SWC). SWC works under the Ministry for „Women, Children and Social Welfare“. Head of SWC is the Minister for „Women, Children and Social Welfare“ Durga Shrestha.

⁸ Only about half of the local NGOs, ca. 18,727, are registered with SWC. Only 133 INGOs are registered with SWC. It is estimated that there are at least 15,000 more local NGOs registered only with the regional Chief District Offices.

⁹ „Proposed code for NGOs against int'l treaties: Amnesty, ICJ“, www.nepalnews.com, 8 November 2005; „Open letter on the proposed code of conduct for NGOs“, Amnesty International und International Commission of Jurists (ICJ), 7 November 2005.

Even when members of SWC try to explain the necessity of the CoC in terms of improving transparency, securing the useful and sensible utilisation of financial means, improving target-group accuracy, preventing mismanagement and creating a result-oriented system of bookkeeping,¹⁰ it still remains questionable whether and how such a CoC can be enforced. The work of both NGOs and INGOs is already covered by a whole gamut of laws such as the Local Self Governance Act of 1998, the Legal Code of Nepal (Muluki Ain), the Organisation Registration Act of 1977, and other existing agreements. Additionally, there is no legally binding value in a code of conduct. Instead, it only points out general values and norms (code of conduct) and can at most be useful in raising awareness. Already, during the drafting process of the new CoC, the association of local NGOs (NGO Federation Nepal) and the association of INGOs in Nepal (Association of International NGOs in Nepal - AIN)¹¹ were rather sceptical about the drafting process as such and the eventual contents of these guidelines.

It remains to be of interest even though the association of INGOs in Nepal already created such basic rules / principles for the work of INGOs in the country (AIN Recommended Principles and Operating Guidelines/Ground Rules for INGOs in Nepal), which have been made public by means of posters. These are divided into Guiding Principles and Operational Do's and Don'ts. The umbrella organisation of local NGOs, NGO

¹⁰ „SWC starts homework on NGO Code of Conduct“, www.nepalnews.com, 11 September 2005 and „SWC set to introduce new Code of Conduct for NGOs“, www.nepalnews.com, 6 November 2005.

¹¹ The association has now more than 50 members, a.o. Action Aid Nepal, Terre des Hommes, United Mission to Nepal und Plan Nepal. It strives to simplify coordination amongst the INGOs. It also strives for a uniform development of the whole country. (www.ain.org.np).

Federation Nepal, which was founded in 1991, has also published on its website (www.ngofederation.org) its own Code of Conduct. Meanwhile, more than 2,000 NGOs have become members of the national umbrella organisation with branch offices in 63 of the 75 districts of the country. It has established regional committees in five development regions which are meant to support and motivate the member NGOs in their work, to coordinate their work, and to encourage networking. Both umbrella organisations spoke up clearly against the drafting and publishing of the CoC on the part of SWC. There are even some individual NGOs which have created a sort of their own Code of Conduct for their organisation and have published it on their websites.

In mid-September the Maoists of the Karnali Bheri Region (Far West development region) also passed guidelines for those NGOs wishing to gain permission to work in their area. These guidelines consist of ten points, which, if observed by the NGOs, will effectively require NGOs to obtain a written or oral permission from the Maoists to work in the area. According to these guidelines, activities near district headquarters and army camps are not permitted, and programs by Israeli or U.S. organisations are to be boycotted. Programs executed by the United Nations and other countries which provide humanitarian aid and other support are welcomed. Regular reporting is required.¹²

During last year's NGO Meeting Nepal (September 2004), some representatives had expressed a concern that the CoC might result in still greater increase in administrative tasks in their dealings with SWC. This was an especially important concern for small organisations

that are characterised by un-bureaucratic and speedy execution of aid activities. The complex procedure is likely to create both financial and organisational burdens on these organizations.

On November 10, 2005 the CoC (Code of Conduct for Social Organisations and Institutions, 2005) was finally announced in a press conference. It is instantly binding for all social workers as well as social organisations and institutions in Nepal. The CoC consists of a total of 15 clauses, which deal primarily with those values and norms on which the work of the NGOs is based. Special emphasis is placed on transparency, responsibility and obligations, volunteerism as well as financial discipline, correct use of means, and coordination. The local NGOs are thus obligated to hand in annual progress reports and financial reports and to coordinate their programs in advance with the local authorities. Terms of presidency of an NGO must not exceed two voting periods and salary payments to members of the board of an NGO are prohibited. Further, the code stipulates that from now on people working in any NGO should not take part in any party politics within the premises of those organizations. Besides, NGOs should not carry out any activities that could be the subject of defamation, disrespect and contempt of court. SWC has the right to dissolve the board of an NGO in case of non-observance of the CoC or even bar the NGO completely. In this case, the NGO has the right to justify itself before actions are taken. As quickly as only one day after the publication of the CoC, massive criticism and protest could be heard and there were calls for nationwide demonstrations.¹³ The criticism focussed initially upon the way the CoC was created and not so

¹² Source: „10 Points Guidelines for NGOs issued by the Karnali Bheri Autonomous Region of the CPN“, Surkhet, 13 September 2005.

¹³ „NGOs start nationwide protest against new Code of Conduct“, www.nepalnews.com, 11 November 2005.

much on its contents, i.e. upon the insufficient involvement of NGOs and INGOs and the volunteerism provision of the guidelines. Many protesters presumed that the publication of the CoC had merely political motives behind it, such as the hindrance of human rights organisations and of journalistic efforts to inform about attacks and misconduct of the military and to quiet down any criticism of the king and his government. Lately, the umbrella organisation of local NGOs has filed a writ petition against the CoC at the Supreme Court.

The CoC further prohibits that parts of the official development aid go directly to local NGOs instead of government organisations. Most of the bi-lateral donors work presently both with the government and with local NGOs, and development funds flow through both channels. The wording in the CoC is in parts so general and vague that it is feared that the controlling authorities at the local level might willingly or unwillingly misinterpret the CoC guidelines. It is, for example, not clear whether the CoC is valid also for INGOs.¹⁴

A few days ago, leading donor organisations, the United Nations and several INGOs have finally requested in a joint letter to the government that the CoC be withdrawn. The donors signing the letter include embassies of Australia, Britain, Canada, Denmark, Finland, Norway, the U.S., the EU, and other organizations including GTZ, SNV, SDC, DFID and the UN Agencies. Japan, the biggest donor, did not sign the letter.¹⁵

¹⁴ „Code of Conduct a major step backward: HRW“, www.nepalnews.com, 16 November 2005; „Code of conduct aimed at silencing the right defenders: AIN“, www.nepalnews.com, 17 November 2005; „The Code of Conduct is confusing and vague“, *Nepali Times*, 18 - 24 November 2005.

¹⁵ „Donors ask govt. to withdraw the code of conduct“, nepalnews.com, 16 November 2005; „Decoding the Code of Conduct“, *Nepali Times*, 18 - 24 November 2005.

Résumé

An end to the armed conflict with the Maoists in Nepal is not possible without a negotiated settlement. In the more than ten years of its existence it has cost the lives of an estimated 12,000 people so far. The current opinion is that democratic peace can only be re-established in Nepal if it is negotiated jointly by all involved parties and if it considers the roots of the conflict itself. This calls especially for the strengthening of the development process and the support on the grassroots level. There is a parallel need for political efforts, which allows for dialogue, includes the civil society and works with groups and individuals who can help make such a societal change.

INGO work must not be restricted to Kathmandu and the Kathmandu Valley, as there is great urgency in the distant areas of Nepal, where the conflict is actually lived out on a local level. Generally, INGO and NGO activities should be focused on the local population and on the improvement of the general living conditions.

It is questionable whether SWC is really capable of executing and coordinating this CoC as it has in the past been much criticised for its overly strong bureaucracy. Despite all ongoing discussions on CoC, many observers feel that a restructuring of SWC is of foremost importance to make it service-oriented and a one-stop center for INGOs.

At this point of time, it is difficult to say whether the CoC will actually hinder the activities of German NGOs locally. However, it may affect those 10 NGOs¹⁶

¹⁶ Registered with SWC are: Christoffel Blindenmission, Förderkreis Hilfe für Nepal e.V., Freundeskreis Nepalhilfe e.V., German Nepal Help Association, Govinda Entwicklungshilfe e.V., Interplast Germany e.V., Kuratorium Tuberkulose in der Welt E.V., Nepalhilfe Beilngries e.V., Sonja Kill Foundation und die Nepalhilfe Aachen e.V.

registered with the SWC and their local partner organisations. It seems that changes in program planning, application and implementation should not necessarily be expected.

To be able to judge the consequences and effects of SWC's recently published CoC, we must first await the end of the implementation phase, which requires a strong networking both among the local authorities and between local and national agencies. It is also possible that it may still be modified or supplemented due to the loud and strong protests and the general disagreement.

To be able to generate change in the observed problems in the country, it is surely necessary to do more than just create a guideline for proper conduct. Especially so as the internal structures and the coordinating function of SWC must first be improved. There must also be a differentiation according to fields of work and size of the NGO to make sure that the bureaucratic requirements are kept to a working minimum. New structures and systems are needed to prevent duplication of effort for NGOs and to be able to filter out the "black sheep" that are the real target group of the CoC. But CoC alone cannot filter out such "black sheep" without an efficient watchdog organisation. International standards and guidelines should always be adhered to, and such a guideline of conduct should not be turned into a legal framework.

Appendix

Code of Conduct For Social Organisations and Institutions 2005

(Unofficial Translation)

To make the contribution of social organisation in the realm of social development more respectable, institutionalised and effective, this Code of Conduct has been prepared and enforced as per the rights enshrined in the Social Welfare Act, 1992, Article 9 (First Amendment) Ordinance 2005, Clause (I).

1. Short Title and Commencement:

1.1 This Code of Conduct shall be called "Code of Conduct for Social Organisations and Institutions, 2005".

1.2 This Code of Conduct shall come into effect immediately.

1.3 This Code of Conduct shall be applicable to social workers of social organisations and institutions functioning within the Kingdom of Nepal.

2. Definition:

Unless and otherwise stated differently, in this Code of Conduct, the following shall mean:

2.1 "Council" shall mean Social Welfare Council established under Social Welfare Act, 2049.

2.2 "Social Organisation and Institution" shall mean all the social organisations and institutions, which are registered in accordance with the prevailing laws of the Kingdom of Nepal or working under agreement.

2.3 "Social Worker of social organisation and institution" means patron, executive office bearer, member, staff, worker, advisor, specialist and consultant working in the social organisations and institutions.

3. Values and Norms:

3.1 Carry out in a transparent manner the social services without any discrimination on the basis of religion, colour, sex, caste or region.

3.2 Endorse and comply with all commitments made in the bilateral and multilateral agreements to which Nepal is a signatory.

3.3 Social workers shall not undertake bi-partisan political activities within the social organisations they are associated with.

4. Priority:

4.1 National and international social organisations and institutions shall give priority to local social organisations and institutions while carrying out the social service activities.

4.2 While selecting such local organisations or institutions objective, competitive and transparent procedure shall be followed in co-ordination with local government agencies.

4.3 Classes/Communities, which need to be protected by the Society shall be given priority for justifiable dignity and service.

4.4 Social organisations and Institutions shall formulate and carry out the programs in consonance with the policy and program as per chalked out by the national and local periodic plan.

4.5 Discourage for not continuing to remain in the Presidency or Chairpersonship in the social organisation and institution for more than two consecutive terms and follow the system.

5. Transparency:

5.1 All the programmes, activities, financial information and assistance received from internal/external sources shall be presented in a transparent manner.

5.2 Annual progress report and auditor's report shall be made public in order to ensure that the available financial and other resources received has been utilised for community and social welfare programmes.

5.3 Details of total annual financial transactions shall be submitted in the form of integrated document to the organisation's management, Council, District Administration Office, District Development Committee and to the donor community as per the necessity.

6. Responsibility and Obligation:

6.1 Social workers of the Social Organisation shall be fully responsible individually or collectively for activities carried out by the organisation.

6.2 They shall be fully responsible to the targeted group.

7. Spirit of Volunteerism:

7.1 Officials or members of the organisation shall be directed by the inherent spirit of volunteerism.

7.2 Except for reimbursement of expenses incurred during social works, officials or members of the organisation shall not draw salary or any allowances and make the organisation a source of income.

8. Impartiality:

8.1 Social organisation and Institutions shall provide services without any discrimination on the basis of religion, colour, sex, caste or region.

8.2 Shall not use financial, material and other resources in activities other than organisational purposes.

8.3 Shall uphold the principle of impartiality as per clause 8.1 in the formation and operation of executive committee of the organisation.

9. Ethics:

9.1 All officials of social organisations and institutions shall be discouraged to work as salaried residential representatives of international social organisation and institutions.

9.2 Due respect shall be given to the needy class and communities that need social protection and priority will be given to works that need social service.

9.3 Property of the organisation shall not to be used for personal gains.

9.4 Social worker of the social organisation and institution shall refrain from:

§ Provide false information to any agency.

§ Receiving donation, fund and award against organisational or institutional interest.

10. Social Goodwill:

10.1 The social worker shall foster social goodwill, co-existence and act for promoting peace.

10.2 Social workers shall not abuse, defame and insult others and refrain from activities that may lead to contempt of court.

11. Use of Financial Resources:

11.1 Social organisations and institutions working in Nepal shall not acquire foreign aid earmarked for HMG/N as their source of funding.

11.2 Social organisations and institutions shall have to obtain prior approval of the Council for any bilateral, multilateral, and other corporate assistance for their programmes.

11.3 Social organisations shall make arrangements to provide prior information to local bodies before the implementation of the programmes.

12. Financial Discipline:

12.1 Staff receiving salary from the organisation shall not become either the executive office bearer or member, likewise the executive office bearer and member of the social organisation shall not become the paid employee.

12.2 All the capital, properties and other financial resources of the organisation shall only be used for social programs and shall not be used for personal advantage of social workers of the organisation.

12.3 Annual budget clearly specifying the proportion of program expenditure and administrative expenditure shall be presented.

12.4 Shall prepare a rational standard of remuneration, services, benefits and allowances and programme expenditure in a realistic manner.

13. Coordination:

13.1 Necessary contact, cooperation and coordination with HMG/N agencies and local bodies shall be maintained while launching the program.

13.2 Program shall be launched in a coordinated manner avoiding the duplication in local and national level programme.

14. Confidentiality:

Confidentiality of all classified information shall be maintained and any such information received by social organisations and institutions must be insured as confidential.

15. Abiding Policy, Program and Code:

Workers of social organisations and institutions shall fully abide by provisions of HMG/N policy, program and code.

Source: Social Welfare Council

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