

AGREEMENT

Between

THE NORWEGIAN MINISTRY OF FOREIGN AFFAIRS

And

THE INTERNATIONAL LABOUR ORGANIZATION

Regarding

Provision of financial assistance to "Promotion of Indigenous Peoples Rights in the Constitution-Making and State-Reform Process in Nepal"

WHEREAS the International Labour Office (ILO) and the Norwegian Ministry of Foreign Affairs (MFA) have agreed to cooperate in the implementation of Promotion of indigenous peoples rights in the constitution – making and state reform process in Nepal (the Project).

WHEREAS ILO and The Government of Norway concluded a Framework Agreement on 14th November 2003 setting out the general arrangements for receipt and use of resources from MFA;

WHEREAS, the MFA has informed the International Labour Organization, represented by ILO of its willingness to form a donor consortium with the Government of Denmark to provide the cost sharing contribution to the ILO towards the implementation of the Project;

WHEREAS the Government of Nepal has been duly informed on the contribution of MFA to the Project.

NOW THEREFORE, MFA and ILO hereby agree as follows (the Agreement):

Article I
Scope and Objectives

1. This Agreement and the Framework Agreement set forth the terms and procedures for MFA's assistance to the Project "Promotion of Indigenous Peoples Rights in the Constitution-Making and State-Reform Process in Nepal" which is summarised in Annex I to this Agreement and more fully described in the Project Document "Promotion of Indigenous Peoples Rights in the Constitution-Making and State-Reform Process in Nepal" submitted 10 July 2008.
2. **The main objectives of the Project are:**
 1. Support meaningful consultation and participation of indigenous councils/councils and communities in the constitution-making process

2. Support the capacity of key policy-making institutions to integrate ILO Convention No. 169 in the state-reform process

Article II
Cooperation - Representation - Administration

1. All communication between the Parties relating to the Project and any notice required to be given under this Agreement shall be addressed to the following:

For ILO:	For MFA:
The Director ILO Katmandu	Chargé d' Affaires Royal Norwegian Embassy Kathmandu

Any notice required to be given by either Party under this Agreement shall be given in writing, shall be deemed given when actually received by the other Party, and shall be conveyed via first class mail, postage prepaid, or via private courier, facsimile or electronic mail. All facsimile or electronic mail messages shall be confirmed by a letter posted as soon as possible thereafter.

2. MFA and ILO shall co-operate fully to ensure that the main objective of the Project is successfully accomplished. To that effect each Party shall in accordance with its relevant regulations, rules, policies and procedures furnish to the other Party all such information as may reasonably be required pertaining to the Project.

Article III: Contribution and Obligations of MFA

1. Subject to Parliamentary appropriation, and on terms and conditions set forth or referred to herein, MFA shall, in the manner referred to in paragraph 2 of this Article, place at the disposal of ILO a Contribution in an amount not exceeding NOK 3,325,000 (Norwegian-kroner-three-million-three-hundred-twenty-five-thousand-)(the Contribution) (approximately equal to USD 593,675) to be used exclusively to finance the Project for the planned period of 18 months. The budget is included in annex 1 to this Agreement.
2. As shown in the attached budget, the Contribution shall cover Project expenditures and support costs which are seven (7) percent of direct Project costs.

Article IV
Contributions and Obligations of ILO

1. The Contribution shall be administrated by ILO in accordance with ILO regulations, rules and directives, applying its established procedures for the execution of its Projects. Project management and expenditures shall be governed by the regulations, rules and directives of ILO and the Contribution will be recorded in the accounts of ILO and reported together with all other non-core contributions to ILO from MFA.

2. The ILO shall maintain a separate account expressed in U.S. Dollars for the Contribution showing all income and expenditures. Contribution paid in currency other than U.S. Dollars shall be converted into U.S. Dollars at the market rate of exchange on the date of the transaction. Expenditures incurred in currency other than U.S. Dollars shall be converted into U.S. Dollars at the United Nations operational rate of exchange on the date of the transaction.
3. The ILO shall, through its Office in Kathmandu, bear overall responsibility for monitoring the execution of the Project.
4. All Intellectual Property Rights including title, copyright and patent rights resulting from the Project activities shall be vested in the International Labour Organization including, without any limitation, the rights to use, publish, sell, or distribute, privately or publicly, any item or part thereof. However, MFA shall not be liable to pay any royalties in connection with the use of documents resulting from the Agreement.
5. The ILO's obligations under this Agreement shall be contingent upon receipt of the necessary funds. The ILO shall not assume any liability in excess of the amount MFA has agreed to pay in conformity with this Agreement. If any payment/s referred to below is not received, the ILO's assistance to be provided to the Project under this Agreement may be reduced, suspended or terminated by the ILO with immediate effect.

Article V
Disbursements

1. The Grant will be disbursed in two instalments. The Contribution shall be disbursed by MFA according to the following tentative schedule:
 - a. NOK 1,662,500 upon signature of this Agreement.
 - b. Up to NOK 1,662,500 in early 2009 upon request of the ILO. The funding request should be based on the financial needs of the Project and accompanied by the certified statement of income and expenditures.
2. MFA shall upon approval of the request deposit the Contributions into the following account:

Union de Banques Suisses (UBS) SA
Case postale 2600
Rue des Noirettes 35
CH-1211 GENEVA 2

Swift Address: UBSWCHZH80A
IBAN No.: CH69 0024 0240 C080 1157 0

Reference should be made to: NEP/08/02/MUL

3. ILO shall immediately, in writing, acknowledge receipt of the funds. The date of receipt shall be stated as well as the exchange rate applied.
4. All disbursements to suppliers of goods or services shall be made by IL
5. MFA will not make any payment in excess of the total amount stated in Article III clause 1. above. In case the total Contribution, in terms of US Dollars, is substantially different, due to fluctuations of the exchange rate, from its estimation at the time of signing the present Agreement, MFA and ILO shall discuss its consequences and agree to measures to be taken. The consultations between MFA and the ILO will result in an exchange of letters setting out the new arrangements.
6. Notwithstanding the completion of the Project, the ILO shall continue to hold unutilised payments until all commitments and liabilities incurred in the implementation of the Project have been satisfied and Project activities brought to an orderly conclusion. Any balance remaining unspent after such commitments and liabilities have been satisfied shall be returned to MFA.
7. Any accrued interest on the Contribution may be used for the benefit of the Project upon MFA's approval of the ILO's proposal for its use.
8. After consultations with ILO, MFA may withhold disbursements in case of:
 - Substantial deviations from agreed plans and budgets;
 - Failure of ILO to provide the reports as stipulated in this Agreement; and
 - Indications of financial mismanagement of the Project.

MFA may reclaim repayment in full or in part of funds from the contribution to the extent ILO has been able to obtain repayment from the negligent party if the funds are found to be misused or not satisfactorily accounted for. Such repayment shall be in accordance with the Financial Regulations and Rules of the ILO. Before withholding disbursement or reclaiming payment, ILO and MFA shall consult with a view to resolving promptly the matter. ILO reserves the right to reduce, suspend or terminate the activities, in its sole discretion.

Article VI **Financial statements and Audits**

1. Certified financial statements related to the Project shall be submitted to MFA not later than 31 May of each year, showing the funds expended for the Project during the previous calendar year.
2. A certified final financial statement, prepared by the ILO's financial services, shall be submitted to MFA no later than 30 June of the year following the financial closing of the Project.
3. Audit

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- a. The contribution and associated activities and expenditures shall be subject exclusively to the internal and external auditing procedures provided for in the regulations, rules, directives and procedures of the ILO.
- b. The Donor may request, at its expense, an audit of the Project activities, contribution and expenditures by the external auditor of the ILO. If an audit is requested, both parties will agree on the Terms of Reference for the work to be undertaken.
- c. The ILO shall ensure that MFA's representatives will be permitted to visit, upon a timely request, any part of the Project for purposes related to this Agreement.

Article VII Reporting

1. During the Project implementation, ILO shall submit to MFA sixth-monthly progress Reports on the results obtained by the Project in the previous period. The report should give information on actual outputs compared to planned outputs, work plans and time schedules, use of inputs, problems encountered or foreseen and other information related to the implementation of the Project.
2. A Final report shall be submitted in accordance with the Framework Agreement Article V clause 4.
3. The ILO is obliged to immediately inform the MFA if any changes, including overspending of budget lines or irregularities in the management of funds are foreseen or have occurred.

Article VIII Reviews and Evaluation

1. The ILO shall carry out the evaluation of the project in accordance with its regulations, rules, directives and procedures.
2. Norway may, separately or jointly with Danida, take initiatives to evaluate or review its co-operation with the ILO under this agreement. The ILO shall be informed about such initiatives in advance and may be invited to join. ILO shall, upon request, assist in providing relevant information within the limits of its rules and regulations. All major costs shall be borne by MFA, unless otherwise agreed.

Article IX Resolution of Disputes

Any dispute, controversy or claims between MFA and ILO arising out of this Agreement shall be settled by negotiations.

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Article X
Entry into Force and Termination

1. This Agreement will enter into force upon signing by authorised representatives of MFA and the ILO.
2. This Agreement shall remain valid until the date both Parties have fulfilled all obligations arising from it.
3. Any revision of this Agreement shall be effected by mutual agreement of MFA and the ILO through an appropriate supplementary amendment to this Agreement.
4. Either party may give the other Party written notice of termination of this Agreement. Termination shall take effect three months after receipt of the notice.
5. In the case of termination by MFA, the ILO shall not be obliged to repay any funds irrevocably committed in good faith by the ILO to third parties before the date of notice of such termination.
6. The obligations assumed by ILO and MFA under the Agreement shall survive the termination of the Agreement to the extent necessary to permit the orderly withdrawal of personnel, funds and property of ILO, as well as the settlement of accounts between the Parties and the settlement or termination of contractual liabilities that are required in respect to any personnel, subcontractors, consultants, or suppliers.

Article XI
Privileges and Immunities

1. Nothing in this Agreement or relating thereto shall be construed as constituting a waiver of privileges and immunities of the ILO.

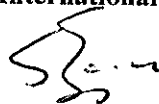
IN WITNESS WHEREOF, the undersigned, acting on behalf of their respective institution, have signed the present Agreement in the English language in two copies.

**For the Norwegian Ministry of Foreign
Affairs**



Thor Gislesen
Ambassador
Royal Norwegian Embassy in Kathmandu
Place & Date: 22 Oct. 2008

For the International Labour Organization



SHENGJIE LI
Director
ILO Kathmandu Office
Place & Date: Kathmandu
22/10/2008

Annex A.
Agreed project summary

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