

**Agreement Between the United Nations High Commissioner for
Human Rights and the Government of the Kingdom of Nepal
Concerning the Establishment of an Office in Nepal**

The United Nations High Commissioner for Human Rights (hereinafter: the "OHCHR" or the "High Commissioner") and the Government of the Kingdom of Nepal (hereinafter "His Majesty's Government"),

Reaffirming the purposes and principles of the Charter of the United Nations, in particular international cooperation in promoting and encouraging respect for human rights,

Recognizing the importance of observing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments,

Considering the commitment undertaken by the Kingdom of Nepal, in signing and ratifying international human rights treaties, in extending invitations to the mechanisms of the Commission on Human Rights, and in implementing the recommendations made to it by the treaty bodies and special mechanisms of the Commission on Human Rights,


Considering also the reaffirmation of these commitments by the His Majesty's Government in its declaration of 26 March 2004 entitled 'His Majesty's Government's Commitment on the Implementation of Human Rights and International Humanitarian Law',

Bearing in mind the interest of His Majesty's Government to establish an OHCHR Office in Nepal, with a mandate to assist the Nepalese authorities in formulating and implementing policies and programmes for the promotion and protection of human rights, and to monitor developments in the country's human rights situation, including the observance of international humanitarian law, and submit to the High Commissioner and, through her, to the Commission on Human Rights and the General Assembly, analytic reports on the human rights situation in Nepal, including the observance of international humanitarian law, and an overview of activities carried out by the OHCHR in Nepal,

Bearing in mind the mandate conferred on the High Commissioner by the General Assembly of the United Nations in its resolution 48/141 of 20 December 1993, in promoting and protecting human rights,

Noting the Memorandum of Understanding between the United Nations High Commissioner for Human Rights and His Majesty's Government of Nepal concerning technical assistance to the National Human Rights Commission of Nepal signed on 13 December 2004,

Considering that the Office contemplated in this Agreement would have significant potential in promoting and protecting fundamental human rights, as well as facilitating the implementation of human rights commitments undertaken by His Majesty's Government, including those contained in the international human rights treaties signed and ratified by Nepal,



Have agreed as follows:

Article I. Definitions

1. For the purposes of the present Agreement, the following definitions shall apply:

(a) "Office" means the Office of the United Nations High Commissioner for Human Rights in Kathmandu, and any other sub-offices which may be established in Nepal, in consultation with His Majesty's Government;

(b) "His Majesty's Government" means the Government of the Kingdom of Nepal;

(c) "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946 and to which Nepal is party since 28 September 1965;

(d) "Parties" means the United Nations and the Government of the Kingdom of Nepal;

(e) "Head of the Office" means the United Nations official in charge of directing and supervising, on behalf and under the authority of the High Commissioner, the activities of the Office;

(f) "Officials of the Office" means the Head of the Office and all members of its staff, employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and are assigned to hourly rates, as provided for in United Nations General Assembly resolution 76 (I) of 7 December 1946;

(g) "Experts on missions" means individuals, other than officials of the United Nations, performing missions for OHCHR within the scope of article VI of the Convention;

Article II. Purpose and territorial scope of the Agreement

The purpose of this Agreement is to establish the Office of the High Commissioner in Nepal, regulate the status of the Office and its personnel, and facilitate its activities in cooperation with the His Majesty's Government.

Article III. Application of the Convention

The Convention shall be applicable to the Office, its property, funds and assets and to its officials and experts on missions in Nepal.

Article IV. Mandate, general objectives and standards for operation of the Office

1. In accordance with its mandate set out in General Assembly Resolution 48/141 of 20 December 1993 and this Agreement, the Office shall monitor the observance of human rights and international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, with a view to advising the



authorities of Nepal on the formulation and implementation of policies, programmes and measures for the promotion and protection of human rights in Nepal, and the submission by the High Commissioner of analytic reports to the Commission on Human Rights, the General Assembly, and the Secretary-General. The Office shall provide advisory services and support in the areas of its competence to representatives of civil society, human rights non-governmental organizations and individuals.

2. The activities of the Office shall be guided by the following standards:

(a) All activities of the Office shall be aimed at fulfilling its mandate and achieving its objectives;

(b) The Office shall function, subject at all times to the provisions of the present Agreement, as a centre for consultations and dialogue, promoting a climate of trust in all sectors involved in and concerned by human rights issues and maintaining contact and coordination with the national Government;

(c) The Office shall act with discretion and shall be guided, in its relations with all sectors involved in the areas of its competence, by the principles of the United Nations, including impartiality, independence, objectivity and transparency.

Article V. Functions of the Office

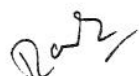
1. The Office shall have the following functions, as prescribed by its mandate, which shall be exercised under the authority of the High Commissioner:

(a) Monitor the situation of human rights and observance of international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, including investigation and verification through the deployment of international human rights officers throughout the country as required;

(b) Engage all relevant actors, including non-state actors, for the purpose of ensuring the observance of relevant international human rights and humanitarian law,

(c) Inform the competent authorities on human rights violations and other abuses in cases where it believes that domestic legal procedures applied by the competent national authorities are not consistent with those set forth in international instruments, and/or in cases where no or insufficient action has been taken and formulate recommendations with a view to possible preventive or remedial action by national authorities where the Office deems that the circumstances so require. To this end, the Office shall receive any information from any source, be it particular, private, public or official on these matters, which it could find relevant; the identity of the authors of the information may be kept confidential. The Office may also recommend and promote measures to protect the authors of the information it receives, the victims and witnesses to the facts alleged therein. The Office shall counsel and encourage persons submitting information to it to bring any charges before the competent authorities as expeditiously as possible;

(d) Without prejudice to the autonomy of the Office to establish such contacts as it considers necessary to carry out its activities, the Office shall maintain constant communication with all competent government agencies, both civil and



military, and with civil society organizations for the promotion and defence of human rights, with a view to observing and ensuring the independent and impartial follow-up of the human rights situation, taking into account the national context. To that end, the Office shall agree with His Majesty's Government and with the competent State entities on the design and implementation of permanent mechanisms for communication, consultation and dialogue with the above-mentioned sectors.

(e) Advise the executive branch on the overall definition and in particular the implementation of human rights policies. Advice will also be provided to the legislative and judicial branches of His Majesty's Government with a view to ensuring that all human rights legislation and judicial decisions are consistent with the relevant international instruments and commitments;

(f) Advise representatives of civil society and individuals on all matters related to the promotion and protection of human rights, including the use of national and international protection mechanisms;

(g) Advise and assist the National Human Rights Commission in the discharge of its statutory mandate, including promotion, protection and reporting, as per the Human Rights Act of 1997 and His Majesty's Human Rights Commitment of 26 March 2004,

(h) Advise State and non-governmental entities on human rights education programmes and appropriate professional training programmes;

(i) Advise the United Nations Resident Coordinator and the Country Team on human rights protection and capacity-building in support of the peace process and development programming and coordinate human rights promotion and protection activities of the United Nations Country Team in Nepal;

(j) Ensure that the recommendations and decisions of the human rights bodies of the United Nations and other international organizations are taken into account by those government entities which have authority and responsibilities in that area, and advise them on the adoption of specific measures for their implementation;

2. The Office shall inform His Majesty's Government regularly of any concerns and assessments it has with regard to issues covered by its mandate with a view to encouraging dialogue on those issues and eliciting His Majesty's Government's views on them. The Office shall issue public reports and statements as and when determined by the High Commissioner for Human Rights.

3. The Office shall report to the High Commissioner on the activities it carries out pursuant to its mandate and functions, any conditions which have facilitated or impeded its work, commitments and subsequent measures undertaken by His Majesty's Government and recommendations on future actions.

4. The High Commissioner shall submit detailed and analytic public reports to the Commission on Human Rights of the United Nations as well as to the Secretary-General and the General Assembly, on the observance of human rights and international humanitarian law in Nepal, as well as an overview of activities carried out by the OHCHR in Nepal. It shall also make such comments and recommendations as it deems appropriate. For the purposes of implementing their respective mandates, the High Commissioner shall make the relevant information



gathered by the Office available to the monitoring bodies for those human rights treaties to which Nepal is a party and to other United Nations human rights mechanisms and programmes.

The conclusions of the Office shall be based on an analysis and evaluation of elements concerning the facts and responsibility. Those conclusions and its recommendations shall be the results of the observation prescribed by its mandate and shall be aimed at encouraging the relevant actors to act in conformity with international human rights instruments and international obligations, including both human rights and humanitarian law. The High Commissioner shall share the report with His Majesty's Government for informative purposes, prior to its submission to the Commission on Human Rights.

5. His Majesty's Government may give its opinion of the reports of the High Commissioner referred to in the preceding paragraph, making any observations it deems appropriate on its content, which the High Commissioner will transmit to the Commission on Human Rights.

6. His Majesty's Government shall make every effort to ensure that government institutions, including the National Human Rights Commission, receiving cooperation and advisory services from the Office are provided with sufficient resources to implement their mandate and the recommendations formulated by the Office. In this respect, the independence and integrity of the National Human Rights Commission will be safeguarded, in conformity with the Paris Principles adopted by the General Assembly in 1993.

7. His Majesty's Government shall make every effort to disseminate the Office's mandate and its statements and reports to all its officials, including the security forces, with a view to promoting cooperation by State authorities and institutions and to effectively contributing to the full implementation of the Office's mandate.

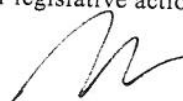
8. His Majesty's Government shall make every effort to respond to inquiries by the Office, and take prompt remedial action to ensure compliance with Nepal's international human rights and humanitarian law obligations.

Article VI. Status of the Office

1. The headquarters of the Office shall be located in Kathmandu, with Sub-offices to be established in other locations in Nepal. The size of the Office and its staffing levels, in terms of international and national staff, shall be at the discretion of the High Commissioner for Human Rights, bearing in mind the views of His Majesty's Government.

2. The Office, its property, funds and assets wherever located and by whomever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case, the Secretary-General of the United Nations has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

3. The premises of the Office shall be inviolable. The property, funds and assets of the Office, wherever located and by whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.



4. The archives of the Office, and in general all documents belonging to or held by it, shall be inviolable.
5. The appropriate authorities shall not enter the Office premises, except with the express consent of the Head of the Office and under conditions agreed to by him or her.

Article VII. Funds, assets and other property

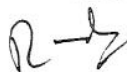
1. Without being restricted by financial controls, regulations or moratoria of any kind, the Office:
 - (a) May hold and use funds or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;
 - (b) Shall be free to transfer its funds or currency from one country to the other or within Nepal to other organizations or agencies of the United Nations system;
 - (c) Shall enjoy the most favourable, legally available rate of exchange for its financial transactions.

Article VIII. Exemption from taxation

1. The Office, its funds, assets, income and other property shall:
 - (a) Be exempt from all direct taxes. It is understood, however, that the Office will not claim exemption from taxes which are, in fact, charges for public utility services;
 - (b) Be exempt from customs duties and prohibitions and restrictions on articles imported or exported by the Office for its official use. It is understood, however, that articles imported under such exemptions will not be sold in Nepal except under conditions agreed upon with His Majesty's Government;
 - (c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article IX. Communications

1. The Office shall enjoy, in respect of its official communications, communications facilities not less favourable than those accorded by His Majesty's Government to any diplomatic mission or other intergovernmental organization in matters of establishment and operation, priorities, charges on mail, cables, telegrams, radiograms, telephotos, telephone and other communications, as well as rates for information to the press and radio.
2. No official correspondence or other communication of the Office shall be subject to censorship. Such immunity shall extend to printed matters, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. The Office shall have the right to use codes and to dispatch and receive correspondence either by courier or in sealed bag pouches, all of which shall be inviolable and not subject to censorship.



Article X. Officials of the Office

1. Officials of the Office shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Office;

(b) Be immune from inspection and seizure of their baggage;

(c) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(d) Be exempt from national service obligation;

(e) Be exempt, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(f) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of the diplomatic missions accredited to His Majesty's Government;

(g) Be given together with their spouses and relatives dependent on them and other members of their household, the same repatriation facilities in time of international crisis as diplomatic envoys;

(h) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in Nepal.

2. Officials of the Office, except for those who are Nepalese nationals or permanent residents shall also be entitled to:

(a) Import free of custom and excise duties limited quantities of certain articles intended for personal use or consumption and not for gift or sale;

(b) Import or acquire in Nepal a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing regulations of Nepal applicable to members of diplomatic missions of comparable ranks.

3. In addition to the privileges and immunities specified above, the Head of the Office, if he or she is not of Nepalese nationality, shall be accorded in respect of himself or herself, his or her spouse and minor children, the privileges and immunities, exemptions and facilities normally accorded to Heads of international missions. The name of the Head of the Office shall be included in the diplomatic list by the Ministry of Foreign Affairs of Nepal.

Article XI. Experts on missions

1. Representatives of OHCHR on temporary mission to Nepal and other persons on business of the Office shall be granted the privileges, immunities and facilities specified in Article VI, Sections 22 and 23 and Article VII, Section 26, of the Convention.

Article XII. Personnel recruited locally and assigned to hourly rates



1. Personnel recruited in Nepal and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.

Article XIII. Waiver of immunity

1. The privileges and immunities accorded under the present Agreement are granted in the interests of OHCHR, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to Articles X, XI and XII in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of OHCHR.
2. OHCHR shall cooperate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

Article XIV. Freedom of movement and access to relevant information

1. The staff of the Office shall enjoy freedom of entry into, exit from, and movement throughout Nepal. His Majesty's Government shall facilitate freedom of movement in areas of restricted access in coordination with the competent authorities. Freedom of movement shall include the following prerogatives, exercised in accordance with the mandates of the Office:

(a) Access to all prisons, detention centres and places of interrogation, without prior notice. Officials of the Office shall have the option of meeting in private with any detained person or anyone held in those places, in accordance with the provisions of article V, paragraph 1 (a);

(b) Access to the central and local authorities of all sectors of His Majesty's Government, including the police and security forces as well as the National Human Rights Commission;

(c) Direct and unsupervised contacts with individuals, representatives of non-governmental sectors, private institutions, hospitals and medical centres, and the mass media;

(d) Access to such official documents and material as may be needed for the proper discharge of the activities of the Office, except for those documents containing privileged information, and as stipulated by the Constitution of the Kingdom of Nepal.

Article XV. Laissez-Passer

1. His Majesty's Government shall recognize and accept the United Nations laissez-passer issued to officials of the Office as a valid travel document equivalent to a passport.
2. In accordance with the provisions of Section 26 of the Convention, His Majesty's Government shall recognize and accept the United Nations certificates issued to persons travelling on business of OHCHR.



3. His Majesty's Government agrees to issue any required visas for such certificates or laissez-passer.

Article XVI. Flags, emblems and distinctive signs

1. The Office may fly or display the United Nations flag and/or emblems on its premises, official vehicles and in any other manner agreed upon by the Parties.

Article XVII. Identification

1. At the request of the Head of the Office, His Majesty's Government shall issue to the staff of the Office appropriate identity documents certifying that, as staff members of the Office, they enjoy privileges and immunities as well as freedom of movement and access to relevant information as required in the course of their duties.
2. Staff members of the Office shall show, but not surrender, their identity documents to any authorized Government official upon request.
3. Upon the termination of the functions of a staff member of the Office or upon his transfer, the Office shall ensure that his identity documents are promptly returned to His Majesty's Government.

Article XVIII. Government undertakings

1. His Majesty's Government shall provide to the Office and its staff throughout Nepal such security as is required and requested for the effective performance of their activities. To this end, the appropriate authorities shall ensure the security and protection of the Office and staff, and exercise diligence to ensure that the tranquillity of the Office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.
2. His Majesty's Government undertakes to respect the status of the Office and its staff, and to ensure that anyone associated with the Office is not subjected in any way to abuses, threats, reprisals or legal prosecution by reason of their status.
3. In all those cases where this Agreement refers to the privileges, immunities and rights of the Office and its staff, as well as to the facilities that His Majesty's Government undertakes to grant, the Government shall ensure that the competent local authorities respect such privileges, immunities and rights and grant the facilities mentioned.
4. His Majesty's Government shall use all the official media to widely publicize this Agreement to the population in general and to the national and departmental civilian, military and police authorities in particular. It shall also inform the competent authorities of the recommendations made by the Office in order for domestic legal procedures applied by these authorities to be consistent with those set forth in international instruments.

Article XIX. Settlement of disputes

1. Any dispute between the Office and His Majesty's Government relating to the interpretation and application of the present Agreement or any other supplementary



agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XX. Liaison with the Government

His Majesty's Government shall designate a high-level liaison entity with decision-making capacity responsible for communications with the Office for all matters relating to the activities of the Office.

Article XXI. Supplementary agreements


The High Commissioner and His Majesty's Government may conclude agreements supplementary to this Agreement.

Article XXII. Final provisions

1. This Agreement shall apply provisionally from the date of its signature, and enter into force on the date that His Majesty's Government notifies the United Nations High Commissioner for Human Rights on the fulfilment of its internal procedures to that effect. It supersedes and annuls the Memorandum of Understanding between the United Nations High Commissioner for Human Rights and His Majesty's Government of Nepal concerning technical assistance to the National Human Rights Commission of Nepal signed on 13 December 2004,
2. This Agreement shall be for two years. The Parties may extend its validity for two-year periods through the exchange of written communications expressing their desire to that effect. Such communications shall be sent no later than 90 days prior to the end of the two-year period referred to in this paragraph.
3. The present agreement shall cease to be in force six months after either of the Parties has notified the other of its decision to terminate the Agreement, except as regards the normal cessation of the Office activities in the country and the disposal of its properties and assets.

Done at Geneva, on _____ 2005, in two original copies in the English language.


(Signed)
Minister of Foreign Affairs
Kingdom of Nepal
Kathmandu
10/04/05


(Signed)
United Nations High
Commissioner for Human Rights
Geneva
8/04/05