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Minister for Women, Children and Social Welfare
His Majesty's Government of Nepal
Lainchaur
Kathmandu
Nepal

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Open letter on the proposed code of conduct for NGOs

Dear Minister,

We are writing to express our deep concern at the proposed code of conduct for non-governmental organizations (NGOs), which we understand is currently being developed by your ministry. We believe that this code of conduct, as currently drafted, will place unacceptable restrictions on the activities of NGOs and violate some of the basic rights contained in the international human rights treaties to which Nepal is party.

Having studied the draft code of conduct, made available in September 2005, Amnesty International (AI) and the International Commission of Jurists (ICJ) believe that it contains vague, sweeping and unjustified restrictions on freedom of expression and association, which do not pass the tests of proportionality and necessity and which could be used arbitrarily to curtail the legitimate activities of NGOs, or their individual staff and members. In light of continuing attacks on basic rights and freedoms, on the work of human rights defenders and on the media, we are seriously concerned that this code of conduct could be used to further suppress legitimate protest and dissent by civil society and close down essential humanitarian and human rights activities.

While codes of conduct for civil society organisations have been adopted in many countries, these are usually developed by NGOs themselves and entered into voluntarily. However, not only will the proposed code of conduct in Nepal be legally binding and imposed by the government, but the Social Welfare Council (a body made up of a majority of government appointees) will have the authority to oversee compliance. Still more disturbing is the fact that the government will have the authority to suspend or dissolve any organisation that is assessed as not complying with the code of conduct. It is not clear whether there will be a right to appeal for those organisations facing suspension or dissolution.

AI and ICJ acknowledge that NGOs, like other organizations and individuals, should be subject to generally applicable and properly legislated national laws and regulations, in such areas as financial and tax matters and criminal law. However, we believe there is no justification for imposing the special restrictions on NGOs and their staff set out in the draft code of conduct. Moreover, we believe that the provisions outlined in the proposed code of conduct violate basic freedoms and are open to abuse.

Many of the provisions in the code of conduct are extremely broad and therefore open to multiple interpretations and abuse. For example, provision 8.A states that “officials, members, personnel and staff of social organisations should not get involved in activities that endanger social harmony”. Other provisions also directly undermine the right to freedom of association and appear to be aimed at preventing civil society organisations and individuals from taking part in legitimate and peaceful political activities. For example, provision 6.A states that “staff... from social organisations should not be affiliated with any political organisation”.

Some other provisions could be used to violate rights to freedom of expression. For example, provision 12 states that “NGOs or individuals affiliated with them should not disclose information received during their work if such information might disturb law and order, peace and security of the community, region or the nation”. We are particularly concerned that provisions such as this could be used to restrict the work of human rights defenders and to prevent them from making information about human rights violations available to the public.

Human rights defenders have already come under sustained attack from the government, with documented cases of activists being harassed arrested, imprisoned and tortured and AI and ICJ are particularly concerned that under this code of conduct the government would have sweeping powers to further harass human rights defenders and close human rights organisations. We believe that the code of conduct is incompatible with the United Nations Declaration on Human Rights Defenders, which states in Article 17 that “in the exercise of the rights and freedoms referred to in the present declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

In addition to the above specific points of concern, the code of conduct also places a variety of restrictions on the priorities and objectives of NGOs, their access to international funding, the location in which NGOs can work and the role of international staff within local NGOs. Moreover, provisions such as 8.B, which states that “[officials, members, personnel and staff of social organisations] should not overtly or covertly get involved in activities that promote violence terror and criminal activities, jeopardising sovereignty and integrity” could be used to harass or close organisations working in rural areas, which are often forced to register with and make financial payments to the CPN (Maoist) in order to operate. As many rural communities are heavily dependent on local NGOs for basic services, any restriction or closure of these NGOs could have a serious impact on the economic and social rights of populations that have already been hit hard by the conflict. Furthermore, the ordinary criminal law is adequate to be able to prosecute any individual in Nepal who is suspected of committing a recognizable criminal offence.

Finally, we would like to stress that the proposed restrictions contained in the code of conduct not only violate international human rights standards and break with international good practice, but, we believe, pose a very serious threat to the role of civil society in Nepal. We therefore urge you to abandon attempts to arbitrarily restrict the role of NGOs in this way.

Yours sincerely,

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