

AGREEMENT

between

His Majesty's Government of Nepal

and

the Government of the Kingdom of Denmark

on

the Secondary Education Support Programme, Nepal

Preamble:

With reference to the Agreed Minutes on the Annual Consultations on the Nepalese-Danish Bilateral Development Co-operation in April 2002, the Government of the Kingdom of Denmark, within an amount of 265,0 million Danish Kroner (DKK), is prepared to support the implementation of the Secondary Education Support Programme (SESP) on a grant basis, which will be reflected in His Majesty's Government's budget allocation for development. The SESP is designed to support His Majesty's Government of Nepal, hereinafter referred to as HMG/N, in achieving its larger development goal of poverty reduction through human resource development. It will be an integral part of the national education system with Ministry of Education and Sports, through its Department of Education, as the agency responsible for implementation. The programme has been developed in a partnership between HMG/N, Asian Development Bank (ADB) and the Danish Government.

The HMG/N and the Government of the Kingdom of Denmark have agreed that the Programme be carried out in accordance with the provisions of this Agreement and the annexes attached.

The general provisions of the present Agreement are set forth in the General Agreement between Denmark and Nepal on Development Co-operation, dated 12 October 1995.

Article 1 Definition

For the purpose of this Agreement, unless otherwise stated, the terms listed below mean the following:

- a) "Competent Authorities" in the case of Denmark refers to the Ministry of Foreign Affairs, Danish International Development Assistance (Danida), and in the case of Nepal refers to the Ministry of Finance or for both parties any other authority empowered to perform the functions exercised by said authorities.
- b) "The Parties" refers to the Competent Authorities.
- c) "The Programme Documentation" refers to a set of documents, which consists of the Sector Programme Support Document (Summary), July 2002 (Annex 1), which includes the more specific Danida requirements and modalities for support to the Secondary Education Programme, and the Secondary Education Support Programme (SESP) Core Document, July 2002 (Annex 2).

The Programme Documentation contains a systematic description of the programme and shall govern its implementation.

- d) Unless otherwise stated in the article in question, “Advisors” shall include such expatriate personnel as employed in Nepal for the execution of the programme.

Article 2

Objectives of the programme

The overall development objective of the Secondary Education Support Programme is **to expand quality secondary education suitable for the need of national development.**

In pursuing this objective, the aim is to support the broader priority objective of development in Nepal as stated in the 10th 5-Year Plan: the reduction of poverty by contributing to ensuring the necessary human resources for a long term development and balanced economic growth.

The immediate objectives of the programme, as reflected in the Secondary Education Development Plan, are:

- a) To improve quality and relevance of public secondary education;
- b) To improve access and equity in secondary education, with a particular emphasis on girls, students with disabilities and students from poor and disadvantaged groups and districts;
- c) To develop the institutional capacity and management of central and district education institutions and public secondary schools based upon a decentralised system of planning and management.

Article 3

Outputs of the programme

In order to achieve the above mentioned immediate objectives the programme aims at producing the following main outcomes:

- To raise Gross Enrolment Rates in lower secondary from 55% to 65%, and in secondary from 35% to 55% by 2007.
- To raise the participation of girls from 40% to 50% in both lower secondary and secondary education and to increase similarly the percentage of disadvantaged groups by 2007.
- To raise and sustain measurable improvements in educational outcomes as evidenced by grade 8 and 10 (School Leaving Certificate) to a percentage that

will be determined on the basis of baseline studies. Similar proportionate increases should be achieved for girls and students from traditionally disadvantaged groups.

The programme has four components that are to be seen as complementary and mutually supportive of each other, contributing to achievement of the immediate objectives. All component activities are anchored within existing organisational structures in the education sector.

Component one: The Learning Environment. Key output:

- Increased equitable access to an improved learning environment especially for disadvantaged groups, ethnic minorities and girls.

Component two: Curriculum Development, Assessment and Instructional Materials. Key output:

- Improved and more relevant curriculum, technically improved assessment and accessible instructional materials.

Component three: Teacher Education and Development. Key output:

- An integrated system supporting teacher education, development and management.

Component four: Institutional Management and Capacity Building. Key output:

- Improved institutional capacity in the school sector based on a system of decentralised planning and management.

Article 4 **Documentation**

The Programme Documentation - Sector Programme Support Document (Summary) and Secondary Education Support Programme, SESP, (Core Document) - is attached as Annex 1 and 2. The Programme Documentation will be reviewed and updated in connection with joint programme reviews. Changes in the Programme Document are subject to the approval of the Nepalese Ministry of Education and Sports and the Danish Ministry of Foreign Affairs/Danida.

Article 5

Obligations of HMG/N

Under this Agreement, HMG/N shall:

- a) promptly inform Denmark of any condition which interfere or threaten to interfere with the successful implementation of the programme.
- b) within a reasonable time advice on all reports, recommendations and other matters properly referred for advice by Denmark, in order not to delay or disrupt the execution of the services or the works of the programme.
- c) provide for the representation of Danish advisers in the bodies responsible for programme implementation and/or channelling of funds.
- d) provide the inputs as described in the Programme Documentation, including the whole regular budget, part of the development budget, and adjustment of management and organisation structure.
- e) ensure required government counterparts and staff stability in key positions.
- f) ensure funds for the payment of all expenses required for the operation of the programme, which are not mentioned as items to be provided by Denmark, or other parties to the programme.
- g) ensure exemptions from custom duties and taxes on goods and equipment required for the programme.

Article 6

Obligations of Denmark

Denmark will contribute to the programme with a grant of DKK 252.6 million for a 7-year period, constituting 40% of the total SESP budget. Approximately 79% of the Danida funds will be provided for the Core Investment Programme (CIP), and 21% will be in the form of direct funding to ensure flexibility.

As a government programme, the overall resource frame for each year of the SESP will be determined through the MTEF process. The Annual Strategic implementation Plan (ASIP) will embrace the SESP as a whole and be the basis for preparing the Annual Work Plan and Budget (AWPB).

The percentage allocation for the four components, which are indicative of policy priorities within the Programme, is estimated as follows (excluding contingencies):

Learning Environment	35%
Curriculum and Assessment	11%
Teacher Education, Development and Management	23%
Institutional Management and Capacity Building	12%

Any additional components or reallocation between the above components is subject to approval by both Parties.

Unspent balance or savings from the programme funds may not be spent by the programme without approval of the Competent Authorities. Surplus derived from exchange rate changes and interest accrued from the remittances shall be returned to Denmark.

Over and above the items specified above Denmark will provide unallocated funds to be decided on at a later stage (DKK 10 million), funds for annual reviews (DKK 3 million), and finance the salary and associated costs for four long-term international advisers, who will relate both to the Basic and Primary Education and Secondary Education. The advisers will facilitate the coordination and daily management of the SESP, and i.e. support the work of preparing the ASIP and the AWPB. The Chief Technical Adviser will have some executive responsibilities in regard to parts of the direct Danida funding, which will focus on e.g. institutional linkages, specialist consultancies, and an intensive 10-district programme.

Equipment, e.g. vehicles, machineries, computers etc., under the direct funding will be purchased directly by Denmark, unless otherwise agreed, according to specifications in the AWPB. All equipment shall be utilized exclusively for carrying out the programme.

Article 7

Obligations of both parties

Both parties will:

- a) use best endeavours to co-ordinate their efforts under this Agreement with other development partners, be they states, international organisations or non-governmental organisations
- b) use best endeavours to optimise the use of programme resources

If misuse of funds within the programme is discovered, appropriate authorities will be asked to investigate the matters. HMG/N will, if and when it is deemed appropriate, take action against suspects including immediate interdiction or suspension of such persons from work, to avoid their interference with the investigations.

Where programme funds have been lost in such a manner as described above, HMG/N will repay such funds to the programme, in order to ensure that planned activities will not be disrupted.

Article 8

Shipment

All shipments covered by this Agreement will be in keeping with the principle of free circulation on ships in international trade in free and fair competition.

Article 9

Importation, import taxes and other public charges and fees

HMG/N shall ensure timely importation and clearance through customs of goods imported under this Agreement. The Parties shall ensure that the Danish grant is not used for payment of any duties, taxes, fees or other public charges imposed in Nepal, as for instance import duties, tax, import surcharges, entry and other fees in restricted areas, charges or deposits in connection with the issuance of payments, work permits, licenses or import licenses for all equipment, materials, supplies and spare parts supplied by Denmark to the activities agreed upon.

Article 10

Status of expatriate personnel

1. HMG/N shall exempt expatriate personnel from:
 - a) all taxes in respect of any emolument paid to them from programme sources;
 - b) all duties and taxes imposed on the import and export of new as well as used household goods and personal effects imported by the advisers and their spouses and dependants for their exclusive use within 6 months after their arrival, subject to re-export on completion of tour of services or payment of duties and taxes if sold locally. The term "household goods and personal effects" shall include inter alia for each household: one refrigerator, one deep freezer, one washing machine, one vacuum cleaner,

one cooker, one radio, one record player, one tape recorder, one CD-player, one personal computer with printer, one television/video set, minor electrical appliances, photographic and cinematic-equipment and air conditioning units;

- c) all duties and taxes imposed on the import and export of a motor vehicle, for personal use of the advisers, or the purchase of such motor vehicle in Nepal out of duty free stock, provided that a motor vehicle imported under these privileges shall be liable for such duties and taxes if resold, unless resold to a person entitled to the same privileges. If the imported motor vehicle is damaged beyond repair or otherwise lost, HMG/N shall allow the expatriate to import another motor vehicle free of customs duty and tax. Furthermore, HMG/N shall allow the import of one new motor vehicle for replacement free of customs duty and tax upon the adviser's termination of three years of service, if the contract is prolonged to four years or more.
2. HMG/N shall issue free multiple entry and exit visas, work permits and residence permits for the advisers and their spouses and dependants.
 3. HMG/N shall provide assistance in clearance through customs of effects mentioned under 1.b) and 1.c) above.
 4. HMG/N shall allow every adviser to operate a bank account. Regarding the repatriation of sale proceeds of the advisers' motor vehicles, the advisers shall apply separately to the Nepal Rastra Bank and their applications will be dealt with in accordance with the foreign exchange control regulations prevailing at the time of their departure.
 5. HMG/N shall ensure that the advisers and their spouses and dependants enjoy the full protection of the law and further ensure that said persons are always treated in a manner no less favourable than that enjoyed by expatriate personnel assigned to Nepal by other countries or international organisations. In the event of arrest or detention of the advisers made available by Denmark, their spouses or their dependants, for any reason or of criminal proceedings being instituted against said persons, the responsible Danish Embassy is to be notified immediately and has the right to visit the detained or arrested. Further, such persons shall have the right to be represented by a lawyer assigned by Denmark.
 6. HMG/N shall be responsible for the security of the advisers, their spouses and dependants. In the event of a crisis affecting the safety of foreign nationals in the Kingdom of Nepal, HMG/N shall accord repatriation facilities to the said persons, equivalent to those accorded to expatriate personnel assigned in the Kingdom of Nepal by other countries or international organizations.

7. Should a situation or condition as referred in paragraphs 5 and 6 of this article above occur, the two governments shall consult and act in close co-operation to minimise any risk of damage to the advisers, their spouses and dependants and personal effects, and items, equipment and vehicles registered under the programme.
8. In an event of crisis advisers acting in accordance with instructions issued by Denmark or taking warranted precautions under the given circumstances that restrain them from reporting for work shall not be considered to be in dereliction of duty under the relevant contract.

Article 11

Conditions for Expatriate Institutions and Consulting Companies

When institutions, consulting companies or other legal persons from other countries than Nepal or international organisations are engaged by Denmark to perform tasks in Nepal with reference to the present agreement the conditions for advisers under this Agreement shall apply to the expatriate personnel of these institutions and companies and their spouses and dependants.

Article 12

Study visits and other activities outside Nepal

For personnel from Nepal participating in study visits, courses and similar professional activities outside Nepal, organised by Denmark or any institution contracted by Denmark within this Agreement, the following shall apply:

In the case of illness or accident during the stay abroad Denmark shall arrange for such medical treatment that must be given before the return to Nepal, according to the opinion of a physician consulted by Denmark.

All costs associated with the treatment shall be financed from the funds made available by Denmark to Nepal under this Agreement, if the need for the treatment could not have been foreseen at the time of departure for the visit.

Insurance coverage for death and disability shall be arranged by HMG/N.

Article 13

Liability

Denmark shall:

- a) not be liable to indemnify any third party in respect of any claim, debt, damage or demand arising out of the implementation of this Agreement and which may be made against the responsible implementing agency or the programme personnel.
- b) not be liable for the death, disability or other hazards suffered by any personnel as a result of employment or work under the present Agreement.

HMG/N shall:

- a) Indemnify Denmark, the responsible agencies and the programme personnel under the present Agreement against any claims brought forward by a third party in respect of liability resulting from acts or omissions by the responsible agencies or the programme personnel in the performance of their duties, except where such claims or liabilities arise from gross negligence or wilful misconduct on the part of the responsible agencies or programme personnel.

Article 14

Information, monitoring and evaluation

1. The Parties shall collaborate fully to ensure that the purposes of this Agreement be accomplished. To this end the Parties shall exchange views with regard to matters relating to the programme and provide each other with all available data, documentation and information; shall provide appropriate mutual assistance required in the discharging of the Parties' duties; and provide all necessary support, in particular in regard of administrative issues, to facilitate the due implementation of the programme.
2. Joint annual programme reviews shall be carried out by the stakeholders in accordance with the Programme Document and at the request of either Party.
3. Denmark shall have the right to carry out any technical or financial mission that is considered necessary to monitor the implementation of the programme. To facilitate the work of the person or persons instructed to carry out such monitoring missions, HMG/N shall provide these persons with all relevant assistance, information, and documentation.
4. Evaluation of the programme, preferably undertaken jointly by Denmark, Nepal, and the Asian Development Bank, may be carried out at the request of either Party.
5. After the termination of the programme Denmark reserves the right to carry out evaluation in accordance with this article.

Article 15
Programme reporting

The following procedure shall be used for programme reporting:

- a) The programme management shall submit progress reports every 4 months. The reports shall be drawn up in a format acceptable to ADB and Danida. The progress reporting for direct funding activities will follow the same time schedule.
- b) Upon completion of the programme the programme management shall prepare a programme completion report in accordance with Danida Guidelines for Programme Completion Reports.

Article 16
Transfer of ownership

The agencies responsible for the implementation of the different programme components shall maintain updated inventories of all equipment provided to the programme by Denmark, e.g. vehicles, computers, furniture and tools.

Equipment, material, supplies and facilities financed by Denmark, which are used during the implementation of the programme, e.g. vehicles, computers, furniture and tools, remain the property of Denmark, until such time as the Parties may agree otherwise.

Transfer of ownership of the above-mentioned assets to Nepal may take place during the programme period. Before programme termination, the parties will assess and agree on final transfer of such assets, which can be justified on the basis of a final request from the receiving institutions. Any remaining property will be disposed of by Denmark.

Article 17
Suspension

If serious irregularity in the programme or suspicion thereof has been ascertained, either party may suspend programme implementation, wholly or in part, until the suspending party decides to resume the implementation.

Either party may cancel the agreement if, with respect to any contract to be financed by Denmark, it determines that corrupt or fraudulent practices were engaged in by representatives of the donor country, the recipient country, or of a beneficiary of the funds during procurement or during the execution of the contract without the party in question having taken timely and appropriate action satisfactory to the party wishing the rescind the agreement in order to remedy the situation.

Either party reserves the right to suspend or terminate the programme and its activities, wholly or in part, if representatives of the donor country, the recipient country, or of a beneficiary of the funds during procurement or during the execution of the contract engages in violations of legal principles as stipulated in international agreements and conventions signed by Denmark, without the party in question having taken timely and appropriate action satisfactory to the party wishing the rescind the Agreement to remedy the situation.

Article 18

Accounting procedure and audit

1. The programme shall be audited annually by the Auditor General of the Kingdom of Nepal.
2. Within 9 months after the expiry of the fiscal year in Nepal the audited accounts of the programme shall be submitted to Denmark for funds, which have been transferred for the Programme through the Ministry of Finance.
3. Audit reports for direct funding will be in accordance with the provisions of the general guidelines for accounting of Danida funds, Annex 3 to this Agreement. The audited reports shall be made available to Auditor General Office, Ministry of Finance, and Ministry of Education and Sports.
4. Representatives of the Auditor General of Denmark shall have the right to:
 - a) carry out any audit or inspection considered necessary as regards the use of the Danish funds in question, on the basis of all relevant documentation,
 - b) inspect accounts and records of suppliers and contractors relating to the performance of the contract, and to perform a complete audit.

Article 19

Other stipulations

A Services Contract will be entered into between Denmark and the selected consultant for the execution of Technical Assistance, be it long term advisers,

institutional linkages, and specialist consultancies based on Denmark's contract conditions currently in force.

Representatives from MoES will be involved in the selection of advisers.

Activities under direct funding will be approved by MoES and the Royal Danish Embassy.

Article 20
Programme duration

The programme will have a duration of seven years. In case of delays in the programme implementation the programme duration may be extended by mutual agreement and within the agreed budget.

Article 21
Settlement of disputes

1. Any dispute concerning the interpretation or implementation of this Agreement shall be settled by negotiation between the Parties. In case the dispute has not been settled within a time limit of one year, the matter may be referred to arbitration by either Party.

2. The arbitration shall operate according to the following rules: The number of arbitrators shall amount to a total of three, one designated by either of the Parties, i.e. two, and a third designated by the former two. In case of dispute between the former two arbitrators as to the designation of the latter, the latter will be designated by a neutral institution to be identified by the former two. The arbitrary award shall be submitted in written form and must be signed by all three arbitrators. The proceedings to be followed by the Court of Arbitration shall be decided on by the three arbitrators, who shall also determine the distribution between the two Parties of the costs relating to the arbitration.

Article 22
Termination

This Agreement shall come into force on the date of signing, and shall remain valid until the end of 2009, unless extended by mutual consultation.

The Parties may terminate the programme by agreement through an exchange of letters or unilaterally by a notice of termination. Such notice will come into effect 6 months after having been received by the other Party.

In witness hereof the Parties hereto, acting through their representatives duly authorised for this purpose, have caused this Agreement to be signed in three originals in the English language.

Done in Kathmandu on 14 March 2003

For the Government of Denmark

For His Majesty's Government
of Nepal

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Gert Meinecke
Chargé d'Affaires e.p.
Royal Danish Embassy

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Bhanu Prasad Acharya
Secretary
Ministry of Finance

