



**UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS IN NEPAL**



**Speech by Mr David Johnson
On behalf of Mr Ian Martin, Representative of the United Nations High
Commissioner for Human Rights, in Nepal**

**At the 10th All Nepal Lawyers' National Conference of the Nepal Bar Association
Rule of Law, Inclusive Democracy and Conflict Management**

**Opening Ceremony
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Mr President, distinguished guests, members of the Nepal Bar Association,

On behalf of Ian Martin, I would like to thank the NBA for inviting me today for the opening of your triennial conference. My name is David Johnson, and while Mr Martin is away from Nepal, at meetings in Europe and in New York, I am the senior member of the Office of the High Commissioner for Human Rights in Nepal. It is a pleasure to see so many active lawyers from throughout the country here today, and a privilege to have this opportunity to deepen our already close partnership with the NBA.

This conference is taking place at a time when lawyers continue to face great challenges and increasing risks. Since Mr Martin addressed the Golden Jubilee gathering of the NBA in late December last year, there have been a number of worrying developments in Nepal for human rights. Yet it is also a time when developments such as the recent Supreme Court decision on the unconstitutionality of the Royal Commission for Corruption Control have provided lawyers with renewed energy and optimism towards the rule of law in Nepal. Before I address these developments, I would like to start by briefly explaining the mandate and work of OHCHR in Nepal.

In April 2005, the Government of Nepal and the High Commissioner for Human Rights, Madame Louise Arbour, signed an agreement on the establishment of an office in Nepal. Under the Agreement, OHCHR monitors the observance of human rights and international humanitarian law, 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. We have our head office in Kathmandu, and four regional offices in Biratnagar, Kathmandu, Nepalgunj, and Pokhara. In recent months, we have grown exponentially and now comprise more than 60 international and 75 Nepali staff. OHCHR has submitted reports to the General Assembly as well as the Commission on Human Rights, conducted a number of investigations into alleged human

rights and humanitarian law violations, raised concerns directly with the authorities, and issued many press releases expressing concern.

The respect for law is a key aspect of OHCHR's work here in Nepal. First, international human rights and humanitarian law provide the relevant standards and obligations by which we assess compliance on the part of both State and non-State actors. Second, we consider domestic law, the judicial process, and lawyers as essential elements for addressing specific as well as systemic violations of international human rights and humanitarian law. In this regard, Nepal is fortunate to have a highly vibrant, professional, and dedicated legal community.

Since our office was created almost one year ago, OHCHR has focused on three key areas: violations related to the armed conflict; respect for democratic rights; and long-standing human rights issues. These have been examined in significant detail in OHCHR's report recently submitted to the Commission on Human Rights. I wish now to draw your attention to some of the key findings from that report.

In the context of the armed conflict, we have seen violations of international humanitarian law by both the security forces and the CPN (Maoist). Although there has been a noticeable decline in the deliberate killing of civilians, both sides continue to place civilians at high risk by making attacks and engaging in clashes in highly populated areas and using houses and schools for military purposes. The security forces have also carried out aerial bombings and shellings in or very near civilian areas, and many civilians have been maimed or killed by explosives placed by the CPN (Maoist). Such acts violate obligations to distinguish between civilians and combatants and to protect civilians from the effects of the conflict. In addition, the CPN (Maoists)'s use of children in military operations and the abduction of civilians also constitute violations of international humanitarian law.

Democratic rights have also come under serious threat in Nepal. As political parties and civil society intensified their largely peaceful demonstrations in December and January, the Government imposed blanket bans on public demonstrations, severely limiting the right to freedom of peaceful assembly. On 19 January, there were mass arrests of demonstration organisers under powers of preventive detention, before the planned major demonstration in Kathmandu on 20 January. Since then there have been a number of additional arrests, and in some cases excessive use of force by security forces against protestors as well as abuses of those arrested. Additional examples of the Government's restrictive approach towards the right to freedom of expression include the Media Ordinance and the Code of Conduct for NGOs promulgated last year, the seizure of broadcasting equipment from radio stations, and the banning of news broadcasts on FM radio.

Finally, there are many longstanding human rights concerns in Nepal which demand attention, such as discrimination based on caste, ethnicity and gender. These concerns are seen by some to be among the root causes of the conflict. Many people who have suffered longstanding discrimination have been further victimised by the conflict, often

suffering disproportionately. For example, many of the families of the disappeared that we met in the western areas of Bardia are from ethnic minority groups such as the Tharu. Women and girls, especially in rural areas, have been subjected to sexual violence by both sides to the armed conflict. Many persons whose rights have long been denied thus find themselves even more vulnerable in times of armed conflict.

I have just depicted a grim picture of the current human rights situation in Nepal. In this context, members of the Nepalese legal community, including individual lawyers and the NBA and other organisations, have a critical role in promoting and protecting human rights in Nepal. Today, on the occasion of this triennial conference of the NBA, I wish to highlight a few ways in which lawyers are playing or can play such a role.

Lawyers can ensure that persons who commit violations of international human rights and humanitarian law are held accountable for their actions. Members of the Royal Nepal Army, the Armed Police Force and the Nepal Police who commit human rights and humanitarian violations, including killings, torture, enforced disappearances, unlawful detention and excessive use of force, must be held accountable. However, civilian courts have only very rarely exercised jurisdiction in such cases. In particular, the RNA has consistently relied on the provision of the Army Act that murder and rape committed “during a military operation” are not subject to the jurisdiction of civilian courts. However, such violations by their very nature should not be considered to fall with the scope of “military operations”. International bodies including the Commission on Human Rights, the Committee against Torture and the Inter-American Court of Human Rights have repeatedly stated that serious human rights violations cannot be considered to have been committed in the performance of military duties. Using such statements and jurisprudence, lawyers should take steps to push the Police, the Government Attorney and the courts to investigate, prosecute and try members of the security forces who have committed human rights and humanitarian law violations, and thereby prevent impunity.

While the CPN (Maoist) has made public assurances that it investigates breaches of international humanitarian law and human rights by its cadres, and deals with offenders, they have not until now made public the results of any of these investigations or action taken, despite repeated calls from our office. If the commitments made by the leadership of CPN (Maoist) are to be treated seriously, then transparency in these processes and accountability of its cadre and leaders is a critical step yet to be established.

Lawyers can defend persons who are arbitrarily and unlawfully arrested and detained. To date, hundreds of persons have been arrested and held in preventive detention under the Public Security Act and TADO, and additional arrests continue to be made each day. Those arrested include lawyers, as well as political party leaders and members, journalists, human rights defenders, and children under the age of 18. As OHCHR has repeatedly acknowledged, members of the NBA have been very active in filing *habeas corpus* petitions for persons held in preventive detention. In nearly all cases where such petitions have been filed, the courts have ordered the release of the detainees concerned, although some have subsequently been re-arrested. It is essential that lawyers

persist in challenging arbitrary arrests and detentions, as well as re-arrests. It is also important that lawyers assist persons in exercising their right to compensation for unlawful preventive detention, as provided in the Constitution of Nepal.

Lawyers can help support and strengthen the courts. Over the past few months, we have witnessed some very positive actions taken by the Supreme Court in addressing a range of human rights violations. We know, however, that very few cases ever go beyond the District and Appellate Courts to reach Nepal's highest judicial body. Nevertheless, it is the local courts that have the potential to effect the greatest scale of action to protect human rights. It is therefore also in the local courts that members of the NBA from across the country can play the most fundamental role in protecting human rights. By pushing the courts to ensure that victims of human rights violations have genuine access to justice, lawyers can contribute greatly to the institutional strengthening and development of the courts .

Finally, lawyers can facilitate the independence of the judiciary. The judicial appointment procedure is a critical element of an independent judiciary. To ensure the transparency and integrity of the appointments process, the NBA can call for institutional reforms in the appointments mechanism and procedure and also promote discussion about persons recommended for the bench. In this regard, OHCHR has noted the NBA's recent concerns regarding the application of the judicial appointments procedure.

These are just few of the many important roles that lawyers can play. During the next three days, I believe that you will develop many practical ideas for how you as individual lawyers, and collectively as the NBA, can contribute to the promotion and protection of human rights in Nepal, not only in Kathmandu, but in the regions as well.

In closing, I would like to recognise again the efforts of the NBA and its members in upholding the rule of law even in the most trying of circumstances, and to call upon you to redouble your efforts in this regard. As this gathering indicates, the NBA is a highly professional organisation with the national reach, the skills and integrity, and the commitment to play this vital role.