



**UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS IN NEPAL
Sunday, 5 July 09**



Speaking points for Richard for Patan Appellate Court Bar Association Event

Thank you for inviting me to this programme today. It is my great pleasure to be here to take part in this inaugural session and to share this time with you all, mostly law professionals.

We are all here today, in part at least, because we think the Constitutional deliberations offer great hope for Nepal. Not only are they an opportunity to build a strong foundation for a State based on human rights and the rule of law, they are also the backbone of the peace process – the forum where representatives of the people, of different parties, genders and ethnicities, from every corner of the country and all social backgrounds and walks of life, are coming together to forge a new Nepal based on discussion and a spirit of consensus rather than on antagonism and friction. My Office is pleased to see the work of the Thematic Committees in the Constituent Assembly moving forward despite so many problems on the political front.

The process of making a new Constitution for Nepal offers an unparalleled opportunity to consider ways of strengthening the human rights legal framework. It allows the opportunity to fashion solutions which encapsulate the aspirations and commitments of all segments of the Nepali community.

I hope that this programme will help to generate meaningful suggestions for strengthening human rights elements as well as enforcement mechanisms, including an independent and authoritative judiciary, in the new constitution.

OHCHR-Nepal is strongly committed to working with professional organizations like Bar Associations to maximize the opportunity for all persons to take part in the Constitution making process. So I would like to applaud Patan Appellate Court Bar Association for taking the initiative of organising this seminar in order to provide a consultative forum for law professionals and judicial officials to generate suggestions.

From OHCHR-Nepal's perspective we hope that the international human rights treaties to which Nepal is a party (and some to which it is not!) may serve as an inspiration for these constitutional deliberations.

When we look at the core human rights instruments, they contain over 120 substantive provisions dealing with human rights. They articulate, in language carefully negotiated by the international community, a wide range of civil, political, economic, social and cultural rights, as well as detailing the rights of particular groups: whether they be women, ethnic, religious or linguistic minorities, indigenous peoples, and children.

It is also notable that by virtue of acceding to these treaties, Nepal has already made a pledge to the international community and to all those within its territory that Nepali authorities will abide by those standards.

Many of the internationally recognized rights are already in the Interim Constitution. At the same time, there are areas in which human rights protections might be strengthened. I am confident that the thematic workshops to be conducted in the following days will identify the areas that need bolstering.

We need to be mindful that even the most perfectly drafted Constitution does not of itself guarantee the enjoyment of people's rights. It is important thus for gatherings like today to consider how to maximize the effectiveness of any rights recognised in the Constitution.

Strong accountability mechanisms are vital, including a strong, independent judiciary with sufficient power to hold the government to account, or in the form of institutions like national human rights institutions, such as NHRC, that can adjudicate complaints of human rights violations. In international human rights language, we speak of the responsibility of the State to provide an effective remedy for violations.

As well as formal institutions to hear complaints, one can also consider examples of procedural requirements to promote compliance: eg in the South African Constitutions, there is a requirement for State authorities to provide a report to the South African Human Rights Commission on measures they have taken towards the realization of particular economic and social rights in the Bill of Rights.

At the same time, let us not forget the role and responsibilities of lawyers themselves and professional organizations like Bar Associations to translate textual guarantees of rights into reality as envisioned by the United Nations' Basic Principles on Role of Lawyers (Principle 14). These Principles also require governments to ensure certain guarantees for the functioning of lawyers including the guarantee that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16). Consideration might also be given to incorporating some of these guarantees in the new constitution.

OHCHR-Nepal is pleased to play a supporting role to professional organizations, state institutions and civil society through this process through offering technical assistance and comparative expertise, we remain committed to assisting this process. Working together to strengthen this fundamental legal framework is vital. May I assure you of OHCHR's best wishes for these deliberations and we look forward to seeing the recommendations made by this initiative.