



**Remarks by Richard Bennett,
Representative of the High Commissioner for Human Rights in Nepal,
at the Inaugural Conference of the National Law Students of Nepal.
14 March 2010, Kathmandu**

“Our Constitution, Our Responsibility, Our Future”

Hon'ble, Prem Bahadur Singh, Minister for Law and Justice, other distinguished guests, lawyers, members of Nepalese Law Student Association (NeLSA), ladies and gentlemen,

Thank you for inviting me to take part in the inaugural session of this programme today. It is my pleasure to be here and I'm happy to learn that the objectives of this two days conference aim at ensuring and fostering human rights in the constitution with inputs from experts – including law students.

I'm also impressed with the slogan that you've chosen and what it stands for: “Our Constitution, Our Responsibilities, Our Future”. The constitutional process offers great hope for Nepal: the opportunity to build the future on a strong foundation of human rights and the rule of law. The theme that you have chosen also signifies that it is a responsibility of all Nepali people - including a rights-conscious-younger generation - to effectively participate in the constitution making process and to make it yours.

I am confident that this conference will help to generate meaningful suggestions for human rights related provisions in the new constitution. I'm told by many Nepali people that they see the constitution making process as an unparalleled opportunity to strengthen Nepal's human rights framework for the benefit of all Nepalis.

My Office is committed to working with national stakeholders to maximize everyone's opportunity to take part in the Constitution making process. So I would like to applaud NeLSA for taking the initiative of organizing this conference in order to offer an interactive forum for legal experts and law students.

As you are aware, Nepal is a party to a significant number of human rights treaties including ICCPR, ICESCR, CRC, CAT, CEDAW, CRPD and ICERD, OHCHR-Nepal hopes that the international human rights conventions to which Nepal is a party, and even those that are not yet ratified, may serve as an foundation for constitutional deliberations pertaining to human rights. When we look at the core human rights instruments, they contain over 120 substantive provisions pertaining to 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, children and people with disabilities. By virtue of its 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.

Let me also make a few brief observations in relation to constitutional provisions proposed by the thematic committees including the committee on fundamental rights and directive principles. OHCHR has noted the efforts made by the Committees towards strengthening constitutional protection of all human rights in Nepal. I am pleased to see that the draft texts include a number of important provisions including more comprehensive nondiscrimination clauses and a wider stipulation of economic and social rights compared to previous texts, a number of collective rights including rights for minorities and the marginalized, and additional guarantees of the right to reparation for victims of crimes.

However, in other areas there are concerns, including the Judicial Committee's proposal to shift the authority for determining the constitutionality of laws from the Supreme Court to a parliamentary committee which would remove independent scrutiny over parliamentary decisions.

Some shortcomings in the Interim Constitution that risk being carried over into the new Constitution include unreasonable restrictions on citizenship and inadequate respect for the rights of non-citizens, inadequate guarantees of due process rights, limited coverage of the rights to liberty and security, lack of exception for retrospective criminal laws dealing with international crimes, provisions permitting broader derogations and limitations of rights contrary to the International Covenant on Civil and Political Rights, lack of guarantees in relation to effective remedy and reparations for victims of human rights violations, and the lack of enforceability of economic, social and cultural rights guarantees on an equal footing with civil and political rights.

OHCHR is hopeful that any flaws of the Interim Constitution, as noted, will be remedied in during the discussion and drafting process for the new constitution now underway, in line with Nepal's human rights treaty obligations.

Whilst talking of rights, we should remain mindful that robust accountability mechanisms are crucial if rights are to be fulfilled. These include a strong and independent judiciary with sufficient power to hold the government to account, national human rights institutions, such as the NHRC, that monitor governmental performance of its obligations towards human rights and take up complaints of violations or denial of rights and a highly professional, inclusive legal community that ensures access to equal justice for all in Nepal.

And let us not forget that a vibrant civil society including lawyers and professional organizations, like NeLSA, are very important not only in terms of securing strong protection of all human rights in the new constitution but also to translate the textual guarantees into reality.

Promulgation of a new Constitution will be a critical benchmark of success in Nepal's peace process and a key milestone for the transition that Nepal is making towards a democratic society based on equality, respect for human rights and the rule of law. My Office is pleased to play a supporting role to national stakeholders through offering technical assistance and comparative expertise that may contribute to the process of drafting the new constitution. That all stakeholders work together to strengthen this country's fundamental legal framework is vital. May I assure you of OHCHR's commitment and best wishes for this conference and I look forward to seeing the recommendations that you develop.

Thank you.