



Remarks by Richard Bennett
Representative of the UN High Commissioner for Human Rights in Nepal
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Thank you for inviting me to this programme today. It is my great pleasure to be here to take part in this inaugural session. We are all here today in part because we think the Constitutional process offers great hope for Nepal: the opportunity to build a strong foundation for a State built on human rights and the rule of law.

I hope that this programme will help to generate meaningful suggestions for human rights related provisions in the new constitution

It's important that you have chosen human rights benchmarks in the new Constitution as the theme for this workshop because so much of the unrest in Nepal has at its heart issues of human rights violations. These include discrimination and lack of inclusiveness, lack of access to economic, social and cultural rights, violations of civil and political rights and impunity for human rights violations. The process of making a new Constitution for Nepal offers an unparalleled opportunity to consider ways of strengthening the human rights legal framework and it allows the opportunity to craft solutions that encapsulate the aspirations and commitments of the Nepali community.

OHCHR-Nepal is committed to working with others to maximize everyone's opportunity to take part in the Constitution making process. So I would like to applaud INHURED for taking the initiative of organising this seminar in order to offer a consultative forum for human rights defenders to prepare their submissions.

OHCHR-Nepal hopes that the international human rights conventions to which Nepal is a party may serve as an inspiration for these discussions. 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. 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.

Many of the internationally recognized rights are already in the Interim Constitution. At the same time, there are areas in which the human rights protections might be strengthened. For example, at present, there is no constitutional recognition of such rights as:

- The right of men and women of marriageable age to marry with free consent, and the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution;
- The right of citizens to take part in the conduct of public affairs, either directly or through freely chosen representatives;
- The right of citizens to vote and be elected at genuine periodic elections by universal and equal suffrage, with elections to be held by secret ballot
- Full rights of ethnic, religious or linguistic minorities
- The right not to be discriminated against on the basis of colour, property, birth or other status, disability, sexual orientation or age.
- Freedom from arbitrary arrest or detention.
- Children's rights are included in the Interim Constitution, but there is as yet no recognition of a child's right that detention be used only as a matter of last resort, and that minors be separated from adults when in detention.
- Similarly, in the field of economic and social rights, the Interim Constitution includes many internationally recognized rights: including right to education, right to social security, right to health, right to property, some protections against labour exploitation and trade union rights.

But, at the same time, it does not extend protection to such rights as:

- The protection of fair wages
- Right to strike in conformity with the law
- Maternity leave
- The right to an adequate standard of living for the person
- There is no right to 'just' compensation for property acquired by the State

As we know, even the most perfectly drafted Constitution does not of itself guarantee the enjoyment of people's rights. Therefore, it is important for gatherings like today to consider how to maximize the effectiveness of any rights recognised in the Constitution.

Strong oversight 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 the National Human Rights Commission, 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 Constitution, 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.

Consideration might also be given to explicitly acknowledging the international human rights instruments within the Constitution itself – some States have for instance, provided that these instruments have constitutional status and so can be used to invalidate inconsistent legislative or administrative action.

Adoption of a new Constitution will be seen as one of the benchmarks of the success of Nepal's peace process. My Office is pleased to see the work of the Thematic Committees in the Constituent Assembly moving forward, and in particular to see that the Constituent Assembly has been seeking to take account of the views of the community in its deliberations. As I stated at the outset, this time of Constitution making is a precious one for State building and consolidation of peace, in forging a text that can be owned by the Nepali community and can protect the inherent rights of all persons, without discrimination.

OHCHR-Nepal is pleased to play a supporting role to State institutions and civil society through this process. Through initiatives such as facilitating a Working Group of NGOs and National Institutions on Human Rights and the Constitution, and providing 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 discussions and we look forward to seeing the recommendations made by this initiative.