



Speech by Richard Bennett
Representative of the UN High Commissioner for Human Rights in Nepal
At an Interaction Programme on Community and Economic, Social and Cultural Rights
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Dr Netra Prasad Timsina, President of the NGO Federation of Nepal, Representatives of the Federation of Community Forest Users Group, Human Rights Alliance, National Federation of Disabled Nepal (NFDN), Dalit NGO Federation (DNF), National Federation of Indigenous Nationalities, Federation of Drinking Water and Sanitation Users (FEDWASUN), Federation of Irrigation Water Users Nepal, Land Rights Forum and Women Networks, Commissioner Gauri Pradhan from the NHRC, Friends and Colleagues,

Thank you for inviting me to speak today. I have been asked to present OHCHR perspectives on Community Rights and ESCR, and would like to begin by talking about the human rights based approach, or HRBA as it is known. HRBA involves empowering rights-holders to claim their entitlements. Therefore, it requires the effective participation of people at the grass roots level. Such participation needs to be well-informed if it is going to be meaningful; accordingly, human rights awareness and education are critical to empowering people to claim their rights.

That said, I want to recall yet once again the universality and interdependence of all human rights. The realisation of economic, social and cultural rights (ESCR) such as food, shelter, access to health care and education, can only be achieved within the framework of civil and political rights, while civil and political rights on their own will not deliver development, reduce poverty and bring about improvements to social conditions so that people are able to live with dignity.

One distinct feature of ESC rights relates to the responsibility of the primary duty bearer – the state. International standards recognise that ESCR cannot always be fulfilled tomorrow. For example, it will take some years to achieve free universal primary education or accessible and good quality health care. However, two points should be noted: 1. there is a core minimum obligation under each right which must be met and, 2. the state has an obligation to undertake steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights in the International Covenant on ESCR (ICESCR), by all appropriate means, including in particular the adoption of necessary legislation.

Thus, the term “progressively”, must not be misinterpreted as justifying inaction or action that renders the state’s obligation meaningless. Rather, it refers to the need for flexibility, “reflecting the realities of the real world and the difficulties involved for any country”. The *raison d’être* of the Covenant remains to establish clear obligations for states parties in respect of the full realisation of the rights in question.

Another point I would like to emphasise is that a cross-cutting imperative in all human rights treaties is non-discrimination and equality. Whether the rights to be protected, respected and fulfilled are civil and political or economic, social and cultural, **discrimination** must be eliminated.

Water, land and forests are among the natural resources that a community depends on. It is well known that lack of recognition of the rights to land and other natural resources have resulted in marginalisation of indigenous and other vulnerable communities globally. In the Nepali context, a

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number of development projects are ongoing that raise these issues; in fact representatives of communities affected by the Arun III project made an excellent presentation on their concerns to my Office. The balance between development initiatives and community rights is critical. A key issue is the meaningful participation and free, prior and informed consent of marginalised communities. Without these, the result can be increasing poverty and migration, leading to denial of the right to development.

Disputes around land and access to lands continue to be an issue of great concern in Nepal. My Office has noted some positive steps, including a *mandamus* order by the Supreme Court on 6 May 2009, which directs the government to implement the fifth amendment to the Land Act of 2001 relating to the land ceiling. It also orders government authorities to distribute seized land to freed Kamaiyas, Dalits and Janajatis as provisioned by the law, and report to the Court on the implementation of the Act. Many hopes reside in the High-level Land Reform Commission that was set up in December 2008, but its “on-hold” status has given rise to some concern. OHCHR-Nepal’s regional offices continue to work with groups such as Haliya and Kamaiya to promote their rights and to ensure non-discrimination.

Let me move on to touch on a basic fundamental requirement to survive - water. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. In its General Comment No 15, the ESCR Committee states, “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights.” The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). Figures suggest that in Nepal, investing in water and sanitation can prevent 13,000 annual diarrhoeal deaths of children below five (UNICEF 2005) or stem the loss in productive labour due to illness caused by lack of access to water and sanitation, estimated to be worth over 10 billion rupees per year.

In its General Comment No 12, the ESCR committee draws a clear link between water, subsistence and life. I quote, “Attention should be given to ensuring that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, states parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples”.

As I have said before, OHCHR-Nepal recognises that discrimination and violations of ESC rights was both a root cause of the conflict – and a consequence. Ensuring the ESC rights of poor and marginalised individuals is one of the crucial elements of the peace process, including the need to ensure protection of these rights in the new constitution. ESCR have been spelled out in the Interim Constitution (2007) directly as well as indirectly.

The chapter on fundamental rights refers to the rights to environment and health, education and culture, employment and social security, as well as to property, religion, labour and food sovereignty. Indirectly, the rights are included in the chapter on Responsibilities, Directive Principles and Policies of the State, which places on the state the responsibility to pursue a policy of adopting scientific land reform; end feudalistic land ownership; pursue a policy of establishing the rights of all persons to education, health, housing, employment and food sovereignty; and to adopt a policy of ensuring socio-economic security, including land. Similarly, this chapter states that the fundamental objective of the state shall be to make arrangements for equitable distribution of economic gains based on social justice without any discrimination.

OHCHR-Nepal has already responded to requests for advice on ESC rights in the constitution, and we stand ready to respond to others. In addition, my Office is of the firm opinion that national institutions have a critical role to play in this field. The NHRC, as you know, has included this in their strategic plan, and OHCHR remains steadfast in our support to them as well as to the process of strengthening the capacity of the National Women's Commission, National Foundation for Development of Indigenous Nationalities and National Dalit Commission in this area.

Thank you.

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