



Speech of Ms. Jyoti Sanghera, Head, OHCHR-Nepal
On the occasion of 11th Anniversary of National Human Rights Commission- Nepal
Friday, 27 May 2011

- Rt. Honourable Prime Minister Mr. Jhala Nath Khanal, Honourable Chairperson of NHRC Mr. Kedar Nath Upadhyay, Honourable NHRC Commissioners, Honourable members of the Constituent Assembly, Honourable Ministers, Excellencies; senior Government officials, NHRC staff members; UN colleagues; colleagues from civil society and the media, friends, first of all, I would like to wish all colleagues and friends at the NHRC a very happy 11th anniversary. Thank you for inviting me to this important celebration.
- We are celebrating this anniversary amidst a very important time for the peace process and human rights in Nepal. As the Constituent Assembly deadline approaches tomorrow we reflect on the long and difficult path that Nepal had already covered in its transition to peace and democratization. We also reflect of course on the major challenges that lie ahead in reaching the final destination. The completion of the Constitution drafting is a key challenge. I am optimistic as you all are that all stakeholders including political parties will take the necessary steps to complete this vital task.
- I want to share a little story with you: A couple of days ago the little daughter of a friend of mine asked me” So when will they finish their homework?” What homework? I asked. “Writing the most important book for Nepal” she replied. And what will be in this book? I asked again. She looked at me as if I was truly an ignorant fool and proceeded to educate me. This is the book which tells all Nepalis how they must behave towards other Nepalis. All Nepalis must love their neighbours, not treat them badly, they should share their food and other things with each other so that nobody goes hungry or is unhappy, and the police and government must respect all people. This will be like a prayer book and if we follow it properly then all Nepalis will be happy and Nepal will be the best country in the world.



What better definition could there be for a Constitution which is fully grounded in human rights. In the simplicity of this child's definition lies the complexity of the principles for the respect for rights and justice. And yes the challenges to making all Nepalis happy as our little friend said, are many.

- Of the utmost importance is the need to address the claims of thousands of conflict victims, who continue to seek truth and justice for human rights violations. Nepal has committed to establish transitional justice mechanisms to confront and address both the causes and consequences of the decade long conflict. The establishment of the Commission of Inquiry on Disappearances and the Truth and Reconciliation Commission (TRC) will assist with the provision of truth and justice to victims and their loved ones. Passing the laws to establish these mechanisms - is both **necessary** and **urgent**. We sincerely hope that these Bills will be promptly adopted and that they comply with international human rights standards, taking into consideration the amendments recommended by human rights community and victims' groups.
- I would also like comment on the ongoing discourse that the accountability for conflict related human rights and international humanitarian law violations and abuses should be referred to the TRC and not the regular judicial system and civil courts. Here, I must underscore that the transitional justice mechanisms cannot replace the regular criminal justice system. It is an obligation of the State to undertake the investigations and prosecution of all cases of serious violations of human rights and international humanitarian law, committed both during and since the conflict.
- It is deeply troubling that to date no-one has been held accountable for crimes committed during the conflict. I am reiterating this issue in presence of Rt. Honourable Prime Minister, urging all concerned parties to hold the concerns of all victims a top priority.
- In this context, there has been worrying talk of withdrawal of cases, some even criminal in nature. Withdrawal of cases, especially criminal or related to serious human rights violations, is contrary to international law. International law imposes an obligation on all State Parties to provide an effective remedy against violations of the rights and freedoms contained in the core human rights treaties, this clearly includes a duty of Nepal as a State party to investigate and hold to account those responsible.



Any form of impunity including withdrawal of prosecution for “serious crimes” committed during the conflict is also inconsistent with the prohibition of amnesty for international crimes under international humanitarian law.

- The Constitution making process and legislative initiatives should be utilized as an opportunity to address this problem through inserting a clear **prohibition on amnesty** for serious crimes, gross violation of human rights.
- All Nepalis want to move on, leave the past behind and establish a strong society and polity built upon respect for human rights, rule of law and justice. But the “moving on” can only happen if we confront the past and not close our eyes to the misdeeds that happened. This is a lesson we have learnt from many examples of countries who have faced conflicts. If the past is not addressed through justice then the past will never go away, it will keep coming back to haunt us and peace will always remain shaky and fragile.
- The other challenge I would like to raise in this journey onwards is the **long-standing issue of discrimination** on the basis of caste, gender, sexuality as well as other grounds that particularly affect vulnerable and marginalised groups of society. Therefore, it is indeed a welcome news that the Bill on Caste-based Discrimination and Untouchability has recently been passed into law. For this the law-makers and the government merits warm acknowledgement. This is indeed an important step forward.
- I am pleased to note the provisions in the new Act: that caste-based discrimination and untouchability practices are prohibited in both public and private spheres; increased punishments for public officials found responsible of discrimination; requirements for perpetrators to provide compensation to victims; and the criminalisation of incitement for caste-based discrimination. I also hope that the legislation will be further strengthened in the implementation to address certain shortcomings, including the potential misuse of the provision that penalizes complainants in cases where the complaints are not substantiated.
- Having a new law in itself is not sufficient and it is now vital to ensure effective implementation of this law, taking appropriate measures such as raising awareness of the law amongst the general public and specific training for the police.



- As just said, a good Constitution and good laws will not by themselves guarantee the enjoyment of people's rights. **Effective accountability mechanisms are vital**, including a strong independent judiciary with sufficient power to hold the Government accountable, and human rights institutions, such as the National Human Rights Commission sufficiently independent and autonomous to hold an objective overview of the human rights situation and make appropriate recommendations to the Government, and recognized authority for its recommendations.
- In this regard, I would like to highlight that enabling legislation for NHRC following its Constitutional status in 2007 is yet to be passed. NHRC and OHCHR have jointly made recommendations on the Bill for it to provisions to be in conformity with the Paris Principles.
- It is relevant to mention that NHRC went through an international peer review only yesterday. One main criteria on which the ICC (International Coordinating Committee of NHRIs) is reviewing (NHRC) is on the Bill's compliance with the Paris Principles, and on whether the NHRC has enabling legislation. While result of this review is not yet known, OHCHR hopes that the NHRC status will be positively judged on the basis of matters beyond its control or capacity. For this very reason, I would like to put an emphasis once again on the need for swift passage of the NHRC law in conformity with the Paris Principles.
- Another significant deadline fast approaching is the adoption process of Nepal UPR Outcome document scheduled on 7 June (in less than two weeks time). Earlier this year in January, Nepal participated in the UPR process and performed very well by accepting a number of vital recommendations. I urge the Government to accept some key recommendations that it had committed to consider by this date and the recommendations it had at that time rejected.
- In closing, let me reiterate OHCHR's full commitment to continuing its work in support of the Government of Nepal, National Institutions, and civil society organisations, in accompanying the people of Nepal in this historic process of securing peace, democracy and human rights. I would also like to express my satisfaction on the good cooperation and collaboration we have with the NHRC, which has strengthened quite significantly and qualitatively in the past year. We look forward to the continuation of this strengthened cooperation. I congratulate the NHRC on its' 11th years and hope



that the role of the Commission can be further supported and strengthen in the upcoming year and years to lead more meaningful interventions as the key organisation defending human rights in Nepal, promoting equality and fighting impunity and discrimination.

Thank you!