

Address of LAWASIA President Malathi Das at the 12th All Nepal Lawyers National Conference of the Nepal Bar Association 2012 (16-18 Mar 2012, Kathmandu)

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The Rt Honourable President, Dr Ram Baran Yadav, of Democratic Republic of Nepal, the Rt Honourable Prime Minister, Dr Baburam Bhattarai, the Honourable the Chief Justice Mr Khil Raj Regmi, the Honourable Speaker of the Constituent Assembly, the Honourable Attorney-General, fellow lawyers, distinguished guests, ladies and gentlemen, Namaste.

It is a great honour and privilege for me to have this opportunity to speak to you today. This is my first visit to your beautiful country and it certainly feels like being at the top of the world. This is especially so given that this is an important time in the history of Nepal.

As you know, LAWASIA, the Law Association for Asia and the Pacific, has always maintained a keen interest in developments in Nepal – most recently through the attendance of past LAWASIA President, Dr Gordon Hughes at its 2001 annual conference, through its Observer Mission in 2005, and again through the participation of past LAWASIA President Mah Weng Kwai as an observer of the 2008 election of the Constituent Assembly.

LAWASIA acknowledges the long and difficult path that Nepal has covered in its transition to peace and democratisation. Needless to say, adoption of a new Constitution will be seen as one of the benchmarks of the success of Nepal's peace process. However, the journey to the finish line is far from over with the completion of the Constitution drafting currently posing a key challenge.

LAWASIA has noted the recent action of the Nepal Bar Association and its members aimed at encouraging this very same Constituent Assembly we saw elected in 2008 to complete the tasks of establishing finalizing and adopting a new Constitution for Nepal expeditiously.

LAWASIA recognizes that whilst repeated commitments towards transitional mechanisms expressed at various points offer a strong promise and hope to the Nepali people, these must be matched with the political will to make good on these promises and meet the expectations of the people.

LAWASIA shares the concerns of Nepali lawyers that these tasks have so far not been completed by agreed deadlines and notes that any further deadlock in negotiations between the political parties will only continue to impede their work. As a regional body comprising peak representative bodies of lawyers in Asia and the Pacific, LAWASIA recognizes that an effective, just and broad-based Constitution reflecting the will of the people is a fundamental element in establishing and strengthening the Rule of Law in Nepal. So long as Nepal lacks such a foundation, the rights of its citizens remain at considerable risk, as has already been evidenced by reports of grave human rights abuses, including torture, extra-judicial killings and forced disappearances.

This situation is of considerable concern not only to Nepali lawyers, but also to the entire legal community of the Asia Pacific region, whose members place the highest importance on governance by a just Rule of Law underpinned by legitimate constitutional arrangements and structures that meet international legal principles and standards.

The first step is to meet promised timelines. It is vital that all stakeholders work together to strengthen Nepal's fundamental legal framework.

We should also be mindful that robust accountability mechanisms are crucial if rights and expectations are to be realized. These should encompass

- a strong and independent judiciary with sufficient power to hold government to account,
- active national human rights institutions that monitor governmental performance of its obligations towards economic, social and cultural rights and take up complaints of violations or denial of these rights.
- Finally, it is vital that a vocal civil society be allowed to voice its concerns and assessment of the effectiveness of traditional structures and be able to fill and feel the gaps, if any, despite the above.

In this respect, let us not forget that lawyers and professional organizations like the Nepal Bar Association are enormously important not just only in terms of securing strong protection of all human rights in your new Constitution, but also to translate the textual guarantees into reality.

Ensuring the economic, social, cultural, civil and political rights of all Nepalese, especially the rights of minority, marginalized and vulnerable groups including women, children, indigenous people and others will be a significant step towards fulfilling the aspirations of Nepalese people for economic and social justice.

Given that we just celebrated International Women's Day a few weeks ago, I hope you will allow me at this point, to address the topic of women issues, both from my own perspective and that of LAWASIA, as these are issues close to my heart and a message I wish to spread as LAWASIA's first woman President.

Last year, I had the opportunity to represent my home country Singapore's national coordinating body, the Singapore Council of Women Organisations (SCWO) at the 49th CEDAW Session at the United Nations. As many of you will know, CEDAW stands for the UN Convention on the Elimination of Discrimination Against Women.

In 2011, apart from Singapore, Nepal was also up for review of its Implementation status of CEDAW nationally. I had the

opportunity to hear the Nepal Government's Report and also meet with various Nepali NonGovernmental Organisations (NGOs) and listen to their feedback to the United Nations CEDAW Committee. They were very vocal and of the 8 countries at the United Nations for the 49th session, Nepal had the most number of NGO reports (totaling 15 in all). In contrast, Singapore and Korea had 7 each, Italy had 6 with most other countries 5 or less. Through my interaction with representations and from reading and listening to their reports, I learnt about both the progress made and challenges faced by women in Nepal.

In particular, I noted that in 2006, your Parliament passed a special resolution to ensure a proportional election system along with the first past the post system with the result that there is 33% women representation from different caste, ethnicity, geography and religion in your Constituent Assembly. This translates to 197 women CA members in the 601 member-body. In contrast, Singapore has no reservation policy and has a lower percentage of women representation in our Parliament. Reservation policies have also seen increased women participation in the security sector with 3% in the army and 7% in police. 2010 was declared the year against Gender-based violence against Women. These are commendable reforms.

However, I have also read reports that despite the 33% women representation in the CA, women representatives face obstacles in the decision-making and constitution building process at the national level. One female politician was quoted in a report by The Guardian (in 2011) as saying that Nepalese society is still reluctant to accept women as leaders and that 'Society looks up to men as born leaders. They are not eager to welcome women in these roles.'

I also read a more recent report (20 February 2012) of female Nepali lawyers protesting against discrimination against them. Many examples were given, from how they are treated in comparison to their male counterparts whether it be in court or in the workplace. I learnt that women lawyers felt uncomfortable addressing judges in Court by the term 'Shreeman' which signifies a term of respect but also means 'husband' in Nepali. On this, I am sure it is possible for a more gender neutral term such as 'Your Honour' to be used to respect the position of the Judge and also provide for the possibility that the Judge may herself be a woman, as I understand there are now women Judges in your courts. I am sure male judges would also prefer that the term 'husband' be reserved for them by their wives only, and not female lawyers appearing before them, as it otherwise dilutes the significance of the term. Some signal from the judiciary that a change in terminology would be acceptable would go a long way towards alleviating this concern.

Although I am a strong advocate of equal opportunities for women and girls, I also believe that women leadership is not the sole province of career women. I feel society has not placed sufficient economic value to the important work that women do as care-givers and mothers.

Interestingly, when I attended a forum on young women leadership in Singapore, one woman speaker said something that I admired and remember vividly. She said that 'To be a mother is my first position of leadership as a woman'. For those of you who remember Margaret Thatcher, former Prime Minister of Great Britain, will do well to remember her words 'Any woman who understands the problems of running a home will be nearer to understanding the problems of running a country.'

Having been brought up by a mother who was not a career woman and yet encouraged me to receive a good education and to dream big, I feel that whether we are career-minded or fulfilled by being stay-at-home mothers, we all have an important role in society that should be valued.

I therefore urge my Nepalese sisters not to be discouraged, but to press on and voice your views, and shape the thinking whether of your daughters or sons, brothers or sisters, husbands or employers. The time will come when the tide of change cannot be stemmed.

Despite the headline of The Guardian article I mentioned having stated 'Nepal's women have a voice in politics but no one is listening', you have been very kind and generous to allow me to lend my voice to this National Conference and for listening to my presentation, and I thank you for your attention.

I wish to therefore conclude my speech as I began and draw attention back to the progress of your Constitution. LAWASIA feels that it is fitting that Nepali lawyers take a strong stand by urging those elected to provide this most basic of requirements for establishing the Rule of Law in Nepal to complete urgently the responsibilities they have been assigned. This is a precondition for the long-term stability of Nepal and will encourage confidence in and facilitate the growth and development of the country nation.

One lesson history has taught us is that justice cannot be achieved without having a strong legal framework that conforms to international standards and best practices. Whilst it is said that justice hurried is justice buried, justice delayed is justice denied.

LAWASIA commends the Nepal Bar Association for its leadership in this and supports the efforts of its members to ensure stable and just governance for their country.

I look forward to hear the happy news of the finalization of your Constitution and wish all of you present and the people of Nepal a peaceful march to progress.

Dhanybhad (Thank you).

Malathi DasPresident LAWASIA

Please click

here to view the address of LAWASIA Secretary-General/CEO Janet Neville at the same event.