

HUMAN RIGHTS

SUMMER COURSE 2015

About the Course

The human rights summer course was envisioned as a platform for those involved with human rights in an academic setting and those who have taken up human rights as activism to share their experiences and knowledge to enhance one another's understanding and application of human rights. The need for such an exchange of ideas and experiences was felt particularly in the context of the transitional political system and the widespread passive acceptance of human rights in all spheres.

The modules for the course have been selected to provoke critical thinking especially with regards to the theoretical components of human rights as a concept and also to address some of the burgeoning issues in recent times. The tutors and the advisory body for the course took the current transition and fragile political process into account and agreed to incorporate thematic areas like democracy and state in conjunction with human rights to analyze and reflect on the political changes and their relevance to human rights in the country.

The existing culture of impunity has posed a serious challenge to the rule of law. The passive acceptance of violence by the general public as a way of life is also of grave concern not just for the smooth transition of the political system but also for the protection of human rights. As the country takes historic steps into institutionalizing a new political system, issues such as assurance of rights of the minority and the marginalized and the need for accountability of political representatives and institutions are foremost on the agenda for the civil society which includes human rights activists.

The inclusion of such varied and yet interconnected topics is expected to generate the debates on the contemporary human rights issues at the national and when necessary at the international level as well. Our hope is that the discussions during the course will allow the participants to critically reflect on their own as well as the national practices of human rights and that the participants will continue to contemplate on these crucial issues even after the course.

Module – 1: Introduction to Human Rights

The concept of ‘human rights’ is based on the principles of non-discrimination, dignity and humanity. . It is the result of a long and continuing process of development that has not yet reached its conclusion. It has its roots in the philosophy of ancient Greeks. However, framework of the human rights was developed only after the World War I and II. The most significant role in this course was played by the United Nations General Assembly by adopting the Universal declaration of Human Rights on 10 December 1948 as a response of the World War II. Forty eight member nations took under consideration the rights which had been violated during the World War II and accepted the preamble for the UDHR “**...recognition of the inherent dignity and of the equal and inalienable rightsof all members of the human family is the foundation of freedom, justice and peace in the world**”.

“Although the Declaration with its broad range of political, civil, social, cultural and economic rights is not a binding document, it inspired more than 60 human rights instruments which together constitute an international standard of human rights. Today the general consent of all United Nations Member States on the basic Human Rights laid down in the Declaration makes it even stronger and emphasizes the relevance of Human Rights in our daily lives”¹.

Human rights are rights that people are born with. But, it is often not clear what exactly is meant by these rights and what they include. So, this module aims at making the participants acquainted with the following issues:

- What are human rights?
- What are the characteristics of human rights?
- What are the obligations of state to protect human rights?
- What are the remedies provided to the victims of rights violation? How to differentiate between human rightsviolation and crime?

Basic readings

Universal Declaration of Human Rights, 1948

International Covenant on Civil and Political Rights, 1966

International Covenant on Economical Social and Cultural Rights, 1966

Need to include the further reading materials

¹Office of the High Commissioner for Human Rights,
<http://www.ohchr.org/EN/AboutUs/Pages/HumanRightsDay.aspx>

Module - 2: Democracy, Human Rights and Rule of Law

Respect for human rights and fundamental freedoms and the principle of holding fair periodic elections by universal suffrage are essential elements of democracy. These values are embodied in the Universal Declaration of Human Rights and further developed in the International Covenant on Civil and Political Rights which enshrines a host of political rights and civil liberties underpinning meaningful democracies.² Meaningful democracy couldn't be guaranteed unless the rule of law is ensured.

It shows strong bond between human rights and democracy. Some scholars believe that democracy is essential for the protection and effective realization of human rights while others think that democracy is not a precondition for nurturing values of human rights.

Nepal entered into multiparty democracy overthrowing 30-year long party-less *Panchayat* system in 1990. But, less than a decade after the reestablishment of multiparty democracy in the country, a violent armed conflict gripped the young democratic system of Nepal. After the end of a decade-long armed conflict in 2006, we have landed into another system, which though considered democratic, is still not entirely stable.

In this background, this module aims to focus on the following questions:

- What are democratic values and principles?
- Is there any linkage between democracy and human rights?
- What is rule of law and its relationship with human rights and democracy?
- What is the role of political parties and civil society in maintaining rule of law, strengthening democracy and protecting human rights?

Basic readings

Donnelly, Jack. (1999). Rights, Democracy, and Development; Human Rights Quarterly, Vol. 21, No. 3 (Aug., 1999), pp. 608-632 URL: <http://www.jstor.org/stable/762667> .Accessed: 23/12/2013 01:35

Patnaik, J. K. (2004). Human Rights: The Concept and Perspectives: A Third World View: The Indian Journal of Political Science, Vol. 65, No. 4 (Oct.-Dec., 2004), pp. 499-514 URL: <http://www.jstor.org/stable/41856073> .Accessed: 23/12/2013 01:38

²Democracy and Rule of Law: http://www2.ohchr.org/english/issues/rule_of_law/democracy.htm

Module - 3: Understanding State and Protection of Human Rights

Although state is often considered to be a protector of human rights, it has also posed as threat to human rights protection in some instances. How can a state be both? In this context, we need to understand the state and its duties of protecting human rights so that we, as a human rights activist and academic, can play the appropriate role in making the state democratic, human rights friendly and accountable.

Some people argue that human rights are a foreign concept that challenges the sovereignty of state. They question 'why should other countries be bothered if Bashar al-Assad, President of Syria, kills people in order to maintain law and order in his country? While others argue 'why do we need United Nations and international laws if they don't protect people from being killed?' This module will, therefore, focus on the following issues:

- How to understand the concept and nature of state?
- Are human rights undermining the notion of state sovereignty?
- Are modern states able to protect human rights?
- Are national and international institutional arrangements decreasing human rights violation?
- How are international institutions and policies influencing national laws and policies?

Basic readings

NEIL A. ENGLEHART (2009) State Capacity, State Failure, and Human Rights: Journal of Peace Research, Vol. 46, No. 2 (March 2009), pp. 163-180 URL: <http://www.jstor.org/stable/25654378> .Accessed: 06/01/2014 00:35

Jenkins, J. Craig and Klandermans, B. ed. (1995) The Politics of Social Protest. University of Minnesota: USA

Module - 4: Impunity and Accountability

A decade long armed conflict waged by the CPN (Maoist) from 1996 to 2006 affected the entire country. While the precise number of conflict-related casualties is not yet available, by the time the conflict came to an end, at least 13,000 people had been killed and more than 1,300 people still reported to be missing.³

Human rights violations and abuses by both the government security forces and by the CPN (Maoist) were widespread throughout the conflict. But, alleged perpetrators of gross violations of human rights are not being investigated, tried or punished. This ongoing and widespread failure to provide justice and accountability has posed a serious obstacle to establish respect for human rights and the rule of law.

Transitional justice mechanisms such as Truth and Reconciliation Commission and Commission on Disappearance have been established to address the violation of human rights committed during the armed conflict. In this context, this module aims to discuss the following issues:

- How did the armed conflict affect human rights situation in Nepal?
- What is the current situation of transitional justice and impunity in Nepal?
- What are the roles and responsibilities of the TJ commissions to address the past human rights abuses?
- Are existing laws and mechanisms sufficient to combat impunity?
- What are the challenges to combat the culture of impunity in Nepal and how to address them?
- How do we understand the concept of "individual criminal responsibility" and application of "universal jurisdiction"?

Basic readings

Bhattarai, Binod. Mainali, Mohan et. al (1999) Impunity in Nepal: An Exploratory Study. The Asia Foundation: Kathmandu

Philippe, Xavier. (2006) The principles of universal jurisdiction and complementarity: how do the two principles intermesh? International Review of the Red Cross Volume 88 Number 862 June 2006

Morris, Madeline H. (2000) Universal Jurisdiction in a Divided World: Conference Remarks

³OHCHR, 2012: Nepal Conflict Report: An analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006; United Nations Office of High Commissioner for Human Rights, Geneva.

Module - 5: Human Rights protection system

Human rights are inherent to the human person, inalienable and universal. The United Nations has adopted many legally binding international human rights instruments. These treaties are used as a framework for discussing and applying human rights. Through these instruments, the principles and rights they outline become legal obligations on the states that choose to be bound by them. The framework also establishes legal and other mechanisms to hold governments accountable in the event they violate human rights.

National human rights institutions also have important roles in promoting and protecting human rights. They are established to ensure that laws and regulations concerning the protection of human rights are effectively applied.

One of the most important functions vested in human rights institutions is to receive complaints from individuals or groups alleging human rights abuses, investigate into the complaints and recommend the government to dispense justice to the victims.

Understanding the national and international human rights protection system is important for human rights activists to advocate for the promotion, protection and the realization of human rights. This module, therefore, has been set to discuss the following issues:

- International human rights protection system (UN and Regional protection mechanisms)
- Effectiveness of international protection mechanisms
- National human rights protection mechanisms (legislative and administrative measures)
- Judiciary and protection of human rights
- Effectiveness of the existing national human rights protection mechanisms
- Way forward to the effective protection of human rights

Basic readings

National Human Rights Commission Act 2008

Module - 6: Understanding and Combating Gender-based Violence

Violence against women and girls is a form of discrimination and a violation of human rights. Nepal has made strong normative and legal commitments to ending gender-based violence and inequality. It has ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and has enacted a Domestic Violence Act as well as a five-year national strategy and action plan.

Non-governmental organizations, civil society and general public are also working actively to end the violence against women and also demanding justice for the victims. We can take an example of Occupy Baluwatar that went on for over two months against the wider issue of violence against women and girls in Nepal. However, cases of violence against women and girls, including physical, sexual, psychological, socio-cultural and economic, have not reduced. Many women and girls are still waiting for the respectful and equal treatment they deserve.

This module aims to deal with the following issues:

- Understanding the gender-based violence
- National and international laws / policies related to women's rights
- Challenges in combating violence against women
- Role of the civil society to minimize the violence against women
- Assessing the impact of women's movement at the grassroots level

Basic readings

Krishnaraj, Maithreyi (2007) Understanding Violence against Women: Economic and Political Weekly, Vol. 42, No. 44 (Nov. 3 - 9, 2007), pp. 90-91 URL: <http://www.jstor.org/stable/40276750>. Accessed: 02/01/2014 01:04

True, Jacqui (2012) From Domestic Violence to War Crimes: The Political Economy of Violence against Women: Oxford University Press: New York

Coomaraswamy, Radhika (2005) Human Security and Gender Violence: Economic and Political Weekly, Vol. 40, No. 44/45 (Oct. 29 - Nov. 4, 2005), pp. 4729-4736 URL: <http://www.jstor.org/stable/4417359>. Accessed: 02/01/2014 01:39.

Module - 7: Protection of Minority Rights

International system of human rights focuses on the protection of the rights of the individual on the basis of basic principles of nondiscrimination, equal enjoyment of human rights and equality before the law. But, as this system was not sufficient to protect the human rights of persons belonging to minorities, special measures have been made to ensure equal protection of minorities both in law and in fact.

Special measures are in effect until full and effective equality is achieved. This may be for always, for example in case of mother tongue (first language) education. Other measures may be for a limited time, for example, affirmative action/positive discrimination in access to employment in public service. States have obligation to implement minority rights with the meaningful participation of minorities in the decision-making processes.

However, in Nepal, there are debates about the definition and rights of minorities. Consequently, there are challenges in ensuring rights of the minority and marginalized communities. In this context, this module will try to make clear understanding on the following issues:

- Rights of the minorities and right to self determination
- International legal frameworks for the protection of minority rights
- Implementation and interpretation of ILO Convention No 169
- Dalit identity and Combating Caste-based discrimination and untouchability

Basic readings

Kovacevic, Dragana (..) International Minority Protection System

Lawoti, Mahendra (2008) Inclusion and Accountability in a 'New' Democratic Nepal [Published in SAFHR's minority hand book]

Module - 8: Right to Development

*“Humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights.” Human rights and human development are one and the same.*⁴

— Former UN Secretary-General Kofi Annan

Human rights not only include civil, political, economic, social and cultural rights but also right to development. The UN, by adopting the Declaration on the Right to Development (DRD) in 1986, has converged development and human rights. The DRD has sought to establish development as a right, which the state is responsible to fulfill so as to improve the wellbeing of all individuals.

In order to get the DRD implemented, a human rights-based approach (RBA) emerged as tool of change. The RBA draws attention to the basic obligation of the state to take care of its most vulnerable citizens, including those not able to claim their rights for themselves.⁵

Despite the UN’s efforts to converge human rights and development, tension between them still exists. Political leaders and development workers consider human rights as a barrier of progress.⁵ On the other hand, rights activists argue that development becomes destruction if it does not fully embrace the concept of DRD and RBA.

With the aim of providing insights into intersections between development and human rights, and the tools and strategies that has emerged as a result, this module will focus on the following issues:

- What is right to development?
- What are the entitlements set forth in the Declaration on the Right to Development?
- Rights-based approach to development and how can it help people realize the right to development?
- How can the rights-based approach be implemented in practice?

Basic readings

Jakob, K. B. and Tomas M. (2007) Applying a Rights- Based Approach: An Inspirational Guide for Civil Society: Danish Institute of Human Rights. Denmark

Andrea Cornwall and Celestine Nyamu-Musembi (2004) Putting the 'Rights-Based Approach' to Development into Perspective: Third World Quarterly, Vol. 25, No. 8 (2004), pp. 1415-1437 Published by: Taylor & Francis, Ltd. URL: <http://www.jstor.org/stable/3993794> Accessed: 19/02/2010 06:42

⁴Quoted in Stevens, L., 2012: Human Rights and Development, two sides of the same coin; The Nation (Thailand), Nation Multimedia Group Public Co., Ltd., December 10; www.nationmultimedia.com.

⁵Boesen, J. K. and Martin, T., 2007: Applying a Rights-based Approach, An Inspirational Guide to Civil Society; the Danish Institute for Human Rights, Copenhagen K, Denmark.