

21st Oct. to 14th Nov. 2010

**6<sup>th</sup>**

**International Residential  
School on Economic, Social  
and Development Rights,  
and Good Governance**

with Special Reference to Emerging Issues



Organised by:

**Kathmandu School of Law (KSL)**

## Condolence



**Deepak Prasai**

We express our deep sorrow over the untimely and sudden demise of our beloved and cherished student Mr. Deepak Prasai, participant of 5th ESDR Residential School from Kathmandu School of Law .

We have indeed lost our committed, dedicated, pro-active and sincere student. Her memory remains omnipresent in our minds and heart.

We mourn this moment of great loss and express our heartfelt condolences to the bereaved family.

**ESDR Residential School Family**

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## Message

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**K**athmandu School of Law is to be praised for its leadership in providing sophisticated education about social, economic and development rights. Protecting socio-economic rights is acutely important in all societies but there are particular challenges in developing countries.

By raising awareness about such rights and strategies for their implementation, the Residential School empowers participants to better protect human rights in their own communities. The Residential School provides a high quality program of instruction, the depth and breadth of which compares very favourably to some of the best law schools worldwide."

**Professor David Kinley,**  
Professor of Human Rights,  
The University of Sydney

**Associate Professor Ben Saul,**  
Co-Director, Sydney Centre for International Law  
The University of Sydney



Prof. David Kinley



Assoc. Prof. Ben Saul

## Message

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**ESDR Residential School is an inexhaustible store  
house of inspiration for learning, doing and serving**

**I**nternational Residential School on Economic, Social and Development Rights (ESDR) regularly organized by Kathmandu School of Law (KSL) is embarking into 6<sup>th</sup> year of its journey towards achieving its coveted goals and objectives. Six years ago Professor Dr. Yubaraj Sangroula, who believes in social transformation through implementation of democratic governance and realization of economic, social and development rights mobilized a group of teachers and students to make academic experiments on how law graduates can be made more conscientious, rebellious, activist, creative and benevolent. This experimental venture is now reckoned as a forum beyond mere academic practices. It is now well regarded as a platform for igniting inner force of the participants and for renewing and revitalizing their rock firm commitment and motivation towards serving the suffering humanity.

I have seen that ESDR School alumni are hugely changed and are engaged in various legal aid activities as lawyers and human rights activists in different capacities. I wish a great success of the upcoming 6<sup>th</sup> International ESDR Residential School.

A handwritten signature in blue ink that reads "Z. Hossain".

**Professor Md. Zakir Hossain**  
Dean, Faculty of Law  
University of Chittagong  
&  
Member, Bangladesh Judicial Service Commission

## Message

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The protection and promotion of human rights is a mammoth task which needs the engagements and endeavors from all concerns. Particularly, arousing awareness and enthusiasm among young students and scholars is a commendable work. The Residential School organized by the Kathmandu School of Law is an example, par excellence, as to how an education institution can contribute in disseminating the human rights education and culture.

It is my pleasure to avail this opportunity to express my good wishes and appreciations to those students and members of staff who are involved in this publication of the compendium of the 6<sup>th</sup> Residential School on Economic, Social and Development Rights.

In Nepal, like in other politically unstable countries, the economic, social and development rights are relegated to rear-end of national commitment and implementation. Even in courts of law, the justiciability of these rights are made debatable. The executive branch of government, often pleads for lack of resources and necessary legal and administrative mechanism of implementation. I hope, the 6<sup>th</sup> Residential School must have deliberated on these issues and similar other topics. Scholarly discourse meticulously assimilated in this compendium of the 6<sup>th</sup> Residential School on Economic, Social and Development rights would add something in an effort to achieve these rights.

**Kedar Nath Upadhyay**  
Chairperson  
National Human Rights Commission



## Message

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With great pleasure, I extend the cooperation of SALS Forum for the 6<sup>th</sup> international Residential School on Economic, Social and Development Rights and Good Governance with special reference to Emerging Issues. From its inception, the School has had great impact through its curriculum. This school gives a golden chance to students from different parts of the world to come together and get an opportunity to learn importance, relevance and contemporary issues regarding social, economic and development and also the dynamic linkage with human rights and democracy. This program also gives a platform to learn in 21 days the realm of the subject with great enriched knowledge, culture and leadership skill. This is also an opportunity to know each other.

I wish a great success to the 6<sup>th</sup> International Residential School 2010. Also hope it can have a great significance to all the participants.

**Prof. Nomita Aggarwal**  
Former Head and Dean  
Faculty of Law  
Delhi University, India



## Preface

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Economic and social rights of people are directly concerned with development and basic needs of human beings. Protection and promotion of such rights not only empowers persons, but also contributes to the increased participation of them in political process and governance. Recognition and protection of economic and social rights is thus a prelude to consolidation of inclusive democracy. Without recognition and protection of economic and social rights, civil and political rights are remain meaningless, and vice versa.

The prospect for protection and promotion of human rights of people, the disenfranchised groups in particular, is unimaginable or unthinkable in absence of inclusive democracy, rule of law and good governance. Safeguarding of basic liberties is possible only with equitable distribution of development opportunities and resources, with priority to weaker sections. Of course, the existence of every individual member in the group cannot be isolated from his/her group. The individual freedoms and group rights co-exist and the recognition and protection of each contributes to create an environment conducive for enjoyment of other.

When we look at the South Asian situation, socio-economic and political exclusion of the disenfranchised community is a serious problem. The vast majority of the population in and around this region is still deprived, exploited and alienated from development opportunities. A significant number of children in these countries die of malnutrition and lack of access to basic medical care. Many children are born defective simply because their mothers had no adequate nutritious food. Thousands of mothers die due to unavailability of obstetric and maternity services during pregnancy and child birth. A large part of the child population is deprived from educational opportunities and thus they are compelled into the labor market. Child marriage is still a problem, and, most seriously, the sexual violence and exploitation of adolescent girls and women is a serious problem. Safe drinking water and the tolerable standard of living is still a myth for millions. The overwhelmingly larger part of the population in this region and its surrounding countries is economically poor, socially excluded and politically suppressed. While China and India have boosted up their economy and the gross national income, the benefit of the economic development is still far from reach of the rural poor people. The larger part of the GDP in all these countries goes to a smaller group, pushing the majority population towards marginalization. Hence, in-depth analysis and discussion on such issues is thus necessary.

Kathmandu School of Law (KSL) has been playing a crucial role in promoting advocacy of indivisibility of human rights for the last seven years. It believes that the prospect of good governance can be enhanced by promoting economic and social rights along with civil and political rights. The protection and promotion of human rights is inseparably related with the good governance and devolution of powers and vice-versa. While the consolidation of good governance strengthens the prospect of respect for human rights, the later significantly contributes to 'democratize the government institutions'. With this view, KSL has been organizing this 'residential school for students' and 'interactive dialogue of professors' on economic, social and development rights, and good governance for the last five years. Since 2005, this school has been transformed into a platform of law scholars and professors from South Asian region. In 2007, the scope and modality of the program was significantly extended with participation of representatives from South Asia, South East Asia, and African countries.

The platform provides an opportunity for young law scholars and professors to deeply understand the significance of economic and social rights and their relationship with good governance in order to address the problem of exclusion of vast majority of population in the region. The mission is to generate a new leadership for the 'system of governance' and 'institutional capacity building to protect the rule of law and human rights'. The program sincerely commits to develop a culture of human rights and democratic functioning of the governance, with special care and protection of marginalized and disenfranchised groups.

I am confident that the program will be able to 'create a linkage between the democracy and need of economic and social transformation of the society'. It will also be helpful to import best practices of other countries in this regard, and in the meantime will provide an opportunity to learn from their problems and experiences. At the meantime, I take the opportunity to share my impression that funding agencies are more focused on the enforcement of civil and political rights and are not found positive to support the activities to promote the socio-economic and development rights. But, civil and political rights, I believe, are meaningfully enforceable only if the economic and social rights are respected, recognized and protected.

**Dr. Yubaraj Sangroula**  
Executive Director





# KSL

**Kathmandu School of Law**  
Purbanchal University, Nepal



## KSL: A seat of Global Learning

**K**athmandu School of Law (KSL) was established in 2000 AD in affiliation to Purbanchal University, a state University. It is an emerging institution pioneering in the field of legal education and is dedicated to maintain high standards of academic excellence. Its prime objective is to address the need of an academically sound and practically feasible legal education in Nepal. It marks a paradigm in modern methodological teaching to generate future leadership in field of law and justice with special focus to work for the interest of the community. The school with its concrete foundation of effective management body and composite teaching personalities has been a motivating center for effective learning, innovative practices and substantial research. It keeps its firm commitment on serving students of diverse backgrounds who seek a quality and competent legal education inside the country.

### Mission Statement

Kathmandu School of Law is committed to achieve excellence in research and academic scholarships in the field of law and justice and to reflect this in high - quality teaching and learning programs designed to meet the educational and vocational needs of its members.

### Features

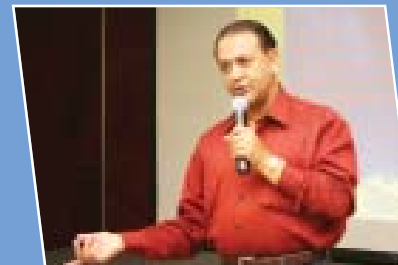
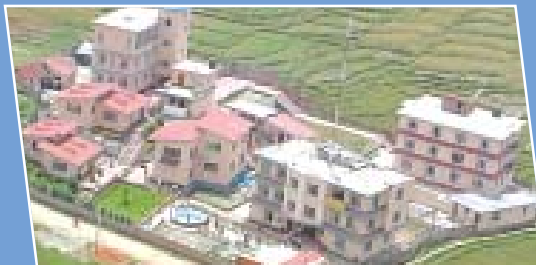
- Participatory and pragmatic way of teaching
- Interdisciplinary forward-looking curriculum with wide subject areas that is competitive to other countries
- Institution to generate lawyers as social engineers who are committed to work for their community and nation at large
- Safeguarding unique values of indigenous legal system by generating trained legal

resources avidly within the country

- Strong nexus with many law schools abroad having frequent exchange programs of teaching faculties and students
- Students' participation in national and international debate programs, regional and international moot court programs, symposium

### Clinical Legal Education Program

KSL runs clinical legal education program via two clinics: Women Victims Legal Aid Clinic and Prisoners Legal Aid Clinic. The program provides pro-bono legal counseling and representation to the indigent persons. Major components of the program includes, Internship at Supreme Court; Legal aid for



and residential programs with records of rewards and academic excellence awards

- Secretariat of South Asian Law Schools Forum for Human Rights (SALS FORUM).

### Academic Program

- A) LL.B. Program
- B) LL.M. Program
- C) M.A. Program

Kathmandu School of Law offers five years LL.B. and two years LL.M programs. It also offers one year interdisciplinary masters' degree in *Human Rights* and *Conflict and International Humanitarian Law*. Prime objective of the programs is to generate proficient and qualified professionals to cater the need of specialized human resources in various areas of law in the nation.

women, marginalized and victims; and Child rights advocacy and legal aid. Students participate in the program as interns and Juniors to legal aid lawyers.

### Library

The Library of the school is one of the extensive and well equipped law libraries in Nepal. It inhouses about 18,000 resource materials including monographs, research reports, books, journals, periodicals, and other unpublished documents.

### Child Right Research and Resource Center

Child Rights Research and Resource Center (KSL Child Rights Center) aims to strengthen research and sharing of information in the issues of child rights at national as well as regional level. The primary objective of the Center is to build a competent

rights regime in Nepal (and South Asia region) by establishing a capable institution to generate human and intellectual resources pertaining to child rights, development and psychology.

The Center has been established as an outcome of the commitment of different like minded institutions to work as joint venture to protect and promote child rights and access to justice. Save the Children Norway, Save the Children Sweden, UNICEF, Tdh Nepal, and CeLRRd deserve credit to initiate this important mission.

### Community Outreach Program

KSL has engendered the concept of 'engaged learning'. Students are encouraged to learn by observation and critical analysis. Students' involvement in community outreach programs such as conducting field study, involving in public awareness campaign and legal aid activities are prioritized along with regular class lectures.



### Promotional Programs

Besides launching academic programs, KSL also works as implementing body of different promotional programs that come under promotion of democracy, human rights, and rule of law, in partnership with different national and international civil society organizations. Students work as researchers and interns in such programs.

### Moot Court Room

The school has constructed a well-setup court room for a simulation exercise on cases. Moot court practice is the important method of teaching law to prepare students for competent advocacy. This moot court room has been dedicated to learned advocate and judge Lava Dev Bhatta.

### Online Internet Resource Center

An online internet resource center has been a priority concern of KSL to provide students an internet facility encouraging them to carry out online research as a part of their regular curriculum. The center assists students in learning through web by involving them into online legal research method.

### Developing a Networked Asia-Pacific Master's Degree in Human Rights and Democratization

KSL is going to launch a networked Asia-Pacific Master's Degree Course in Human Rights and Democratization in partnership with the University

and knowledge of, and respect for, human rights law amongst key actors in the criminal justice system in Nepal, including police, prosecutors and young lawyers.

The project aims to improve awareness of avenues of accountability for violations which do occur; enhance public confidence in the justice system; and strengthen the effective functioning of the justice system in accordance with international legal standard. It will address the culture of impunity for serious violations of human rights including enforced disappearances, state-sanctioned killings and torture.



### Guest Lecture Programs

KSL maintains a practice of organizing a series of Special Lectures inviting dignitaries from reputed national and international institutions. National dignitaries, diplomats, ambassadors are invited frequently to interact with faculty and students and to share their views on the situation of the country. It provides a platform for students to learn about foreign affairs and international impression towards the country.



of Sydney to strengthen the framework for the protection of human rights, justice and the rule of law in the Asia-Pacific region and to promote democracy in the region. The ultimate objective of the Course is to ensure the protection and enjoyment of human rights by all the people in the region without discrimination along with the strengthening of the framework of democracy.

### New research: Safeguarding Human Rights in the Criminal Justice System in Nepal

Kathmandu School of Law and Sydney Centre for international Law, University of Sydney are jointly launching a one-year project to work together on the area of "Safeguarding Human Rights in the Criminal Justice System in Nepal." The main objective of the project is to improve understanding



# ESDR Overview

## Economic, Social and Development Rights and Good Governance

**K**athmandu School of Law (KSL) has been playing a crucial role in promoting advocacy of indivisibility of human rights for the last eight years. It believes that the prospect of good governance can be enhanced by promoting economic and social rights along with civil and political rights. The protection and promotion of human rights is inseparably related with the good governance and devolution of powers and vice-versa. While the consolidation of good governance strengthens the prospect of respect for human rights, the later significantly contributes to democratize the government institutions.

With this view, KSL has been organizing residential programs for students and interactive dialogue of professors on economic and social rights and good governance. Since 2005 the program has been organized in coordination with SALS Forum and has been transformed into a platform of law students and teachers from South Asian region and abroad. The platform provides an opportunity for young law students and teachers to deeply understand the significance of economic and social rights and their relationship with good governance in order to address the problem of exclusion of vast majority of population in the region. Programs in the past have made significant outcomes, which can be outlined as follows:

- Students have developed a tremendous sense of social responsiveness, and pro-activism towards protection and promotion of socio-economic rights of people. This has been evident from the enthusiasm of students to participate in civic education of grassroots communities. In 2005, KSL students organized

a series of activities such as research on social responsiveness of the media in Nepal, democracy orientation for secondary school students, filing of public interest litigation against exploitation of child workers, and the education of youths and students on constituent assembly to name a few.

- KSL students have been generating an environment conducive for enrollment of increased number of *dalit* and other marginalized students in legal education. They have been helping to establish scholarship funds and raise financial support.
- A regional hub of law students, faculties and rights activists has been established through ESDR Alumnus, which will be beneficial for regional collaboration on promoting socio-economic and development rights, and good governance.

### ESDR ALUMNUS

The ESDR Alumnus was formed in 2006 taking the responsibility to assist to organize the residential programs for the following years. Members of the Alumnus are as follows:

Mr. Ankit Jain, India	Chairperson
Mr. Rataphum Bausumlee, Thailand	Vice-President
Ms. Reena Pathak, Nepal	Treasurer
Ms. Sabrina Ali, Bangladesh	Secretary
Ms. Zhu Li, China,	Member
Mr. Farooq Azam, Pakistan	Member
Ms. Nima Om, Bhutan	Member

### OBJECTIVE

The residential school was expected to address the following objectives:

- Promotion of increased regional academic and professional discussions on issues of good governance and its relation with economic, social and development rights;
- Promotion of research and consistent dialogue on human rights (economic and social rights in particular), inclusive democracy and good governance in academic institutions in the region targeting students, faculties, government experts and activists at the South Asian regional level;
- Development of a regional platform for academics and professionals for discussion on human rights (economic and social rights in particular), inclusive democracy and good governance;
- Enhancement of intellectual capacity building and human resource on these issues, with a view to assist in the process of constitution making in context of Nepal.





## IMPRESSION AND EVALUATION OF THE COURSE:

The Course is first of its kind in the South Asian region as well as in the surrounding countries. It has been viewed extremely important in providing an international forum for many Nepalese faculties as well as students to test their ability and expertise. In context of Nepal, the Course has developed the confidence of KSL to organize and work as a leading institution in the region and surrounding countries on issues of economic and social justice, good governance and rule of law.

Productivity of the Course has been established by the following evaluation tools:

- Participatory Survey by the Participants: At the end of the program, all participants are given opportunity to evaluate the standards, quality and relevance of the Course. The analysis of the impressions of the participants establishes that the Course has played a significant role in enhancing the understanding about the several issues covered by the Course.
- Graphic evaluation of the individual participant presents his/her specific contribution in the interactions and workshops.
- The "elocution" competition provides an opportunity to judge the knowledge of the participants on the issues covered by the Course.



## ACHIEVEMENTS

- A regional forum to promote study on Economic, Social and Development Rights and Good Governance has been established. The forum is the first of its kind in the region and surrounding countries. It has been catalytic to bring a number of law professors specializing on economic and social rights and good governance, and experts working for the vulnerable groups from good governance and rule of law-based approach. The forum has been proved crucial to gather a number of experts of the region and share experiences in this area.
- A regional network of law faculties, experts, students and rights advocates has been constituted to address the following objectives:
  - Building awareness on the economic and social justice to vulnerable groups as a milestone for sustaining democracy.
  - Developing a network for continuous communication and collaboration on issues of good governance and rule of law by exchanging information and experiences in respective countries.
  - Creating a pool of experts on the issues of economic, social and development rights and good governance.
  - Generating funds for sustainability of the course in future.
  - Launching publication on the given areas of issues.
- A comprehensive compendium on Economic Social and Development Rights and Good Governance has been developed that includes research reports, articles and workshop proceedings. This compendium is expected to provide rich resource materials for understanding of economic, social and development rights and good governance. This will also provide resource materials for the course in future.
- This Residential School has enhanced the capacity of KSL as a center for in-depth study and research on issues of economic, social and development rights as well as good governance.
- Importantly, the School has provided a rich input to the process of transformation of the Nepalese society. The problems faced by people in relation to the economic and social justice as well as good governance and the interventions designed by the Course to address such problems will provide a rich insights for the Constituent Assembly while making the new constitution in Nepal.

## Selection of the Participants:

Law students from South Asian region or abroad, who have interest in the area of human rights and good governance are eligible to apply for the course. Additionally, interested personnel of legal field, individual or representative from the institutions working in the related area are also encouraged to apply.

Selection of participants is carried out on the basis of their knowledge, interest, and motivation on the course.

## Curriculum:

In depth and extensive curriculum is developed by experts in various aspects of socio economic and development rights, and good governance. The curriculum is designed as a short term diploma course.

## Course Registration:

### Registration fee for

Nepalese Participants	: NRS. 5000
International Participants	: \$ 150

## Resource Persons:

National and International experts on socio economic rights and good governance facilitate the program. Experts and advocates working for the vulnerable groups from rights and rule of law-based approach are invited for the program.

## Logistic Arrangement:

Expenditure on accommodation and food for participants during the program period is borne by the organizer. The organizer makes arrangements for the field research, meetings and other visits that fall under purview of the program. No extra cost is levied from participants.

The organizer bears travel expenditure of the expert and disburse the moderate remuneration for his/her service. It arranges local transportation, accommodation and food for them accordingly.

Participants shall bear their travel expenditure by themselves. Organizer will not be responsible to pay their personal bills and usages.

## Course Certification:

Participants are certified for participating in the residential school at the end of the program. Selected students from final evaluation of the program are granted 'Diploma Certificate'.

## Methodology:

- Preliminary Orientation
- Field Research
- Country Presentation by Students and Comments from Professors
- Workshop Discussion and Presentation of Findings
- Plenary
- Expert's Presentation/ Brainstorming
- Interaction and Discussion
- Group Exercise
- Preparation of Report/ Charter
- Examination and Evaluation

## Available Facilities:

Residential school serves with library facilities with books and reference materials on the related issues. It also provides an online internet facility for the participants. First Aid is always at participants' disposal.

# 1<sup>st</sup>

## Winter Residential School on Economic and Social Rights, and Good Governance - 2004-2005

### Program Overview

The 1<sup>st</sup> Residential School provided a national forum to the students of KSL to interact on the manifold issues of economic and social rights and good governance amidst renowned experts of the country. The program was scheduled for five working days starting from 7<sup>th</sup> of January 2005. Selection of participants and preliminary orientation was held in the end of December 2004. The program aimed at educating students about the interrelationship of economic and social rights with good governance which forms the foundation of democracy and welfare state. Theoretical aspects of the issues were discussed followed by the interactions, group discussions and presentations.

The following areas were covered :

- Concept of Universality of "Human Rights".
- Position of Economic and Social Rights: Interrelationship of "Good Governance and Economic and Social Rights"
- Devolution of Powers and Concept of Sovereignty of People as an Indispensable Basis for Enjoyment of Economic and Social Rights by People'
- Extension of the "Concept of Rule of Law" and its implication in Ensuring "Good Governance and Enjoyment of Economic and Social Rights"
- Globalization & Privatization, and Marginalization of Peoples of Least Developed Countries.

At the end, participants were encouraged to develop a *Charter of Fundamental Rights of People of Himalayan Kingdom of Nepal and Structure of the*

Date : 7 Jan - 11 January 2005

Venue : Nagarkot, Nepal



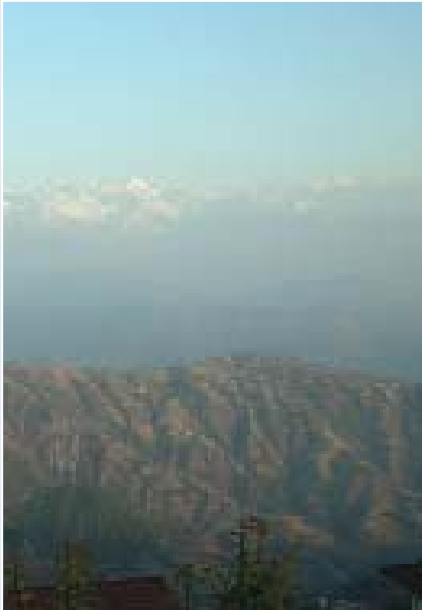
*Government and Its Mechanisms. Not only that* Participants also expressed their commitment to continue the initiatives on these issues as a part of their special project "Activism through Academic Pursuit." Civic education in grassroots community, research on social responsiveness of the media in Nepal are few other efforts made as part of this project.

### Certification and Award

Certificate of participation was distributed to all participants on the final day of the Residential School . Award entitled *Nation's Future Human Rights Lawyer* was given to Ms. Samikshya Baskota for her best performance in the program.



Participants at Group Discussion



Late Justice Laxman Pd. Aryal with participants of 4th School

#### PARTICIPANTS OF THE PROGRAM

##### Students from LL.M

Mr. Indra Bdr. Thapa, Ms. Awani Mainali, Mr. Prithivi Raj Timilsina, Mr. Jaya Poudel, Mr. Tanka Aryal, Ms. Bishwomani Pokharel, Mr. Shambhu Karki

##### Students from LL.B

Mr. Ramesh Parajuli, Mr. Ramsharan Pokharel, Mr. Sandesh Acharya, Mr. Krishna Katwal, Mr. Niranjana Adhikari, Ms. Sindhu Sitaula, Ms. Pallavi Joshi, Ms. Sandhya Basani Sitaula, Mr. Saroj Regmi, Ms. Shobha Pokharel, Ms. Dikshya Tuladhar, Ms. Samikshya Baskota, Mr. Apurba Khatiwada, Ms. Reena Pathak, Ms. Jony Mainali, Ms. Monalisa Bhatta, Ms. Prabinta Osti, Ms. Supriya Timilsina, Mr. Ganesh Nayak, Mr. Bhabesh Gautam, Ms. Devi Chaudhary, Mr. Ramesh Thapa, Mr. Rajib Sangroula

#### OUTPUT

### The participants developed a new Charter of Fundamental Rights of the Kingdom of Himalaya

#### Charter of Fundamental Rights of the Kingdom of Himalaya

##### Preamble:

We the sovereign people of Himalayan Kingdom respecting inherent human dignity, affirm the promotion of socio-economic justice, peace and good governance, human rights, independence of judiciary, rule of law and self-actualization through the active mobilization of natural resources;

We believe in multiparty democracy through adult franchise based on proportional representation to protect the democratic values through the promotion of self-governance.

Thus, this Charter of Fundamental Rights of the Kingdom of Himalaya has been duly approved by the constitutional assembly on the date of 9 January 2005.

##### Fundamental Rights:

- Article 1: Right to life
- Article 2: Right to equality
- Article 3: Right to freedom
- Article 4: Right to self-determination
- Article 5: Press and publication right
- Article 6: Right to Criminal Justice
- Article 7: Right to work
- Article 8: Right to information
- Article 9: Right to Education
- Article 10: Right to Health
- Article 11: Right to Citizenship
- Article 12: Cultural and Religious Rights
- Article 13: Right against Exile
- Article 14: Right to Privacy
- Article 15: Right to Property
- Article 16: Right against Exploitation
- Article 17: Right to Socio-economic Justice
- Article 18: Right to Remedy



# 2<sup>nd</sup>

## Winter Residential School on Economic and Social Rights, and Good Governance - 2005

Date : 18 - 24 October, 2005  
Venue : Nagarkot, Nepal  
Participating Countries: India, Nepal, Bhutan

### Program Overview

2<sup>nd</sup> Residential school was organized jointly by KSL and SALS Forum. The program developed seven days learning course schedule starting from 18<sup>th</sup> October 2005. SALS Forum developed the curriculum for the program and identified participants and resource persons. This year marked the beginning for regional participation from three countries viz. India, Nepal and Bhutan.

The program widened its modality from this year by incorporating components like field research and country presentations. Philosophy and core values of human rights, good governance, democracy, rule of law etc. and their implications in South Asian subcontinent were the principle focus of discussion. Various aspects of economic, social and cultural dimensions of human rights and factual situation of their implementation in the participating countries were deliberated.



The following areas were covered :

- Empirical Study on the Situation of Socio-Economic Rights in Rural Villages
- Position of Economic and Social Rights: Interrelationship of "Good Governance and Economic and Social Rights" of the research to the participants
- Concept of Universality of "Human Rights".



- Devolution of Powers and Concept of Sovereignty of People as an Indispensable Basis for Enjoyment of Economic and Social Rights by People'
- "Concept of Rule of Law" and Its Implication in Ensuring "Good Governance for the Enjoyment of Economic and Social Rights"
- Impact of Globalization and Privatization in Economic and Social Rights of People in Developing Countries

The program adopted clinical methods of learning giving ample opportunity of participation. Team work, presentation and discussion were the prime mode of learning through out the program. Participants also conducted field research in different villages near Nagarkot VDC, particularly, on the issues of right to health, education, housing, food and adequate standard of living. Participants developed a Charter of the Fundamental Rights of Himalayan Kingdom as to recognize the enforceability of



economic, social and cultural rights which is the fundamental rights of the citizen in the Constitution of the country and also the democratic framework of governance. They also proposed different constitutional bodies and economic development model for the sustainable development of the country. Recalling the idea that no single state is poor but is poorly managed, participants prepared the model on the basis of the management of the resources of the country for its holistic development.

### Certification and Award

Certificate of participation was distributed to each participant on the last day of the Residential School. Ms. Antara Singh and Mr. Barun Ghimire from LL.B first year bagged award of "Nation's Future Human Rights Lawyer".

#### PARTICIPANTS OF THE PROGRAM

##### Students from Bhutan

Tshering Lhamo (IP), Delhi India  
Pema Dechen (IP), Delhi India

##### Students from India

Manika Indraparasha University (IP), Delhi  
Mallika Ramachandran, (IP), Delhi

##### Students from Nepal

LL.M. - Sanjit Kumar Singh, Samir Ghimire, Amrita Thebe,  
Punadevi Maharjan, Dharma Ratna Manandhar,  
Paritosh Poudyal, Rajan Adhikari  
LL.B. - Sarita Nepal, Bibhu Pokhrel, Pushpa Pokhrel, Alok  
Pokhrel, Sushila Karki, Subasha Lamichane, Renu  
Rajbanshi, Biswo Jit Khadka, Suresh Chapagain,  
John Karki, Anjana Adhikari, Manisha Poudel, Sajana  
Parajuli, Barun Ghimire, Niti Karki, Aruna Joshi,  
Saubhagya Shah, Antara Singh, Prizu Baidhya,  
Sandeep Poudel

The program grabbed intended success in order to aware participants on the importance of socio economic rights and good governance in the development of the country. Active participation and inquisitiveness of the participants, unwavering dedication of the organizing team, and insightful contribution from the resource persons have encourages KSL to expand the program in international level in the days to come.

#### Outcomes:

- Charter of the Himalayan Kingdom of Nepal,
- Structure of Government and its Mechanism including Economic Development Package

### Charter of Fundamental Rights of Himalayan Kingdom

#### PREAMBLE

We, the people of the Himalayan Kingdom, having solemnly resolved to restore the lost confidence and loyalty to the state and well recognizing our international commitments, undertake to constitute the Himalayan Kingdom into a **SOVEREIGN, SECULAR, WELFARE AND INCLUSIVELY MULTI-PARTY DEMOCRATIC STATE**, with **CEREMONIAL MONARCHY**;

Commit ourselves to secure to all its citizens;

JUSTICE- social, economic, political, cultural and religious;

EQUALITY of status and of opportunity;

LIBERTY of thought, expression, belief, faith and worship with a view to ensure unity amidst our diversity;

And to promote among them all FRATERNITY;

Assure DIGNITY to every individual;

And to uphold the INTEGRITY of the State;

With the broader aim of building a united Himalayan Kingdom able to take its RIGHTFUL PLACE in the family of nations, HEREBY adopt this Constitution through our freely elected representatives.

#### Part iii- fundamental rights

Article 1 - Right to life and personal liberty

Article 2 - Right to equality

Article 3 - Prohibition of discrimination on grounds of religion, race, caste, ethnic background, political ideology, linguistic preference, sex or place of birth.

Article 4- Equality of opportunity in matters of public employment.

Article 5 - Right to abolition of untouchability

Article 6 - Right to freedom

Article 7 -Right to property

Article 8- Right to participate in political affairs

Article 9 - Right against exile

Article 10 - Rights with regard to criminal justice

Article 11- Right to environment

Article 12- Right to privacy

Article 13- Right to informtion

Article 14- Religious, cultural and linguistic rights

Article 15- Right to health

Article 16 - Right to food, water and sanitation

Article 17- Right to shelter

Article 18- Right to work

Article 19- Right to education

Article 20- Right to development

Article 21- Remedies for enforcement of rights conferred by this part

# 3<sup>rd</sup>

## Winter Residential School on Economic, Social and Development Rights, and Good Governance - 2006

Date : 28 Dec. - 12 January, 2006

Venue : Nagarkot, Nepal

Participating Countries: India, Bangladesh, Bhutan, Nepal, Pakistan, China and Thailand



### Program Overview

3rd Year Residential School was unique and significant in multiple aspects. From this year the School was able to gain the status of international program with increasing number of participating countries and wide-ranging curriculum. Curriculum was developed considering the credit hours and hence the program was acknowledged as *Short Term Diploma Course*. Joint effort of SALS Forum and KSL promoted the liaison between different law schools in Asia and abroad which contributed in increasing number of participants from different corner of the world. National and international experts and resource persons were also identified and invited to facilitate the sessions.

The following areas were covered:

- Comparative Analysis of Concept of Democracy and Human Rights
- Cultural Relativism- Myths and Realities
- Problems, Challenges and Prospects of

- Democracy and Protection of Human Rights
- Concept of Inclusive Democracy and Constitutionalism
- Problems, Situation and Challenges Faced by Marginalized, Endangered Communities in South Asia and Surrounding Countries in Context of 'Inclusivity' in the System of Governance and Protection of Human Rights
- Concept of Good Governance and Democracy
- Accountability and Transparency (Prevention

of Corruption and Its Trend Analysis with reference to SAARC and Surrounding Countries)

- Economic Impact and Management of Globalization and Intensified Consumerism
- Linkages between Good Governance and Economic and Social Rights
- Field Research Modality and Methodology
- Interaction of participants on linkage between good governance and socio economic and development rights (laws, policies & directives) with representatives of government, planning commission, donor agencies, INGOs, NGOs and representatives of the marginalized community.
- Int'l Perspective on Socio Economic Rights
- Int'l Perspective on Development Rights
- Concept of Right to Self Determination in Context of CERD

With the focused discussion on economic social and development rights of marginalized and disenfranchised community, the program was successful in understanding and critically analyzing the deepening factors and specific issues of socio economic and development rights of those groups and situation of good governance of the participating countries. Identifying the specific problems and SWOT of the respective country, the program explored solution at national as well as regional level.

Additionally, the program was divided into different sessions apart from lectures and presentations:

The program was also significant in forming the ESDR Alumnus.



## Inauguration

The three week regional residential school was officially inaugurated by Acting Chief Justice Rt. Hon'ble Kedar Prasad Giri on 28th Dec. 2006.

## Observation Visit and Interaction

An interaction program was held in the office of the Attorney General of Nepal. The meeting with the Judiciary, experience sharing about status of Nepalese Judiciary, and introduction of the foreign/national participants and professors amidst each other, was the objective of the program.



## Plenary

Interaction was held on linkage between good governance and socio-economic and development rights with representatives from the government, donor agencies, INGOs, NGOs and the marginalized community. A presentation was made concerning the socio-economic condition of the Nepali people by a team of KSL students. Questions were raised on roles and accountability of those organizations to the problems. Queries were answered by the panelists, Ms. Preeti Thapa, The Asia Foundation, Nepal; Ms. Madhuri Singh, USAID; Mr. Bishnu Adhikari, USAID; Mr. Hiramani Ghimire, DFID; Mr. Sundeep Bista, DANIDA; and Mr. Tulasi Upreti, Rastriya Banjiya Bank.

## Field Research

Field research was conducted in different places of Nagarkot VDC to explore the situation of good governance and the problems being faced by rural, and marginalized communities. Participants were divided into eight groups and sent to various areas surrounding Nagarkot, to conduct the research.

## Television Interaction

Participants went to the 'Youth Forum Program', of the Nepal Television Metro Channel to voice their opinions on the topic 'Opportunity for the Youths in the Promotion of Socio-Economic Rights and Good Governance'.

## Elocution Competition

Regional Elocution Contest on 'Marginalized Community's Socio Economic and Development Rights and their Participation in Political Process and Governance' was conducted during the program Mr. Avishek Gazmere from KSL bagged 'Best Performance Trophy' for the Regional Elocution Competition.

## Evaluation

Evaluation was made on the basis of daily performance of the participants and written examination taken at the end of the program. On the basis of this evaluation 21 participants were able to bag the Diploma Certificate.

## Certification and Award

Finally, the entire program was concluded with closing ceremonies and awards distribution. Mr. Rataphum Busumlee, participant from Thailand bagged the 'Academic Excellence Award' while Ms. Zhu Li, participant from China, received the 'Fellowship Award'. The distribution of participation certificates, and token of memoirs was also awarded to all the participants. 21 participants had been successful in acquiring 'Diploma' certificates in the program.

## PARTICIPANTS OF THE PROGRAM

### Students from Bangladesh

Md. Yasin Khan, Mohiuddin Md. Hanif, Ms. Sabrina Ali, Md. Nasir Uddin

### Students from Bhutan

Mr. Kelden Jamtsho, Ms. Nima Om.

### Students from China

Ms. Zhu Li

### Students from India

Ms. Tapashi Barman, Mr. Amrish Kumar, Mr. Ankit Jain, Ms. Amrita Bahri, Mr. Abhisekh Gautam

### Students from Pakistan

Mr. Farooq Azam

### Students from Thailand

Mr. Rataphum Buasumlee

### Students from Nepal

Rabindra Bikal Khaniya, Laxmi Sharma, Kamal Guragain, Nirmal Kumar Upreti, Amit Upreti, Avisekh Gazmer, Kanchan Koirala, Manaslu Gurung, Manish Karki, Mukesh Dhungana, Nischal Pokhrel, Pooja Khatri, Prabin Subedi, Rachana Bhusal, Rajish Hada, Ram Sharan Pokhrel, Reena Pathak, Rojina Thapa, Roshan Bdr. Kadyat, Sabana Parajuli, Sandhya Sitaula, Santosh Maharjan, Sudip Pokharel, Suraj Basnet



### ESDR Alumnus:

The Alumnus was formed taking the responsibility to assist to organize the residential programs for the following years. Members of the Alumnus are:

Mr. Ankit Jain, India	Chairperson
Mr. Rataphum Bausumlee, Thailand	Vice-President
Ms. Reena Pathak, Nepal	Treasurer
Ms. Sabrina Ali, Bangladesh	Secretary
Ms. Zhu Li, China	Member
Mr. Farooq Azam, Pakistan	Member
Ms. Nima Om, Bhutan	Member



# 4<sup>th</sup>

## Winter Residential School on Economic, Social and Development Rights, and Good Governance - 2007

Date : 22 Sept. - 5 Oct. 2007

Venue : KSL & Telkot, Nepal

Participating Countries: India, Bangladesh, Nepal, Bhutan, Cambodia, China and Malawi

### Program Overview

4<sup>th</sup> Residential School followed the modality of third Residential School. The program was conducted with the theme of economic social and development rights of women, marginalized and endangered community and good governance. The year was able to expand the dimension of the program with participants from African continent. The platform served to be the significant international forum to share the experience of many countries and learn best practices. The forum was also significant to promote discussion on exclusion of disenfranchised communities and its resultant impact on democracy. Discussion was particularly focused on the need of addressing the problem of socio-economic exclusion of vast majority of population in the developing countries, which collectively constitutes the disenfranchised condition.

The following themes were covered:

- Broader Perspective on Democracy and



Human Rights Scenario of Impacts of Socio Economic Rights of the Region

- Cultural Relativism- Myths and Realities
- Comparative Analysis of Concept of Democracy and Human Rights
- Problems, Challenges and Prospects of Democracy and Protection of Human Rights with special reference to Experience of the participating Countries.
- Concept of Inclusive Democracy and Constitutionalism
- Historical Perspectives of ESDR
- Enforceability and Justiciability of ESDR

• Issue of ESDR and Conflict Transformation (Country experiences)

- Accountability and Transparency (Prevention of Corruption and Its Trend Analysis with reference to SAARC and Surrounding Countries)
- Concept of Good Governance and Democracy
- Economic Impact and Management of Globalization and Intensified Consumerism
- Linkages between Good Governance and Economic and Social Rights - Experience Sharing
- Linkages Between ESDR and Reproductive Rights(country Experience)
- Gender Equality and Reproductive Rights
- Importance of ESDR in Addressing the Caste Problem (Untouchability) Constitution, Laws, Policy, India
- Endangered Minority and Role of ESDR (Protection)
- Role of Asian Universities in Enhancing Studies on ESDR
- Field Research to some VDCs of Nagarkot to explore situation of good governance and problems of women, and marginalized communities
- International Perspective on Socio Economic Rights
- Indispensability of Economic and Social Rights for democratic rights of people
- Int'l Perspective on Development Rights
- Responsibility of developed countries to support consolidation of rights to development in developing countries
- Concept of Right to Self Determination







- Indigenous Communities and Right to Self determination

Apart from lectures and presentations the program included the following sessions:

### Preparatory Orientation

One week session for the preparatory orientation was scheduled from 14 September in order to provide basic concepts on the thematic topic of the year. The orientation was targeted to interested participants from non legal background and for the participants from other countries who would like to get basic information about the thematic topic to prepare themselves for the active discussion in the formal Residential School.

### Panel Discussion

Panel discussion was held on the topic Gender Equality and Reproductive rights from the perspective of medical science and socio economic rights. Prominent professionals of the related field were invited to put their view on the issue. Interaction with participants followed the session.

### Field Research

Field research was conducted in different places of Nagarkot VDC to explore the situation of good governance and the problems being faced by women and marginalized communities.

### Roundtable Discussion

Roundtable discussion on Role of Asian Universities in Enhancing Studies on ESDR was held amidst national and international professors and the participants. The discussion focused on role of university and law students to incorporate subjects of ESDR in the curriculum and organize research and extra curricular activities on those issues. The discussion acknowledged the role of law students and students society in enhancing studies on ESDR.

### Interaction with Ambassadors

British Ambassador to Nepal Dr. Andrew Hall and Danish Ambassador Mr. Finn Thilsted paid a visit to the program. Dr. Hall addressed the lecture series on support of British government in conflict

transformation and promoting democratic values in Asia particularly in context of Nepal. Similarly, Mr. Thilsted addressed the closing session highlighting the role of Danish government to address the peace process particularly in context of Nepal and hence contributing to the socio economic justice of the people.

### Observation Visits

Participants visited National Judicial Academy and National Police Academy to learn the activities and initiatives of these institutions in ensuring socio economic justice of the people.

### Elocution Competition

Elocution Competition on Marginalized and Endangered Community's Socio Economic & Development Rights and their Participation in Political Process and Governance was conducted at the end of the program. Ms. Swechya Ghimire, from KSL bagged 'Best Performance Trophy' for the International Elocution Competition.

### Evaluation

Evaluation was made on the basis of daily performance of the participants and written

## PARTICIPANTS OF THE PROGRAM

### Students from Bangladesh

Syeda Rafia Zaman, Chandan Kanti Nath, Farjana Yesmin, Aminul Islam

### Students from Bhutan

Sushma Kharka Chettri, Ishwor Mishra

### Students from Cambodia

Khun Sovannetra

### Students from China

Shi Jun

### Students from India

Kalpna Tyagi, Divyakant Lahoti, Meenakshi Midha, Apoorv Garg

### Students from Malawi

Fegus Frans Lipenga, King Norman Rudi

### Students from Nepal

Ashikram Karki, Reetu Bhandari, Renu Ghimire, Rahul Chapagain, Achyut Raj Budhathoki, Nishika Sharma, Arati Shrestha, Swarnima Bhandari, Deependra Danuwar, Bijaya Kumar Basnet, Laxmi Sapkota, Swechhya Ghimire, Mukesh Batajoo, Avima Upreti, Srijana Regmi, Prabhu Krishna Koirala, Santosh KC, Narayan Kharel, Bishnumani Adhikari, Samir Pokhrel, Smrita Shakya, Thakur Prasad Neupane, Anil Kumar Shrestha, Ram Bdr. Khadka, Chandra Bdr. Deuba, Tulika Jha, Surya Chandra Lal Lama, Kalpana Bishwokarma, Ankita KC, Akriti Giri, Krishna Kumar Suwal

examination taken at the end of the program. On the basis of this evaluation 19 participants were able to bag the Diploma Certificate.

### Certification and Award

The entire program was concluded with closing ceremony and award distribution. Ms. Nishika Sharma from KSL bagged the 'Academic Excellence Award' and Mr. King Norman Rudi, participant from Malawi, received the 'Fellowship Award'. The participation certificates, and token of memoirs was also distributed to all the participants. 21 participants had been successful in acquiring 'Diploma' certificates in the program.



# 5<sup>th</sup>

## Winter Residential School on Economic, Social & Development Rights, and Good Governance - 2008

Date : 16 October - 7 November, 2008

Venue : Telkot, Bhaktapur, Nepal

Participating Countries: India, Nepal, Thailand, Bangladesh, China, Sri Lanka

### Introduction

Kathmandu School of Law (KSL) successfully implemented the 5<sup>th</sup> 'International Residential Course on Economic, Social and Development Rights, and Good Governance' from 16 October to 7 November, 2008 in cooperation with South Asian Law Schools Forum for Human Rights (SALS Forum) and co-funding by Danish Institute for Human Rights (DIHR). The primary goal of the Course was to provide opportunities for law faculties, students and rights advocates to address the issues of inter-relationship between economic, social and development rights and good governance with special focus to constitution making in developing countries. The Course envisaged addressing the following long-term objective:

- Development of understanding about indispensability of economic and social empowerment of communities for sustainability of democracy and promotion of rule of law and good governance.
- Sharing of experiences and ideas on situation of good governance and rule of law among



South Asian and surrounding countries, including some countries from other continents.

The overall objective of the programme was to academically assist to create an environment conducive for fostering an institutional structure of the good governance as well as to enhance prospect for recognition and protection of socio-economic, and development rights as fundamental rights by the forthcoming constitution as well as means to transform conflict.

The Course intended to address the following specific

objectives:

- Promotion of increased regional academic and professional discussions on issues of good governance and its relation with economic and social rights, thereby enhancing the political empowerment of marginalized groups.
- Promotion of research and consistent dialogue on human rights (economic and social rights in particular), inclusive democracy and good governance in academic institutions in the region.



- Development of an international platform for academics and professionals for discussion on human rights (economic and social rights in particular), inclusive democracy and good governance.
- Facilitation in drafting the new inclusive constitution of the country through Constituent Assembly in context of Nepal.

A group of 50 law teachers, students and rights advocates from Bangladesh, China, India, Nepal, Sri Lanka, Sweden/Morocco and Thailand participated in the Course. Professors from Bangladesh, China, India, Japan and Nepal conducted the Course as residential resource persons. Professors and experts from Australia and experts on good governance working in different development agencies in Nepal also provided classes as resource persons.

### Achievements

- A regional forum to promote study on Economic, Social and Development Rights and Good Governance has been established. It has been catalytic to bring a number of law professors specializing on good governance and rule of law perspectives and experts and advocates working for the vulnerable groups from good governance and rule of law-based approach. The forum was proved crucial to gather a number of experts of the region in this area.
- A regional network of law faculties, experts, students and rights advocates has been constituted to address the following objectives:
  - Building awareness about the economic and social justice to vulnerable groups as a milestone for sustaining democracy.
  - Developing a network for continuous communication and collaboration on issues of good governance and rule of law by exchanging information and experiences in respective countries.
  - Creating a pool of experts on the issues of



economic, social and development rights and good governance.

- Generating funds for sustainability of the course in future.
- Launching publication on the given areas of issues.
- Providing a mechanism to select resource persons and participants for the course.
- A compendium on Economic Social and Development Rights and Good Governance has been developed which includes overview of economic, social and development rights, and good governance and information about the course objectives and

proceedings. This compendium is expected to provide resource materials for understanding of economic, social and development rights and good governance. This will also provide resource materials for the course in future.

- This platform has enhanced the capacity of KSL as a center for in-depth study and research on issues of economic, social and development rights as well as good governance.
- Finally, the platform has provided a rich input to the process of transformation of the Nepalese society. The problems faced by people in relation to the economic and social justice as well as good governance and the interventions designed by the Course to address such problems will provide a rich insights for the Constituent Assembly while making the new constitution in Nepal.

### PARTICIPANTS OF THE PROGRAM

#### Students from Nepal

Akshyata Shrestha, Anuj Thapa, Anurag Devkota, Asmita Maharjan, Deepak Prasai, Gambir Man Jyakhwo, Ghanshyam Ghimire, Gokul Sapkota, Hasina Pradhan, Jyoti Pandey, Kriti Singh Bhandari, Laxmi Bakhadyo, Laxmi Pokharel, Madhusudan Tamang, Nanda Kr. Shrestha, Parashmani Pokharel, Prashant Kr. Sah, Prashant Pathak, Prativa Khanal, Rajani Maharjan, Ramrai Siwakoti, Sangita Biswakarma, Sanjeeb Sangroula, Shradha Atreya, Subhas Biswakarma, Smriti Dhungana, Smriti Pokharel, Sunil Hakaju Shrestha, Suvas Kumar Bhattarai, Tirtha Bahadur Baidhya, Nitu Gadtaula and Nishan Thapa

#### Student from India

Aastha Vidhi, Ajit Singh, Palka Rishi and Pancha Rishi Dev Sharma

#### Students from Thailand

Suwan Masmek, Medhapan Tianchainan and Noufal Abboud

#### Students from Bangladesh

Bapan Chandra Das, Tabassum Mokhduma and Zaker Ahmad

#### Student from China

Zhu Wei

#### Student from Sri Lanka

Abdul Raheem Mohammed Zulfi



# 6<sup>th</sup>

## International Residential School on Economic, Social and Development Rights, and Good Governance with Special Reference to Emerging Issues - 2010

Date : 29 April - 19 May, 2010  
Venue : Telkot, Bhaktapur, Nepal

### Background

No enforcement of civil and political rights is possible and meaningful without due respect to the economic and social rights. These two types of right indeed operate interdependently and complementarily. The civil and political rights which constitute as basic elements of a workable democracy are not fully enforceable in the condition where the economic and social rights are not recognized and protected. The sustainability of democracy depends on socio-economic justice, and the economic and social rights are the instruments of socio-economic justice.

Moreover, the interrelationship of socio-economic rights and good governance is a cornerstone for democratization of the State, in particular countries like Nepal which embarked to democracy recently. The protection and promotion of human rights is inseparably related with the good governance and devolution of powers and vice-versa. While the consolidation of good governance strengthens the prospect of respect for human rights, the later significantly contributes to 'democratize the

government institutions'. With this view, KSL has volunteered to take responsibility of hosting this program in Nepal, which provides an interactive platform for future generation of lawyers to better know on issues of economic, social and development rights and good governance. KSL has successfully conducted the program in the past and has been able to create significant impact. The economic and social rights are now widely linked up with issues of 'rights of marginalized people' in political process. The making of constitution in Nepal at present is very much concerned with this issue.

As mentioned earlier, the program from 2006 has

fully been transformed into an international (Asian) platform of law students and professors. This platform particularly provides opportunity for young law scholars and professors to deeply delve into and realize the significance of economic and social rights and their relationship with good governance in order to address the problem of exclusion of vast majority of population in the developing countries in the region.

Socio-economic and political exclusion of vast majority of population on ground of caste, religion, sex, and due to poverty is a serious problem across the region. The residential school organized in 2008 in participation of different Asian countries explored the pitiable situation of rural, poor and politically and socially disenfranchised and marginalized people.

The experiences demonstrated that 'socio-economic justice' is still a myth for vast population in these countries, which is ultimately adversely affecting the democracy. The situation is not different while the nature of problem is different. Lack of right to expression and incessant population growth and wider economic gap between the urban and rural population are the major problems of China, whereas the bubble economy (unstable economy) is hindering good governance in Thailand. Feudal power structure, and unfair distribution of resources is problem being faced by Pakistan. Centralized power system with impunity to corruption is shared problem of the SAARC region.

The program explored that an accountable and transparent government system is necessary to





address these problems in the region. Thus, the people need to participate in the system of government which is supposed to deliver service to them. In this context, the significance of interactive forum among students and professors along with workers of the government and international organizations is not only important but indispensable. KSL along with the SALS Forum has made an attempt to address this need by creating ESDR platform for students and academicians to discuss and sensitize themselves on issues of economic and social rights and good governance in view of promoting democracy. This program in the past has made the following positive outcomes:

- Participants in the residential school have developed stronger sense of social responsiveness, and pro-activism towards socio-economic rights. They have been able to understand the interface of the economic and social rights and civil and political rights. This has been evident, for instance, from enthusiasm of students of KSL to participate in civic education of grassroots communities. A group of over 50 students worked in many parts of country to generate civic awareness of marginalized and endangered communities like Mushar, Santhal, Majhi, Danuwar, and so on. Moreover, they have been actively engaged in organizing a series of activities such as research on social responsiveness of the media in Nepal, orientation on democracy and peace for secondary school students, organizing electoral process fair and filing of public interest litigation against exploitation and the education for youths and students on constituent assembly;
- Participants from this program have been helping to build an atmosphere conducive for



‘enrollment of increased number of dalit and other marginalized students in legal education’. They have been helping to establish scholarship funds and raising financial supports for such students;

- An ESDR Alumni has been formed comprising members from different countries. This Alumni is bringing more human rights students to the service of marginalized groups of population in the region.
- Currently, the ESDR Alumni is conducting a structured survey on the socio-economic and legal situation of the severely marginalized groups in these countries, which will be a major component of discussion in the forthcoming residential school.

The program similarly has helped to promote interactive dialogue among academics, which is

believed to contribute to bring about changes in the stereotypical notion of justice in Nepal. These interactions are helping to generate sensitivity towards needs and issue of economic and social justice for sustainability of democracy in South Asian countries. The program has tremendously helped the Nepalese lawyers and academics to deeply think about the need of restructuring of the state’s policies and institutions from the perspective of inclusion. In addition, the dialogue has significantly helped to:

- deepen the understanding of rule of law, good governance and democracy, with focus on accountability of government system;
- learn from success and failure stories of other countries, and thereby contribute to discussion on possible approaches, and contents to be followed while formulating the new constitution in future;
- enhance the quality of empirical research of students and academics on socio-economic transformation and inclusive democracy.

Giving the opportunity for scholars and professors to deepen the understanding of the interrelationship and interdependence of economic and social rights and democracy is expected to create far-reaching impact in the days to come.

It helps in generating rights activists who would contribute in conflict transformation and peace building in the country. This understanding has helped to relate legal education to the community needs, and development issues. Thus this program has genuinely interlinked the legal education to the service of the disenfranchised community. Most importantly, this program has contributed to link human rights issues with peace building, governance structure and accountability of political system.

## Reflection

*'How this winter residential school will help you in your career development'* - that was the question of my boss when I approached for one month leave from my organization for attending 5<sup>th</sup> winter residential school in Nepal, amidst huge work loads and when my absence would cause delay in several projects. My answer was not so convincing at that time - *'well, I think, it will, some how'*. I do not want to blame myself for that, as I did not know concretely how it will. I was fortunate enough that I could attend in the event managing such a long leave from my office. After math, when I returned to my organization spending twenty two days in the training, my boss could not repent for granting this long leave, it was paid off.



I have been working in the field of human rights since second year of my bachelor of law. I was very much used to see human rights from legal dimensions. With this out look I joined winter residential school. Twenty two days were gradual evaluation period of my outlook and knowledge. I learnt how to perceive human rights from multidisciplinary dimensions, how to connect the concept of human rights with other crucial factors of the society, how to include human rights in development, governance and this list will be longer and longer. Most importantly, I realized the importance of economical and social rights to make the word 'human rights' a reality from myth. The most interesting thing of winter school was the groups formed by different nationals. During the group discussion, I identified the nature and intensity of the grievances for the violation of human rights is the same irrespective of countries. I found the strong linkage between the legal profession and community level mobilization through the sessions of the school. Besides, during *diwali* and *bhai fota* time, I got the scope to know the culture of common people of Nepal and touched by their warmth hospitability and humble nature to cherish life in colourful ways. I also got wonder seeing the developed and comprehensive legal education course of kathmandu school of law and meeting the intellectual and friendly law students from there. I feel 5<sup>th</sup> winter school is a part of the wide teaching of kathmandu school of law for making social engineers across south asia. I have applied the teaching of this school in my professional works and determined to make its optimum use in future works also. As a participant of winter residential school I salute the venture of winter residential school to convert legal technicians to social engineers and make human rights projected in the real life of the poor defining it multidisciplinary.

**Sharin Shajahan Naomi**

Bachelor in Law, University of Dhaka, Bangladesh.

# 6th ESDR Committee



The Organizing Committee of the 6th International Residential School on Economic, Social and Development Rights with Special Reference to Emerging Issues

1. Ashma Sharma
2. Jeena Maharjan
3. Nutan Jha
4. Prasiddha Pandey
5. Roji Tulsibakhyo
6. Salina Kafle
7. Samikshya Sharma
8. Saroj Bista
9. Subin Mulmi
10. Sudeshna Thapa
11. Sushan Shrestha
12. Sushila Adhikari
13. Yugichhya Sangroula

# Nepal: A country blessed with natural splendour

- By Subhash Bishwokarma (LL.B.) & Karuna Parajuli (LL.B.)

Nepal lies in South Asia between the east meridian of 80° 4' and 88° 12' and the north parallels of 26° 22' and 30° 27'. Nepal is bordered by India on the west, south and east and by the Tibet region of the People's Republic of China on the north. Its area is 197,181 sq km. Its population is about 30,000,000. Nepal embraces a part of the main Himalayan region in the north including Mt. Everest (8,848 m), popularly known as Sagarmatha in Nepal, the highest peak of the world

## Geographical division:

- i) Himalayan highlands with snow-covered mountains and glacial valleys
- ii) The lower Himalayan ranges with their green and fertile valleys
- iii) The forest areas of the inner Terai, low river valleys and the foothills of the Churiya and Shivalik range
- iv) The flat and fertile land of the Terai, the north edge of the Gangetic region. This region of Nepal is popularly known as its green belt.

Nepal is divided into 5 development regions, 14 zones and 75 districts. Southern Nepal has resemblance to the great plains of India, from which it extends. Known as the Terai, this region comprises of both cultivable land and dense jungles, the latter being, for the most part, a game preserve inhabited by wild elephants, tigers, and other typical South Asian fauna. The Terai forests are also known for their valuable timber. The Terai region consists of about one-third of Nepal's population and covers about one-fourth of its total area. The second, and by far, the largest area of Nepal is formed along the Mahabharata, Churia, and Himalayan mountain ranges, extending from east to west. Their altitude increases toward the north, reaching the Tibetan border. Three principal rivers originate from the glaciers and snow-fed lakes here and break southward through deep Himalayan gorges, and enter the Karnali, Gandaki, and Koshi basins respectively. Flowing towards India, they become tributaries (as are all Nepal's rivers) of the Ganges system.

The third geographical region of Nepal is a high central region, some 890 km (344 sq mi) between the main Himalayan and Mahabharata ranges; this hilly region is where the Kathmandu Valley or the Valley of Nepal is located. Overlooked by mountains, the valley, with its fertile soil and temperate climate, favours extensive agriculture. Here, Kathmandu, the capital, along with the nearby towns of Bhaktapur and Patan are situated on the foothills of the rolling Churia hills.



## Religion:

Nepal is a home to people of various religious groups. According to the 2001 census, about 80.6 % of its people have identified themselves and Hindus. Nepal has been declared to be secular state with people of Buddhist (10.7%), Christian (0.5 %), Muslim (10%), Kiranti(3.6%), and other religious beliefs also residing together with the Hindus in peace and harmony.

## Ethnicity:

It is difficult, if not impossible to find another country in the world with such rich cultural diversity within an area as small as Nepal's. Nepal consists of 103 caste/ethnic groups altogether. Some of them include the Bhramin, Chettri, Magar, Tharu, Tamang, Sherpa, Yadav, Newar, Gurung, Sarki and Damai ethnic groups who have predominantly high populations amongst others. Some other ethnic groups such as Sunwar, Dhobi, Chepang, Dhimal, Dom, Raute and Kunda have comparatively lower population densities.

## Tourism in Nepal:

Nepal, with its rich natural and cultural heritages is undoubtedly amongst the best visits for tourists all over the world. Tourists from places like France,

UK, USA, Bangladesh, Pakistan and Thailand throng Nepal every year. The weather during autumn is seen to be most suitable for tourism.

Tourists can opt to trek in places like Ghandruk, Lamjung (Bahundada), Gosaikunda, Tatopani etc where they can also savour the taste of traditional Nepali culture. Nepal also offers its guests with various adventure sports like paragliding, rafting, bungee jumping and mountain biking. It is dotted with picturesque lakes like Fewa, Rara, Begnas and Rupa. Nepal is also a home to the world's highest lake, Tilicho, situated 4,919 metres above sea level. Pokara, Biratnagar, Mustang, Solukhumbu and Dhangadi are some places in Nepal which tourists are seen to frequent because of their caves, springs, mountain views, museums, ancient palaces, historical monuments and other cultural and natural heritages.

The dramatic changes in elevation along the terrains of Nepal result in a variety of biomes from tropical savannas along the Indian border to subtropical broadleaves and coniferous forests in the hills and from temperate broadleaves and coniferous forests on the slopes of the Himalayas to rock and ice notches at the highest elevations.

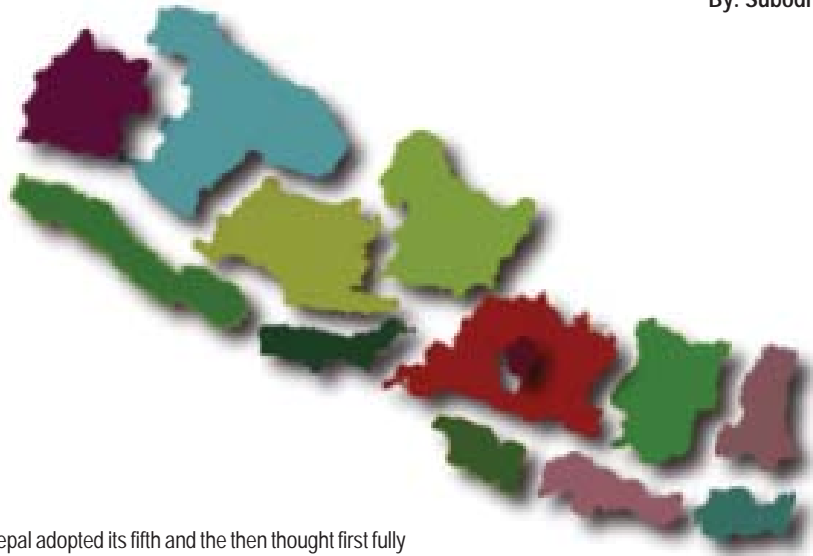
Nepal also shelters some of the world's most endangered animal, bird and plant species like the Red panda, One-horned rhinoceros, Bengal tigers, Danphe etc. About 245 species of the world's plants are only found in Nepal today. A total of 118 ecosystems, 75 vegetations and 35 forest types have so far been identified in its terrains. Nepal, The birthplace of Lord Budhha, stands as an example of striving for development through non-violence and peace as taught by Gautam Budhha. There is unity even through the magnanimous cultural, geographical and ethnic diversity of Nepal. ■





# Federalism in Nepal

By: Subodh Adhikari (LL.B.)



In 1990, Nepal adopted its fifth and the then thought first fully democratic constitution. Although, the constitution was then thought to be ideal and noteworthy, it could not live up to the demands of most Nepali people. Nepal's extended political history as a Hindu kingdom was then transformed by the 2063 *Janaandolan* which successfully overturned the 240 year old monarchical structure of the country and established a federal democratic republican system.

Nepal is now to acquire its first democratic constitution which is thought to reflect notions of federalism so as to guarantee the rights of every individual Nepali citizen, without any discrimination on the grounds of caste, sex, class, race and ethnicity. As simple as it is to call Nepal a federal state, it isn't any easier to work out the provincial divisions, name them and outline the surrounding geographical areas. This is, by far, the most debated issue that comes into forefront while bearing in mind the notion of federalism in Nepal. Questions further arise when the issue is analyzed critically: What shall be the basis of federalism in Nepal? How shall the constituent units be designed? Shall the boundaries of the constituent units be based primarily on ethnicity? Or should the basis be others factors like economic viability and availability of natural resources instead?

There have not been uniform approbatory opinions amongst the political parties with regard to federalism in Nepal. The Result of which is evident in the progress of the restructuring committee of the Constituent Assembly. Apparently, ethnicity and language along with other cultural and historical prospects have received much attention as the key determinant factors of constituent divisions. Many "states" have already been divided and named according to the ethnic majorities residing within them. The "Madesh Pradesh" for example, has been named after the overwhelming majority of "Madhesis" in the region. Similarly, the "Newa Prades" and the "Newa Mandal" have derived their names from the "Newari" ethnic majority located in the region. Names like "Limbuwan",

"Khumbuwan", "Tamuwan", "Khasan" and "Jadan" have further been proposed by the restructuring committee. The agenda next in line is the numbering of the states. The final number of states that shall help structure a "New Nepal" has been an issue that has involved much contestation. Although the Maoists have submitted a proposal advocating for 14 states, the other political parties have not given in their final propositions. This highlights the complexities involved in naming and numbering the states. The question of what factors should be the foundation for federalism still remains. The political parties have diverse and conflicting opinions in this regard; ethnicity, language, historical features, geographic and natural boundaries, and economic viability have been the major propositions made so far. Once the restructuring committee comes up with the final proposal with unanimous agreement there further remain other hurdles. The proposal of the committee has to be accepted and passed by the Constituent Assembly. Changes are likely to be made in the proposal. Since the issue is a crucial and sensitive one, coming up with a resolution in a scientific way is certain to be more effective than prioritizing political consensus.

With the designated constitution making deadlock coming closer by the day, it has now become a challenge for the political parties to develop an effective federal system which would mobilize all country's citizens for its multifarious development. The hope and faith of the Nepali people now lies in the new constitution yet to be made as it will hold the tribute of being the only constitution in Nepalese history that shall involve active participation of all Nepali people. The motto of federalism, 'Unity in Diversity', is to be brought into action through unison of the extensively diverse People, languages, cultures, traditions, religions, and geographical terrains of Nepal. Federalism should be able to address the needs of every individual Nepali citizen so as to achieve national welfare. ■

# “The Decade long arm conflict and the current political scenario”

- By Ram Kumar Khatiwada (LL.B.)



Armed conflict between the communist party of Nepal (Maoist) and the government of Nepal began from 13<sup>th</sup> February, 1996 and had lasted till 2006 for one decade long period of time. It was the war between a group of Guerilla Maoists and the armed forces of the nation. But during the war besides the two conflicting parties many other civilian also lost their life. The prevailing situation of insurgency, conflict, insecurity and instability was leading the society to fear. The news channels were full of daily updates regarding the cross firing between the rebels and the army. The death toll was increasing day by day. Almost every person of the country was affected by this war directly or indirectly. Among the affected, women and children suffered a lot. The young men and women of the houses were involved in the war so only the elderly, children and women were at home worrying for the safety of their loved ones. The innocent people who had no part to play in the war were affected the most as they were displaced from their homes and had to move from one place to another due to the frequent disturbances created by both armies and rebels. This resulted in the increase of the migration rate from the rural areas to the cities.

It all started due to the poverty, corruption, social and political exclusion in the country. A few elites were handling the governance of the country whereas many hardworking people were excluded from the opportunities and were marginalized from the mainstream development activities of the country. The ruling power was always centralized and there was no accountability and transparency in the governance of the nation. Hence, on February 1996 a group of political activists who were disappointed with the government activities put forward a forty point demand to the government with a view to change the land reform system and the governance system. This demand was rejected and this group of people stood against the government and started the armed conflict.

Situations became worse and the conflict took a giant leap forward when the then King

Gyanendra took the executive power in his control on October 2002. He appointed his own personnel in the government and on 1<sup>st</sup> February, 2005, he sacked the existing government and started ruling the country with the help of military force. In the name of 'counter-terrorism' and 'anti-corruption' he charged the political leaders and imprisoned them. The voice of the media was manipulated and censored. The rights of people to organize and assemble were suspended. There was no freedom of expression as well. This resulted in a massive protest and people's movement where the Maoists also played a significant role. The political leaders, farmers, businessmen, media persons and people from all the other sectors joined in to dethrone the King's rule and re-establish democracy in the country. The protest continued for nineteen days and became successful as the autocratic King was forced to leave the palace. A 12 point agreement was signed by the Maoists with the Seven Party Alliance on November 21<sup>st</sup>, 2006 that officially ended the decade long armed conflict.

The Informal Sector Service Center (INSEC) reported that between February 13<sup>th</sup>, 1996 to the mid of July, 2006 more than 8403 people were killed by the security force whereas 4990 were killed by the Maoist rebels. Almost 47,000 people had been abducted and nearly 39,000 people were displaced from their homes during the arm conflict. There was massive violation of human rights during the conflict as even those people who had no part in the conflict were killed or abducted. There was a cloud of fear everywhere in the country. Now, that it has all ended and the Maoists are recognized as powerful political party, the struggle is still going on. After the Constituent Assembly elections, Maoists became the largest party and led the government but could not sustain long as they resigned within 9 months of their rule. In the present context they are playing the role of an opposition party and are strongly urging the government to make the constitution within the given time frame. ■

# Poverty in South Asia and People's Expectation

- Yugichha Sangroula (L.L.B Second Year)

**P**overty is the state of deprivation and deficiency in means of subsistence, physical health, emotional comfort, economic security and opportunities.

Poverty is a pressing problem in South Asia and elsewhere and combating it has become a major global agenda. CIVICUS: World Alliance for Citizen's Participation reports that in South Asia, as much as 43% of the population lives in absolute poverty, a number greater than that of Sub-Saharan Africa where it is 39%.

Out of 1350 million people in the region, only 135 million (10%) have access to sanitation, 40% of the same population does not get to attend school for various reasons, out of every three persons one goes to bed with an empty stomach and a child in every three cases loses its life owing to lack of health care facilities. These figures clearly depict the grim and deplorable condition of poverty in South Asia.

The question is trivial: what aggravates poverty in South Asia? The answer on the other hand is not so trivial: non-realization of people's basic expectations. It is the innate feature of human being to seek happiness and progress. People through out the world expect workable policies from their governments driven to pursue people's interest, not unachievable socio-economic policies based on far-fetched standards. What the people of South Asia expect from their governments in the present are a comfortable home, decent education, basic sanitation, adequate food, access to electricity and some other necessities to be fulfilled.



These expectations could be more contextually termed as socio-economic and development rights. These rights are but the realizations and assurances materialized in forms of opportunities and accessibility. The paramount objective of these rights is to make the people capable of



sustaining their lives themselves.

Poverty, *per se*, is a result of myriad of deprivations. It would be rather ambitious to claim it can be eliminated by a single action or policy. In fact, the process of poverty alleviation is ignited when people's expectation are upheld. This endeavor gains pace when people gradually recover by gaining access to resources. Hence, any policy that involves realization of socio-economic and development rights of the people is a step taken for poverty alleviation.

In this perspective, if the efforts of the South Asian governments are to be evaluated, they are not up to the mark with the promises made in their policies. Urban-rural disparity, ineffective remedial mechanism for human rights violations and corruption are the challenges, to name a few, that pose a threat to the pace of development. Contemplation in effectively tackling these challenges has become more crucial than ever in South Asia. ■

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