

Bill Relating to the Prohibition of Impunity, 2007



FOHRID HUMAN RIGHTS AND DEMOCRATIC FORUM
मानव अधिकार तथा लोकतान्त्रिक मंच

Bill Relating to the Prohibition of Impunity, 2007

Human Rights and Democratic Forum (FOHRID)
196/14, Radhe Marga, Dillibazar, Kathmandu

Postal Address: P.O. Box 19186, Kathmandu, Nepal

Tel: +977-1-44 23 125, Fax: +977-1-44 38 812

E-mail: fohrid@wlink.com.np

Website: www.fohrid.org.np, www.fohridnetwork.org

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Part- I

Impunity Prohibition Act: Need and significance

Background

Absence of bringing into justice to those responsible for gross violation of human rights law and serious violation of humanitarian law has caused increment of impunity and decreased accountability in Nepal. To ensure justice to the victims by prosecuting those perpetrators is pre-condition for protection and promotion of human rights. Similarly, zero tolerance to impunity is necessary for strengthening rule of law and democracy. With this spirit, Human Rights and Democratic Forum (FOHRID) has been extending campaign against impunity with long term strategy in Nepal.

There are two facets of FOHRID's campaign against impunity. Firstly, to build impunity free society by public opinion formation against impunity through advocacy and awareness programs. Secondly, to draft a new specific law in Nepal in accordance with the international jurisprudence developed against impunity to term impunity as a crime, in the context of certain violations of human rights and humanitarian law.

In this connection, FOHRID has finalized a draft of Bill Relating to the Prohibition of Impunity, 2007 as part of its campaign against impunity. This draft Bill has been prepared by FOHRID on behalf of civil society. This has been possible with the concerted effort of the representatives of lawyers, human rights activists, experts from the civil society, victims, and national and international human rights organizations. The draft bill has come a long way after the tireless striving since the last two years and is at your hand now. This draft bill has been prepared

under "Ending Unlawful killings and impunity project" funded by European Commission.

Finally, we express our sincere gratitude to the individuals and organizations that have made their invaluable contribution in this initiative. We hope that the proposed bill will bridge the gaps and fulfill the inadequacies and weaknesses in the existing laws of our country. We believe that it will contribute to ensure justice for all through ending impunity and guaranteeing protection and promotion of human rights and strengthening democracy and rule of law.

Problem of impunity and the proposed bill

The existence of impunity or lack of punishment has not only weakened rule of law but also posed a serious threat and challenge to the Nepalese society. Consequently, citizens' rights guaranteed by national and international instruments are repeatedly being violated. This has worsened human rights situation in Nepal. We cannot attain our aim to improve human rights situation unless we take effective, adequate and solid measures to end impunity.

Impunity continued to remain as culture in our country because the perpetrators involved in the violations of human rights during Jana Andolan I & II could not be punished by the subsequent governments. This is a result of the absence of rule of law as well. The incidents of gross violation of human rights law and serious violation of humanitarian law such as murder, abduction, beating, torture, rape, disappearance have increased alarmingly after the commencement of 'People's movement' by CPN-Maoist in B.S. 2052.

Increase of impunity in such serious incidents has further proved inadequacy in existing Nepalese legal system to address impunity. Nepal is yet to accede to the Rome Statute,

1998 of the (International Criminal Court) ICC. Likewise, there is lack of domestic law to implement international instruments to which Nepal is already a state party.

Impunity as an obstacle to humanity and justice

Existing legal system in Nepal is unsuccessful to arrest, prosecute, trial and punish the perpetrators involved in violation of human rights and humanitarian law. The victims are yet to receive reparation and justice. Due to system that the perpetrators are left without any criminal, civil, administrative, or disciplinary action, de jure or de facto, accountability has become impossible. The perpetrators involved in the incidents such as war crime, crime against humanity, genocide, torture, extrajudicial killings, rape, abduction, and forced disappearance have always remained outside the jurisdiction of law. Such a situation has challenged rule of law and criminal justice system in Nepal.

The prevalence of the problem of impunity has challenged the public conscience, human tolerance, and human rights culture. Due to existing impunity, the authors of serious crimes of international concerns are not brought into justice system by defining them as *hostes humani generis*. In this way, the perpetrators involved in the serious crime against humanity have remained unpunished in Nepal. Similarly, the victims are not empowered to articulate their grievances or seek justice either. Neither the state mechanisms/authority have shown firm stand against impunity nor do they have enough means for this. Hence, the silence and unaccountability of the state has invited serious consequences. This has abetted, increasing the grievances of the victims and the violators are encouraged with the feeling that they never have to face punishment for the crimes they commit. It has contributed the continuation of impunity, weakened state agencies, denied and depreciated humanitarian values.

Importance and need of law

Nepal, compared to other countries in South Asia, has signed significant number of international instruments pertaining to human rights and humanitarian law. Protection of the rights enshrined by such instruments, ensuring remedy for the victims developing measures to this effect, bringing perpetrators of human rights violation into justice system, respect to the international human rights law and international humanitarian laws ratified by Nepal, ensure that respect and their implementation are the international obligations of the state. As a state party, the provisions of such instruments are to be implemented through domestic laws. Enforcement of relevant laws in the country is required for this. But there is lack of adequate law to protect, promote and implement human rights guaranteed by international human rights and humanitarian laws. Hence, this bill will fulfill the lack of legal provisions such as controlling the violation of international human rights and humanitarian law, prosecution against the perpetrators and ensure justice to the victims to ending impunity. Likewise, this bill will meet the need of domestic law to prosecute perpetrators involved in the crimes of international concern.

Impunity is the situation when there exists inability to investigate, prosecute, trial and punish the perpetrators involved in the gross violation of human rights and serious violation of humanitarian law. International instruments developed against impunity have overtly taken stand that impunity of any type or form is unacceptable. Various organizations and individuals have raised voice at the national and international level for end to impunity. Impunity is institutionalized in Nepal despite these efforts. Authorities and the law implementing agencies are enjoying impunity in the serious crimes against citizens. Though the mentality of the rulers, social situation and citizens' awareness are also

responsible for this, the main cause behind it is the lack of specific law to end impunity.

Existing criminal laws and legal system in Nepal are based on traditional criminal jurisprudence. The provisions in the Muluki Ain (Country Code) and other laws are related to the crimes at the individual levels. But there is lack of specific law to deal with the crimes, regarded as the crimes against human rights and humanitarian law, committed by the state against individual or citizens. Therefore, this specific law is required to uproot impunity through prosecution to those involved in the crimes against human rights and humanitarian law.

In the backdrop of past internal armed conflict and present unstable political situation, impunity has much to do with the government and political levels, law enforcing agencies, political parties, security forces, as well as rebels and the newly raising insurgent groups. For impunity is the problem of state, government, governance system, leadership, security forces and policy makers do have their first responsibility to mitigate it. However, they have not made any clear vision and adopted solid measures till now in this regard. Therefore, this bill is required to make the perpetrators accountable for their crimes, to end impunity, to strengthen rule of law and build the culture of human rights.

Contribution of the bill to protect human rights and end impunity

This bill will open way to ensure that the state prosecute perpetrators involved in crimes against humanity, war crimes, genocide and other grave violations of human rights ensured and protected by international human rights laws.

Likewise, this bill has determined mechanisms as per the domestic need by considering some specific violations of human rights and humanitarian law as crime and to prosecute perpetrators involved in those crimes for practical implementation of the law. Therefore, this bill will open a way for protection of human rights and ending impunity which is a major cause of human rights violation in Nepal.

Impact of law

No doubt, the enforcement of the bill to end impunity will contribute for ensuring just society. This will give a message and lay the impact that the nation is heading from culture of impunity towards culture of Accountability by implementing the commitments expressed at the international level. As the enforcement of this bill ensures action against those government officials who were involved in violation of human rights and humanitarian law from the past to the present time and potential involvement from the date onwards, it will prove that the perpetrators do not go unpunished and the victims will get justice. This will create moral and legal synergy in the struggle against impunity. This will end impunity and establish culture of human rights in Nepal. In addition, as this bill adds an extensive new dimension to the criminal justice system, it will be an exemplary law in the course of struggling impunity in the world.

Reference:

1. FOHRID, **International Instruments Developed against Impunity**, (2064) Human Rights and Democratic Forum (FOHRID) Kathmandu
2. Rome Statute of International Criminal Court 1998
3. Economic and Social Council, **Updated Set of principles for the protection and promotion of human rights**

- through action to combat impunity: Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, (2005) GE.05-10900 (E) 210205
4. FOHRID, **Ending unlawful killing and impunity project document**, (2006) Human Rights and Democratic Forum (FOHRID) Kathmandu
 5. Brussels Group for International Justice, Brussels Principles against impunity and for International Justice, **The Fight against Impunity: Stakes and Perspectives** (2002), Brussels
 6. FOHRID, **FOHRID Human Rights Monitor No. 12-17**, (2006-7) Human Rights and Democratic Forum (FOHRID) Kathmandu
 7. Acharya, Bhimarjun, **Need of a law to eradicate impunity: Precise discussion paper**, (2006) Human Rights and Democratic Forum (FOHRID) Kathmandu
 8. Siwakoti R.K., **Struggle against Impunity, Accession to and Implementation of Rome Statute: Background document**, (2006) Human Rights and Democratic Forum (FOHRID) Kathmandu
 9. Siwakoti R.K., **Law Drafting against impunity: Discussion paper**, (2006) Human Rights and Democratic Forum (FOHRID) Kathmandu
 10. William A. Schabas, **Introduction to International Criminal Court**, (2004) Cambridge University Press
 11. International Centre for Human Rights and Democratic Development, **Campaign against the Impunity: Portrait and Plan of Action**, (1997) ICHRDD, 63, rue de Bressoles, Montreal, Canada, H2Y IV7.

Part-II

Bill Relating to the Prohibition of Impunity, 2007

Preamble: Whereas, it is expedient to end impunity by taking action against suspects involved in human rights and humanitarian crimes for effective enforcement, protection and promotion of human rights guaranteed by the Constitution and international human rights and humanitarian laws to which Nepal is a party;

Be it enacted by the Parliament.

Chapter - 1

Preliminary

1. **Short Title and Commencement** : (1) This Act shall be called as "**Act Relating to the Prohibition of Impunity 2007**".
(2) This Act shall come into force immediately.
2. **Extra-Territorial Application of the Act** : Even if the crime or offence defined under this Act has been committed **by residing outside** the country of Nepal, the suspects involved shall be deemed to have committed the crime from within the country of Nepal and subjected to action and punishment under this Act.
3. **Prohibited Acts** : All acts against human rights and humanitarian laws occurred at any time or places, whether within or outside the country against any citizen shall be prohibited.
4. **Definitions** : In this Act, unless the subject or the context otherwise requires;

(a) "Impunity" shall denote the condition of impossibility or failure or **unintentional (unintended)** or unsuccessful to carry out an investigation, prosecution, trial and action against a person who violates human rights and humanitarian laws.

(b) "Crime against Human rights and humanitarian laws" shall denote genocide, crimes against humanity, war crimes and the act against human rights guaranteed by international instruments on human rights and humanitarian laws.

(c) "Genocide" shall denote the act of killing members of any caste, ethnic or religious group or community; the act of causing serious bodily or mental harm to the members of a group or community; the act of preventing the birth within members of a group or community; or the act of forcibly transferring children belonging to one group or community to another group or community.

(d) "Crime against humanity" shall denote mass killings, enslavement, torture, extermination, taking of hostages, forceful transfer or displacement of population, rape, sexual exploitation, forced prostitution, forced pregnancy or enforced sterilization, any form of sexual violence, the act of disappearance, repression based on political, religious, gender or on any other basis or any other inhumane acts.

(e) "War crime" shall denote the offences committed against **the** international humanitarian laws and related customary laws; which include killing; torture and inhuman treatment; great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity; compelling a prisoner of war or other protected person to serve in the forces of a hostile power; depriving a prisoner of war or other protected person of the rights of fair and regular trial;

forceful deportation or transfer or confinement; taking of hostages; attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; attacks against civilian objects, that is, objects which are not military objectives; or attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.

(f) "Victim" shall denote persons affected directly or indirectly by the act of a violation or crime of human rights and humanitarian law and his/her relatives in case the affected person is dead or handicapped or his/her whereabouts is unknown.

(g) "Court" shall denote the National Criminal Court constituted in accordance with the Section 17 of this Act with the purpose of prosecuting and making trial against suspects involved in offences or crimes defined under this Act.

(h) "Chairperson" shall denote the Chairperson of the National Criminal Court established under this Act.

(i) "Members" shall denote the members of the National Criminal Court constituted under this Act.

(j) "Prosecutor" shall denote the person designated under this Act to conduct inquiries or investigations into the crimes or allegations under this Act.

(k) "Prescribed or as prescribed" shall denote prescribed or as prescribed in the rules framed under this Act.

Chapter - 2
Rights of the victim

5. **Right to Know the Truth** : If any kind of damage is caused to any individual as a result of negligence by the government agencies or its officials or by any kind of illegal act, the victim shall have the right to know about the past incident, the suspect involved in the incident and the remedy guaranteed to him/her.
6. **Right to Reparation** : (1) If any kind of damage is caused to any person as a result of negligence, an illegal act or non-compliance of law by any law enforcement officials, government employees, armed person or group, rescue and measures of rehabilitation including appropriate and adequate compensation shall be guaranteed to the victim. The dependants of victim shall also be entitled to receive such compensation, rescue, rehabilitation or remedy in the event of victim's death.

(2) In case a conviction against a person under this Act is reversed by appeal or review, except in circumstances wherein the accused is involved fully or partially in the failure to divulge substantive facts on time, a person affected as a result of the conviction shall be entitled to receive compensation in accordance with the law.
7. **Right to Fair Hearing and Remedy** : Persons who have been victims of impunity shall have the right to remedy and to fair hearing before a competent, independent and impartial judicial body or competent official.

8. **Right to Legal Assistance** : Persons who have been victims of offence or crime under this Act shall have the right to receive free legal assistance.
9. **Right to Security** : The victims suffering from offence or crime under this Act, his/her family members and respective witnesses shall have the right to receive necessary security.

Chapter - 3
Principles of Criminal Justice System on Impunity

10. **Presumption of Innocence until Proved Guilty** : (1) No person accused of any offence shall be assumed as an offender until the guilty is proved according to law.

(2) Notwithstanding anything mentioned in this Act and in current Nepali laws, in case of the offence committed by any inferior person or personnel under this Act the superior authority shall, holding the legal responsibility of supervision and control over such person or personnel, have burden to prove that he/she did not issue any direction for such act or he/she was not informed of the act.
11. **No Punishment without Law** : (1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.

(2) Notwithstanding anything mentioned in subsection (1), there shall be no obstruction to prosecute and try against any person or officials under this Act for once in the case of involvement of such person or officials in any

offences defined in this Act even prior to the enforcement of this Act

12. **Double Jeopardize** : No person shall be prosecuted or punished for the same offence in a court of law more than once.
13. **No Compulsion to be a Witness against Oneself** : No person accused of any offence shall be compelled to be a witness against oneself.
14. **Duty to Furnish Information on Charge** : Any one who is arrested shall be informed in a language he/she understands of the nature and cause of the charge against him/her. The accused person shall not be kept in detention without a warrant slip and without full abiding by the procedure established by law.
15. **No Torture or Inhuman Treatment** : No person who is arrested during investigation, or for trial or for any other reason shall be subjected to torture, nor shall be given any inhuman or degrading treatment.
16. **Consultation and Meeting with Family Members, Relatives and Legal Practitioners** : The person who is arrested shall not be deprived of the right in meeting his/her family members, relatives and consulting a legal practitioner of his/her choice at the time of the arrest.

Chapter - 4

Establishment of the Court

17. **Establishment and Composition of Court** : (1) A separate National Criminal Court shall, for the purpose of proceeding and finalizing the cases in a speedy and effective manner under this Act, be established.
 - (2) The National Criminal Court shall comprise the following Chairperson and Members attaining 45 years of age and having no conviction by a court for a criminal offence involving moral turpitude:
 - (a) A person holding a Masters degree in related subject and have worked for at least 15 years in the field of law or justice and has also acquired a reputation at the national or international level - Chairperson
 - (b) A person who is qualified to become a judge of an Appellate Court – Member
 - (c) A person who is qualified to become a member of the National Human Rights Commission- Member
 - (3) A separate Recommendation Committee, as follows, shall be formed for the appointment of the Chairperson and members:
 - (a) Speaker of the House of Representatives - Chairperson
 - (b) One senior most judge of the Supreme Court - Member
 - (c) One member of National Human Rights Commission designated by the Chairperson of the National Human Rights Commission – Member

- (d) Leader of the main opposition party in parliament- Member
- (e) The senior advocate or advocate nominated by Nepal Bar Association who has held the distinguished position in the field of law and justice- Member

(4) The terms of office of the Chairperson and members shall be three years from the date of appointment. They shall be eligible for re-appointment.

(5) The position of the Chairperson and members shall be considered vacant in case of the death of the Chairperson and members of the court, or in case of the submission of a written resignation by them or in case of the resolution passed against them for reasons of incompetence, misbehavior or failure to discharge the duties of his office in good faith.

18. **Jurisdiction of Court** : (1) The National Criminal Court shall have the power to prosecute and finalize the case filed against any person involved in crimes against human rights and humanitarian laws or any person responsible for such crimes or any person qualified to be trialed with adequate evidences based on the inquiries and investigations of Truth and Reconciliation Commission.

(2) Notwithstanding anything mentioned in Sub-section (1), the Court established in accordance with this Act shall have not power to intervene the prosecution or trial initiated by the Military Court into the military offences.

(3) The court established under this Act may, upon a request of parties and depending on the nature of case, trial the case both in open and in camera bench.

(4) In case the dispute brought before the National Criminal Court is, during the judicial proceeding, proved as being not the offence of human rights and humanitarian

laws, the Court may refer such dispute to the general court of the land.

19. **Addition of the Cases** : Nepal Government may, by publishing the notification in Nepal Gazette, depute the additional cases on human rights and humanitarian laws to the National Criminal Court established under section 17.

Chapter - 5

Powers and Procedures of National Criminal Court

20. **Recording the Statement or Imposing Tarekh or Deposit** : The National Criminal Court Shall have powers to record the evidence or other persons other than the witnesses of petitioner or respondents concerned and required for the case; or to record the statements of the respondents or witnesses by arresting them if they are not produced before a court within a specific time limit as prescribed; to trial the party on tarekh or impose the condition to such party to be present in a given date or order the party for deposit.

21. **Freezing the Property or Banning to Issue Passport** : The National Criminal Court may, based on the seriousness of accusation, personal profile of the accused and degree and nature of crime, issue order to the concerned agency for freezing the property or for not issuing passport to such accused or freezing it in case it has already been issued.

22. **Additional Complaint be Lodged** : (1) Notwithstanding anything mentioned in current laws, the prosecutor may, even if the complaint has already been lodged in the National Criminal Court, submit the application to the National Criminal Court for seeking permission to have further investigation or inquiries or to have additional claim

against the accused person on the ground that he/she has found new evidences relevant to the case.

(2) The National Criminal Court may, in reference to the application under sub- section (1), issue order for the permission as deemed necessary and once such order has been issued the additional penalties or additional complaint on additional accusation can be lodged against the accused person already charged.

23. **Other Powers and Procedure** : The National Criminal Court shall, in course of proceeding and finalizing the case, exercise the powers of this Act as have they been written and in other cases it shall have all powers equivalent to district courts according to the existing laws.
24. **Power of Contempt** : The National Criminal Court shall have power to take action on its own contempt and it can impose fine up to Rs. Five thousand or imprisonment up to six months or both in case the proved contempt.
- Provided that, the National Criminal Court may issue order to give amnesty to the accused person or to excuse or reduce the fine against him or issue order for not implementing the fine by keeping the case in pending for six months on specified conditions to be followed by the guilty.
25. **Time Frame of the Finalization of Case** : The National Criminal Court shall normally finalize the case within six months from the date of registration of such case.
26. **Execution of the Verdict** : Except the mention of particular institution in the judgment or final verdict liable for the execution of such judgment or verdict of the National Criminal Court, the concerned District Court shall execute the judgment or final order of the National Criminal Court.

27. **Provision of Employees** : Nepal Government shall provide employees necessary to the National Criminal Court.

Chapter - 6

Inquiries and Investigation of Cases

28. **Appointment of Prosecutor** : (1) An independent prosecutor shall, on the recommendation of Judicial Council, be appointed to make inquiries and investigations of the offences or crimes defined under this Act and for the purpose of filing a charge-sheet.
- (2) The terms of office and other facilities of the prosecutor shall be as prescribed.
29. **Office of the Prosecutor** : (1) The office of the prosecutor shall be established as an independent body. Its main responsibility shall be to make inquiries and investigations to the offences under this Act and prosecute them before the court.
- (2) The jurisdiction of the prosecutor shall begin once the victim or his/her relatives or any other concerned institutions registers a complaint at the office of the prosecutor.
- (3) Notwithstanding anything mentioned in sub-clause (2), there shall be no obstruction to the prosecutor to inquiry and investigate the offences under this Act and suit the cases against the person involved in such offences or crimes in his/her soumoto.
- (4) It shall be the duty of state and concerned person to cooperate with the prosecutor in the course of investigations.

30. **Prosecution and Investigation** : The procedure for investigation and prosecution of the cases under this Act shall be as prescribed in Rules.
31. **Punishment** : In case the impunity is promoted for not taking action against the perpetrator due to the negligent inquiry or investigation of the prosecutor, such prosecutor may be punished with necessary action as recommend by Judicial Council. The detailed procedure for action shall be as prescribed.

Chapter - 7

Provisions Relating to Penalties

32. **Penalties** : The sentence of life imprisonment shall be imposed to the major guilty proved under this Act. Depending on the degree of offences, the court may impose sentences from five years to fifteen years to the person who has passed order or implemented such order or who has solicited or induced the commission of such offence.
33. **Reparation** : (1) The court shall make the convicted person pay compensation including reparation to the persons affected directly or indirectly by the act of a violation or crime of human rights and humanitarian law and his/her relatives in case the affected person is dead or handicapped or his/her whereabouts is unknown. In cases where compensation or reparation cannot be realized through the income source or the property of the convicted person or if it is insufficient, compensation and reparation shall be paid to the victim from the State's funds.
- (2) The court shall, while imposing the sentence to the convicted person, take seriousness of the crime and

also the personal details of such person in accordance with the standards of national and international laws into consideration.

34. **The Procedure to be as Prescribed** : The procedure relating to determination and payment of compensation or reparation shall be as prescribed.
35. **Effect** : Notwithstanding any provisions of this Chapter, nothing shall affect the penalties or their implementation against a convicted person in accordance with other existing laws.

Chapter - 8

Provisions Relating to Appeal and Review

36. **Appeal** : The prosecutor or the person convicted under this Act may, on the basis of error in procedure, error of facts or error of law, appeal before the Supreme Court. Such appeal shall be submitted to at least three member special bench of the Supreme Court.
37. **Limitation of Appeal** : Any party who is not satisfied with the verdict of the National Criminal Court shall appeal before the Supreme Court within thirty five days of the decision.
38. **Review** : The decision of the Supreme Court on appeal shall be considered a final decision. Provided that, in the following conditions, the Supreme Court may review its decision or final order:
- (a) In case any evidence or fact is found which may have a substantive effect on the decision after the decision or the same becomes known to the concerned parties.

(b) If it appears that the decision is against the precedent or principles of laws established on human rights or humanitarian laws.

39. **Limitation of Review** : The application for review may be filed within sixteen days of the final decision by the Supreme Court.

Chapter - 9

Miscellaneous

40. **Use of the Act** : (1) This Act shall be effective into any person or official of the state or non- state party or institution involved in the offences defined by this Act.

(2) There shall not be any compromise of any kind from both the state and non-state parties which may cause an adverse impact on the protection, promotion and implementation of the rights of the victims of human rights and humanitarian law crimes defined in this Act.

(3) A state of war, any kind of exceptional situation, internal political instability or public crisis shall not be considered as exceptions for impunity.

41. **Obligation of the State** : It shall be the obligation of the State not to allow a situation of impunity or if such situation arises, to take the necessary steps timely and to protect and promote the rights of the victim guaranteed by this Act.

42. **Trial of the Case** : The accused under the offences of this act shall, generally be trialed in detention.

43. **Burden of Proof** : The concerned respondents shall have burden to proof the factual evidences concerning with his\her accusation.

44. **Framing of Rules** : The Nepal Government may frame necessary Rules for fulfilling the objectives of this Act.

45. **In Case of Conflict** : Notwithstanding anything mentioned in any other current Nepali laws, the provisions mentioned in this Act and Rules shall prevail accordingly and in other cases, shall prevail as mentioned in other laws.

Part-III

Process of the Draft Bill and Stakeholders

Process of the Draft Bill

In drafting the **Bill Relating to the Prohibition of Impunity, 2007**, intensive consultation meetings were held in the initial phase with all stakeholders of different levels and professions. After the consultation meetings, 'A high level Citizen Law Drafting Council' was formulated on 1 May 2006. There were 37 members in the Council and the convener was senior human rights activist, Nutan Thapaliya.

The Drafting Council designated **Advocate Bhimarjun Acharya as coordinator of the Law Drafting Committee to proceed this legislation drafting**. Advocate Acharya moved forward the bill drafting process involving experts with long experience in human rights and legal field as well as the Drafting Council. Consultation discussions were held repeatedly on the preliminary draft prepared by the drafting committee within the committee. Suggestion and feedbacks of the consultations were incorporated to update the preliminary draft.

Then, the updated preliminary draft was forwarded to governmental, non governmental and international agencies to collect written suggestion in the second phase. Consultation discussions were frequently organized with a number of organizations including National Human Rights Commission, prominent human rights organizations, OHCHR Nepal, International Commission of Jurists (ICJ), Amnesty International collecting suggestions and feedbacks on the bill. The bill was updated again on the basis of the feedbacks received.

In the third round, the proposed draft bill was taken to the major stakeholders for extensive discussion. Kathmandu Consultation Meeting was organized on 8 December 2006 to discuss the proposed bill. Fourth round update on the draft was undertaken after the Kathmandu Consultation meeting. After that, Experts' meeting of the core technocrats on legislation drafting was organized to finalize the bill.

Finally, with the broader participation of all the stakeholders 'Consultation Conference to finalize the Impunity Prohibition Bill' was organized on 5 September 2007 to make the draft perfect. Section-wise discussion on the bill was held in the consultation conference and the 'Impunity Prohibition Bill, 2007' was finalized.

A number of law experts, lawyers, government representatives, human rights activists, representatives of political parties, journalist, representatives of national and international organizations actively participated in this legislation drafting process. In this way, final shape to the bill was given with active participation, consultation and the feedbacks of all stakeholders. The name lists of the individuals, organizations and the members of Citizen Law Drafting Council involved in this draft legislation process are given below. This is mentioned as per the policy of FOHRID to reflect the involvement and participation of all stakeholders as far as possible.

This draft bill is the outcome of concerted effort, participation, ownership, and contribution of all stakeholders including government representatives, private lawyers, human rights activists, professor, representatives of national and international organizations who are, on our request, involved in this process by providing consultation, suggestions and feedback.

This effort will be meaningful only after the bill comes into force as an Act from concerned authority. Hence, there is a need of support, cooperation, and solidarity of all stakeholders to pass the bill from present Legislature-Parliament to eradicate impunity from the country. So, FOHRID requests all the stakeholders and appeals to general public to join hands in this collective campaign to get the bill passed from the Parliament.

Stakeholders involved in legislation drafting

A) Organizations and individuals involved in Citizen Law Drafting Council

Citizen Law Drafting Council was formulated on 1 May 2006 to draft a law to eradicate impunity. The name list of the organizations and individuals involved in the Council is as follows:

S. N.	Organization	Representative	Signature
1.	Nepali Congress	Krishna Prasad Sitaula, Member of Parliament (MP) and Spokesman of Nepali Congress	*
2.	Nepali Congress	Kamala Panta, MP	*
3.	CPN (UML)	Rajendra Prakash Lohani, MP	*
4.	Nepali Congress (Democratic)	Tek Bahadur Chokhyal, MP	*
5.	Rastriya Jansmorcha	Nawaraj Subedi, MP	*
6.	Journalist Federation	Bishnu Nisthuri, President	*
7.	Civil Society for Peace	Dr. Sundarmani Dixit	*
8.	Informal Sector	Kundan Aryal	*

* Names of individuals who expressed their consent and solidarity to involve in the Council but not present on the formation date.

	Service Centre	
9.	Freedom Forum (INSEC)	Tara Nath Dahal *
10.	Women Rehabilitation Centre (Worec)	Dr. Renu Rajbhandari *
11.	Forum for Protection of Human Rights (FOPHUR)	Gopal Siwakot 'Chintan' *
12.	Nepal Bar Association	Senior Advocate Sindhunath Pyakurel, Former President Shakuntala Thapa
13.	Forum for Protection of Human Rights (FOPHUR)	Shakuntala Thapa
14.	Law Practitioner	Advocate Krishna Prasad Basyal
15.	Human Rights Organization of Nepal (HURON)	Nawaraj Khatiwada
16.	Advocate	Mohan Pokharel
17.	Human Rights and Democratic Forum, FOHRID	Nutan Thapaliya
18.	Law Practitioner	Advocate Santosh Bhattarai
19.	Law Practitioner	Advocate Rajendra Bhattarai
20.	Law Practitioner	Advocate Krishna Devkota
21.	National Human Rights Foundation (HURFON)	Bhawani Prasad Kharel
22.	Human Development and Peace Campaign (HUDEP)	Pradeep Pokharel
23.	Advocate	Bijaya Singh
24.	Collective Campaign for Peace (COCAP)	Bijaya Guidel
25.	Forum for Protection of Human Rights (FOPHUR)	Sudha Khatiwada
26.	Human Rights and Democratic Forum, FOHRID	Dr. Hari Thapaliya
27.	Advocate	Suman Khatiwada
28.	Institute of Human Rights Communication Nepal	Meena Sharma

- (IHRICON)
29. Nepal Bar Association Advocate Binod Nepal
 30. Human Rights and Tulasi Bahadur Karki
Democratic Forum, FOHRID
 31. Human Rights Organization of Bijaya Upadhyaya
Nepal (HURON), Parsa
 32. Women Foundation Debendra Parajuli
 33. Women Foundation Kamala Upreti
 34. Women Foundation Jayaram Gautam
 35. CPN (ML) Tej Prasad Kandel
 36. Human Rights and Advocate Raj Kumar
Democratic Forum, FOHRID Siwakoti
 37. Human Rights and Peace Man Bahadur Thapa
Foundation, (HURPEF), Nepal

B) Organizations and Individuals who have provided written comments and suggestion on the bill

Government Agencies:

S.N. Name of the government agencies

1. Government of Nepal, Defence Ministry, Nepali Army, Karyarathi Bibhag
2. Government of Nepal, Ministry of Law
3. Government to Nepal, Human Rights Cell, Armed Police Force Headquarters, Home Ministry
4. Government of Nepal, Office of the Prime Minister
5. Government of Nepal, Law and Monitoring Cell, Armed Police Force Headquarters, Home Ministry

National Human Rights Mechanism:

S.N Name

1. National Human Rights Commission

Human Rights Organizations:

S.N. Name

1. Informal Sector Service Centre (INSEC)

2. Forum for Protection of Human Rights (FOPHUR)
3. Joint Forum for Human Rights
4. Legal Aid and Consultancy Centre (LACC)
5. Centre for Victims of Torture (CVICT)
6. Women Foundation
7. Access to Justice and Advocacy of Rights (AJAR) Nepal
8. Campaign for Human Rights and Humanitarian Law (CHRHL)
9. National Human Rights Foundation (HURFON)

International Organizations:

S.N. Name

1. Office of the High Commissioner for Human Rights (OHCHR) Nepal
2. International Commission of Jurists (ICJ)

Individuals:

S.N. Name

1. Advocate Shyam Dungal, Nepal Law Campus
2. Advocate Chandra Kanta Gnyawali
3. Om Prakash Aryal, Section Officer, National Human Rights Commission
4. Binu Kumar Shrestha, Legal Officer, National Human Rights Commission
5. Babu Ram Regmi, Government of Nepal, Ministry of Law
6. Pro. Dr. Shanta Thapaliya, Legal Aid and Consultancy Centre, LACC
7. Advocate Tika Ram Pokharel, Centre for Victims of Torture, CVICT
8. Kamala Upreti, Women Foundation
9. Hari Bahadur Karki, Access to Justice and Advocacy of Rights, AJAR Nepal
10. Advocate Sanu Suwal
11. Advocate Tirtha Basaula

12. Advocate Satish Krishna Kharel, International Commission of Jurists, ICJ
13. Advocate Govinda Bandi, International Commission of Jurists, ICJ
14. Madhav Paudel, Secretary, Office of the Prime Minister, Government of Nepal
15. Advocate Hari Phuyal
16. Kaoru Okuizumi, International Legal Advisor, OHCHR Nepal
17. Kelly Low, OHCHR Nepal
18. Anne Sofie ALLARP, Advisor, European Union, Delegation of the European Commission to Nepal

C) Organizations and individuals involved in drafting process:

Organizations:

S.N. Name

1. Human Rights, and Democratic Forum (FOHRID)
2. Forum for Protection of Human Rights (FOPHUR)
3. Informal Sector Service Centre (INSEC)
4. Centre for Victims of Torture (CVICT)
5. National Human Rights Foundation (HURFON)
6. Human Development and Peace Campaign (HUDEP)
7. Collective Campaign for Peace (COCAP)
8. Institute of Human Rights Communication Nepal (IHRICON)
9. Legal Aid and Consultancy Centre (LACC)
10. Forum for Women, Law and Development (FWLD)
11. Advocacy Forum
12. Human Rights and Peace Society (HURPES)
13. National Human Rights Commission (NHRC)
14. Nepal Bar Association (NBA)
15. Nepal Law Reform Commission
16. Office of the Attorney General

17. Department of Adjutant General, (Legal Section), Nepali Army Headquarters
18. Police Headquarters, Naxal
19. Women Foundation
20. Human Rights and Peace Foundation Nepal (HURPEF Nepal)
21. Human Rights Organization of Nepal (HURON)
22. Nepal Engineers Association
23. Nepal University Teachers Association
24. Kathmandu Bar Association
25. NGO Federation Nepal
26. Appellate Bar, Patan
27. Access to Justice and Advocacy of Rights (AJAR Nepal)
28. Institute for Conflict Management, Peace and Development (ICPD)
29. Environment and Justice Society (ENJUS)
30. Centre for Conflict Studies (COS)
31. Platform for Social Justice (SOJUP)
32. Guardian Association Nepal
33. Rule of law Promotion Society
34. Ban Landmines Campaign Nepal (NCBL)
35. Lawyers National Campaign against Untouchability (LANCAU)
36. Antenna Foundation
37. Blue Diamond Society (BDS)
38. Forum for Social Development (FORSD)
39. Dalit Human Rights Organization (DHRO)
40. Voice Nepal
41. Nuwakot Development Forum
42. Jagriti Manch
43. Office of the High Commissioner for Human Right Nepal, OHCHR Nepal
44. United Nations Development Programme (UNDP)
45. International Commission of Jurists (ICJ)
46. International Committee of the Red Cross (ICRC)

47. Centre for Legal Studies (CLS)

Individuals:

S.N. Name

1. Advocate Shakuntala Thapa, Forum for Protection of Human Rights
2. Advocate Krishna Prasad Basyal
3. Advocate Nawaraj Khatiwada, Human Rights Organization of Nepal (HURON)
4. Advocate Mohan Pokharel
5. Senior Human Rights Activist Nutan Thapaliya, Human Rights and Democratic Forum (FOHRID)
6. Advocate Santosh Bhattarai
7. Advocate Rajendra Bhattarai
8. Advocate Krishna Devkota
9. Bhawani Prasad Kharel, National Human Rights Foundation (HURFON)
10. Pradeep Pokharel, Human Development and Peace Campaign (HUDEP)
11. Advocate Bijaya Singh
12. Bijaya Guidel, Collective Campaign for Peace (COCAP)
13. Advocate Sudha Khatiwada, Forum for Protection of Human Rights (FOPHUR)
14. Advocate Suman Khatiwada
15. Dr. Hari Prasad Thapaliya
16. Tulasi Bahadur Karki
17. Meena Sharma, Institute of Human Rights Communication Nepal (IHRICON)
18. Advocate Binod Nepal, Nepal Bar Association
19. Bijaya Upadhyaya, Human Rights Organization of Nepal, (HURON), Parsa
20. Debendra Parajuli, Women Foundation
21. Kamala Upreti, General Secretary, Women Foundation
22. Jaya Ram Gautam, Women Foundation
23. [Tej Prasad Kandel, Representative CPN-ML](#)

24. Man Bahadur Thapa, Human Rights and Peace Foundation, HURPEF Nepal
25. Birendra Prasad Thapaliya, President, Human Rights and Democratic Forum, (FOHRID)

26. [Sunil Paudel, FOHRID](#)
27. Saligram Singh, Nepal Engineers Association
28. Advocate Rabindra Bhattarai, AJAR Nepal
29. Advocate Hari Bahadur Karki, AJAR Nepal
30. Advocate Tika Ram Pokharel, CVICT
31. Advocate Tirtha Basaula
32. Priyanka Budhathoki, Civic Movement
33. Advocate Shyam Prasad Dhungel, Nepal Law Campus
34. Senior Advocate Sindhunath Pyakurel
35. Advocate Sanu Suwal, Jana Kanooni Kendra
36. Advocate Durga Mohan Shrestha, Okil Sewa Kendra
37. Advocate Sindhu Sapkota, Human Rights and Democratic Forum (FOHRID)
38. [Hem Prakash Karki, Environment and Justice Society \(ENJUS\)](#)
39. Advocate Raj Kumar Siwakoti, Human Rights and Democratic Forum (FOHRID)
40. Advocate Punya Prasad Khatiwada, Centre for Conflict Studies (COS)
41. Advocate Raju Ram Bhandari, Human Rights and Democratic Forum (FOHRID)
42. Advocate Mohan Pokharel
43. Rama Pathak, Human Rights and Democratic Forum (FOHRID)
44. Mohan Bhattarai, Environment and Justice Society (ENJUS)
45. Gyan Prasad Bhattarai, M. Phil Programme
46. Shasi Kumar Upadhyaya, Forum for Protection of Human Rights (FOPHUR)
47. Ramesh Thapa, National Police Academy
48. Suprabhat Bhandari, Guardian Association Nepal

49. Purushottam, Alliance Law Firm
50. Ambika Prasad Niraula, Office of the Attorney General
51. Keshav Bhattarai, Rastriya Janashakti Party
52. Deewakar Panta, Former Secretary
53. Nilambar Acharya, Former Law Minister
54. Guru Dahal, ANNFSU
55. Baburam Giri, Human Rights Organization of Nepal (HURON)
56. Binod Chadra Panta, Youth Student Depart
57. Birendra Thapaliya, CPN-ML
58. Lokesh Dhakal, Nepali Congress
59. Laxman Aryal, Former Judge, Supreme Court
60. Dr. Shankar Kumar Shrestha
61. Bishnu Raut, CPN-UML
62. Bishnu Bhusal
63. Bhim Prasad Bhurtel
64. Puspa Kamal Paudel, Nepali Mach monthly
65. Dibya Jha
66. Bibek Timalisina
67. Purna Kanta Adhikari, ICPD
68. Hari Bhakta Khoju, Dhulikhel
69. Bikash Lohani, RSS
70. Diksha Thakuri, The Himalayan Times
71. Dinesh Thapa, Nepal FM
72. Basanta Kumar Gurung, NC (Democratic)
73. Krishna Kumar Karki, Law Ministry
74. Deepak Prasai, Nepal Law Reform Commission
75. Advocate Ram Prasad Bhattarai, Advocates Chambers
76. Gopal Krishna Ghimire, Rule of Law Promotion Society
77. Dharma Ratna Bajracharya, Padma Kanya Campus
78. Manoj Sharma
79. Gopal Prasai, Journalist
80. Anil Chandra Panta, Nepal Student Union
81. Sushil G.C.
82. Harihar Yogi, Journalist

83. Bhesh Nath Sapkota, Padma Kanya Campus
84. Bhuwan Prasad Ghimire
85. Ratna Nidhi Regmi "Sukracharya" Independent Journalist and Author
86. Kamala Shrestha, NCBL
87. Koshal Chandra Sudedi
88. Kapil Kafle, IHRICON
89. Shantalal Mulmi, NGO Federation
90. Manju Karki
91. Lok Hari Basyal, FWLD
92. Sitaram Karki, Metro Post
93. Tika Paudel, Metro Post
93. Purushottam Adhikari, T.U. Press
95. Kam Dev Khanal, CVICT
96. Advocate Bhim Bahadur Niraula
97. Luma Sing Bishwokarma, INSEC
98. Bishnu Prasad Dhungana
99. Ram Prasad Shrestha, FOPHUR
100. Prakash Kumar Pokharel, Forum for Justice
101. Amar Raj Kaini, NC-Democratic
102. Keshav Dahal, UNDP
103. Charan Prasai, Human Rights Organization of Nepal (HURON)
104. Purushottam Nepal, Nepal Law Reform Commission
105. Binu Kumar Shrestha, National Human Rights Commission
106. Shiv Bhandari, European Union, Delegation of the European Commission to Nepal
107. Anne Sofie ALLARP, Advisor, European Union, Delegation of the European Commission to Nepal
108. Reshma Thapa, International Commission of Jurists (ICJ)
109. Pawan Nepali, LANCAU Nepal
110. Tula Chaudhari, Antenna Foundation
111. Advocate Sher Bahadur K.C., Nepal Bar Association
112. Rabin Subedi

113. Sunil Babu Panta, Blue Diamond Society
114. Mahadev Prasad Yadav, Former Attorney General
115. Shyam Prasad Mainali, CPN-UML
116. Mukunda Paudel, Law Association Nepal
117. Advocate Anita Sapkota Chapagai, LACC
118. Prof. Dr. Rajit Bhakta Pradhananga, Nepal Law Campus
119. Kelly Low, OHCHR Nepal
120. Hari Phuyal, OHCHR Nepal
121. Hem Lawati, Nepali Army Headquarters
122. Jagannath Mishra, Appellate Bar, Patan
123. Govinda Chaudhary, Nepal Sadbhawana Party-Anandi Devi
124. Abhaya Raj Joshi, National Human Rights Foundation, HURFON
125. Usha Titikkshu, Sangya
126. Tara Prasad Lamichhani, Alliance Law Firm
127. Adebayo Olowo-Ake, ICRC
128. Krishna Chalishe, ICRC
129. Ambar Raut, Advocacy Forum
130. Raju Prasad Chapagai, National Legal Advisor, OHCHR Nepal
131. Padma Mathema, National Human Rights Commission
132. Masako Yokoyama, Human Rights and Democratic Forum (FOHRID)
133. Krishna Pahadi, Civil Society
134. Raju Karki, Social Development Forum
135. Krishna Khadka
136. Ananda Adhikari
137. Kishor Paudel, Associate Press Institute
138. Pramila Ranjit, LL B Student, Nepal Law Campus
139. Damodar Adhikari
140. Srijan Sharma, Shankar Dev College
141. Bimal Paudel
142. Hon'ble Yagya Murti Banjade, Attorney General of Nepal
143. Bishnu Basyal, LLM Student, Nepal Law Campus

144. Narayan Sharma, Kalyan Pakshik
145. Dhruva Hari Neupane
146. Ramesh Neupane
147. Prapti Acharya, LLB Student, Nepal Law Campus
148. Dal Bahadur Bishwokarma, Dalit Human Rights Organization DHRO
149. Kopila Shrestha, Nepal Law Campus
150. Karuna Shrestha, Nepal Law Campus
151. Ashok B.K., Voice of Nepal
152. Prativa Kunwar, Music FM
153. Suraj Shrestha, Axis Media
154. Hon'ble Mahendra Bahadur Pandey, Member of Legislature-Parliament and Chief Whip CPN-UML
155. Min Prasad Sharma, Mandavi News
156. Sagar Ghimire, COCAP
157. Ashok Sarki
158. Manohar Upreti, Nesov
159. Rukmani Maharjan, Nepal Law Campus
160. Kabita Shrestha, Nepal Law Campus
161. Sharmila Dhakal, Blue Diamond Society
162. Nischal Rijal, Journalist
163. Khim Lal Panthi, Capital FM
164. Suresh Sapkota, Nepal Law Campus
165. Hom Natha Acharya, Balmiki Campus
166. Amrit Bhatta, Sagarmath TV
167. Sri Krishna Wanju, Nepal Law Campus
168. Rajendra Aryal
169. Pramod Bhattarai, Kathmandu School of Law
170. Chandra Bhupal Pun, Victim
171. Dilli Acharya
172. Durga Yogi
173. Rina Subedi
174. Devi Chhantel
175. Prakash Roka
176. Matrika Prasad Timilsina

177. Kiran Shrestha
178. Yogendra Bohora, Voice of Asia
179. Advocate Govinda Bandi, International Commission of Jurists (ICJ)
180. Madan Lamsal, Samaya Nepal
181. Ram Bahadur Tamang, LLM Student, Nepal Law Campus
182. Sitaram Bhandari
183. Dipak Kafle
184. Prasanna Thapa
185. Suman Acharya
186. Kul Raj Neupane, Mahendra Ratna Campus, Tahachal
187. Nim Datta Subedi, RSS
188. Shiba Ranabhat, Office of the Attorney General
189. Kiran Neupane, Human Rights and Peace Society
190. Ishor Adhikari
191. Surya Deuja, National Human Rights Commission
192. Abhilasha Risal, Kathmandu School of Law
193. Rupa Devi Bastola, National Human Rights Foundation, HURFON
194. Narayan Prasad Paudel, Nepal Law Campus
195. Bishwo Mani Paudel, Nepal Telecom
196. Rameshwor Upadhyaya, Nepal University Teacher's Association
197. Santosh Lama
198. Raju Adhikari
199. Tika Ram Limbu
200. Krishna Basyal
201. Krishna Prasad Adhikari, Police Headquarters, Naksal
202. Dr. G.L.S. Das
203. Rameshwor Bhandari, Nuwakot Bikas Manch
204. Pramod, ATV
205. Binu Lama, Nepal Law Campus
206. Roshan Mahato, Blue Diamond Society
207. Prof. Dr. Birendra Prasad Mishra, Former Election Commissioner

208. Advocate Hem Mani Subedi
209. Bijaya Kanta Karna, Jagriti Manch
210. Keshav Gautam, Dang
211. Mayarsh Ghimire, Lamjung
212. Naresh Shrestha
213. Dipak Rijal, Nepal Samachar Patra
214. Ramesh Wagle, Sagarmatha TV
215. Advocate Sarita Rai
216. Nirmala Shakya, Kathmandu Bar
217. Sunita Kandel, Baglung
218. Surya Chandra, Baglung
219. Surya Narayan Shah, Maoist Victim, Rukum
220. Dol Kumari, Maoist Victim, Baglung
221. Tili Maya, Maoist Victim, Baglung
222. T. R. Paudel, Journalist
223. Raj Kumar Ranjit, Legal Section, Nepal Army Headquarters
224. Paul Green, Legal Officer, ICJ Asia Pacific Programme
225. Advocate Kamal Pokharel, General Secretary, Centre for Legal Studies (CLS)

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आभार : दण्डहीनता निषेध गर्ने विधेयक २०६४ को निर्माणमा सुरुदेखि अन्तिमसम्मको मस्यौदा कार्यमा योगदान गर्नुहुने अधिवक्ता भिमार्जुन आचार्य, नागरिक मस्यौदा परिषद्मा संलग्न भई मस्यौदा निर्माण प्रक्रियामा योगदान गर्नुहुने संस्था एवं व्यक्तिहरु, प्रति फोरिड आभार व्यक्त गर्दछ ।