

EVALUATION REPORT OF COMBATING IMPUNITY TO PROMOTE ACCOUNTABILITY-PROJECT



FOHRID

HUMAN मानव अधिकार तथा प्रजातान्त्रिक मञ्च
RIGHTS AND DEMOCRATIC FORUM

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Evaluation Report of Combating impunity to promote accountability-project



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Preface

We feel happy to present before the reader this External Evaluation Report of the "Combating impunity to promote accountability – project" implemented by Human Rights and Democratic Forum (FOHRID) from April 2009 to May 2010. Under this project, FOHRID conducted intensive sessions of interaction and consultation with experts about incorporating retroactive provision to prosecute in the serious crimes already defined by international law and to punish the perpetrators involved in such crimes. The outcome of such programs were recommended to the concerned CA Committees and CA Members. This report has been prepared after evaluation of this whole process and its outcome.

The new Nepal envisioned by Nepali citizens is a society with zero tolerance to impunity and the ruling system complying to it. For this, the serious crimes of the past must be addressed and the perpetrators must be brought to the justice system. The bad culture of impunity cannot end till we bring them to the justice system by formulating retroactive law. The constitution making process is a golden opportunity for Nepal to address impunity. Our aim to ensure new Nepal without impunity shall remain just a dream if we fail to incorporate impunity related provision in the new constitution.

The CA Committee for Fundamental Rights and Directive Principles submitted its preliminary draft to CA Chairman Subas Chandra Nemwang on 8 November 2009. Among the 31 fundamental rights, the inclusion of retroactive provision to address serious crimes under international law drew the attention of legal experts and intellectuals. Similar provision was recommended by the Interim Constitution Drafting Committee also but consensus could not be developed to incorporate it as a provision. The civil society exerted pressure once again in the process of drafting a new constitution from the CA. Though consensus was not secured in the CA Committee for Fundamental Rights and Directive Principles regarding this provision, it was included as two separate additional opinions by Nepali Congress and CPN-UML. This has opened door for discussion on the possibility to formulate retroactive law.

We are grateful to the FLC of Finland Embassy in Kathmandu for providing financial support to implement this project. We highly appreciate the cooperation from senior authority and officials of Finland Embassy

including Program Coordinator Ms. Kati Bhose and Program Coordinator Mr. Matti Väänänen for their continuous support and feedback to succeed this project. FOHRID would like to thank all the experts and participants who extended their invaluable cooperation being directly involved in the implementation process. It is impossible to mention the names of all the stakeholders and well wishers who contributed in the project implementation; however, we must recall the valuable contribution from the team members of FOHRID who were always ready to work even during odd hours to accomplish this task.

FOHRID would like to thank Advocate Punya Prasad Khatiwada, an independent Lawyer and free lancer consultant for evaluation of this project. I express my gratitude to FOHRID President Mr. Birendra Prasad Thapaliya for the advisory role and HR Program Coordinator Mr. Tulasi Bahadur Karki for translating documents as resource materials and editing the language to make it standard during evaluation process.

We believe that this report shall be an instrument to share the experiences of the civil society to apply retroactive provision against serious crimes under international law. FOHRID family is happy for being able to bring encouraging outcome through this project with the help of the stakeholders. We shall be grateful to the readers if they point out errors and weaknesses in this publication as well as in the whole project implementation process so that we can learn for improvement in the future.

We look forward for response and creative feedback from the readers.

Thank you.

On behalf of FOHRID,

Raj Kumar Siwakoti
Secretary General

Abbreviations

AG	Attorney General
BS	Bikram Sambat
CA	Constituent Assembly
CIPA project	Combating impunity to promote accountability-project
CPN-UML	Communist Party of Nepal (United Marxist Leninist)
ESP	Enabling State Program
EU	European Union
FGD	Focus group discussion
FLC	Fund for Local Cooperation
FNJ	Federation of Nepalese Journalists
FOHRID	Human Rights and Democratic Forum
ICC	International Criminal Court
ICJ	International Commission of Jurists
NBA	Nepal Bar Association
NHRC	National Human Rights Commission of Nepal
NPWG	National Protection Working Group
OHCHR	Office of the High Commissioner for Human Rights
SAFMA	South Asian Free Media Association
TRC	Truth and Reconciliation Commission
UCPN-Maoist	Unified Communist Party of Nepal (Maoist)
WTO	World Trade Organization

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Part I General introduction

1.1 Background of call: The Combating impunity to promote accountability-project (CIPA project) was funded under the Fund for Local Cooperation (FLC)¹ by Embassy of Finland, Kathmandu. There are two funding areas under FLC of Finland Embassy. First, Innovative ideas linked with the Finnish Development Cooperation policy; and second, Peace building and conflict transformation. The project being evaluated is implemented under the Sub-theme “promotion of human and civil rights situation” under the second funding area.

1.2 Implementing agency:

FOHRID Human Rights and Democratic Forum was established in 2001. It is a non-government, non-profit making, non-political, independent, public interest organization. It has been registered in the District Administration Office, Kathmandu with Regd. No 185/058-059. It is affiliated to Social Welfare Council, Government of Nepal on 9 November 2003 (BS 2060/5/25) with the affiliation no. 15269 and it has been working in close association with national and international non-governmental organizations. Economists, political scientists, advocates, senior human rights defenders, anthropologists, researchers, development experts are involved in this organization.

FOHRID’s Mission: As a dynamic organization, FOHRID aims to materialize democratic process and culture through protection, promotion and respect of human rights by planning and implementing advocacy, education, conflict resolution, networking, collaboration and capacity building activities according to its faith, commitment and vision.

¹ *The Fund for Local Cooperation (FLC) is a financing instrument of the Embassy of Finland for small development projects implemented by local organisations. The FLC supports the objectives set in the Finnish Government’s Development Policy Programme, which is an integral part of the Finnish Foreign Policy. The primary objective of development policy is the eradication of poverty by promoting economically, socially and environmentally sustainable development. Special attention is given to initiatives that strengthen civil society development by enhancing social equality, gender equality, open civil participation and human rights. The FLC can also be directed to projects that enhance commercial ties or strengthen local cultural identities.*

In Nepal, FLC is used to complement and supplement Finland’s wider bilateral development programme in Nepal by making it more relevant, efficient and effective. FLC is seen targeted and focused tool that responds the rights and needs of Nepali communities. However, the objectives defined in FLC strategy don’t necessarily try to achieve all objectives defined in the Finland’s development policy programme. Special emphasis is put on the districts with low Human Development Index (HDI) and on the marginalized and excluded groups. All projects supported through the FLC should promote creation of a diverse society where every individual living in Nepal has equal rights regardless of gender, ethnicity or caste identity. This should be done through social inclusion and/or empowerment of traditionally marginalized groups. (For more information please visit < <http://www.finland.org.np>>)

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FOHRID's Modality: FOHRID has developed a modality over the years of its activities and experiences in grassroots and local level. It conducts study, research, organizes seminar, workshop, interaction, public hearing and symposium to accumulate knowledge and professional skills for future action and intervention. Plan of intervention or action are mainly implementation work at primary stakeholder or grassroots level of beneficiaries, which are meant to organize the target groups for their own needs. This is the modality of FOHRID: RESEARCH–ACTION–ORGANIZATION model.

Major issues of concern / objectives of FOHRID are as follows:

- Protection, promotion and respect of human rights according to the Universal Declaration of Human Rights-1948 and other relevant international instruments,
- To strengthen democratic process and culture through institutional capacity building at all levels,
- To take initiatives to end impunity for protection and promotion of human rights and strengthening rule of law.
- To initiate campaign for the ratification and implementation of Rome Statute 1998 of ICC at the domestic level.
- To initiate campaign for immediate signature and ratification of other UN Conventions and Optional Protocols by Nepal.
- To take initiative for poverty alleviation through conducting constructive activities for community development by identifying, managing and mobilizing natural resources.
- To establish culture of peace and conflict management.
- To enhance institutional infrastructure and capacity building of FOHRID.

Principal achievements in the past three years:

- Development of an organization with knowledge and skills as well as development of membership representing the resources and work on democracy and human rights related humanitarian concerns.
- An identity of a national level non-governmental organization.
- An advocate for democracy, peace and human rights with focus on diversity, fundamental rights and freedom.
- Development of quality in work.
- Linkage with national and international organizations and resources.

Field(s) of activity:

Principal thematic approaches of the organization are:

- Co-ordination, facilitation and networking
- Knowledge center
- Representation, advocacy and policy debate
- Documentation, translation, publication, dissemination
- Promotion of professional standards

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FOHRID has become a service provider in the non-profit sector. The benefits of its activities are directed at:

- a) People in need regardless of ethnic, gender, political or religious backgrounds;
- b) Promotion of dialogue for inclusive democracy and non-violent conflict resolution;
- c) Provision of empowerment and assistance through community based participatory approach in the protection and promotion of inclusive democracy, peace and human rights;
- d) Provision of durable solutions for those affected by conflict; and
- e) Promotion of the principle of service and professionalism in the non-profit sector.

So far, FOHRID has successfully implemented two projects with funding from the EU under EIDHR. The first was “Ending unlawful killings and impunity project” and the second was “Initiative to combat against torture and impunity”. This document evaluates implementation status of the “Combating impunity to promote accountability-project” implemented with the financial assistance from Fund for Local Cooperation, Embassy of Finland, Kathmandu. Alongwith this project, FOHRID has accomplished “Initiative to support constitution making process” with the funding from ActionAid/MS Nepal. Likewise, FOHRID accomplished Campaign for constituent assembly with the support of ActionAid Nepal, Advocacy for social, economic and legal justice for victims of conflict through truth and reconciliation commission with the funding from the ESP. Besides, FOHRID has successfully implemented several other projects including Initiative for Democratic and party reform, Initiative for vulnerable groups, Regional Initiative for the rights to sustainable livelihood and the enabling of social and political participation (in South Asia), Intensive Campaign in the form of National Protection Working Group (NPWG), Campaign of FOHRID on WTO and globalization, Study and research, Publication and dissemination. In 2006, FOHRID established an intensive networking of the human rights and civil society to integrate and strengthen campaign against impunity and for ratification of the Rome Statute. This coalition under the banner of Citizen’s Task Force to Combat Impunity has the involvement of 52 organizations and 113 individual campaigners from the human rights and civil society. Apart from these, FOHRID has initiated internship scheme for the national and international students. Interested students studying in the +2, Bachelors or Masters level are provided internship opportunity for 1 to 6 months.

FOHRID has established working relationship with the Delegation of European Commission in Nepal, Office of the High Commissioner for Human Rights, Six Treaty Bodies of the UN, Taiwan Foundation for Democracy (TFD), Finland Embassy, Federal Republic of Germany, ICJ, National Human Rights Commission of Nepal, Amnesty International, Grassroots International, Institute for Agriculture and Trade Policy, Minneapolis USA, 3D-Trade, Human Rights and Equitable Economy, Geneva, Enabling State Programme Nepal, CARE Nepal, ActionAid Nepal, Consortium of Humanitarian Agencies (CHA), Sri Lanka, International Centre for Ethnic Studies, Sri Lanka and other national, regional and international organizations in the fields complying with FOHRID vision and mission.

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The office infrastructure and employees of FOHRID is satisfactory. Office of FOHRID is situated at Dillibazar, Kathmandu. Currently, there are 13 officials and staff members at FOHRID. Six of them are working in full time basis in different areas; seven are working in the part time basis and three are volunteers. There is small resource center, enough infrastructure, equipment and space in the office to work for the above team.

1.3 Brief introduction of project:

FOHRID received opportunity to work with the Finland Embassy after approval of a proposal in the Priority issues '1' of the call for proposals under FLC. The project was entitled "**Combating Impunity to Promote Accountability-project**". Total budget of the project was 34,115 EURO. The project duration was from 16.04.2009 to 31.05.2010. Brief outline of the project is given below:

Objectives	Activities	Quantify output	Expected results
To incorporate impunity prohibition provision in the new Constitution and to build a public interest campaign against impunity.	1. Media mobilization 2. Produce analytical discussion paper 3. Focus Group Discussion	1.1 Articles published in newspapers- 25 1.2 Open media round table discussion-2 events 1.3 Closed media round table discussion-1 event	1. Nationwide campaign built against impunity and stakeholders more sincere towards accountability. 2. Impunity prohibition provision incorporated in the new constitution. The new constitution shall incorporate provision for "prosecuting and punishing in the war crimes and crimes against humanity by formulating law with retroactive effect" in the rights regarding justice under fundamental rights. It shall also ensure that "Any person shall have the right to get legal treatment against impunity and crime against humanity".
This project shall take initiative to incorporate provision to end impunity and promote accountability in the new constitution to be formulated by the CA. Through this action, stakeholders will be sensitized on the need to incorporate provisions to end impunity and promote accountability in the new constitution.	4. Consultation meeting / lobbying 5. Compilation, publication, dissemination	2. Different themes and issues - 7 papers 3.1 Central level-4 events 3.2 Regional level -6 events 4.1 Consultation meeting with experts-3 events 4.2 Recommendation lobbying with the constitution drafting bodies and CA Members-6 events 5. Publication-1000 copies (350 pages)	3. Include the provision guaranteeing right to life in the constitution. 4. The efforts made to address impunity in the constitution drafting process shall be documented. This shall be a reference material for the legislative organs, policy makers, law enforcing agencies, judiciary, law interpreters, students, academicians and researchers in the future for implementation of the impunity prohibition provision.

Part II Evaluation Rational and methodology

1.1 Rationale:

Rationale of this evaluation is to explore the achievements of the objectives and outcomes set by the “Combating impunity to promote accountability-project” in the beginning. The results and achievements of the project is evaluated in light of relevance, impact, effectiveness, sustainability, participation and ownership, gender and inclusion, visibility and communication, staff performance, budget etc. In this way, the rational of this evaluation is to determine the level of achievement and to make recommendations for further steps.

1.2 Evaluation methodology

Literature and secondary information review: The evaluation study was based on both qualitative and quantitative assessment of the key elements of the project documents and principal risk assumptions. The evaluator made an extensive review of relevant project documents, publications as well as results and impact. Based on the ToR and discussions with the project staff of FOHRID, the evaluation exercise primarily relied on a systematic collection of information from project staff focusing on the project characteristics, activities and effects. Content analysis method or the document method was applied to collect secondary information related to the project activities and policy environment for the projects. Many secondary sources such as internal evaluation and monitoring report, activity reports, financial statement, actual expenditure reports, audit reports, e-mail correspondence with funding agency, project final document and all other project related documents have been reviewed and the content has been analyzed. For these various sources of information, document method has been applied as the key tool for collection of secondary data. Document method is essential tool for secondary data collection. Denscombe (1999) writes in this regard, “Quite apart from the literature review, there is another way in which documentary sources can be used for the research. Rather that acts as an introduction to the research they can take on a central role as the actual thing that is to be investigated. In this sense, document method can be treated as a source of ‘data in their own right’- in effect an alternative to questionnaire, interview or observation” (Denscombe 1999, pp 156-59).

Questionnaire and interview : FOHRID project staff was interviewed to make the evaluation process fruitful. Oral interview was conducted with the stakeholders. Questionnaire is important tool for the data collection. All FOHRID project staff have administered the questionnair for information collection. Information was gathered through a separate questionnaires for the project staff. This contributed to make the evaluation systematic and successful. This method has been applied for interview. Program coordinator and other project staff have been interviewed openly, and wide variety of information has been collected. Therefore, maximum amounts of data have been collected by means of interview providing comprehensive insights on the subject matter.

Part III Assessments and evaluation on key aspects

1.1 Relevance

3.1.1 National context: Nepal is currently in the process of institutionalizing peace and democracy. After successful election to the Constituent Assembly (CA) in April 2008, Nepalese national politics was focused to a single issue of formulating a new constitution for the country. In such a context, it is natural that the people seek to address all the national problems through constitutional provision and national policy. At the same time, protection, promotion and respect of human rights is imperative for a fresh start. The issue of addressing impunity, strengthening state and promotion of accountability require to be focused. The prevalence of widespread impunity has challenged the public conscience, human tolerance and human rights culture. Due to existing impunity, the perpetrators of serious crimes of international concern are not brought into the justice system by defining them as *hostes humani generis*.

Nepal, compared to other countries in South Asia, has signed a significant number of international instruments pertaining to human rights and humanitarian law. Those international instruments have clearly denounced impunity. Nepal, as a state party to these instruments, should follow legal and constitutional measures to end impunity. As a state party, it is obligatory for Nepal that such instruments are implemented at the domestic level. However, from the past to the present, Nepalese constitution and other domestic laws have not addressed serious crimes under international law and impunity properly.

Perpetrators are not punished, and the victims do not get proper justice because serious crimes under international law and impunity have not been addressed properly through the constitution and domestic laws till now. Nepal has not acceded to the Rome Statute of ICC that has hindered the country from fulfilling international obligations against impunity. Those responsible for gross violation of human rights laws and serious violation of humanitarian laws have not been brought to justice resulting in increased impunity and decreased accountability. Similarly, zero tolerance to impunity is necessary for strengthening rule of law and democracy. We cannot attain an improved human rights situation unless we take effective, adequate and concrete measures to end impunity and strong legal provision to address serious crimes under international law. Increased impunity in such serious incidents is evidence of the inadequacy of the Nepalese legal system.

Absence of accountability, flourishing impunity and escape from justice are occurring in the context of a severe human rights crisis and breakdown in the rule of law and the justice system, and it has grown since the 1990s ultimately hindering the promotion of human rights and peaceful conciliation in Nepal. The challenge for Nepal in promoting human rights, rule of law and democracy is the immunity being enjoyed by perpetrators.

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The Interim Constitution Drafting Committee headed by former justice Laxman Prasad Aryal had included a provision in the draft interim constitution for taking action against perpetrators by formulating a law with retroactive effect. But the legislative parliament did not recognize the right against impunity as a fundamental right. Impunity was put in the directive principles of the state. The committee had recommended a provision on impunity as a fundamental right in Part 3, Article 25 (4) of the Interim Constitution which states, "Provided that this shall not hinder prosecuting and punishing in the war crimes and crimes against humanity by formulating a law with retroactive effect." The same draft had recommended rights regarding justice in Article 25 (5), "Any person shall have the right to obtain legal remedy against impunity and crimes against humanity." Unfortunately, these provisions were omitted when the constitution was published in the gazette after being passed by the legislature parliament on Magh 1, 2063.



However, Article 33 (c) of the constitution has accepted the concept of fundamental human rights stating "... to maintain good governance by eliminating corruption and impunity" will be the responsibility of the state. Though this is a landmark achievement at the policy level, there is still a big question about how and when it will be implemented as it is kept under Part 4 Responsibilities, Directive Principles and Policies of the State. Paragraph 7.1.3 of the Comprehensive Peace Accord concluded between the Government of Nepal and the CPN (Maoist) on November 21, 2006 states, "Both sides express the commitment that impartial investigation and action shall be carried out in accordance with the law against persons responsible for creating obstructions to exercise the rights stated in the Accord and ensure that impunity shall not be encouraged. Apart from this, they also ensure the rights of the victims of the conflict and torture and the rights of the family of disappeared persons to obtain relief."

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On Chaitra 18, 2063, the government issued its minimum programme of consensus with the signatures of the top leaders of eight political parties. Paragraph B (7) of the programme states, "Crimes and anarchy shall be controlled by strengthening the situation of peace and security. Law and order will be maintained and impunity eradicated by ending continued strikes, bandhs, gheraos, blockades and uncertainty." Paragraph D (2) of the same programme states, "Good governance will be guaranteed by ruling the state according to the principle of the rule of law and access to governance and services will be expanded through administrative reform. The civil service and security agencies will be made professional, capable and committed, impunity will be ended and the Commission for the Investigation of Abuse of Authority and law enforcement authorities shall be strengthened and made effective."

The above policies and political agreements can be fruitful if the provision regarding impunity is incorporated in the constitution under fundamental rights. Pressure should be created to address impunity at the national level to lead the peace process to a logical conclusion. On the basis of such efforts, we must ensure that the right against impunity is incorporated in the new constitution. A strong initiative based on national and international experience is necessary for this. This shall fulfill the need to take steps to realize past efforts by addressing impunity in the constitution.

Till now, there is neither a constitutional nor legal provision in Nepal to address impunity and serious crimes under international law. No effective effort has been made in the past to discourage impunity through such provisions either. State organs like the government, governance system, leadership, security forces and policy makers have the primary responsibility to mitigate the problem of impunity. However, they have not shown any clear vision or adopted concrete measures in this regard till now. Therefore, a concerted effort by organizations working to eliminate impunity from the face of Nepal is required to insert provisions in the constitution to end impunity vis a vis serious crimes under international law and promote accountability. These efforts should be taken together with the campaign for a perfect constitution.

Addressing the problem of impunity is the need of present Nepal. It is contextual to address the impunity and serious crimes under international law through an effective provision under right regarding justice in the new constitution. In this context, need of implementation of the Combating impunity to promote accountability-project is justifiable. This was contextual at the time of project design and shall remain important in the future. This is very much important to follow up the achievements of this project at least till a new constitution is promulgated by the CA.

3.1.2 Targeting the most relevant groups

The project aimed to incorporate impunity prohibition provision and addressing the serious crimes under international law in the new constitution. Such as prosecuting and punishing in the crimes against humanity and war crimes by formulating law with retroactive effect in the rights regarding justice under fundamental rights. In this way, the project was designed selecting the target groups with the objective and need to incorporate important provision in the fundamental rights of the new constitution. The project has selected target groups to match the need to conduct advocacy with the Constitutional Committee and CA Committee for Fundamental Rights and Directive Principles.



Main beneficiaries of this project are CA Members, Constitutional Committee, thematic committees and procedural committees of the CA. Civil society and human rights community are also beneficiaries. The project has facilitated them to incorporate impunity prohibition provision in the new constitution. Final beneficiaries shall be all the Nepalese people as it reduces risks caused by impunity to them. Relevance of the target groups selected by the project can be analyzed as follows:

Political level

The target groups from political level are the major actors in the constitution making process. Their role and responsibility is imperative to incorporate provision to address impunity and serious crimes under international law in

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the new constitution. Implementation of this project was impossible without their active participation. Selecting CA Chairman, CA Members, constitutional committee, thematic committees and procedural committees of the CA, political parties including their sister organizations as major target groups for the project to assist in the constitution making process and to incorporate provision to address impunity and serious crimes under international law in the new constitution is the strength of this project.

Government Level

Participation of the target groups selected by the project is crucial for the constitution making process. The Ministry of Law, Justice and Constituent Assembly Affairs, Parliament Secretariat, Office of the Attorney General are the government agencies that can play important role in the constitution making process. Their participation in the project is contextual as they give feedback to the CA. This is also policy making level. Participation of this target group in the beginning of the process helps in the implementation phase in the future.

Non-government level

It is necessary to make the CA, political parties and the government agencies accountable to address impunity and serious crimes under international law. For this, non government sector can play the role of continuous watch dog. Therefore, it was necessary to sensitize them on the issue. The non-government sector such as Nepal Bar Association, lawyers, journalists, organizations of women, dalits and ethnic communities, trade unions, human rights organizations, student leaders and occupational groups are responsible to exert pressure and conduct advocacy to incorporate appropriate provision to address people's concerns regarding impunity and accountability. It is contextual to include them as target groups. The project has addressed this need.

3.1.3 .Relevant issues

The project has focused the impunity issue caused by the past conflict and mass human rights violation. This is a sensitive issue in a post conflict society. The project has systematically raised the issue of incorporating constitutional provision to address impunity in the new constitution. Nepalese political history is full of problem of impunity. Impunity has continued unabated during Panchayat regime, democratic rule after 1990, armed conflict after 1996 and after the success of Jana Andolan II. Absence of bringing into justice those responsible for gross violation of human rights law and serious violation of humanitarian law has caused increased impunity and decreased accountability. Findings of the interaction program **on "Addressing impunity and promotion of accountability in new constitution"**, held in Janakpur on 28 August 2009 has pointed out the causes of increasing impunity and decreasing accountability as follows:

- a. Lack of implementation of law:** *We have envisaged an ideal Nepal that respects rule of law in paper. But, we need not only the rule of law but the rule of just law. The law enforcing agencies including police and District Administration Office have not adopted the general rules regarding arrest, interrogation and prosecution. The letters and spirits of the provisions of law are not followed properly. People are arrested without notice. Court's order to produce the convicted in the court is denied even when the person in question is in detention. We can prosecute all forms of killings through Muluki Ain, if the state becomes determined. Torture is used as a means of obtaining confession. The detainees are not made available to meet. The convicted person is not allowed to have counsel with a lawyer. Though the arbitrary detention is illegal, the Chapter of Illegal Detention is not applied. Lack of effective implementation of law is the traditional problem of Nepalese legal system.² Impunity is strengthened when an activity is not administered according to law.³ The existing laws have not been implemented effectively and the law enforcing agencies are not accountable.⁴ Therefore, lack of implementation of the existing law is the major cause behind widespread impunity and decreased accountability in Nepal.*
- b. Weakness and incapability of the law enforcing agencies:** *The law enforcing agencies in Nepal are not skillful and well equipped with modern means and technology. Cases are piled up in the courts and the courts do not decide the cases in time. A decade may pass easily to finalize a case. It is argued that the lack of adequate human resources is reason behind this. Means and resources must be added, if it is not adequate; but no one pays heed towards this. It is not appropriate to delay justice in the name of lack of means and resources. The existing human resource is not performing effectively. The law enforcing agencies have been controlled by irresponsible and inactive officials. This has given rise to corruption and delay in justice administration. Many people have negative feelings about law enforcing agency and judiciary due to their bad experience.⁵ Most of the officials of the law enforcing agencies own traditional feelings regarding human rights. This has also made the state indifferent towards protection and promotion of human rights.*
- c. Abuse of authority:** *The government officials are habitual to abuse of authority. The police are authorized to arrest, investigate, prosecute and produce to the court in relation to a convicted person. But the police use torture as a means of extracting confession. Torture is not allowed but the police are practicing torture under the veil of investigation. The District Administration Office, Forester, the court officials continue use of physical and mental torture abusing their authority. Impunity does not end and*

2 Views expressed by Senior Advocate Yugal Kishor Lal as commentator to the papers presented.

3 Views expressed by Justice Surendra Singh Basnet.

4 View of CA Member Ram Saroj Yadav.

5 Views expressed by different participants.

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accountability cannot be promoted till this trend prevails in the government officials and law enforcing agencies. We have examples of approving false statutory limitation by Tameldar in the court. In this way, the authorized persons themselves are involved in violation of law. We should regulate the situation of enforcement of law to stop abuse of authority. We should create an environment to ensure right of a citizen to get notice before his/her arrest.⁶ Bureaucracy is responsible for impunity in Nepal. The abuse of authority by the bureaucrats is the major cause.⁷ We cannot expect an accountable bureaucracy and political system till we end abuse of authority.

d. Trend of political criminalization and withdrawal of cases: *Political criminalization in Nepal is closely connected with political power, murder and violation. Crimes and criminals are protected from the political level. The criminals are backed by the power mongers. The political party leaders are directly protecting the criminal gangs. The tie between the crime, criminal and politicians is getting stronger. Withdrawal of cases by the government has further aggravated this. The government withdrew significant number of cases in 1991-92. The decision of the council of ministers had withdrawn 527 cases of homicide, intended homicide, fraudulence of government stamp, use of fraud check etc. Similarly, in 2008 the Maoist led government withdrew 349 cases related to serious crimes including rape and smuggling of drug. The government has the duty to enforce law. It has to ensure punishment to the culprit and justice to the victims. Politicization of crimes challenges administration of justice and implementation of law. Withdrawal of the cases relating to the crime of homicide is in a way protecting of crime and criminals. It is unfortunate that the Nepalese politics has turned to be a factory to produce criminals.⁸ In this way, the criminalization of politics and politicization of crime has strengthened impunity and decreased accountability.*

e. Existing social contradictions and the potential accident that it can invite: *Now, there is a controversy over language in the country. Foundation is being created for conflict on ethnic identity, geography, color and existence. This can invite dangerous contradiction in the society. The situation of impunity can be aggravated if a group becomes aggressive towards the other for existence. We have to formulate new constitution addressing the possibility of contradiction and conflict. But we are still not sure about whether the constitution will be formulated in time or not, that has hinted a possibility of further contradiction. Voice of the oppressed has been surfaced to which the State has to address. The oath of Vice President Paramananda Jha in Hindi language became a national issue. This debate may prolong leading to an unwanted situation. The society may head towards anarchy and violence if we fail to address contradictions. Absence of this may aggravate impunity and end accountability.⁹*

6 Comment of Senior Advocate Yugal Kishor Lal on the discussion paper.

7 View expressed by Dharmendra Sharma, Vice Chairman of Appellate Bar Unit, Janakpur.

8 Opinion of Senior Advocate Ramji Prasad Mainali.

9 Views expressed by Abhaya Kanta Datta, Rajeshwar Nepali and Abhaya Ashish.

- f. Lack of change in the thinking of the law enforcing authority:** Reinstatement of democracy through Jana Andolan II was a harbinger of significant change in Nepal. However, the law enforcing agencies including the Office of the Attorney General, District Administration Office and police have not transformed according to the spirit of change. They are still overcome with the traditional thinking. They believe that the human rights situation is favourable in Nepal. They opine that the country has taken unnecessary burden by ratifying international human rights treaties. Those leading administration claim that we are leading the country towards wrong direction by talking about international law.¹⁰ Responsible persons in the law enforcing agencies are unable to accept change. They still have the thinking and mentality of the Panchayat era. Respect of human rights cannot be preserved till the mentality of the authority in the law enforcing agencies is changed. The issue of protection and promotion of human rights becomes shadowed and impunity prospers. This traditional feeling in the responsible persons has given rise to the situation of impunity.¹¹
- g. Lack of good character and dedication:** The political leaders and bureaucracy lack good character and dedication. They still bear feudal concept and culture. The office bearers have a narrow perspective to view the general public. The officials harass more than serve the people. Leaders talk of ideal and duty till election but forget their commitments and become corrupt after winning the election and entering into Kathmandu valley. The bureaucrats and leaders are characterless and corrupt. They do not have a trace of accountability. The leaders, government officials as well as the public must hold good character and become accountable to end impunity. Impunity cannot end till our character is not improved. Sarbe bhawantu sukhina.. (Let all be happy..) is the motto of socialism. Socialism does not prevail by just claiming ourselves as socialists. We can make the society disciplined and dutiful only if we become responsible and dutiful. Then only accountability is possible and impunity can be discouraged.¹²
- h. Poverty and unemployment:** Poverty and unemployment have contributed to aggravate impunity. Poverty has controlled the conscience of the public encouraging them to commit crimes. This social hazard has been utilized by leaders to win election. Youths are unemployed and they do not have stable source of income. The state has failed to mobilize resources and provide employment opportunities. Man has taken shelter of crime for adequate standard of food and livelihood. This situation has been convincing society to accept crime as natural. Under these circumstances, poverty, politics and crime have become intertwined. People are convinced that there is no option other than committing crime to live. This has motivated people to commit crime, prospered impunity and made the society less accountable.¹³

10 As stated by Chief District Officer of Dhanusha district.

11 Based on opinion of most of the participants of the program.

12 Based on opinion of Swami Sarbeshananda and Bhagirath Lal Karna.

13 Based on opinion of Swami Sarbeshananda and Abhaya Ashish.

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Zero tolerance to impunity is necessary to strengthen rule of law and democracy. People's confidence on justice is decreasing due to impunity and the situation of accountability is deplorable. Under these circumstances, it is contextual to raise the issue of addressing impunity through constitutional provision. For this, the project has specifically raised the issue of impunity and accountability. The project has raised this issue in the context of serious human rights violation under international law¹⁴. In particular, it has carried the issue to ensure rights to victims of the past conflict by incorporating effective provision in the new constitution to address serious violations under international law. This seems to be guided by the thought of ensuring domestication of international justice system through management of complementary mechanism of ICC at the national level. This effort to incorporate provision to address serious violations under international law and impunity in the constitution making process is innovative as it aims to ensure wider application of international criminal justice system. The experience of this project can be applied as the best practice for post conflict countries all over the world in the constitution making process to make the criminal justice system effective. In this way, the issues raised by this project are contextual.

1.1.4 Location of project

Achievement of the project objectives depends upon where and in which location the project activities are implemented. The project has determined its objectives at 2 levels. First objective was "to incorporate impunity prohibition provision in the new constitution" at the national level; and the second objective was "to sensitize stakeholders on the need to incorporate impunity prohibition provision in the new constitution through public interest campaign building against impunity".

As both the objectives are aimed to contribute in the ongoing constitution making process, the project location was required to be at a place where

14 The already defined crimes and serious crimes under international law which are of international concern should be dealt with through criminal justice system. As these crimes fall under the purview of national and international criminal jurisdiction, the right to seek justice in such offences should be guaranteed as the right to criminal justice. The serious crimes under international law have been already defined at the international level. According to the Updated set of principles for the protection and promotion of human rights through action to combat impunity, United Nations, Economic and Social Council, Commission on Human Rights, Sixty-first Session, Item 17 of the provisional agenda, (E/CN.4/2005/102/Add.1), 8 February 2005, the phrase "serious crimes under international law" encompasses grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery. As these crimes have been defined from 1948, we can incorporate provision to take action on such crimes with a law having retrospective effect.

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maximum participation of the stakeholders / target groups could be ensured. The project has realized this fact. The activities such as interaction, consultation meeting and recommendation, lobbying with the constitution drafting bodies have been determined for the central level as the CA members are mostly engaged at the central level for the constitution making process. The target groups including CA members could play key role to incorporate impunity prohibition provision in the new constitution. Therefore, the project has chosen Kathmandu as the central level location. Similarly, it is found that the district level locations have been selected to promote pressure and lobbying from the target groups of those areas. The project had selected Ilam, Biratnagar, Janakpur, Chitwan, Rupandehi, Pokhara, Nepalganj, Dhangadhi and Bardiya as project location at the district and regional level.



While compared to the activities determined by the project, it has not been able to reach many important places at the local and district level. The project limitations also created such a situation. However, the project has selected regional and district level locations as far as possible with the limited resources. In the beginning, 4 events FGD were scheduled to be held in Kathmandu; out of which 2 events were shifted to the district/regional level in Chitwan and Rupandehi with the consent from the Finland Embassy through a letter dated 17 August 2009. Similarly, one event open media round table was shifted from Kathmandu to Nepalganj and one event FGD was shifted from Nepalganj to Bardiya with the consent from Embassy through a letter dated 12 March 2010.

Focus to a particular location makes difference in the replication, impact and multiplier effect of the project. The central level activity implemented in the capital can make impact at the policy making level. The activities implemented at the regional and district level contribute for sensitization and empower people to claim rights in the national policies. This project has parallel replication, impact and multiplier effect in the urban and rural areas in the following ways:

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- a. The project activities implemented at the central level have sensitized the central level target groups to demand and claim constitutional provision on criminal justice system to address impunity and measures of constitutional remedy. The project has convinced the national level target audience on the issue of incorporating constitutional provision to regularize serious crimes under international law. It has provided useful feedback in this regard.
- b. Though this project has not determined rural area focused activities, the regional and district level activities were implemented as the rural level activities. This has sensitized the local level target groups on the serious crimes under international law and remedy and justice against them as set forth in the international law. It has laid impact on what type of constitutional provision can be set in place against impunity in the context of serious human rights violations. To sum up, it has expanded the sphere of knowledge of the regional and district level stakeholders to strengthen their campaign against serious human rights violations and impunity. On the basis of the above, we agree to the assessment in the final report of the project regarding wider applicability of the results. The Final Execution Report of the Project has presented following assessment of the wider applicability of the results:

The issue of applying retroactive provision against impunity and the serious crimes under international law shall be discussed in the discourse of constitutional evolution in the criminal justice system of Nepal. This is a major achievement of the project, since it established this issue in the Nepalese context. The state shall be more accountable and responsible towards protection of the life of people as right to life shall be guaranteed in the new constitution. The impact in the stakeholders/ target beneficiaries laid by this project and the sensitization and awareness shall motivate them to become more accountable against impunity. Even if the provision envisioned by this project is not incorporated in the new constitution, public opinion and sensitization through this project shall strengthen the steps to criminalize serious crimes under international law in the domestic laws of Nepal. The target groups and stakeholders shall utilize the project produced publication as resource material. The focal points created by FOHRID in the regional and district level shall coordinate the activities under this initiative in the future.

- C. Consultation meeting entitled “**Serious crimes, impunity and prosecution**” organized in Kathmandu on 8 December 2009 recommended following provisions to incorporate in the new constitution

The already defined crimes and serious crimes under international law which are of international concern should be dealt with through

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criminal justice system. As these crimes fall under the purview of national and international criminal jurisdiction, the right to seek justice in such offences should be guaranteed as the right to criminal justice. The serious crimes under international law have been already defined at the international level. The phrase "serious crimes under international law" encompasses grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.¹⁵ As these crimes have been defined from 1948, we can incorporate provision to take action on such crimes with a law having retrospective effect.

No person shall be accused or punished for an act which is not an offence according to the existing law.

Unless the act is an offence under international law including genocide, war crime, crime against humanity, enforced disappearance or torture, no person shall be accused or punished for an act performed which is not an offence according to existing law when the act was committed.

Every person shall have the right to seek legal remedy against impunity or offence of genocide, war crime and crime against humanity.

Expert opinion in the consultation program organized in Kathmandu on 19 February 2010 entitled "Retroactive provision to be incorporated as fundamental rights in the rights regarding criminal justice of the new constitution to address serious crimes under international law" recommended following provisions to incorporate in the new constitution:

There is no theoretical difference between the additional opinions proposed by Nepali Congress CA member Ramesh Lekhak and CPN-UML CA member Pradeep Kumar Gyawali in the CA Committee for Fundamental Rights and Directive Principles. However, we can amend it to make it perfect in respect of their language and completeness. There is misunderstanding at the public level that the opinions of both the parties have not brought a uniform concept while proposing additional opinion. Therefore, it is necessary to eliminate this misunderstanding and prepare a perfect opinion by adjusting both the opinions. Then both the CA members can register their joint opinion regarding provision

15 Updated set of principles for the protection and promotion of human rights through action to combat impunity, United Nations, Economic and Social Council, Commission on Human Rights, Sixty-first Session, Item 17 of the provisional agenda, (E/CN.4/2005/102/Add.1), 8 February 2005, International Instruments developed against impunity, FOHRID, Kathmandu, 2064, p. 211.

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to incorporate in the new constitution to the Constitutional Committee. FOHRID can facilitate to create environment for this. The additional opinions of the two CA members can be revised as follows:

Provision

No one shall be convicted for an act which is not a punishable offence according to national and international law and no one shall be punished more than what was applicable at the time of committing such offence.

Provided that this shall not restrict investigation, trial and punishment to any person on the violation of human rights and humanitarian law.

Any personal shall have the right to receive legal remedy against impunity or offences of genocide, war crimes and crimes against humanity.

3.1.5 Project methodology relevant to and effective for target groups

The methodology determined by the project was relevant to the issue to be addressed and the target groups of the project. The project methodology is adequately participatory. The target audience were selected from the political level, government level and non government level according to the project objectives. Main beneficiaries of this project were CA Members, CA Committee for Fundamental Rights and Directive Principles, Constitutional Committee and thematic committees. Civil society and human rights community are also beneficiaries.

The project ensured adequate participation of the target groups from all the three levels. Significant number of participation was ensured from CA members, political parties and government representatives at the central level activities; and the district level government representatives, political party leaders, civil society and human rights community were more involved in the regional and district level programs. Participation of women, dalit, janajati as well as victims was noteworthy in all the programs.

Total 2 events open media round table, and 1 event closed media round table discussions were held with the media persons and journalists. In this way, the project has given due importance to reach the media community to attain its objectives. Two events of these were implemented in the capital Kathmandu. One event open media round table discussion, previously planned for central level, was shifted to the mid-western region in Nepalganj with the consent from Finland Embassy. It is not logical to regard it as strength of the project as the media round table could not reach all the development regions.

The project implementation methodology has ensured ownership of the project to the target groups. Strength of the project is that each of the event reports have been prepared, analyzed thoroughly and recommendations made by taking into account the views expressed by the participants. More importantly, the expert

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opinions have been minutely analyzed to draw the conclusion of the events. Such outcome of the project has been documented effectively. Outcome of the documentation has been compiled in the project produced publication entitled "Impunity and accountability: Application of retroactive provision in the serious crimes under international law". This has given space for the participants, who expressed their views individually or institutionally, to feel ownership of the project. The participants whose views are presented from pages 265 to 352 of the publication can be categorized as follows:

S.No.	Area of representation	No. of participation
1	CA Members / Political leaders	26
2	Judges	5
3	Senior advocates	4
4	Representatives of government agencies including office of AG	7
5	Victims and victims' organizations	5
6	Civil society	12
7	Human rights community	15
8	Advocates and representatives of NBA	18
9	Journalists	15
	Total	107

This project aimed to facilitate the constitution making process; therefore, the CA members were selected as the major beneficiaries. As its major objective was to incorporate impunity prohibition provision in the new constitution, it was relevant to select the CA Members as the beneficiaries. This project was designed for policy level discourse and advocacy. The possibility to incorporate retroactive provision to combat impunity and promote accountability was explored through discussions and interactions with the expert papers written on the basis of international law and practice as well as national requirements. The methodology such as interaction at the central and regional level, media mobilization including article publication and round table discussions, consultation meetings, lobbying were implemented through participatory approach.

3.2 Impact

3.2.1 Impact and assessment of the outcome level

Promotion of rule of law, protection of human rights and effective constitutional guarantee against impunity and serious crimes under international law are the current needs of the target groups. In the context of post conflict situation in Nepal, the project has raised the issue of serious crimes under international law and the emancipation being enjoyed by persons involved in such crimes. Linking this issue to the constitution making process, the project aimed to guarantee anti impunity provision to address serious crimes under international law in the new constitution. Right to remedy against serious crimes and impunity is essential element in the post conflict Nepal.

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The expression and feeling brought by this project in the target groups for guarantee and to advance and meet the rights against impunity is reflected in the conclusion of the media round table organized in Nepalganj on 8 April 2010 entitled "Human rights violation and retroactive provision in new constitution". Conclusion of the program was as follows:

*Impunity is the most serious obstacle in institutionalizing the democratic achievements and ensuring prosperous Nepal. Those involved in the serious human rights violation are always out of grip of law. This situation has challenged rule of law. The victims have become hopeless due to a situation where the perpetrators are respected and assume senior position to rule the state. The incidents of human rights violation have remained out of legal proceedings and the perpetrators are more encouraged in their criminal activities. This has caused decreased accountability. **The effect of crimes against humanity, war crime and crime against peace remains for a long time if we view it only from political perspective. Impunity does not end till we bring the perpetrators to the justice system through prosecution. We must go forward with the conviction that all rights are for all the people. Now, we must address the crimes, violations and atrocities of the past.***¹⁶ This can be addressed through TRC or new constitution. We must start investigation of the past crimes against humanity. The NHRC has been continuously conducting investigation and submitting recommendations based on the international instruments to which Nepal is a state party, but unfortunately those recommendations are not implemented by the government. Those involved in the serious crimes including forced disappearance should not receive amnesty. There cannot be amnesty in the serious crimes. The new constitution should go forward by incorporating retroactive provision.

The political parties talk of ending impunity very lightly. They have not taken any practical step towards this direction. The Interim Constitution Drafting Committee headed by former justice Laxman Prasad Aryal had included a provision in the draft interim constitution for taking action against perpetrators by formulating a law with retroactive effect. As a proviso to the provision of non retroactivity, the draft held, "Provided that this shall not hinder prosecuting and punishing in the war crimes and crimes against humanity by formulating a law with retroactive effect."¹⁷ It had further recommended "right to obtain legal remedy against impunity and crime against humanity."¹⁸ But these provisions were later omitted due to lack of political consensus. In this way, the parties claimed that there is no place for impunity in new Nepal; however, they tried their best to omit the provision to end impunity by formulating a retroactive

16 Based on views expressed by participants including Mohan Joshi, representative, NHRC at an interaction program with media entitled "Human Rights Violation and Retroactive Provision in New Constitution" organized by FOHRID in Nepalganj on 8 April 2010.

17 Draft Interim Constitution of Nepal, Part 3, Article 25 (4), Lokpriya Prakashan, Kathmandu, 2063.

18 Ibid, Article 25 (5).

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law. It provides that the political parties are terrorized by the constitutional provision against impunity. They fear that such a provision might open door for prosecution against themselves. Under such circumstances, the only way out is to incorporate provision to address serious human rights violation in the new constitution. **It addresses the crimes of the past. This is also a guarantee that the future rulers shall not violate the rights of Nepalese people showing any reason. Therefore, a provision to address impunity must be accommodated in the new constitution.**¹⁹

Madhesh / terai is facing the worst situation of impunity. Impunity is widespread within police administration. There is increasing need to launch strong and organized struggle against impunity. Formulating constitutional provision makes the struggle easier. The parties have a misunderstanding and they fear that retroactive provision may drag themselves to the justice system. In fact, this provision attracts to the serious crimes of international concern only. Any person committing crime of international concern in the future can be prosecuted through the provision of retroactive law. Such a provision strengthens criminal justice system. There is also risk of its misuse, but it can be avoided. This provision opens door of justice to end impunity and human rights violation. It also provides constitutional ground to address past violations. It compels the state organs to become accountable. We cannot become happy in the future just by forgetting the past. Therefore, constitutional provision to address impunity is required and the existing laws must be revised and amended to address the serious crimes of the past and avert the possibility of such crimes in the future.²⁰

Journalists are facing increased risk. They have been murdered at various parts of the country. Main reason behind this is impunity and inability to bring them to the justice system. **Therefore, it is necessary to incorporate retroactive provision in the new constitution and to regularize impunity by formulating law accordingly. Currently, we have to address many issues. The incidents of sexual violence and rape are also increasing. We must not allow to extend transitional phase indefinitely. Constitution making process must be concluded in time.**²¹ Accountability has decreased due to misconception that emancipation is possible for any act performed while in power. Hence, provision of retroactive law is the only solution to bring those responsible for human rights violation to the justice system. Incorporating retroactive provision in the

19 Based on views expressed by participants including Basudev Gyawali, Nepalganj representative of CeLARD at an interaction program with media entitled "Human Rights Violation and Retroactive Provision in New Constitution" organized by FOHRID in Nepalganj on 8 April 2010.

20 Based on views expressed by participants including C. P. Singh, human rights activist, Niraj Gautam, journalist/former President of FNU, Krishna Karki, representative of Nepali Congress at an interaction program with media entitled "Human Rights Violation and Retroactive Provision in New Constitution" organized by FOHRID in Nepalganj on 8 April 2010.

21 Based on views expressed by participants including Srijana Acharya, journalist at an interaction program with media entitled "Human Rights Violation and Retroactive Provision in Ne Constitution" organized by FOHRID in Nepalganj on 8 April 2010.

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constitution will help bring the perpetrators of human rights violation to the justice system. This can make the campaign against impunity meaningful. The constitution must open way for this.

The project could not make clear impact for improving the situation of target groups. This is because this project was not focused to resolve any particular problem of the community. It was not aimed to make any close impact in the target groups in the issues such as poverty, environment, income generation. It aimed to make policy level intervention to incorporate constitutional provision to address impunity and serious crimes under international law. At this stage, we cannot claim that this objective was achieved as expected. It was due to unstable political situation and extended constitution making process. Despite this, the project was successful to prepare the participants to claim and express their rights for constitutional remedy against impunity to resolve their problems. The project has not brought any immediate and clear change in the legislative and administrative practice of the state. However, the issue of the possibility to criminalize serious crimes under international law through constitutional provision has entered into intellectual discourse in the crucial period of constitution making. Provision relating to the right against impunity and right to remedy have been proposed by the CPN-UML and Nepali Congress as separate additional opinions in the draft of the CA Committee for Fundamental Rights and Directive Principles. This has created a ground for constitutional guarantee against impunity. Incorporation of such a provision in the new constitution shall certainly make significant impact in the criminal justice system and legislative practice in Nepal.



The project implementation has not brought any unintended side effect. No unforeseen positive or negative effect has been found. However, it was found

that the project team was not totally convinced that the political leaders shall accept the need of provision against impunity. They believed that the political parties may come for discussion on the possibility to incorporate retroactive provision in the new constitution, but incorporating such provision as additional opinion by two major political parties was a bit more ambitious.²² It can be assumed that the multiplier effect will be seen at two levels. Firstly, the publication brought out by this project is an excellent resource material against impunity. It has effectively analyzed the retroactive use of criminal law to regularize incidents of serious human rights violation and impunity from various dimensions and established jurisprudence. It has fulfilled the need of comprehensive resource material for intellectual debate on the retroactive law against impunity.

Secondly, the additional opinion relating to retroactive provision and its debate in the CA shall remain as an innovative measure in the constitutional development. Documentation of such effort may be a best practice for any post conflict country in the world.

3.3 Effectiveness

3.3.1 Project preparation:

Project preparation was systematic and practical. However, logframe was not prepared while designing the project. This does not mean that the project was not practical and logical. The project was developed to incorporate impunity prohibition provision in the new constitution and to build a public interest campaign against impunity. It was found that the efforts made to address impunity and serious crimes under international law from the very beginning of drafting the Interim Constitution Drafting Committee were minutely assessed during project designing. Logframe was not used for project implementation; however, the continuous review meetings were held to assess the progress and documentation of the outcome was performed.

3.3.2 Organizational experience

FOHRID had experience of working in the field of human rights prior to implementing *Combating Impunity to Promote Accountability – project*. This organization implemented *Ending Unlawful Killings and Impunity project* from January 2006 to December 2007 and *Initiative to combat against torture and impunity project* from January 2007 to December 2008 funded by EU. During the same period, FOHRID accomplished “Initiative to support constitution making process” with the assistance of ActionAid

²² Based on discussion with Advocate Birendra Thapaliya, President of FOHRID.

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/ MS Nepal. FOHRID implemented advocacy for social, economic and legal justice for victims of conflict through truth and reconciliation commission funded by AtionAid; and Initiative for people's participation and ownership in the Constituent Assembly funded by DFID/ESP. Before 2006, FOHRID had worked on different small and medium size projects with the funding from DED Nepal, CARE Nepal, ESP, Transparency International, Grassroots International and so on. The projects are found to be implemented on the issues of HR Education for students and grassroots level people, Campaign for application and implementation of IHL Geneva Convention (Common Article-3), Democratic reform including political party reform and restructuring, Democratic civic education, Anti-corruption. FOHRID implemented Regional Initiative for the rights to sustainable livelihood and the enabling of social and political participation with the funding from Consortium of Humanitarian Agencies (CHA) Sri Lanka / N(o)VIV, The Netherlands. FOHRID has adequate experience in the sectors of publication and dissemination, networking. They have also worked in the fields of research, preparation of training manual and conducting trainings.

Prior to executing this project, FOHRID had already drafted Bill Relating to Torture 2065 under the project ***Initiative to combat against torture and impunity*** and Bill Relating to Prohibition of Impunity 2007 under the ***Ending Unlawful Killings and Impunity project*** as well as recommended it to the concerned authority to pass it from the parliament. It was found that the experience of former projects have contributed to make implementation of this project a success. FOHRID had, in fact, gathered adequate experience and knowledge in conducting advocacy, lobbying, publication and dissemination. Despite good experiences of FOHRID in the fields of impunity, rule of law, democracy, peacebuilding and reconciliation, this organization has not secured longterm partnership with any donor or funding agency.

There is 40 percent involvement of women in FOHRID management. There is significant involvement of the ethnic and minority community including dalit and madheshi. There is a good gender balance in the project implementation team.

3.3.3 Achievement of the project purpose

The project had two tier purpose. First, to incorporate anti impunity provision, or to incorporate a provision under right regarding justice in the new constitution that allows formulation of retroactive law against impunity and serious crimes under international law. The project aimed to sensitize stakeholders to demand such a constitutional provision. Second, to build a strong public campaign against impunity.

Out of the above two purposes, the retroactive provision has been incorporated as additional opinion by two major political parties in the

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draft of CA Committee for Fundamental Rights and Directive Principles. Due to this effort, the issue has entered in the CA for further discussion. We cannot expect it to come as constitutional provision during the project period as the term of CA was extended for one year. This development has prepared a firm ground for attainment of project purpose in the future. However, continuous advocacy and lobbying with the CA and political parties is required for this. Other purpose linked to the retroactive provision were achieved as expected.

Attainment of the expected results and objectives of a project depends upon determined activities and timely implementation. The project activities give the expected project results. The level of execution of activities of this project is presented in the table below:

Activity execution level

Sl.No.	Activity	Achievement
1	Media mobilization	All components accomplished as determined time and plan
	1.1 Articles published in news papers – 25 articles	
	1.2 Open media round table discussion – 2 events	
	1.3 Closed media round table discussion – 1 event	
2	Produce analytical discussion paper in 7 themes ²³	Completed
3	Focus group discussion	Completed
	3.1 Central level – 4 events	
	3.2 Regional level – 6 events	
4	Consultation meeting/lobbying	Completed
	4.1 Consultation meeting with expert – 3 events	
	4.2 Recommendation lobbying with the constitution drafting bodies and CA Members – 6 events	
5	Compilation, publication, dissemination	Completed

Event report has been prepared and preserved for e²³ach activity. The event reports show that the activities mentioned above were effectively implemented according to the designated time frame. This is an exemplary practice found in FOHRID in such a small scale project. This was found to be a strength of FOHRID in project implementation.

Analysis of the achievement of expected results section in the Final Report explains the level of achievement of the project intervention. The report has assessed it as follows:

²³ The project had determined to prepare analytical papers in 7 different themes. However, 13 papers were prepared as required to cover the new areas explored

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Analysis of the achievement of expected results

Determined expected results	Assessment of results
<p>1. Nationwide campaign built against impunity and stakeholders more sincere towards accountability.</p> <p>2. Impunity prohibition provision incorporated in the new constitution. The new constitution shall incorporate provision for “prosecuting and punishing in the war crimes and crimes against humanity by formulating law with retroactive effect” in the rights regarding justice under fundamental rights. It shall also ensure that “Any person shall have the right to get legal treatment against impunity and crime against humanity”.</p> <p>3. Include the provision guaranteeing right to life in the constitution.</p> <p>4. The efforts made to address impunity in the constitution drafting process shall be documented. This shall be a reference material for the legislative organs, policy makers, law enforcing agencies, judiciary, law interpreters, students, academicians and researchers in the future for implementation of the impunity prohibition provision.</p>	<p>1. The project has been successful to raise the issue of ending impunity and promoting accountability at the national level. Despite its limited resources, the project conducted intensive discussions on the jurisprudence of retroactive provision to end impunity. About 900 representatives of stakeholders have been directly sensitized in this issue at the regional and district level outside Kathmandu. This has made the political parties and CA Members sincere to the issue of impunity.</p> <p>2. This result was not achieved as determined. However, this provision has been included in the new constitution as additional opinion. CA Member Pradeep Kumar Gyawali of CPN-UML recommended a proviso to the Clause of non-retroactivity as an additional opinion that reads, “Provided that this Clause shall not be deemed to prevent punishment by formulating retroactive law in the crimes such as crime against humanity, war crimes and genocide.”²⁴ CA Member Ramesh Lekhak of Nepali Congress recommended a separate proviso to the same Clause that reads: “Provided that this Clause shall not be deemed to prevent formulating retroactive law and punishment in the crimes to be punished under applicable international laws.”²⁵ Hence, as the two major political parties have proposed additional opinion with similar motive, there is possibility of achieving this result. However, there is also some risk as it requires continuous pressure and lobbying to get complete success.</p> <p>3. We can be hopeful that this result shall be achieved as expected. The preliminary draft of the Committee for Fundamental Rights and Directive Principles has incorporated in Article 1 Right to Dignified life “Every person shall have the right to live a dignified life.” There is no different opinion against it.</p> <p>4. The efforts made under this project have been documented. Altogether 14 analytical papers were prepared under this project. The papers have described jurisprudence of international criminal justice to address serious crimes under international law and impunity. Expert opinions presented by major stakeholders on the retroactive provision against impunity have been compiled. The compilation has been published as a book of 352+8 pages. This shall be widely disseminated to be used as an important resource material by key stakeholders.</p>

24 Constituent Assembly, Report of thematic concepts and preliminary drafts, 2066, Committee for Fundamental Rights and Directive Principles, P. 96.

25 Ibid, p. 97.

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Level of attainment of the objectives determined by the project can be assessed as follows:

Analysis of achievement of determined objectives

Determined objectives	Assessment of achievements
<p>To incorporate impunity prohibition provision in the new Constitution and to build a public interest campaign against impunity.</p> <p>This project shall take initiative to incorporate provision to end impunity and promote accountability in the new constitution to be formulated by the CA. Through this action, stakeholders will be sensitized on the need to incorporate provisions to end impunity and promote accountability in the new constitution.</p>	<p>Achievements of the previously determined objectives can be listed as follows:</p> <ol style="list-style-type: none"> 1. The project made series of recommendations to the CA regarding provision to address impunity and serious crimes of international concern. Following provision was recommended at the final stage: Right regarding criminal justice: (1) No person shall be punished for an act which was not punishable by law when the act was committed, and no person shall be subjected to a punishment greater than that prescribed by the law in force at the time of the offence. But, this shall not hinder prosecuting and punishing in the genocide, war crimes and crimes against humanity by formulating law with retrospective effect and such retrospective effect shall be applicable in the crimes that occurred after BS 2017 (AD 1960) only. (2) Any person shall have the right to obtain legal remedy against impunity or genocide, war crimes and crimes against humanity. 2. Impunity prohibition provision came into debate in the course of formulation of new constitution. The CA Committee for Fundamental Rights and Directive Principles could not incorporate this as a major provision. However, the two major ruling parties Nepali Congress and CPN-UML incorporated this as separate additional opinions. 3. The project made high level initiative to incorporate provision to end impunity and promote accountability in the new constitution. Discussions were held in Kathmandu and 9 places outside Kathmandu on the jurisprudence and need of retroactive provision. Pressure was exerted to the political parties at the central level. 4. The project sensitized the stakeholders to incorporate retroactive provision against impunity and serious crimes under international law in the new constitution. CA Members have realized and expressed that provision with retrospective effect can be incorporated in the new constitution under right to criminal justice to deal with special types of crimes.²⁶ The issue of incorporating provision with retrospective effect in the new constitution received impetus for discussion in the Committee for Fundamental Rights and Directive Principles.²⁷ Leaders of Unified CPN-Maoist expressed commitment to discuss possibility of applying retroactive provision against impunity within their party to determine their party line on the issue.²⁸ <p>To sum up, the retroactive provision against impunity could not be incorporated in the new constitution during project period as the constitution making process was prolonged. However, it has been included as additional opinions by two major political parties in the draft of thematic committee. Other objectives have been achieved as determined.</p>

26 Based on views expressed by CA Members Nilambar Acharya, Ramesh Lekhak and Pradeep Gyawali at different programs organized by FOHRID under this project.

27 Based on view expressed by Binda Pande, Chairperson of the CA Committee for Fundamental Rights and Directive Principles at a consultation program organized by FOHRID on 31 July 2009.

28 As stated by UCPN-Maoist leader Dev Gurung to a lobbying delegation led by FOHRID on 13 August 2009.

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Based on the above assessment, the overall effectiveness of the project can be reflected as follows:

Results of the project have been described already in the above sections. The provision to formulate retroactive law against impunity and serious crimes under international law has been incorporated as additional opinions. Two major parties, Nepali Congress and CPN-UML have been ready to incorporate such provision in the new constitution. Provision regarding right to life has been incorporated. Stakeholders have been sensitized on the need of retroactive provision against impunity. While observing in this way, the project has been successful. These objectives have been achieved due to project intervention. However, it should be acknowledged that the right to life has been incorporated as a result of collective efforts from other initiatives, stakeholders and as a need of the time.

3.4 Sustainability

This project has started debate on the need to formulate retroactive law against impunity and serious crimes under international law. The project has made important research and prepared resource materials creating a firm ground for further intervention on this issue. This has ensured that the issue of formulating a retroactive provision against impunity shall be continuously discussed in the future till such provision is guaranteed in the nation's criminal justice system. The additional opinions shall create ground to continue such discourse in the justice system.

This project sensitized the beneficiaries on the ground provided by international law to fight against impunity and serious crimes under international law. It has strengthened the stakeholders to claim and express their rights on this base. However, domestic legal provision is important to materialize this. The individual and institutional stakeholders who participated the interactions and consultations of the project had the opportunity to learn about the efforts made at the international level and the principles developed so far to combat impunity. This has sensitized them through sharing of knowledge on the way to seek justice in the serious crimes under international law.



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A significant achievement of this project is to bring into discourse the issue of addressing crimes under international law through domestic laws. This discourse needs to be continued in the future too. Similarly, the provision on right to life can broaden the rights of Nepalese people. Legal and institutional measures should be adopted for application and guarantee of this right. Similarly, the publication prepared under this project can be expected to be widely utilized by the policy makers, political parties, members of parliament, judiciary, lawyers, journalists and other stakeholders as resource materials in the long run. FOHRID has expanded its network at the regional and district level during implementation of this project. Institutional effort shall assist to expand the initiative of FOHRID to the local level.

Main ground for sustainability of the project outcome is that the issue to incorporate retroactive law against impunity and serious crimes under international law has entered as an agenda for discussion in the CA, political parties and academic level. This provision may not be incorporated in the new constitution if political consensus is not secured in favour of this. However, this action has created ground to formulate other legal provisions to address impunity and serious crimes under international law.

There was no formal local partner in this project. However, various national and local level organizations were involved during project implementation at the central as well as regional and district level. FGDs in Ilam and Biratnagar were conducted in collaboration with Sungabha Club, Ilam and Ekata Club for Eradicate Poverty, Morang respectively. Similarly, FGD in Janakpur was held in collaboration with Janakpur Appellate Court Bar Unit, in Bhairahawa with Rupandehi Bar Unit, in Pokhara with FOPHUR and in Chitwan with various local NGOs. Media round table interactions were conducted in Kathmandu jointly with FNJ and SAFMA Nepal. Other events in Kathmandu and outside were also implemented in collaboration with various organizations. OHCHR Nepal presented paper regarding international practice on retroactive provision against impunity at some events of the FGD in Kathmandu and Janakpur. The loose coalition of the Citizen's Task Force to Combat Impunity was mobilized in the activities.

The collaboration ensured during implementation of this project enhanced the opportunity to work together to combat impunity, promote accountability and formulate retroactive law. During project implementation, the experiences and good practices of other countries to combat impunity were shared with the stakeholders. The provisions against impunity as set forth in the constitutions of Ethiopia, South Africa, East Timor, Republic of Croatia, Republic of Kosovo and principles of Nuremberg Tribunal were discussed in the project related events.

3.4.1 Outcome of the project will be continued and expanded in the future

There is a high probability of continuing and expanding the project outcomes in the future. This is because the project expected to guarantee right to life. This is already incorporated in the draft of CA Committee for Fundamental Rights

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and Directive Principles. The project team has acknowledged the contribution of other similar efforts in this regard. It has strengthened and opened avenues for continuous effort to guarantee right to life and justice against human rights violation. Additional efforts are required for necessary legal arrangements to effectively ensure right to life.

The additional opinions presented by two major political parties Nepali Congress and CPN-UML in the draft of CA Committee for Fundamental Rights and Directive Principles are guided by realization of the need to guarantee justice against impunity and serious crimes of international concern. This is not the exact expected outcome of the project. However, while the constitution making process has been delayed by one year, incorporation of intended provision as additional opinion is a remarkable achievement. This creates ground for formulating retroactive provision and justifies the need and relevance of such a provision in the post conflict society of Nepal. This project has expanded the opportunity to continue advocacy for constitutional provision to regularize the serious crimes under international law and impunity.

The project produced publication entitled “Impunity and accountability: Application of retroactive provision in the serious crimes under international law” has fulfilled the need of an advocacy material on jurisprudence for legal guarantee against impunity and addressing serious crimes under international law and the serious crimes that require to be dealt with retroactive provision. This publication has opened door for intellectual debate among CA Members, CA, political parties, experts, judiciary and journalists on the basis for formulating retroactive law. This publication informs readers about the jurisprudential basis for using retroactive law against serious crimes under international law. Therefore, this publication helps to continue advocacy on the issues of serious crimes, impunity and accountability in the future. But, the publication has been brought out limited copy that has imposed constraint to reach it to all the potential stakeholders. The 1000 copies printed under this project is enough just to distribute among CA members and political parties. It is not enough to distribute to other stakeholders such as law enforcing agencies, human rights and civil society, Office of Attorney General and district level stakeholders.

3.4.2 Main risks of sustainability

Follow up of a project depends upon the minute assessment of the risk inherent in the sustainability. The Final Report has described the risk of this project as follows:

There is a general opinion that the political parties especially the UCPN-Maoist and Nepali Congress have been hesitant about including retroactivity in the new constitution fearing that the provision could backfire on them for their crimes committed during the decade long armed insurgency. It is believed that the party leaders omitted the provision of retroactivity from the Interim Constitution due to

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the same fear.²⁹ Despite this, efforts are being made to convince the party leaders to have consensus to incorporate retroactive provision in the new constitution. The tenure of the CA has been extended for one year due to inability to formulate new constitution within two years. So far, CPN-UML and Nepali Congress have agreed to incorporate retroactive provision against impunity in the new constitution. However, there is still need to convince UCPN- Maoist and other political parties on this issue. Hence, there is risk to loose the achievement made so far if we do not continue pressure and lobbying on behalf of human rights and civil society to the political parties for the next one year.

On the basis of the above analysis, the project needs to be continued till the constitution making process ends. Otherwise, the achievements made so far can go in vain. This issue needs to be continued till the completion of constitution making process on the basis of the issues raised by this project and the progress made so far. In this way, we can ensure sustainability of the project.

3.5 Participation and ownership

The level of participation of stakeholders and target beneficiaries was encouraging during project implementation. The regional and district level FGDs were participated by stakeholders representing the target audience identified by the project. Local level organizations were involved as organizers at the regional and district level programs. This enabled them to feel the ownership of the project at the local level. They were encouraged to conduct the programs and express their views freely on the issue of the project. For more information on the participation and ownership, please see the section “Project methodology relevant to and effective for target groups” in the preceding pages.

3.6 Gender and inclusion

The issue of gender and inclusion was carefully considered during project implementation. Women’s participation was encouraged in each of the events. However, the overall participation of women remained around 20%.³⁰ The articles under Activity 1 were published in the daily and weekly newspapers as well as academic journal of Tribhuvan University. Out of 25 articles, 12 were written by women writers. Participation of the representatives of dalit, Tharu, Muslim, Madhesi, and backward community was significant during project implementation. Large number of people from Madhesi community participated in the programs organized in the terai / Madhes such as Morang, Janakpur and Bardiya.

29 ‘Retroactive provision a must’, a news report in The Kathmandu Post, Vol. XVII, CPN-UML and Nepali Congress agreed to support this effort. Consequently, CA Members Pradeep Kumar Gyawali and Ramesh Lekhak registered retroactive provision as additional opinion on behalf of their respective parties.

30 Based on the participation during execution of the FGD and interaction programs organized under the Combating impunity to promote accountability project.

3.7 Visibility and communication

It was found that regular communication and correspondence was made between the donor agency and implementing agency during the project implementation. Reporting of the project activities was prepared and disseminated widely and promptly. Comprehensive event reports have been prepared in each case. Contribution of Finland Embassy was displayed in the banners of the program events. It is displayed in the publication brought out under this project. The reports have been widely disseminated to the national and international stakeholders including to the Finland Embassy. Apart from the event reports, regular progress reports were submitted to the donor for 4 times during the whole project period. Documentation of e-mail and other correspondence / communication stands as evidence to this.

3.8 Staff performance

It is found that the team members involved in the implementation of this project have maintained effective coordination at the internal and external levels. Discussion and planning meetings were held between FOHRID Executive Committee and Project implementation team before implementing each of the activities. It is found that they have made clear distribution of responsibilities to avoid any overlapping. There was good coordination within FOHRID team to bear the responsibilities entrusted to each of them. To make the activities fruitful, coordination was maintained with major stakeholders before implementing each of the activities. The discussions and consultations were held to make the activities result oriented. Separate preparatory meetings were held with different levels of stakeholders to make effective recommendation to CA member and CA Committee for Fundamental Rights and Directive Principles. This ensured good coordination inside and outside to succeed the programs.

The project staff carefully maintained internal and external coordination for implementation of the project. Each of the activities were implemented with good coordination. The project team contributed a lot to prepare resource materials under the project. Information was disseminated in right time. The Project Officers sincerely prepared Monthly review and reporting to submit to the Project Coordinator. Staff performance was satisfactory during all levels of project implementation.

3.9 Budget

The budget seems to be sufficient in respect of the project activities and duration. However, the budget allocated to the human resources is lower compared to the academic work related to the project. More copies of the project produced publication could have been printed if there was more budget allocation in its heading. Apart from the resource materials, the articles published, working papers, event reports, summary and final report were translated from Nepali into English

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for which there was not adequate budget. Budget constraint was seen in the office expenses, e.g., communication and office supply and local travel, which are not in proportion with the actual requirement. Detail of the fund utilization is reflected in the Audit Report as follows:

S.N.	Description	Total budget (NRs.)
1	Program cost for key component	941,100
2	Short term contract cost	92,000
3	Cost of equipment and supply	264,500
4	Communication and office	277,500
5	Project staff cost	1,455,000
6	Travel mission	217,500
7	Contingency	227,332
	Total	3,474,932

3.10 Problems and lessons learned

The problems and lessons learned identified by the Final Project Execution Report have been minutely assessed by the Evaluator during project evaluation. After review of the Final Report, the Evaluator agrees to the points enumerated in the problems and lessons learned included there which are given below:

Problems:

New constitution could not be formulated by CA within the two years' duration. Political situation is unstable and the peace process has not reached a logical end. Political consensus could not be secured on several issues to be incorporated in the new constitution. Consensus is required to address impunity and serious crimes under international law; however it was only partially successful during the project period. CA Members are the key stakeholders of this project. Any problem faced in ensuring their participation due to meeting in the CA, legislature parliament and their party compelled to reschedule program events. Difficulty is faced in convincing CA Members to incorporate provision with retrospective effect against incidents of serious human rights violation in the new constitution. Especially, UCPN-Maoist, and leaders of the political parties which were in the government during armed conflict, are hesitant on this issue. There was difficulty in accomplishing activities according to an already worked out plan due to unstable political and security situation. Regional / district level FGDs were often affected by the unpredictable strikes and bandhs. So, it was difficult to make plans for such activities in advance. The local participants in Janakpur preferred to talk in Maithali and Hindi rather than Nepali or English language; however, such issue was not raised in other districts including Kathmandu. Additional opinions have been incorporated regarding provision to formulate law with retroactive effect. Duration of this project ended

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in the previously determined tenure of the CA. In this context, there is risk that the achievements of this project may become ineffective if we do not continue the intervention of this project.

Lessons learned:

It is learned that the issues of public concern to be settled through political decision require to be intervened as an initiative. This is because any project stops its intervention after a certain period. Under such circumstances, the action cannot continue its effort to achieve the ultimate results in the change of the scenario. Providing a forum for the people to express their grievances and sufferings is a component of healing process. This provides them a chance to share their feelings and reduce their sufferings. The local level programs are useful to collect aspirations of the local people rather than for receiving technical feedback. Technical meetings are required at the central level to translate such feelings in the language of constitution. The modality and agenda for a local level program should be determined by analyzing feelings of diverse groups of a particular locality. Program organizers must work out plan and determine agenda in a careful manner to tackle possible expression of dissatisfaction against government, particularly so in the localities where the people are engaged in movement.



Part IV Conclusion and recommendation

4.1 Conclusion

The project under evaluation was a small scale project. The activities were contextual and effective. As the project was directly related to the constitution making process, project duration was designed on May end 2010, the original term of the CA. However, the extension of the term of CA has made it necessary to extend the project duration. While implementing this advocacy based project, the jurisprudential ground for retroactive provision were clarified through background papers in the beginning. Interaction and consultation programs were conducted with the stakeholders on the basis of those background papers. Feedback and suggestions received from the stakeholders were compiled and analyzed. Through mobilizing lobbying delegations, the outcome was recommended to the CA Committee for Fundamental Rights and Directive Principles, CA Members and political parties to inform them on how to incorporate retroactive provision in the new constitution. While considering in this way, the activities have been accomplished by interlinking one another in an effective manner. The bottom to top approach has been applied which can be regarded as strength of the project.

The office record shows that the event reports were prepared immediately after completion of each activity. The reports are detailed and comprehensive, and electronic copies of those reports have been disseminated widely among stakeholders. Therefore, preparing report of every event in time, sharing of them with the stakeholders, and wide dissemination is found to be positive aspect of the project implementation. Event reports, articles, background papers were translated from Nepali into English language as required. In this way, the observation of the Evaluator is that the project team and the overall team of FOHRID has impressive team spirit and sincerity to accomplish any project successfully.

The Final Execution Report of this project is more systematic and perfect compared to other projects implemented by FOHRID earlier. The Annex of the report includes separate reports from each of the activities. The activities have been implemented with due sincerity. It shows that the project team was dedicated to bring good results rather than fulfilling formality.

Overall observation of the Evaluator is that the project has achieved the objectives and results as expected in the beginning. Retroactive provision in the new constitution can bring those involved in the incidents of serious human rights violations such as extra judicial killing, disappearance, torture, rape of the past armed conflict into justice system. The retroactive provision, in fact, can challenge at any time the persons responsible for serious human rights violation. The leaders of UCPN-Maoist and Nepali Congress have to bear the responsibility if the cases of mass killing at Madi, Doramba, disappearance at Bhairabnath Barrack and Bardiya are prosecuted as emblematic cases. In this situation, it is a remarkable achievement of the project that the Nepali Congress and CPN-UML strongly presented their additional opinions in the draft of CA Committee for Fundamental Rights and Directive Principles. This has opened door for discussion

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on the issue of retroactive law in the CA. It has justified the need to incorporate such a provision in the new constitution. However, it could not be incorporated in the new constitution as the term of the CA was extended for one year.

Reaching the intended target groups and sensitize them in the issue of addressing serious crimes under international law must be reviewed to assess the project outcomes. The project has been successful to reach all the 3 levels of target groups namely, political level, government level and non-government level. It has sensitized the target groups to effectively address impunity and accountability in the context of serious human rights violations. The project has been successful to show a way through the human rights violations on the basis of theoretical and practical provisions in the international level. The issue addressed by the project is a complex one linked with the international justice system. Hence, it can be an exaggeration to claim that a small effort like this can bring significant change in addressing this issue. In fact, the measures explored by this project to address impunity and accountability is a ground for further intervention. The project has been able to influence two major political parties, thereby the CA Committee for Fundamental Rights and Directive Principles to establish this issue. This has created a ground for continuous intervention to attain the objectives in the future.

Despite preliminary achievement, FOHRID has not been able to continuously follow up the outcomes of the project. Reason behind this is the extension of the term of CA and the project period tied up with the initial term of the CA upto May end 2010. As this project is directly related to the constitution making process, its activities should be continuously implemented in line with the ongoing constitution making process and the additional term of the CA. Similarly, FOHRID does not have a long term partnership, and its staff are appointed on the project basis. Hence, FOHRID does not have institutional capacity to follow up to work in this issue effectively after completion of project period.

The project has carefully applied the strategy of advocacy and lobbying method during project implementation. The project team has conducted systematic monitoring and assessment of the issues related to implementation such as project output, execution status, impact etc. Coordination was maintained with the target groups and beneficiaries through the strategy of subtle diplomacy.

To sum up, the project has been able to achieve satisfactory results though the issue of making the political parties accountable for impunity in the serious crimes was a challenging issue requiring continuous intervention.

4.2 Recommendations:

1. **Project design:** The framework determined by FLC seems to be perfect for project designing. However, it would have been better if the logical framework was prepared for the project. It shall help in the assessment of progress through project monitoring and external / internal evaluation.

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- 2. Continue intervention on the issue:** The issue of impunity and accountability is related to the incidents of serious human rights violations. It is more important in the Nepalese context, as it addresses the serious crimes committed during the armed conflict in the past and possibility of similar violations in the future. As Nepal is in the transitional phase after a decade long conflict, human rights violations and impunity is directly linked with politics. Therefore, the Evaluator recommends the donor and FOHRID to continuously intervene in this issue till the political situation in the country improves in a satisfactory manner.
- 3. Additional pressure to be exerted to the CA and political parties:** The retroactive provision raised by this project is directly related to address the serious human rights violations of the past. The leaders of UCPN-Maoist and Nepali Congress, along with the army personnel, will be affected if action is taken on the basis of such a provision. Despite this fact, two major political parties CPN-UML and Nepali Congress have come for an agreement to introduce such a provision in the new constitution. FOHRID must exert, with the help of civil society, additional pressure to bring other political parties including UCPN-Maoist to agree in the need of a retroactive provision in the new constitution.
- 4. Need to develop a single voice in the two additional opinions:** Two separate additional opinions have been submitted by two major political parties - CPN-UML and Nepali Congress in the draft of CA Committee for Fundamental Rights and Directive Principles. These opinions must be merged for a single voice so that it shall be incorporated in the new constitution with stronger support from political parties.
- 5. Additional advocacy in favor of retroactive provision:** To address the serious human rights of the past, the issue of incorporating retroactive provision has received priority in the constitution making process. The stakeholders of political and non-political sector have been positive to this issue. The stakeholders participating interaction sessions and consultations of this project have strongly pointed out the need to incorporate retroactive provision in the new constitution. However, final achievement has not been made in this regard. Hence, it is recommended to continue advocacy in favor of retroactive provision till effective legal and constitutional arrangement is made against impunity and serious crimes under international law.
- 6. Long term partnership:** Long term intervention is required in the issues of impunity, accountability and serious crimes under international law. These issues are directly related to the peace, security and welfare of not only a particular country but the whole world. The serious crimes of international concern should not remain unpunished in any country as it can encourage perpetrators in other countries also. Accountability must be guaranteed on such incidents. Therefore, to combat with such challenging problems, long term intervention must be continued with coordination among stakeholders. As FOHRID is the leading organization to work in this field in Nepal, FOHRID requires long term partnership to work in this issue. Hence, it is recommended with the donor agency / fund providers to support for long term partnership to continue systematic intervention in the issue of impunity.

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