

# **Final Project Execution Report of Combating Impunity to Promote Accountability - project**

**Period covered by this report: 16 April 2009 to last May 2010**

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**Submitted to,  
Embassy of Finland**  
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**Submitted by,  
Human Rights and Democratic Forum (FOHRID)**  
Mailing Address: GPO Box: 19186, Kathmandu, Nepal  
Street Address: 428 Gyaneshwor Marga, Gyaneshwor, Kathmandu  
Tel: +977 1 44 23 125  
Fax: +977 1 44 38 812  
Email : [fohrid@wlink.com.np](mailto:fohrid@wlink.com.np)  
Webpage: [www.fohrid.org.np](http://www.fohrid.org.np), [www.fohridnetwork.org](http://www.fohridnetwork.org)

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# Final project execution report of Combating Impunity to Promote Accountability - project

## Part I Brief summary of the project

### 1. Project Context in brief

Nepal is in the process of formulating a new constitution since election to the Constituent Assembly in April 2008. From the past to the present time, perpetrators involved in serious crimes are not punished and the victims do not get justice because impunity is not addressed properly through constitution and domestic law. Increased impunity and lack of accountability in the serious incidents of rights violation reflects inadequacy of existing Nepalese legal system.

The then Interim Constitution Drafting Committee headed by former justice Laxman Prasad Aryal had recommended provision of retroactive law in Part 3, Article 25(4) of the draft Interim Constitution. The Committee had recommended under Rights regarding justice in Article 25(5) that any person shall have "the right to obtain legal remedy" against impunity and crime against humanity. Unfortunately, these provisions were omitted when the constitution was promulgated by the legislative parliament on 1 Magh 2063. However, the 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 positive achievement at the policy level, it is not enough. The political parties have expressed their commitment to combat impunity and to ensure rule of law in the Comprehensive Peace Accord and the minimum program of consensus. However, its implementation status is not satisfactory. This project aims to materialize such political commitments by addressing impunity in the new constitution.

### 2. Project Summary

**Project location**<sup>1</sup> : Kathmandu valley at central level and Ilam, Biratnagar, Janakpur, Pokhara, Nepalganj, Dhangadhi, Chitwan, Rupandehi, Bardiya at regional level

**Project duration** : 16 April 2009 to last May 2010

**Total budget** : NRS 3,474,932.00 (EURO 34,714.61)

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	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.
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.	3. Focus Group Discussion 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)	It shall also ensure that "Any person shall have the right to get legal treatment against impunity and crime against humanity". 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.

<sup>1</sup> 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.

## Part II Execution status of project activities

All the activities were executed to achieve the initially planned objectives as mentioned in the agreement. The execution status of the activities is as follows:

### Activity 1: Media mobilization

Media mobilization was accomplished into two parts, i.e., article publication and media round table. Brief description of this activity is given below:

#### 1.1 Article publication

Articles stressing the need to incorporate provision to formulate a law with retrospective effect on human rights violation and right to legal remedy against impunity in the new constitution were published in the newspapers. The articles were written by freelancers, columnists, legal experts and academicians. These articles were instrumental to share the national and international practice to combat impunity. List of articles published is given below:

**Table 1 Articles published under media mobilization**

#	Topics	Publication	Date
1	New constitution and questions to be addressed	Nepal Samacharpatra	19 Apr 2009
2	Shall we be relieved of impunity?	Gorkhapatra	1 May 2009
3	Question of impunity in the new constitution	Nepal Samacharpatra	6 May 2009
4	New constitution under shadow	Nepal Samacharpatra	20 May 2009
5	Rights against impunity	Gorkhapatra	21 May 2009
6	No more impunity	The Kathmandu Post	26 May 2009
7	Women's rights and impunity	Gorkhapatra	8 Jun 2009
8	When shall impunity end?	Gorkhapatra	15 Jun 2009
9	Impunity concealed under the veil of politics, and Politics of playing with people's life	Nepal Bhoomi weekly	16 & 23 Jun 2009
10	New constitution and addressing impunity	Media Mission weekly	6 Aug 2009
11	Question of impunity in the new constitution	Gorkhapatra	24 Aug 2009
12	Retroactive provision in the new constitution	Gorkhapatra	9 Sep 2009
13	Constitution making and accountability	Annapurna Post	18 Sep 2009
14	Jurisprudence of retroactive law	Annapurna Post	10 Oct 2009
15	What to do against impunity	Gorkhapatra	13 Oct 2009
16	Accountability and Maoist thinking	Annapurna Post	26 Oct 2009
17	Jurisprudence of retroactive law	The Rising Nepal	16 Nov 2009
18	Constitution building, peace process and impunity	Gorkhapatra	23 Nov 2009
19	In favour of retroactive law: Parties should rethink their stand	Annapurna Post	23 Nov 2009
20	Addressing serious crimes in the new constitution	The Rising Nepal	22 Jan 2010
21	Impunity, parties and voice of citizens	Nepal Samacharpatra	3 Feb 2010
22	Fundamental rights in the proposed constitution	Kantipur	16 Feb 2010
23	Reconciliation, impunity and constitutional provision	Gorkhapatra	24 Feb 2010
24	Addressing impunity through retroactive provision in new constitution	Nepal Law Review	April 2010
25	Impunity: Problems and addressing them	Gorkhapatra	1 May 2010

Priority was given to publish articles in the government owned Gorkhapatra daily as it is widely circulated among the CA Members and government offices. Articles were published in other Nepali dailies, English daily, weekly newspaper and a journal of Nepal Law Campus, Faculty of Law, Tribhuvan University. April 2010 issue of the journal was "dedicated to the constitution making process in Nepal", and it was disseminated to all the CA Members. (See Annex 1 for few articles published under this activity).

## 1.2 Open media round table discussion

**First event open media round table** was organized in collaboration with the Federation of Nepalese Journalists (FNJ) at Sanchargram, Kathmandu on 11 July 2009.<sup>2</sup> Participants of the program held intensive consultation on the role of media to incorporate provision to address impunity in the new constitution. They opined that media should create public opinion and exert pressure to incorporate constitutional provision of legal remedy against impunity and to prosecute against those involved in the serious crimes through retrospective law.<sup>3</sup> The participants discussed on the alarming situation of impunity in the country and stressed that media has inevitable role to end impunity. The program identified need for long term intervention on behalf of media to combat impunity. The program was attended by 60 participants including publishers, editors, thematic editors, thematic correspondents, columnists, writers, opinion write up editors representing print and electronic media as well as representatives of civil society and human rights organizations (See Annex 2 for brief report).

In the beginning, the **Second event open media round table** was planned to be held in Kathmandu. However, considering need to sensitize journalists of outside Kathmandu on the issue of serious human rights violation, this event was held in Nepalganj with the consent from Finland Embassy. This interaction was conducted applying round table method. In the beginning Advocate Govinda Sharma 'Bandi' presented his paper entitled "Human rights violations of the past and context of continuous crime" and on behalf of Human Rights and Democratic Forum (FOHRID) Advocate Raj Kumar Siwakoti presented paper entitled "Right to remedy and retroactive provision against impunity in the new constitution". After these presentations, participants expressed their views on the issues raised by them and discussed about various issues including incidents of human rights violation, situation of widespread impunity in Nepal, causes behind this, problems faced by journalists due to impunity and possible provisions to be incorporated in the new constitution to address impunity. Representatives of National Human Rights Commission (NHRC), representatives of local human rights organizations and large number of journalists associated to print and electronic media of both national and local level participated the program.

## 1.3 Closed media round table discussion

**First event closed media round table** was organized jointly by FOHRID and SAFMA Nepal on 13 November 2009 in Kathmandu. The program was organized after the CA Committee for Fundamental Rights and Directive Principles submitted its draft to the CA Chairman Subas Chandra Nemwang on 8 November 2009. Out of its 31 groups of fundamental rights, the issue of incorporating provision to formulate retroactive law to take action in the serious crimes under international law has drawn the attention of human rights and civil society. The civil society has been exerting pressure to incorporate this provision in the new constitution. Despite this, consensus could not be built in the Committee to incorporate it in the draft. Due to opposition from UCPN-Maoist, the two major ruling parties Nepali Congress and CPN-UML included this provision as additional opinion. Nevertheless, this has strengthened initiative to formulate retroactive law. Objective of the closed media round table was to sensitize reporters, columnists and editors associated with media about ground for criminalizing serious crimes under international law in the right to justice, and jurisprudence to formulate retroactive law against impunity. Besides, the program was intended to organize face to face of the journalists with the CA Members Pradeep Kumar Gyawali of CPN-UML and Rames Lekhak of Nepali Congress who submitted additional opinion allowing effective law against impunity in the draft of the CA Committee for Fundamental Rights and Directive Principles.

In the beginning, CA Member Pradeep Kumar Gyawali presented his paper entitled "Addressing serious crimes in the new constitution." CA Member Rames Lekhak commented on the paper and shared his views. Afterwards, an interaction was held among CA Members, experts, journalists and participants on the issue. Altogether, 74 participants including representatives of media and civil society were present on the occasion. Explaining the provision proposed by him, CA Member Gyawali stressed the need to incorporate retroactive provision in the new constitution. He discussed about his experiences of efforts to incorporate retroactive provision from the time of finalizing Interim Constitution. CA Member Lekhak discussed about his own efforts to incorporate the provision. The

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<sup>2</sup> Chief Guest of the program was Shankar Pokhrel, Minister for Information and Communication. Advocate Birendra Prasad Thapaliya presented his paper entitled "Future constitution and addressing impunity" and FNJ President Dharmendra Jha presented his paper entitled "Addressing impunity and role of media." Other speakers included journalists Yubaraj Ghimire, Kanakmani Dixit and Bishnu Nishthuri as well as other members of civil society.

<sup>3</sup> Brief report of interaction on "Addressing impunity in the new constitution and role of media" dated 11 July 2009.

participants raised concerns over rule of law and regularizing the serious crimes alongwith the status of criminalization of politics and politicization of crime. They also discussed about the potential measures for constitutional remedy to ensure victim's justice, revelation of truth and addressing the serious crimes of past (See Annex 3 for brief report).

## **Activity 2: Produce analytical discussion paper**

Following analytical discussion papers were prepared:

1. **Crime, impunity and reconciliation: Responding in the transition:** Taking reference of the international practice to deal with the issue of transitional justice, the paper has tried to elucidate the notion of international crime, emancipation being enjoyed by the criminals and its impact in the reconciliation process.
2. **Interpreting retroactive effect in relation to Article 15 of ICCPR and other practices of international criminal justice system:** The paper has focused use of retrospective effect in the criminal justice system in the context of international criminal law and human rights principles. Discussing about retroactive law in the Nepalese context, the paper has explored area, limitation and potential of using such a provision in the criminal law.
3. **Addressing serious crimes of past through constitutional provision for transitional responses:** The paper has concentrated to the efforts to address serious crimes of past, and jurisprudence for use of retrospective law to address human rights violations. The international experience and national practices have been taken as reference.
4. **Need to institutionalize national efforts so far to address impunity and international experience:** The paper has described domestic efforts at the policy and institutional level to address impunity. For this, it has reviewed efforts of government, NHRC, human rights and civil society including media. Taking reference of international experiences, it ends up with suggestions for regulatory framework.
5. **Analyze provision of international law against impunity:** The paper argues that impunity and crimes of international concern should be addressed through right regarding criminal justice in the constitution. It has explained the problem of impunity prevalent in the country in light of the crimes of international concern. The paper has explored the general obligations of the State against impunity to promote accountability.
6. **Human rights violation and conflict mitigation, notion of delimitation of law based on international practice:** The paper that starts with the definition of non-applicability of statutory limitation goes on to describe about its evolution in the international instruments. It gives the evidence of such practice from UN Resolutions to the charters and documents guiding various tribunals established in the post conflict societies. It finally makes recommendation that Nepal needs to adopt non-applicability of statutory limitations through constitutional and legal measures.
7. **Human rights violation in the past, defining them as a continuous crime:** This paper is based on the doctrinal research on whether or not the human rights violations during the armed conflict can be defined as continuous crime. In this backdrop, the evolution of the doctrine of continuing violation or crime has been discussed in the context of international law, various legal systems and case law. After that the paper goes on to explore whether the human rights violations in Nepal can be defined as continuous crime or violation or not.

The papers were prepared by identified experts after signing formal agreements. The papers were utilized as resource material in the FGDs, interactions and consultations with experts under this project. It may be mentioned here that each paper was presented at more than one occasion (See Annex 4 for Summary of the discussion papers).

## **Activity 2.1: Focus group discussion (FGD)**

### **2.1.1 Central level FGD**

In the beginning, 4 events FGDs were scheduled to be held at the central level; out of which 2 events were shifted to be held in the district/regional level in Chitwan and Rupandehi with the consent from the Finland Embassy through a letter dated 17 August 2009.

**First event central level FGD** entitled "Addressing impunity under rights regarding criminal justice in the new constitution" was held in Kathmandu on 29 May 2009 with the CA Members, Members of thematic committees of the CA, political parties, legal experts and civil society. In the beginning, a working paper entitled "Use of retrospective effect in criminal justice in the context of international

criminal law and human rights principles"<sup>4</sup> was presented arguing that the retrospective effect can be acceptable to determine procedure and agency for investigation, prosecution and trial; to find a solution that benefits both the perpetrator and the victim; and to determine statutory limitation. Then the floor was opened for interaction among participants. CA Members<sup>5</sup> present on the occasion expressed their commitment to address the issue of impunity in the new constitution. Legal experts and other participants expressed their views on the discussion paper and the issue raised by it. Participants of the program sought measures to make State more accountable through new constitution. They discussed the existing legal and constitutional provisions to address serious violation of human rights. Discussion was held on the effective ways to provide legal remedy to the victims. They stressed need of constitutional measures to deal with the past violations. Former Justice and Coordinator of the then Interim Constitution Drafting Committee Laxman Prasad Aryal summed up findings of the program and shared his experiences while drafting the Interim Constitution. Aryal stressed the need of retroactive provision under rights regarding justice in the new constitution.

**Second event central level FGD** entitled "Rights regarding justice in the new constitution and principle of retroactive law" was held in Kathmandu on 3 September 2009. Speakers of the program highlighted the need to incorporate a provision with retrospective effect to address serious crimes under international law and legal remedy against impunity in the new constitution. Speaking on the occasion, CA Member and Nepali Congress leader Suprabha Ghimire opined that the non-repetition of the past crimes should be ensured. CA Member of UCPN-Maoist Angdawa Sherpa said that we should be clear about how to measure serious human rights violations, how to define this and on which basis. CA Member of UCPN-Maoist Shivaram Yadav said that the legal and constitutional provisions should be contextual.

Presenting a discussion paper entitled "International Crime, Impunity and Reconciliation", Advocate Kamal Pokhrel stressed that accountability should be promoted to end impunity. Presenting his discussion paper entitled "Transitional constitutional provisions to address serious crimes of the past", Advocate Dinesh Tripathi said that a happy future cannot be shaped by neglecting the past. Blanket amnesty in the name of peace process can lay negative impact in the peace process, Tripathi opined, retroactive provision is necessary in the new constitution to address the serious crimes committed by the State and non-state actors. Advocate Raju Prasad Chapagai presented his paper entitled "Retroactivity of Criminal Law in the Context of Serious Crimes under International Law" on the occasion. Advocate Chapagai urged to incorporate retroactive provision in the new constitution to address disappearance, torture, crimes against humanity of the past and to avoid chances of repetition of such crimes in the future. Presenting his paper entitled "Forms of impunity, experience of Nepalese people and Nepalese politics enjoying its own way" Kedar Khadka, Executive Director of Pro-Public said that there is discomfort in the society because the power holders are demanding prestige rather than earning prestige.

**The third event** central level FGD entitled "Prosecuting suspects of serious human rights violation and constitutional provision" was organized at Bhairahawa of Rupandehi district on 30 January 2010. Objective of the program was to conduct discussion among participants on what provision should be incorporated in the new constitution to prosecute perpetrators of serious violation of international law, and to submit the feedback received to the CA Committee for Fundamental Rights and Directive Principles.

The program was organized as a face to face interaction. Prem Raj Dhakal, Judge of Rupandehi District Court was the chief speaker of the program where Advocate Dinesh Tripathi presented his paper entitled "Jurisdiction of retroactive law to address serious violation of international human rights and international humanitarian law in the past" and Advocate Birendra Thapaliya presented his paper entitled "Non applicability of statutory limitations in the serious violation of human rights, its contribution to mitigate conflict and international practice". On behalf of FOHRID, Advocate Raj Kumar Siwakoti presented his paper entitled "Right against impunity and retroactive provision in the new constitution". After presentation of papers, floor was opened for discussion. The participants provided their feedback alongwith comments on the presentations. Intensive discussion was held on the issues of the need of prosecution and punishment, hurdles of prosecution in Nepal as well as impunity and prosecution. The participants provided their feedback on these issues. They agreed that statutory limitation should not be imposed to the grave crimes. They opined that a law with retroactive effect can be formulated to prosecute and punish in the serious crimes. Total 39 participants including judge, lawyers, experts, human rights activists, political leaders, representatives of security agencies, journalists participated the program.

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<sup>4</sup> The paper was presented by Advocate Rabindra Bhattarai.

<sup>5</sup> CA Members Ramesh Lekhak and Mina Pande of Nepali Congress, Ekraj Bhandari and Bharat Prasad Sah of UCPN-Maoist, Bhim Rawal of CPN-UML and Anil Kumar Jha of Nepal Sadbhawana Party participated the program.

The **fourth event**, a discussion program entitled "Addressing impunity and constitutional provision for reconciliation" was organized in Chitawan. Objective of the program was to sensitize stakeholders on what types of provision can be incorporated at which place in the new constitution to ensure reconciliation and peace building, and to provide feedback to the CA members about such provision. In the program organized as a round table, Advocate Kamal Pokhrel presented his paper, "Crimes of violation of human rights, concept of impunity and reconciliation and addressing past in the transitional phase: Guaranteeing for future". Gita Prasad Timilsina, Assistant Attorney of Chitwan, and Jagannath Thapaliya, political analyst made comments on the working paper. As a key note speaker, CA Member Ramesh Lekhak discussed about his efforts in the CA to incorporate retroactive law and its necessity. Total 45 participants including CPN-UML district Vice Chairperson Krishna Bhakta Pokharel, Nepali Congress District President Ram Krishna Ghimire, Rastriya Prajatantra Party district Secretary Rudra Prasad Dhakal, other political party representatives, lawyers, journalists, human rights activists participated the program. The participants discussed on the issues of promotion of democracy and rule of law, preventing incidents of human rights violation in the future and addressing impunity, reconciliation, addressing past and ensuring future and provided useful feedback. FOHRID president Birendra Prasad threw light on the objective and relevance of the program. The program was chaired by Jagannath Bhandari, President of Chitawan District Bar Association and facilitated by local representative of FOHRID Advocate Prakash Thapaliya.

**Table 2 FGDs held at the central level**

# of Event	Date & Place	# of Participants
First event	29 May 2009, Kathmandu	40
Second event	3 September 2009, Kathmandu	40
Third event	30 January 2010, Bhairahawa	39
Fourth event	10 February 2010, Chitawan	45

(See Annex 5 for brief reports of central level FGD).

### 2.1.2 Regional level FGD

**First and second event** regional level FGDs were held on the topics of "Addressing impunity under right to justice and new constitution" in Ilam and "Addressing impunity and new constitution" in Biratnagar.

Objectives and process of the program was clarified in the beginning. After that, working papers entitled "Use of retrospective effect in criminal justice in the context of international criminal law and human rights principles" and "Right regarding justice: impunity and crimes of international concern" were presented.<sup>6</sup> After comments by experts on the working papers, the participants actively involved in the discussion about need of prosecuting perpetrators involved in the incidents of human rights violation through a law with retrospective effect. They discussed about whether the provisions recommended by the Interim Constitution Drafting Committee to address human rights violation and impunity should continue in the old form or with revision. Most of the participants opined that the constitutional provision with retrospective effect is necessary to curb prevalent impunity and avert any possibility of grave violations in the future.<sup>7</sup> The programs ended with presentation of conclusion about incorporating provision with retrospective effect to address impunity, war crimes and crimes against humanity, as well as to arrange right to legal remedy in the incidents of impunity or genocide, crimes against humanity and war crimes under right regarding criminal justice in the new constitution. The programs were attended by representatives of judiciary, lawyers, human rights activists, civil society, political parties, law enforcing agencies, academicians and journalists.

**The third event** regional level FGD<sup>8</sup> was held in **Janakpur**, which is the centre of Madhesi movement demanding one Madhesh one province and recognition of Maithali and Hindi as national language. In fact, the venue for the local level FGD have been selected keeping in mind to represent diverse communities in terms of ethnicity, culture, language and geography so that different perspectives can be gathered on the issue addressed by the project. Commencing the program, experts presented analytical discussion papers entitled 'Addressing past crimes, constitutional and legal provision against impunity and the jurisprudence of the use of retroactive law to address human rights violation', 'Principle of Non-retrospectivity of Criminal Law', and 'Addressing impunity during transitional phase.' Senior advocates expressed their critical opinion on the papers. Apart from the issue of impunity and

<sup>6</sup> The papers were presented by Advocate Rabindra Bhattarai and Advocate Raj Kumar Siwakoti.

<sup>7</sup> Brief report of regional FGD on "Addressing impunity under right regarding justice and new constitution".

<sup>8</sup> The FGD entitled "Addressing Impunity and Promotion of Accountability in New Constitution" was held on 28 August 2009 in Janakpur, Dhanusa. The program was attended by 80 participants including CA Member Ram Saroj Yadav, Chief Justice of Janakpur Appellate Court, Judges of the District Court Dhanusha, Chief District Officer Shambhu Koirala, Senior Advocates Ramji Prasad Mainali and Yugal Kishor Lal, representatives of law enforcing agencies, political parties, human rights and civil society, lawyers, journalists, OHCHR, Embassy of Finland and other stakeholders.



accountability, the participants raised local issues of language, culture, autonomy and discrimination from the government. Situation of impunity in Nepal and its causes were explored through this program. The laps and gaps in the rule of law created by lack of accountability were raised by the participants. They pointed that the reason behind increasing impunity and decreasing accountability are inadequacy of law, lack of implementation of existing laws, law enforcing agencies not sincere to work properly and in a fair and accountable manner, inability of the police administration to maintain law and order, ineffective performance of the court, lack of awareness in the people etc. The number of participants was almost double than expected, and they were encouraged to express their feelings and experiences about local problems freely. As a result, the participants raised their own perceptions regarding diverse problems rather than concentrating upon a single issue.

**The fourth event** was organized as a discussion program entitled "New Constitution and Retroactive Provision" in Pokhara. Objective of the program was to sensitize general stakeholders on the efforts made at the CA to incorporate a provision of retrospective law in the new constitution; to collect feedback and suggestions to raise the proposed additional opinion with revision in the CA; and to sensitize general stakeholders regarding principles of retroactive law and non applicability of statutory limitation in the serious crimes under international law. In the beginning of the program organized in the form of round table, CA Member Pradeep Kumar Gyawali presented his views alongwith working paper in favour of provision with retroactive effect. Gyawali discussed about the efforts made in the CA Committee for Fundamental Rights and Directive Principles of State. In an interactive way, Gyawali answered the queries raised by the participants on his presentation. After this, Advocate Dinesh Tripathi presented his paper entitled "Jurisdiction of retroactive law to address serious violation of international human rights and international humanitarian law in the past". Senior Advocate Tilak Parajuli and Deputy Attorney General Durga Bandhu Pokharel made comments over the paper. Dignitaries including Om Prasad Subedi, Chief Judge of Kaski Appellate Court, Narayan Prasad Pokharel, District Judge of Kaski, Chief District Officer of Kaski expressed their views on the occasion. The participants discussed intensively on the issues of criminalization of serious crimes under international law, right to legal remedy in the serious crimes of international concern including impunity, ensuring an impunity free environment for future generation, and strengthening use of national criminal jurisdiction against serious crimes. The program recommended a provision to be incorporated in the new constitution to combat against impunity and also made some long term policy recommendations to the Constituent Assembly. Total 61 participants including representatives of judiciary, lawyers, journalists, security forces, representatives of civil society and political parties were present on the occasion. Local rights activist and Kaski district Chairman of FOPHUR Surendra Thapa chaired the program.

**The fifth and Sixth events** were organized in Gulariya of Bardiya and Dhangadhi of Kailali. The programs at both these places were conducted in the round table discussion method. In the beginning the subject matter and issues of the program were explained on behalf of the FOHRID and the discussion resumed focusing those issues. In the programs chaired by FOHRID President Advocate Birendra Thapaliya, Advocate Govinda Sharma 'Bandi' presented his paper entitled "Human rights violations of the past and context of continuous crime" and on behalf of FOHRID Advocate Raj Kumar Siwakoti presented a paper entitled "Right to remedy and retroactive provision against impunity in the new constitution". Floor was opened after these presentations. The participants were encouraged to express their views freely and put forth their queries. Experts presented their views with comment on the issues raised by the papers. The programs were attended by representatives of various human rights organizations, Office of the Attorney General, lawyers, representatives of District Administration Office, civil society, journalists and conflict victims. The program in Gulariya was facilitated by local Coordinator of FOHRID Advocate Sanjib Kumar Karna and in Dhangadhi by local Coordinator of FOHRID Advocate Tekendra Joshi.

Following table illustrates the regional level FGDs:

**Table 3 FGDs held at the regional level**

# of Event	Date & Place	# of Participants
First event	8 June 2009, Conference Hall of Sungabha Club, Ilam	47
Second event	12 June 2009, Hotel Ratna, Biratnagar	60
Third event	28 August 2009, Appellate Court Bar Unit, Janakpur	80
Fourth event	5 February 2010, Pokhara	61
Fifth event	10 April 2010, Gulariya, Bardiya	46
Sixth event	11 April 2010, Dhangadhi, Kailali	50

(See Annex 6 for brief reports of regional level FGDs).

### **Activity 3: Consultation with experts, recommendation lobbying with the CA Members and constitution drafting bodies**

This activity was implemented by dividing into two parts. First, consultation with experts, second, recommendation lobbying with the CA Members and constitution drafting bodies.

#### **3.1 Consultation with experts**

Feedback received in the FGDs and other interactions were compiled and revised through closed consultation meetings with experts. Letters, with the agenda determined by the consultations, were submitted to the CA Committees and CA members requesting them to incorporate provision against impunity. Brief description of this activity is presented below:

**The first event** consultation meeting was organized on the topic of "Retroactive provision and right to remedy against impunity under the new constitution"<sup>9</sup> on 31 July 2009 in Kathmandu. According to the aim of the program, two Members of the then Interim Constitution Drafting Committee shared their experience of efforts made to recommend specific provision to prosecute in the war crimes, crimes against humanity and to combat impunity. Two papers were presented on behalf of FOHRID and one more on behalf of OHCHR-Nepal. The papers explained about ground provided by international law for incorporating provision with retrospective effect to deal with serious human rights violation and gross violation of international humanitarian law. The program helped to clarify concept, principle and jurisprudence of provision with retrospective effect on grave violations of human rights and humanitarian law. The program determined language of recommendation to the CA Committee for Fundamental Rights and Directive Principles and CA Members regarding incorporation of retroactive provision to take action against perpetrators involved in the serious violation of human rights and provision of legal remedy under right regarding justice in the new constitution. Recommendation made by the consultation program is given in the "Results achieved" section of this report.

**The second event consultation meeting** was held into two parts. **The first part of second event** entitled "Serious crimes, impunity and prosecution" was held at the Nepal Academy, Kathmandu on 8 December 2009 in line with the celebration of Human Rights National Magna Meet-2009. With the objective of determining provision to incorporate in the new constitution with right to prosecute and punish in the already defined serious crimes under international law by formulating retroactive law, and right to receive constitutional remedy, a consultation meeting entitled "Serious crimes, impunity and prosecution" was held by FOHRID with the experts and representatives of human rights and civil society. Participants of the program discussed about the jurisprudential ground and necessity of a provision for retroactive law and right to remedy in the new constitution. FOHRID President Advocate Birendra Thapaliya presented discussion paper entitled "Context of past human rights violations and continuous crimes" prepared for FOHRID by Advocate Gobinda Sharma Bandi. The program concluded with discussion and interaction among experts, lawyers and other participants on the issues raised by the discussion paper. The participants of the program agreed that already defined crimes and serious crimes under international law which are of international concern should be dealt with through criminal justice system.

**The second part of second event** consultation meeting was held on 19 February 2010 in Kathmandu. FOHRID has been conducting dialogue with the stakeholders and experts regarding language to be used for recommending retroactive provision to the CA. This consultation was an event in this regard. Speaking on the occasion, Shashi Kumar Upadhyaya, Treasurer of FOPHUR said that UCPN-Maoist, a faction of Nepali Congress, judges and lawyers are scared of retroactive provision. Advocate Kamal Pokhrel said that the additional opinions for retroactive provision have been proposed separately and uniformity is required in the language of these two propositions. Advocate Gobinda Sharma Bandi suggested that a closed meeting of the CA Members who have proposed additional opinions of retroactive provision, experts having deep knowledge in this field and some CA members who have worked in the Committee should be organized. The meeting can finalize the language of the provision to incorporate in the constitution, which can be submitted through lobbying delegation to the CA. Advocate Dinesh Tripathi told that the people in the local level must be sensitized through collaboration with them and enabled to claim retroactive provision in the new constitution. He suggested that the regional and local level consultation programs being implemented by FOHRID should be expanded to sensitize stakeholders on the issue. It is difficult to remove the provisions incorporated in the draft, Advocate Tripathi opined, we must exert more pressure to compel them to include retroactive provision. Senior human rights defender Nutan Thapaliya opined that the two additional opinions included in the draft and the options proposed by FOHRID should be revised to prepare a clear provision to recommend to the CA and pressure should be exerted to incorporate the provision. Advocate Birendra Thapaliya, Advocate Raj Kumar Siwakoti and other participants also spoke on the occasion.

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<sup>9</sup> Total 10 CA Members, representing 6 major political parties, including Chairperson of the CA Committee for Fundamental Rights and Directive Principles Binda Pande, Members of the then Interim Constitution Drafting Committee Senior Advocate Harihar Dahal and Advocate Shambhu Thapa and OHCHR representative Raju Chapagain were among the participants.

**The third event consultation meeting** was held in Kathmandu on 16 May 2010. Altogether 25 participants including Constitutional Committee President Nilambar Acharya, CA Committee for Fundamental Rights and Directive Principles President Binda Pandey, CA Member Pradeep Kumar Gyawali who proposed additional opinion, CA Members of CPN-Samyukta Ganesh Sah, from Rastriya Janamorcha Chitra Bahadur K.C., from UCPN Maoist Kali Bahadur Malla, from CPN-UML Lal Babu Pandit, CPN-ML leader Deuman Sambahamphe; senior human rights defenders Nutan Thapaliya, Charan Prasai; Officers of Constitutional Committee Secretariat Kamal Acharya and Tikaram Aryal; and Advocates Gobinda Sharma 'Bandi', Tirtha Basaula, Punya Prasad Khatiwada, Rabindra Bhattarai, Shasi Kumar Upadhyaya were present on the occasion. CA Member Ramesh Lekhak informed in the morning that he could not attend the program due to another urgent meeting of his party. Concept of FOHRID on the subject matter was presented in the beginning. Then the experts presented their views. The program was concluded with the views of the CA Members. The participants discussed about the two additional opinions proposed on behalf of CPN-UML and Nepali Congress in the draft of CA Committee for Fundamental Rights and Directive Principles. They suggested the need to bring uniformity in the two additional opinions and submit a single draft to the CA. The participants raised concern about how to give continuation to the achievements made so far if the new constitution is not promulgated on 28 May 2010. They suggested to hold more interaction and lobbying with UCPN-Maoist, Madhesi parties and other small parties to convince them on the need to incorporate provision against impunity in the new constitution. (See Annex 7 for brief reports of Consultation with experts).

### **3.2 Recommendation lobbying with the CA Members and constitution drafting bodies**

**First round lobbying** was held with a recommendation letter. In the beginning, a draft letter was prepared with a request to incorporate provision with retrospective effect in the war crime and crimes against humanity and right of legal remedy against impunity under rights regarding criminal justice in the new constitution. The request letter was delivered to the CA Members, Chief Whips of the political parties, and Constitutional Committee, Committee for Fundamental Rights and Directive Principles, Committee Relating to Justice System, and International Relations and Human Rights Committees of the CA by lobbying delegations in the final week of April 2009.

**Second round lobbying** was conducted after the FGDs held in Ilam and Biratnagar. The feedback from the regional level FGDs was transformed into the language of Constitution by consulting legal experts. Reports of the regional level FGDs that reflected the recommendations and suggestions were submitted, alongwith memorandum, to the thematic Committees and CA Members on the last week of June 2009 by visiting their offices.

**Third round lobbying** was held utilizing outcome of the consultation meeting entitled "Retroactive Provision and right to remedy against impunity under the New Constitution" held on 31 July. The outcome was submitted to all the 601 CA Members including the CA Chairman, thematic committees of the CA, major political parties and the supreme leaders of the parties. Direct interaction was held with some of the CA members while submitting the document.

A delegation of the human rights and civil society met with the representatives of UCPN-Maoist on 13 August 2009 and discussed about why and how the provision relating to impunity should be incorporated in the new constitution. Maoist leader and Former Law Minister Dev Gurung responded to the concerns raised by the delegation. Gurung asserted that his party had not seriously discussed about the retrospective provision and the right to remedy of the victims of serious crimes under international law. He informed that this issue will now be discussed in the party. He expressed commitment with the delegation that his party shall play lead role to end the existing situation of violation of human rights, humanitarian law and impunity and to create a congenial environment for the future to take action against such incidents. The delegation held a review meeting after the lobbying. The meeting concluded that the Maoists are now turning positive to incorporate provision to address impunity and right to legal remedy. The third round lobbying was held from 9 to 13 August 2009.

**Fourth round lobbying** was conducted on 4 and 5 November 2009 to incorporate the provisions with issue of rights being raised by FOHRID in the draft and to build consensus within the Committee in this regard. Representatives of FOHRID and experts were involved in the lobbying delegation. On 4th November, the delegation called on Constitutional Committee President Nilambar Acharya, Fundamental Rights and Directive Principles Committee President Binda Pande and other CA Members. During the meeting, discussion was held to incorporate the proviso for sub-article 4 of the rights regarding justice proposed as additional opinion by CA Member Pradeep Kumar Gyawali "Provided that this sub-Article shall not restrict punishing in the crime against humanity, war crime and genocide by formulating retroactive law" in the new constitution. Speaking on the occasion, CA Committee for Fundamental Rights and Directive Principles President Binda Pande, CA Member of Nepali Congress Radheshyam Adhikari and CA Member from the CPN-UML Agni Kharel suggested that the civil society should conduct continuous lobbying to sensitize and build consensus among

political parties. During the meeting, Committee President Binda Pande informed that the proposal of Pradeep Kumar Gyawali to address impunity and the serious crimes under international law was supported by CA Member of Nepali Congress Ramesh Lekhak. On 5 November 2009, the delegation requested CA Member of Nepali Congress Ramesh Lekhak, Chief Whip of Madhesi Janadhikar Forum (Loktantrik) Ram Janam Chaudhari, Chief Whip of Madhesi Janadhikar Forum Chandrika Yadav and CA Member of Terai Madhes Loktantrik Party Arabinda Sah to pass the additional opinion proposed by CA Member Pradeep Kumar Gyawali. They suggested that the civil society should hold additional discussions with the senior leaders on the issue.

**Fifth round lobbying** was conducted from 27 to 29 April 2010 with the CA Members including the Members of CA Constitutional Committee and Committee for Fundamental Rights and Directive Principles requesting them to incorporate provision to end impunity in the Right relating to justice under Fundamental rights of the new constitution. During the lobbying, CA Members Ramesh Lekhak and Pradeep Kumar Gyawali were requested to present a joint submission to the Constitutional Committee and Constituent Assembly by incorporating the spirit of both of their separate additional opinions in the draft. The lobbying document was submitted to the CA Members by meeting some of them personally as well as through pigeon holes in the CA and CA party office. Reports of the FGD programs entitled "Retroactive provision proposed in the draft of fundamental rights committee" held in Bardiya, "Addressing impunity and proposed retroactive provision in new constitution" held in Kailali and open media round table discussion entitled "Human rights violation and retroactive provision in new constitution" held in Nepalganj were attached with the request letter.

**Sixth round lobbying** was conducted from 18 to 20 May 2010 with the Constitutional Committee, CA Committee for Fundamental Rights and Directive Principles as well as to all the CA Members. FOHRID conducted series of consultation and interaction programs with stakeholders in Kathmandu and 9 places outside Kathmandu at regional and district level. Consequently, significant impact is felt in the CA Committee for Fundamental Rights and Directive Principles to incorporate provision of retroactive law and criminalization of serious crimes under international law. UCPN-Maoist remained in the opposition of this provision due to differences with other parties and possibility of bearing accountability to the past violations. However, additional opinions were proposed on behalf of Nepali Congress and CPN-UML. Based on the feedback received through the programs implemented by FOHRID so far, a recommendation letter was prepared for submission to the concerned thematic committees and CA Members. The recommendation letter was submitted to the CA members through lobbying delegation. The letter was submitted to the Constitutional Committee, CA Committee for Fundamental Rights and Directive Principles as well as to all the CA Members. By meeting some CA Members personally, the delegation stressed the need to keep up the achievements of the past efforts to combat impunity by bringing uniformity in the two additional opinions proposed by CPN-UML and Nepali Congress in the CA Committee for Fundamental Rights and Directive Principles.

(See Annex 8 for brief reports of Recommendation, lobbying with the constitution drafting bodies and CA Members)

#### **Activity 4: Compilation, publication and dissemination**

Under this activity, literature relating to international practice and experience to combat impunity and promote accountability were translated from English into Nepali language. The analytical papers were written through experts. The activity reports were prepared and documented. All these documents and information were compiled. A book entitled "Impunity Application of retroactive provision in the serious crimes under international law" has been published incorporating all these information.

The book is divided into two parts. The first part contents 14 research based articles and papers written by various experts on the possibility of incorporating retroactive provision from different angles of international law. The second part comprises of the views and feedback provided by the participants of central, regional and district level consultations and interactions organized by FOHRID under this project. The publication comprises of following articles:

1. Impunity problem analysis, past efforts and some international experiences
2. Right relating to justice: impunity, serious crimes of international concern and retroactive provision in the new constitution
3. Addressing serious crimes in the new constitution
4. Provision to formulate retroactive law is necessary to avoid human rights violation
5. Addressing past crimes, constitutional and legal provisions against impunity and jurisprudence of use of retroactive law to address human rights violations
6. Retroactive use of criminal law in the context of principles of international criminal justice and human rights
7. Past human rights violations and context of continuous crime
8. Analysis of non-applicability of statutory limitation in the serious violations of human rights
9. Jurisprudence of victim's justice
10. Transitional justice: principle and practice
11. Crimes of human rights violation, concept of impunity and reconciliation
12. Peace process of Nepal and transitional justice
13. Remedy of serious human rights violations in the campaign for justice against impunity : Criminal prosecution and punishment or amnesty?
14. Role of Supreme Court to end impunity: Case study

The publication was printed 1000 copies. It is being disseminated among stakeholders.

**Part III**  
**Assessment of project impacts and results**

New constitution could not be formulated within two years as designated before, and the term of the CA has been extended by one year. Therefore, the objectives, results and achievements of this project have been evaluated taking the report of the thematic committee as reference.

**1. Analysis of achievement of determined objectives**

<b>Determined objectives</b>	<b>Assessment of achievements</b>
<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"> <li>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: <b>Right regarding criminal justice: (1)</b> 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.</li> <li>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 incorporate this as separate additional opinions.</li> <li>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.</li> <li>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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup></li> </ol> <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 delayed. 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>

<sup>10</sup> Based on views expressed by CA Members Nilambar Acharya, Ramesh Lekhak and Pradeep Gyawali at different programs organized by FOHRID under this project.

<sup>11</sup> 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.

<sup>12</sup> As stated by UCPN-Maoist leader Dev Gurung to a lobbying delegation led by FOHRID on 13 August 2009.

## 2. 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."<sup>13</sup> 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."<sup>14</sup> 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>

## 3. Relevance of the project

The result, purpose and objectives of the project were according to the needs and aspirations of the country and stakeholders. This is still relevant in the present Nepalese context. Guarantee of justice through constitutional provision to address existing impunity and serious crimes under international law is the need and aspiration of Nepalese people. Constitutional guarantee to bring such crimes under the grip of justice system is the need of post conflict society.<sup>15</sup> It is required to bring the perpetrators involved in serious human rights violation to justice system through constitutional provision. It was contextual to sensitize CA Members and political parties in this regard. Efforts were

<sup>13</sup> Constituent Assembly, Report of thematic concepts and preliminary drafts, 2066, Committee for Fundamental Rights and Directive Principles, P. 96.

<sup>14</sup> Ibid, p. 97.

<sup>15</sup> Based on views expressed by participants in the FGD organized at district and regional level.

made under this project to collect opinions and measures through intensive consultation and interaction with stakeholders.

In this way, the objectives, purpose and results of this project were based on the needs of the country and the beneficiaries. The serious crimes under international law must be criminalized at the domestic level through constitutional provision. The project was designed to fulfill this need, and the objectives of the project were determined accordingly.

#### **4. Impact of the project**

The project benefited CA Members, CA Committee for Fundamental Rights and Directive Principles, representatives of political parties, civil society, media persons, government representatives, non-government level as well as victims. The intervention of the project has made positive impact in the stakeholders and other groups. A discourse has been initiated in the CA and political parties on the issue of incorporating constitutional provision against impunity and serious crimes of international concern. The project has been successful to convince many CA Members on the need to incorporate such provision in the new constitution. Journalists, members of human rights and civil society have been sensitized on the jurisprudence of retroactive provision. They have started to raise their voice to incorporate retroactive provision against impunity in the new constitution.

Due to intervention of this project, separate additional opinions were presented in the thematic committee by two major political parties against impunity and serious crimes under international law. We can believe that the right to life shall be guaranteed in the new constitution. More important achievement is that a discussion has been initiated within CA and UCPN-Maoist party on the need of constitutional provision against impunity. The project has laid more positive than negative impact to the stakeholders. A firm ground has been prepared in the CA and political parties for discussion on the need of right against impunity. Personally, CA members and political party leaders have agreed on the need to formulate constitutional provision against impunity. However, most of the political parties have not expressed their commitment officially.

The provision against impunity was incorporated as additional opinion rather than major provision in the draft of CA Committee for Fundamental Rights and Directive Principles. This was because the project activities were affected by the external factors such as extension of the term of CA, peace process, change in government, majority system instead of consensus, question of management of arms and army etc. The CA and the political parties could not take the issue of retroactive law seriously due to these factors. However, debate was held within the Committee for Fundamental rights and Directive Principles on this issue.

#### **5. Effectiveness of the project**

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 opinion. 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.

#### **6. 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 in this regard. 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.

A significant achievement of this project is to bring into discourse the issue of addressing crimes under international law through domestic laws. This discourse shall continue in the future too. Similarly, the provision on right to life has broadened the right of Nepalese people. Legal and institutional measures should be adopted for application and guarantee of this right. Similarly, the publication prepared under this project shall be 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.

**The main risks to sustainability :** 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 the same fear.<sup>16</sup> Despite this, efforts are being made to convince the party leaders to have consensus to incorporate retroactive provision in the new constitution. 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.

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.

## **7. 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.

## **8. 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%.<sup>17</sup> 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.

## **9. Problems and lessons learnt**

### **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. Problems faced during project implementation can be listed as follows:

- 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.

<sup>16</sup> 'Retroactive provision a must', a news report in The Kathmandu Post, Vol. XVII, No. 198 dated 4 September 2009.

<sup>17</sup> Based on the participation during execution of the FGD and interaction programs organized under the Combating impunity to promote accountability project.



- 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 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 learnt:**

It is learnt 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. Some lessons learnt during project implementation are as follows:

- 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.

#### **10. Wider applicability of 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.

#### **11. Collaboration / involvement of implementing partner**

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.

#### **12. Visibility**

Contribution of Finland Embassy was displayed in the banners of the programs. It is displayed in the publication brought out under this project.

#### **13. Financial status of the project**

Total budget of this project was NRs. 3,474,932 equivalent to Euro 34,715 (Exchange rate of 19 February 2009, Euro 1: NRs. 100.1). Till the time of final reporting, FOHRID has received total Euro 31,242 in the first, second and third installments. The final installment of Euro 3473 shall be received after approval of final report.

Summary of the budget breakdown is as follows:

S.N.	Description	Total budget (NRs.)
1	Program cost for key component	940,566
2	Short term contract cost	92,000
3	Cost of equipment and supply	264,522
4	Communication and office utility	277,532
5	Project staff cost	1,455,000
6	Travel mission	217,440
7	Contingency	124,242
8	Audit fee (from contingency)	25,000
	<b>Total</b>	<b>3,396,302</b>

Out of the total budget of NRs. 3,474,932, NRs. 3,396,302 has been spent for the project. The balance NRs. 78,630 (including NRs. 78,090 from contingency and NRs. 540 from the program) has been unspent from the contingency. The amount of contingency NRs. 227,332 has been spent as follows:

S.N.	Purpose of contingency use	Date of Vouching	Amount (NRs.)	Date of approval	Remarks
1	Bank charge	2009.06.15, 2009.08.31, 2010.02.05, 2010.02.14 2010.03.01	1,400.00	--	-
2	FGD Relocation Expense	2010.01.31, 2010.02.14	70,150.00	07.09.2009	
3	Mission cost	2010.05.11	5,000.00	12.03.2010	
4	Price fluctuation	2009.08.31 2010.03.01	47,692.00	--	
5	Auditing	2010.06.29	25,000	29.06.2010	
		<b>Sub total</b>	<b>149,242.00</b>		
		<b>Balance</b>	<b>78,090.00</b>		
		<b>Total</b>	<b>227,332</b>		

The detail financial report as well as Auditor's Report attached separately with this report.