

Initiative to implement Supreme Court decisions -December 2010

Final Project Execution Repot

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Final Project Execution Report of
"Initiative to implement Supreme Court decisions"

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Final Project Execution Report of "Initiative to implement Supreme Court decisions"

1. Introduction of the initiative:

Initiative to implement Supreme Court decisions

There are significant practices in the Supreme Court of Nepal regarding the cases relating to serious crimes under international law and impunity. Number of writ petitions have been filed in the Supreme Court regarding extrajudicial killings, enforced disappearance, torture and sexual violation including rape, and the Court has made exemplary decisions on such writs. Unfortunately, the government has not been able to effectively implement such decisions. Impunity has increased alarmingly due to lack of implementation of the decisions and orders of the Supreme Court. Prosecution against perpetrators involved in serious human rights violations has become difficult as the Office of Prime Minister and other concerned Ministries are not being accountable in the implementation of such decisions. This has created a situation where the perpetrators do not have to face prosecution and become liable for their crimes. Therefore, in the context of deplorable implementation status of the Supreme Court decisions, FOHRID has forwarded this initiative to explore this situation to intervene in the necessity of effective implementation of such decisions.



Objective of this project implemented with the funding from TFD was "to conduct study of the Supreme Court decisions and orders on the serious human rights violation and impunity, and to sensitize key stakeholders on implementation of those decisions" The project with the duration from 1 July 2010 to 31 December 2010 was implemented with the USD 1500 funded from TFD. Following activities were determined in this project:

- Brief study of the implementation status of the Supreme Court decisions on cases relating to serious human rights violation and impunity.
- Interaction-1 event with stakeholders on the basis of the study outcome.
- Publication of study material

2. Status of activity implementation:

2.1 Study on the implementation status of the Supreme Court decisions against serious human rights violation and impunity: This study has been accomplished. The study is divided into 5 chapters as follows:

Chapter 1: Context, objectives, methodology and delimitation of study. **Chapter 2:** Concept of the study – international standard against impunity; Nepal's obligations under international law on implementation of court decisions; state's accountability for implementation of decisions. **Chapter 3:** Supreme Court decisions against impunity – decisions of the Supreme Court against impunity and unlawful, arbitrary and mass killings; Supreme Court decisions against impunity and enforced disappearance; Supreme Court decisions against impunity and torture; Supreme Court decisions against impunity and sexual violation including rape; Supreme Court decisions and perspective against impunity and violation of humanitarian law; Supreme Court decisions and perspectives on the investigation commissions formed against human rights violations and impunity. **Chapter 4:** Implementation status of the decisions against impunity – mechanism for implementation of decisions, body responsible for implementation of

decisions, implementation status. **Chapter 5:** Conclusion and recommendation of the study Full text of the study is attached herewith as Annex 1.

Interaction program:

Interaction-1 event was implemented on the title of "Implementation of Supreme Court decisions in the context of human rights violation and impunity: Challenges and solutions" at Hotel Pension Vasana, Kathmandu on 31 October 2010. Brief report of the program is given below:

Background

There are significant practices in the Supreme Court of Nepal regarding the cases relating to serious crimes under international law and impunity. Number of writ petitions have been filed in the Supreme Court regarding extrajudicial killings, enforced disappearance, torture and sexual violation including rape, and the Court has made exemplary decisions on such writs. Unfortunately, the government has not been able to effectively implement such decisions. Impunity has increased alarmingly due to lack of implementation of the decisions and orders of the Supreme Court. Prosecution against perpetrators involved in serious human rights violations has become difficult as the Office of Prime Minister and other concerned Ministries are not being accountable in the implementation of such decisions. This has created a situation where the perpetrators do not have to face prosecution and become liable for their crimes. Therefore, in the context of deplorable implementation status of the Supreme Court decisions, FOHRID has forwarded this initiative to explore this situation to intervene in the necessity of effective implementation of such decisions.

Objective

To commence advocacy on the implementation status of the Supreme Court decisions regarding human rights violations and impunity and to exert pressure to the responsible authority to implement such decisions of the Supreme Court.

Program proceeding and participation

The program was organized in a round table method. After presentation of research paper on the implementation status of Supreme Court decisions regarding human rights violation and impunity by Advocate Punya Khatiwada, Kashiraj Dahal, Chairman of Administrative Court, representatives of Supreme Court, Office of Attorney General of Nepal, Victimologist Dr. Shankar Shrestha and Secretary of National Human Rights Commission Bishal Khanal threw light on the theoretical aspect of the issue, relevant jurisdiction as well as laps and gaps of the study. After this, other participants discussed on the issues such as nature of study related cases, agencies for implementation of decisions and accountability of the government for their implementation. Altogether 45 persons representing government agencies, judiciary, lawyers, human rights community, victimologists and civil society participated the program. The program was chaired by Nutan Thapaliya, senior human rights defender and Chairperson of FOHRID.

Conclusion

It is useful to discuss about the jurisdiction of filing cases in the Supreme Court before entering into implementation of the Court's decisions. The cases enter into the Supreme Court through ordinary and extraordinary jurisdiction. Individual general cases are filed under ordinary jurisdiction and public interest litigations are filed under extra ordinary jurisdiction. In the ordinary cases, the persons or stakeholders concerned play role in the implementation with their own initiatives. However, the state must be responsible for implementation of the decisions and orders of the court in the cases filed under extra ordinary jurisdiction. This is also the question of the accountability of the state.

We must be clear on what types of disputes can be covered under the decisions of the Supreme Court relating to impunity. We must generalize the context that triggers impunity. The efforts and pressure for implementation can work only when we become clear about the nature of decisions of the court on cases relating to impunity. Impunity is viewed here only for the cases relating to the serious violation of international law and the decisions of the court have been referred in this context. While considering from this perspective, only the supreme court decisions for implementation of the reports of various commissions formed to investigate in the crimes such as unlawful killings, enforced disappearance, sexual violence including rape, violation of human rights and humanitarian law are the decisions

relating to impunity. The implementation status of decisions on such cases require to be analyzed and raised before the state.

Among the Supreme Court decisions on the cases relating to human rights violation and impunity, the decision on the killing of Umesh Chandra Thapa, first martyr of the Jana Andolan II (murdered on 8 February 2006), and mass killing of laborers engaged in the construction of an airport at Kotwada, Kalikot district by the indiscriminate firing of the security forces on 2058 Falgun 12 are worthy to mention. These cases were filed by FOHRID as PIL. The joint bench of Justice Anupraj Sharma and Justice Balaram K.C. ordered mandamus against the defendant Nepal Government, Office of Prime Minister and Council of Ministers. The decision states, "On the killing of innocent citizens by the responsible government agency, it is required to provide appropriate compensation with the perspective of victimology to end impunity, as well as take immediate steps to formulate a comprehensive law incorporating provisions including fair investigation and effective treatment and arrange an agency to provide necessary counsel and suggestions in such cases; therefore, it is determined that it is necessary to issue order of mandamus in the name of defendant Office of the Prime Minister and Council of Ministers, government of Nepal." On these decisions, the court has spoken being liberal in favour of the victims. The court has adopted victimological perspective and spoken for the justice to the victims. The court had instructed to take action against the perpetrator in other cases such as the Maina Sunuwar case. In the earlier two cases, the court has clearly indicated to provide compensation with the perspective of victimology and to end impunity. Intention of the court is to provide full reparation to the victims of the past armed conflict. Likewise, the order for a comprehensive law implies to strengthen the prosecution against the perpetrators by safeguarding the interest of the victims. The Supreme Court itself does not implement its decisions. The court plays only a supporting role for implementation. At present, the Supreme Court has established Decision Implementation Monitoring Department to monitor the implementation status. Justice from the court is meaningless without implementation of its decisions. However, the implementation status of court decisions is deplorable in Nepal. Except in the PIL cases, only 35% of the Supreme Court decisions have been implemented. There are several reasons hindering the implementation of the court orders.

Executive bodies of the State are responsible for implementation of Supreme Court decisions on the cases relating to serious crimes under international law and impunity. Office of Prime Minister, Home Ministry and Law Ministry are the major responsible bodies. Human Rights Section and its Secretary in the Office of Prime Minister is not effectively monitoring the implementation status of the court decisions on serious human rights violation and impunity.

When the nation is going through transitional phase, the state organs and bodies are not being capable to effectively administer their duties ultimately affecting the implementation of the court decisions. The frequent divisions and mergers of the Ministries after change in the political system and government has shadowed the implementation of the decisions, as this situation creates controversy on what types of decisions are the responsibility of which Ministry. The responsible Ministries do not maintain adequate coordination for implementation of the decisions. More alarming situation is created by the mentality of the concerned authorities in the Ministries who think that the Supreme Court gives unnecessary decisions and orders against the government.

According the existing law, the Secretary of the concerned Ministry is responsible for implementation of the Supreme Court decisions, and the decisions must be implemented within 3 months. However, the concerned authority hardly becomes responsible to comply with this rule. In some cases, Bills have been drafted by the government and submitted to the parliament to pass them as new law according to the Supreme Court decisions, but such Bills usually remain in the shelves of the parliament.

Another cause that creates challenges in the implementation of the Supreme Court decisions is the lack of uniformity in the decisions. Different types of decisions are made in the similar cases. In the cases of unlawful killings of Umesh Chandra Thapa, victims of Jogimara, and Kahule incident, the court has ordered the Office of Prime Minister to form a high level investigation task force and provide compensation to each of the families of the victims according to the report of such commission within 3 months of the report submission, and to formulate a comprehensive law for providing compensation. In a similar case of Jaya Kishor Lav, the court has issued order of mandamus in the name of defendant to register the petition according to law and to conduct necessary investigation as set forth in the law.

Though both the above writs had demanded to take action against perpetrators, the court has ordered to formulate a new law and provide compensation in the first instances. Regarding prosecution, the court has ordered to proceed systematically formulating a new law. But in the second case, it has ordered to register the case within the existing legal framework. In this way, varied decisions in the similar cases has posed difficulty in the implementation of the Supreme Court decisions. Therefore, more efforts for legal and structural reform are required to make the implementation of Supreme Court decisions effective.(detials report in nepali please see annex 2)

2.3 Publication: Summary of the study conducted under this project and decision in some important cases shall be translated into English, and the publication shall be brought out in English and Nepali language. Translation shall take some time as it shall be started after finalization of the text in Nepali language. The translation shall be completed by the end of December 2010. The publication shall be printed in the first week of January 2011.

- 3. Problems and lessons learned:** The issue of implementation of the decisions made by Supreme Court is problematic and complex in Nepal. Supreme Court decisions on emblematic cases have remained overlooked as the Supreme Court does not implement its own decisions, and the government does not act in a responsible way to implement them. Supreme Court has made liberal and landmark decisions on some cases relating to serious human rights violation and impunity. But, lack of timely implementation of such decisions has created hurdles in the campaign against impunity.