

LAW OF MONGOLIA

7 December 2000, Ulaanbaatar city

THE NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA ACT

CHAPTER ONE

GENERAL PROVISIONS

Article 1. Purpose of the Law

1.1. The purpose of this Law shall be to determine legal basis and operational principles of, and to regulate the relations arising out of the exercise of powers by the National Human Rights Commission of Mongolia (hereinafter referred to as ‘the Commission’).

Article 2. Legislation on the Commission

2.1. Legislation on the Commission shall consist of the Constitution of Mongolia¹, this Law and other legislative acts enacted in conformity with them.

2.2. If an international treaty to which Mongolia is a State Party (the international treaties of Mongolia) provides otherwise than this Law, the provisions of that international treaty shall prevail.

Article 3. The Commission and its Operational Principles

3.1. The Commission is an institution mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms, provided in the Constitution of Mongolia, laws and international treaties of Mongolia.

3.2. The Commission shall consist of 3 (three) members (Commissioners).

3.3. The Commission shall adhere in its operations to the principles of the rule of law, independence, protection of human rights, freedoms and legitimate interests, justice and transparency.

3.4. It shall be prohibited for any business entity, organisation, official or individual person to influence and/or interfere with the activities of the Commission and its Members.

¹ The Constitution of Mongolia was published in the issue # 1 of 1992 of the ‘State Gazette’.

CHAPTER TWO

APPOINTMENT AND RELEASE OF COMMISSIONERS, SUSPENSION OF THEIR POWERS AND DISMISSAL

Article 4. Candidates for Commissioners

4.1. A candidate for Commissioners shall be a Mongolian citizen of high legal and political qualification, with appropriate knowledge and experience in human rights, with a clean criminal record and who has reached the age of 35 (thirty-five).

Article 5. Nomination of Candidates for and Appointment of Commissioners

5.1. The Speaker of the State Great Hural (Parliament) shall nominate names for candidates for Commissioners to the State Great Hural on the basis of respective proposals by the President, the Parliamentary Standing Committee on Legal Affairs and the Supreme Court.

5.2. If the State Great Hural declines to appoint a candidate as a Commissioner, then the Speaker of the State Great Hural shall submit the name of another person within 14 (fourteen) days in accordance with procedure provided in Art 5.1.

5.3. A name of the same person shall not be nominated again.

5.4. The State Great Hural shall consider and decide on this issue within 30 (thirty) days from the date of submission of the names for candidates.

5.5. In case any of Commissioners has been released, resigned from his/her official position or deceased before the expiry of the term of his/her office, the Great State Hural shall appoint replacement for that Commissioner within 60 (sixty) days from that date in accordance with this Law.

5.6. A Chief Commissioner shall be appointed for a term of 3 (three) years from among Commissioners by the State Great Hural, based on the proposal by the Speaker of the State Great Hural.

5.7. Commissioners shall not hold any job or office concurrently other than that mandated by this Law, except that of engaging in training and research. If any of Commissioners has been holding another job or office before his/her appointment, then he/she shall be released from that job or office from the day on which he/she has taken an oath of office.

Article 6. Term of Office of Commissioners

6.1. A single term of office for Commissioners shall be 6 (six) years.

6.2. Powers of Commissioners shall start by taking an oath of office to the Constitution of Mongolia, and shall end by the swearing in of the newly appointed Commissioners.

6.3. Commissioners may be re-appointed only once.

Article 7. Swearing in of the Members of Commission

7.1. Commissioners shall take an oath of office to the Constitution of Mongolia within 30 (thirty) days from the date of appointment by swearing in: ‘I do swear to observe faithfully the Constitution of Mongolia, and to fulfil dutifully my obligations to promote and protect the human rights and freedoms, which are guaranteed in the laws and international treaties of Mongolia.’

7.2. The Speaker of the State Great Hural shall approve the procedure for ceremony of taking an oath by Commissioners.

Article 8. Release and Suspension from the Office, and Dismissal of Commissioners

8.1. The State Great Hural shall release a Commissioner from his/her office in the following cases:

8.1.1. A Commissioner has been nominated as a candidate for the President of Mongolia, or for the Member of the State Great Hural;

8.1.2. A Commissioner has been appointed or elected to another official position;

8.1.3. A Commissioner has requested on his/her own because he/she becomes unable to exercise his/her powers due to health conditions or for any other excusable reasons.

8.2. The State Great Hural shall discuss and make a decision within 14 (fourteen) days from the date of receipt of a proposal and decision from the competent authority on whether to suspend his/her powers, if a Commissioner has been implicated in the crime, as well as has been arrested as provided in Art 23.1. of this Law.

8.3. The State Great Hural shall restore his/her powers and adopt a resolution to that effect, on the basis of a decision by the competent authority or official, which has established that a Commissioner has not been implicated in the crime or not guilty of committing it.

8.4. The State Great Hural shall dismiss him/her from the office and adopt a resolution to that effect, if a crime, which has been proved to be committed by a Commissioner, and a final binding judgement to that effect by the Court has come into force.

CHAPTER THREE

COMPLAINTS LODGING TO THE COMMISSION

Article 9. Right to Lodge Complaints

9.1. Citizens of Mongolia, either individually or in a group, shall have the right to lodge complaints to the Commission in accordance with this Law, in case of violations of human rights and freedoms, guaranteed in the Constitution of Mongolia, laws and international treaties of Mongolia, by business entities, organisations, officials or individual persons.

9.2. Unless otherwise provided in laws and international treaties of Mongolia, foreign citizens and/or stateless persons who are residing in the territory of Mongolia, shall exercise the same right to lodge complaints to the Commission on equal footing as the citizens of Mongolia.

9.3. Complaints may be lodged in by representation of lawful representatives-parents, care-takers and/or guardians for the persons, who do not have full civil law capacity or have some limited or partial capacity, as well as by representatives provided under the law for the persons, who are considered missing or declared as deceased.

9.4. Non-governmental organisations and trade union organisations shall exercise equally the right provided in Art 9.1. and lodge complaints through their representatives.

9.5. Representatives provided in Art 9.3 and Art 9.4 shall have a document of proof for their own representation powers.

Article 10. Form of Lodging Complaints

10.1. Complaints shall be lodged in writing in Mongolian language or verbally in person. Persons, who do not know Mongolian language, may lodge complaints in their mother tongue and their complaints must be translated into Mongolian language and duly certified in accordance with procedure provided for it.

Article 11. Requirements for Complaints

11.2. Complaints shall reflect the following items:

11.1.1. A Complainant must have had his/her complaint decided through an administrative process;

11.1.2. A Complainant must indicate, which rights and freedoms guaranteed in the Constitution of Mongolia, laws and international treaties of Mongolia, have been violated;

11.1.3. The Complainant must write his/her own name, residential or postal address, and has signed it;

11.1.4. The Complainant must attach the name, address, phone-number and other related documents of the business entity, organisation, official or individual person who is implicated in the complaint;

11.2. Commissioners shall not receive complaints about criminal and civil cases and/or disputes, which are at the stage of registration/inquiry of cases, investigation and/or on trial or have been already decided.

Article 12. Period for Receiving and Replying to Complaints

12.1. A Complainant shall lodge a complaint within 1 (one) year from the date on which his/her rights and freedoms were violated or from the date on which he/she came to know about such violation.

12.2. The Commission shall not accept any complaint without a name or address on it.

12.3. The Commission shall give a reply within 30 (thirty) days from the date of receipt of a complaint, and if there is need for additional research and inquiry required, the Chief Commissioner may extend it up to 60 (sixty) days.

CHAPTER FOUR

POWERS OF THE COMMISSION AND ITS MEMBERS

Article 13. Powers of the Commission

13.1. The Commission shall exercise the following powers:

13.1.1. To put forward proposals on any human rights-related issues;

13.1.2. To put forward recommendations and/or proposals on whether laws or administrative decisions are in conformity with the key human rights principles;

13.1.3. To put forward proposals on the implementation of international human rights treaties and/or drafting of Government reports thereon;

13.2. The Commission shall carry out the following activities within its powers:

13.2.1. To conduct research on human rights issues and provide necessary information;

13.2.2. To collaborate with the international, regional and other national human rights institutions;

13.2.3. To produce reports on the human rights situation in Mongolia;

13.2.4. To increase public awareness about the laws and/or international treaties relating to human rights;

13.2.5. To promote human rights education activities;

13.2.6. To encourage ratification of and/or accession to the international human rights treaties.

Article 14. Powers of the Chairperson of the Commission

14.1. A Chief Commissioner shall exercise the following powers.

14.1.1. To represent the Commission in domestic and/or foreign relations;

14.1.2. To appoint and/or release the Director of the Staff;

14.1.3. To deal with internal organisational matters of the Commission;

Article 15. Powers of Commissioners with respect to the acceptance of Complaints

15.1. Commissioners shall exercise the following powers with respect to the acceptance of complaints:

15.1.1. To accept and examine complaints;

15.1.2. To refuse to accept the complaints which do not meet the requirements provided in Art 11 of this Law;

15.1.3. To transfer complaints with respect to criminal and/ or civil cases and disputes to relevant authorities or officials according to their jurisdiction;

15.1.4. To explain to the Complainant what rights and duties he/she has with regard to the restoration of violated rights.

Article 16. Powers of Commissioners with respect to Inquiry of Complaints

16.1.1. Commissioners shall exercise the following powers during the course of inquiry into complaints:

16.1.1. To take explanations in writing from the Complainant and relevant business entities, organisations, officials or individual persons and take explanations orally and take notes thereon if the Complainant is illiterate;

16.1.2. To summon the Complainant and relevant persons;

16.1.3. To have unrestricted access to any business entity or organisation and to participate in their meetings and conferences, and to meet in person with the relevant officials;

16.1.4. To obtain without any charge the necessary evidence, official documents and information from organisations and/or officials, and to get acquainted with them on the spot;

16.1.5. To appoint experts from the appropriate organisations in a case of necessity for the specialised knowledge, and to get their expert-opinions;

16.1.6. To transfer a complaint to the relevant authorities or officials according to their jurisdiction, if it is considered that this complaint has a nature of criminal or civil case during the course of examination;

16.1.7. To conduct alone an inquiry into the activities of business entities, organisations or officials, or jointly on the basis of a proposal by the competent State authority and their officials;

16.1.8. To access the confidential data/secrets of the State, organisation or individual person in accordance with procedure established by the relevant law, if Commissioners considers it necessary during the course of exercise of his/her powers;

16.2. Commissioners shall keep in good faith the confidential data/secrets of the State, organisation or individual person, which he/she came to know about during the course of conducting the official business or which has been informed to him/her in trust.

Article 17. Powers of Commissioners in respect of Decision-making on Complaints

17.1. Commissioners shall exercise the following powers with respect to making a decision on complaints:

17.1.1. To submit claims to the Courts with regard to issues of violations of human rights and freedoms by business entities, organisations, officials or individual persons to participate in person or through a representative in judicial proceedings in accordance with procedure established by the law;

17.1.2. To put forward requests to the competent authorities or officials with regard to imposing administrative sanctions on officials who, as he/she considers, have violated human rights and freedoms;

17.1.3. To demand organisations or officials to stop activities which violate human rights and freedoms, or which create conditions for such violations;

17.1.4. To decide the issues by way of conciliation of the parties.

17.1.5. To return a complaint to the Complainant if he/she considers it to be without grounds.

17.2. Claims lodged under Art 17.1.1 shall be exempted from court expenses.

17.3. Commissioners shall have an obligation to inform the Complainant with regard to results of his/her complaint examination activities.

Article 18. Other Powers of Commissioners with respect to Fulfilling of Human Rights and Freedoms

18.1. Commissioners may participate in the advisory capacity in sessions of the State Great Hural or in meetings of the Government Cabinet at the request of the Speaker of the State Great Hural or the Prime Minister.

18.2. Commissioners may conduct inquiries at his/her own initiative on the basis of information with regard to violations of human rights and freedoms or at the request of business entities, organisations or officials.

18.3. Commissioners shall get acquainted with the decisions concerning civil and criminal cases as well as have access to the documents which rejected instituting a case or the cases which have been dropped, with a view to conducting human rights research.

18.4. Commissioners shall refer to the officials or authorities with law-initiating competence his/her proposals with regard to improving the legislation connected with fulfilling human rights and freedoms.

18.5. Commissioners shall provide advice on human rights issues at the request of State authorities.

Article 19. Demands and Recommendations of Commissioners

19.1. Commissioners shall issue demands and/or make recommendations during the course of exercise of his/her powers.

19.2. Commissioners shall write and deliver demands to relevant organisations in order to restore human rights and freedoms and eliminate the violations if he/she has considered that business entity, organisation or official has violated human rights and freedoms.

19.3. Commissioners shall make recommendations within his/her own competence and deliver them to relevant business entities, organisations or officials in order to eliminate reasons and conditions in case there is possibility for violations of human rights and freedoms.

19.4. Business entities, organisations or officials shall inform in writing with regard to measures undertaken within 1 (one) week if they have received demands, and within 30 (thirty) days if they have received recommendations from Commissioners.

19.5. Commissioners may approach the Court, according to the procedure established by law, with regard to the business entities, organisations or officials which have refused to undertake relevant measures as provided under his/her demands and/or recommendations.

19.6. Commissioners shall have a right to publish and report his/her issued demands or recommendations through the mass media.

Article 20. Report of the Commission

20.1. The Commission shall submit to the State Great Hural a report on the human rights situation in Mongolia within the 1st (first) quarter of every year.

20.2. Report of the Commission shall be published in the ‘State Gazette’.

CHAPTER FIVE

GUARANTEES FOR THE POWERS OF COMMISSIONERS

Article 21. Political Guarantees

21.1. It shall be prohibited for the Commission and its Secretariat to conduct political activities. Commissioners shall suspend his/her political party membership during the period of his/her term of office.

21.2. Commissioners shall treat respectfully his/her official position in exercising his/her freedom of thought, opinion and expression, of speech and press, of conscience and religious belief.

Article 22. Economic and Social Guarantees

22.1. Expenses for the activities of Commissioners shall be financed from the State Consolidated Budget, and the State shall provide economic guarantees for carrying out his/her activities.

22.2. The State Great Hural shall approve and reflect specifically the budget of the Commission in the State Consolidated Budget on the basis of a latter's proposal, and this budget shall fulfil the requirements for the independent conduct of its activities.

22.3. Commissioners shall receive a salary equal to that of the Member of the Government Cabinet.

22.4. In case the term of office of Commissioners has expired, or he/she has been relieved from the office because of the health condition or for any other excusable reasons, Commissioners shall be provided with the allowance for period of up to 6 (six) months, which is not less than the salary level when he/she was Commissioners, until he/she gets transferred to another job or official position in line with his/her profession or expertise, or get employed in different job without scaling down the salary, and if he/she is employed in job with lesser salary, then he/she shall be provided with the difference of that salary during the same period.

Article 23. Legal Guarantees

23.1. If Commissioners has been arrested in a criminal act or on the site of crime with all implicating evidence, it shall be reported by the relevant official to the Chairperson of the State Great Hural within the following 24 (twenty four) hours. In all other cases it shall be prohibited to detain, imprison or impose administrative sanctions by way of a judicial process on Commissioners, and to conduct the search of his/her home, office room and body.

23.2. Unless otherwise provided by the law, it shall be prohibited to release and/or dismiss Commissioners as well as to transfer him/her to another job or official position without his/her consent.

23.3. It shall be prohibited to divulge the confidentiality of correspondence related to the exercise of powers by Commissioners.

23.4. Business entities, organisations and their officials and citizens shall have obligations to render all kinds of assistance to Commissioners in exercise of his/her powers.

CHAPTER SIX

MISCELLANEOUS

Article 24. Work Organisation of the Commission

24.1. The Commission shall have a Secretariat. The Commission shall approve the by-laws of its Secretariat, and shall establish the posts and salary fund within the budget limits approved by the State Great Hural.

24.2. Staff of the Commission shall be civil administrative servants.

24.3. The Commission may establish ex-officio boards, which consist of the representatives of advocates' association, confederation of trade unions and/or human rights non-governmental organisations, to be assisted in conducting its activities.

24.4. The Commission may have research conducted by research organisations or non-governmental organisations on the issues, which are considered as required.

Article 25. Seal, Stamp and Official Blank Paper of the Commission

25. The Commission shall use a seal, stamp and official blank paper with the State Coat of Arms, made according to the regulation established.

Article 26. Liability for Violation of the Law on the Commission

26.1. The Court shall impose the following administrative sanctions on the persons who has violated this Law:

26.1.1. A citizen who has violated Art 3.4 of this Law shall be liable to a fine of Tg 5,000-40,000, an official to Tg 10,000-50,000, and a business entity or organisation to Tg 50,000-150,000 (Tugrug is national currency);

26.1.2. A citizen who has violated Art 19.4 and Art 23.4 of this Law shall be liable to a fine to Tg 10,000-50,000, an official to Tg 20,000-60,000 and a business entity or organisation to Tg 30,000-250,000.

SPEAKER OF THE STATE GREAT HURAL

L. ENEBISH