

Kingdom of Nepal

The Human Rights Commission Act, 2053 (1997)

Preamble:

Whereas, it is expedient to establish an independent and autonomous National Human Rights Commission in regard to have effective enforcement as well as protection and promotion of tile Human Rights conferred by the Constitution and her prevailing laws;

Be it enacted by Parliament in the twenty-fifth year of the reign of his Majesty the King Birendra Bir Bikram Shah Dev.

Chapter - 1 Preliminary

1. Short Title and Commencement:
 - (1) This Act may be called "The Human Rights Commission Act, 2053 1997."
 - (2) This Act shall come into force forthwith.
2. Definitions: In This Act, unless the subject or context otherwise requires:-
 - (a) "Commission" means the National Human Rights Commission constituted under Section 3.
 - (b) "Constitution" means the Constitution of the Kingdom of Nepal, 2047 (1990).
 - (c) "Chairman" means the Chairman of the Commission and this term also includes the Member of the Commission who acts as an Acting Chairman pursuant to Section 20.
 - (d) "Member" means the Member of the Commission and this term also includes the Chairman.
 - (e) "Secretary" means the Secretary of the Commission.
 - (f) "Human Rights" means the rights relating to lire, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and the rights embodied in the international treaties relating to human rights to which Nepal is a party.
 - (g) "Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter - 2 Provisions relating to Constitution of the Commission, Terms of Service of Members

3. Establishment and Constitution of the Commission:

(1) The National Human Rights Commission comprising the Chairman and Members as follows shall be established and constituted:

- (a) One person from amongst the retired Chief Justice or Judges of the Supreme Court – Chair
- (b) Three persons from amongst the persons having rendered outstanding contribution in the field of law, human rights, social work or communications and journalism; ensuring having regard to representation from all the fields to the extent possible – Member
- (c) One person from amongst the persons who have served in any office of constitutional bodies or who served in office of special class of His Majesty's Government and got retirement – Member

(2) In addition to the qualifications referred to in sub-section (1), in order to become eligible to be appointed as the Chairman or Member, any person shall have to possess the following qualifications:

- (a) To be a citizen of Nepal.
- (b) To have attained forty years of age.
- (c) Not to have been convicted by, a court in a criminal offense involving moral turpitude

(3) A person once appointed to the office of Member of the Commission shall not be eligible for appointment to an office in any other government service.

(4) The Chairman or Member of the Commission shall not be entitled to carry on professional business elsewhere until he holds office in the Commission.

(5) The Commission shall be a body with perpetual succession.

(6) The Commission shall have a separate seal of its own.

(7) The Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.

(8) The Commission may, like an individual, sue by its own name and it may also be sued.

4. Appointment of Chairman and Member:

(1) His Majesty shall, upon the recommendation of the Recommendation Committee constituted pursuant to sub-section (2), appoint the Chairman and Members of the Commission.

(2) There shall be a Recommendation Committee as follows to make recommendation for appointment of Members of the Commission:

(a) The Prime Minister – Chair

(b) The Chief Justice – Member

(c) The leader of the Opposition in the House of Representatives - Member

(3) The Committee constituted pursuant to sub-section (2) may regulate its working procedures on its own.

(4) It shall be the responsibility of the Chief Secretary of His Majesty's Government to make necessary arrangements vis-à-vis the meetings of the committee constituted pursuant to sub-section (2).

5. Term of office of Members:

The term of office of the Members shall be five years from the date of appointment. They shall be eligible for reappointment.

6. Vacation of Office:

The office of the Member shall be vacant in the following circumstances:

(a) If he dies,

(b) If his resignation is accepted by His Majesty,

(c) If the term of office is completed under section 5.

(d) If the Human Rights Committee of the House of Representatives, by a two-thirds majority of the meeting attended by at least two-third members of its total members, adopts a resolution that any Member of the Commission is not to hold the appropriate office by reasons of incompetence or misbehaviour, and the resolution so adopted is approved by the meeting of the House of Representatives. Provided that a Member accused of such charge shall be given a reasonable opportunity to defend himself in the Human Rights Committee of the House of Representatives.

7. Conditions of Service of Members:

The remuneration facilities and other conditions of service of the Chairman and Members of the Commission shall be as prescribed. Provided that such remuneration and facilities shall not be less than the remuneration and facilities to which the Judges of the Supreme Court are entitled.

8. Meeting of the Commission:

(1) The meetings of the Commission shall be held on such date and in such place as the Chairman appoints.

- (2) The Commission shall ordinarily meet twice 1 month.
- (3) If three Members are present ill a meeting of tile Commission, it shall be deemed to constitute a quorum for the meeting.
- (4) The meetings of the Commission shall be chaired by the and ill the event of absence of the Chairman, the meeting shall be chaired by the senior Member.
- (5) The decisions of the Commission shall be made by the majority of the Members Ill the event of a tie, the Chairman shall exercise tile casting vote.
- (6) No act or proceedings of the Commission shall be invalidated merely oil the ground of existence of vacancy of the office of any Member.
- (7) The Commission may itself regulate other procedures relating to its meetings.

Chapter - 3

Provisions Relating to Functions and Procedures of the Commission

9. Functions and Duties of the Commission:

- (1) It shall be the principal duty of the Commission to protect and promote the human rights.
- (2) In order to perform the duty referred to in sub-section (1), the Commission way carry out the following functions:
 - (a) To conduct inquiries into and investigations of ally following matters, upon a petition or complaint presented to the commission by a victim himself or ally person oil his behalf or upon the information received by it from ally source, or on its own initiative:-
 - (1) Violation of human rights and abetment thereof,
 - (2) Recklessness or negligence in the prevention of violations of the human rights by any concerned person, organization or body.
 - (b) Inquiries into and investigations of the matters referred to in clause (a) may be conducted by the Commission itself or through a body or employee of His Majesty's Government or any person; and such a body" employee or person shall conduct inquiries and investigations ill accordance with the directions of the Commission and submit a report to the Commission;
 - (c) If the Commission deems that the received petition, complaint or information has no basis in fact or is of the nature that it can't be enforced by the courts of Nepal it may keep such petition or complaint pending, with setting out the reasons therefore,

- (d) In respect of the proceedings consisting of a claim of violations of human rights which is sub Judice in a court, to inquire into the matter with the permission of the court,
 - (e) To visit, inspect and observe any, body, jail or any organization under His Majesty's Government and to make necessary recommendations to His Majesty's Government on reforms to be made in the functions and procedures physical facilities etc. of such all organization for the protection of human rights,
 - (f) To review the provisions and safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and make necessary recommendations for effective implementation of such provisions,
 - (g) To study international treaties and instruments on human rights and make necessary and appropriate recommendations to His Majesty's Government for effective implementation of the related provisions,
 - (h) To undertake or cause to be undertaken research works in the field of human rights,
 - (i) To publicize and propagate human rights education among various, symposiums, conferences, and vigilants as to the existing legal guarantees in the protection of human rights;
 - (j) To encourage the functions and efforts of institutions working in the non-governmental sector.
 - (k) To review the existing human rights situation of the country,
 - (l) To make necessary recommendations to His Majesty's Government on reports to be furnished by Nepal under the provisions set forth in international treaties on human rights, and
 - (m) To carry out such other functions as it may deem necessary and appropriate for the enforcement, promotion and protection of human rights.
- (3) On the matter of Nepal's obligation to furnish reports under international treaties on human rights, His Majesty's Government shall furnish reports upon receiving opinion of the Commission thereon.

10. Matters Not Subject to Jurisdiction of the Commission:

The Commission shall have no powers to inquire into or institute any other proceedings in any of the following matters pursuant to this Act:

- (a) A matter under the jurisdiction of the Military Act, provided that nothing will prevent the Commission from carrying out the functions referred to in this Act on a matter with respect of the court may hear a case pursuant to the Constitution and the prevailing law.

- (b) A matter certified by, the Chief Secretary of His Majesty's Government that it may have adverse effect on the treaty concluded between His Majesty's Government and any foreign government or international or inter-governmental organization, or on the security of the Kingdom of Nepal,
- (c) A matter certified by the Attorney General that it may have adverse effect on an inquiry into and investigation of any crime pursuant to the law or on finding out the crime or the criminal.

11. Powers of the Commission Relating to Inquiries:

(1) The Commission shall, while inquiring into petitions or complaints or reports made under its jurisdiction, have the same powers as the court has under the prevailing law of Nepal in respect of the following matters:

- (a) Requiring any person to appear in the Commission, and taking and recording his statement or information
- (b) Summoning the attendance of witnesses and examining them,
- (c) Ordering the production of any document,
- (d) Requesting any document or copy thereof from any governmental or public office or court,
- (e) Examining evidences,
- (f) Doing or causing to be done in-site inspection, ordering the production of any physical proof

(2) The Commission may prescribe such limitation of time as it may think fit for enforcing the attendance of any person, producing any document or procuring any evidence pursuant to sub-section (1).

(3) In case the Commission has the reasonable grounds to believe that any thing or document relating to subject matter of its inquiry or investigation is in the possession of any person or is in any place, it may, pursuant to the existing law of Nepal, search or cause to be searched such person or place and seize or cause to be seized any such goods or take or cause to be taken extracts or copies or duplicates of such document.

(4) The Commission may, if it thinks it necessary, conduct public hearing on an inquiry of any event.

(5) The Commission may make a reference, along with its special stricture to His Majesty's Government or authorized body or authority to take action against a person who does not send the documents or necessary evidences required by the Commission in connection with any inquiry or who does not cooperate or a person who has asked to appear before the Commission and does not appear before the Commission by being self-willed.

(6) The Commission may, as per necessity, constitute committees or sub-committees in regard to any function required to be performed by it under

this Act. and the functions, duties and powers of such committees or sub-committees and allowances and facilities to be received by the members of such committees or sub-committees shall be as prescribed by the Commission.

(7) The Commission may, as per necessity, avail itself of the service or experts of the concerned subject or specialized agencies. The service, term and facilities of the experts rendering such a service shall be as prescribed by the Commission.

12. Complaint and Proceeding Relating to Violation of Human Rights:

The procedures on filing complaints on violations of human rights and proceedings relating thereto shall be as prescribed.

13. Process of Implementation of Decisions of the Commission:

(1) If, while taking proceedings by the Commission on the complaints and petitions filed under its jurisdiction pursuant to Section 11, the accused is found guilty, it shall write to the concerned body, or authority to take necessary action against the guilty.

(2) While writing pursuant to sub-section (1), if the Commission thinks it necessary to provide the victims with necessary compensation, it shall also write therefore.

(3) The bases and procedures to be followed while providing compensation pursuant to sub-section (2) shall be as prescribed.

(4) Upon receiving a writing for actions pursuant to sub-sections (1) and (2), the concerned body or authority shall take action as written by the Commission, or if such action cannot be taken, setting out the reasons thereof, the concerned body or authority shall send the report of the action taken accordingly to the Commission within three months of the date of receipt of the writing from the Commission.

14. To Submit Reports:

(1) The Commission shall each year prepare annual report on the acts and actions carried out by it and submit it to His Majesty, and His Majesty will cause such a report to be laid before Parliament.

(2) The Commission shall each year publish details of acts and actions carried out by it for information of the general public. Provided that if the Commission deems it necessary, it may publish the details of its functions at any time.

15. Financial Management

- (1) The Commission may obtain such means and resources from different bodies by, way of grants as are required for the performance of its functions.
- (2) The Commission may obtain financial assistance with a view to helping the performance of the functions referred red in Section 9.
- (3) The sums of financial assistance obtained pursuant to sub-sections (2) shall be expended in accordance with the terms agreed into between the donor and the Commission.
- (4) The Commission shall have to maintain accounts of its incomes and expenditures and other relevant records pursuant to the prevailing law.
- (5) The accounts of the Commission shall be audited by the Auditor General.
- (6) Other provisions on financial management of the Commission shall be as prescribed.

Chapter - 4
Miscellaneous

16. Office of the Commission: The headquarters of the Commission shall be located in Kathmandu Valley. The Commission may as pet- necessity set up branch offices in different areas in the Kingdom of Nepal.

17. Secretary:

- (1) There shall be Secretary in the Commission.
- (2) The Secretary shall be appointed by His Majesty on the recommendation of the Commission. The term of office, service, terms and other facilities of the Secretary shall be equivalent to that of the Secretary of His Majesty's Government.

18. Staff of the Commission:

- (1) The Commission may appoint such staff as are required for its functions, and the service, terms and facilities of the staff so appointed shall be as prescribed.
- (2) Notwithstanding anything contained in sub-section (1), the Commission may ask His Majesty's Government to provide the staff required for the Commission. It shall be the duty of His Majesty's Government to provide the staff so asked.
- (3) In case the Commission asks any governmental office for assistance in the performance of its functions, such an office shall have to provide assistance.

19. Delegation of Powers:

The Commission may delegate any of the powers conferred on it under this Act to the Chairman or Member or staff of the Commission or to an officer employee

of His Majesty's Government or the committee or sub-committee to be constituted under this Act or to any person.

20. To Act as Chairman:

In the event of the occurrence of any vacancy in the office of the Chairman, His Majesty may authorize the senior Member to act as Acting Chairman until the appointment of a new Chairman.

21. Oath:

Before assuming the office, the Chairman shall take all oath before His Majesty and the members, before the Chairman as specified ill the Schedule.

22. Contact with His Majesty's Government:

While making liaison with His Majesty's Government, the Commission shall do so through the Secretariat of the Council of Ministers.

23. To Frame Rules:

The Commission may, in order to carry out the objectives of this Act, frame necessary rules. While making such rules the Commission may consult His Majesty's Government. Provided that ill making rules relating to remuneration and facilities, His Majesty's Government shall be required to he consulted.

24. Saving: No suit or legal proceedings shall be instituted against the Commission or Chairman or Member or staff or ally person designated by the Commission in respect of any act or action which is in good faith done or intended to be done pursuant to this Act or rules framed under this Act.

Schedule
(Relating to Section 21)
Oath

I.....so swear ill the name of god/solemnly affirm that I will bear loyalty to the Constitution of the Kingdom of Nepal, 1990 and faithfully discharge the responsibility and duty of the office of Chairman/Member assumed by me, without fear, favour, affection, ill-will or greed and that I will not communicate or divulge any matter which becomes known to we ill the course of discharges of my duties in any circumstance where I shall be holding office or not, except ill pursuance of the prevailing law.

Date of Royal Seal- 2053-9-24-4 (8 Jan. 1997)