

Human Rights Commission Act, 2053 (1997)

Preamble :

Whereas, it is expedient to establish an independent and autonomous National Human Rights Commission for the effective enforcement as well as protection and promotion of Human Rights conferred by the Constitution and other 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 at once.

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) "Chairperson" means the Chairperson of the Commission and this term also includes the Member of the Commission who acts as an Acting Chairperson pursuant to Section 20.

d) "Member" means the Member of the Commission and this term also includes the Chairperson.

e) "Secretary" means the Secretary of the Commission.

f) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights as are 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 the constitution of the Commission and terms of service of Members

3. Establishment and constitution of the Commission: (1) The National Human Rights Commission comprising the following Chairperson and Members shall be established and constituted:

(a) One person from amongst the retired Chief Justices or Judges of the Supreme Court – Chairperson

(b) Three persons from amongst persons who have rendered an outstanding contribution in the field of law, human rights, social work or communications and journalism, ensuring representation from all the fields to the extent possible – Members

(c) One person from amongst the retired persons who have served in any office of constitutional bodies or who have served in the capacity of special class officer of His Majesty's Government – Member

(2) In addition to the qualification referred to in sub-section (1) a person eligible for appointment as the Chairperson or Member must possess the following qualifications:

(a) Be a citizen of Nepal

(b) Have attained forty years of age

(c) Not convicted by a court of any criminal offence involving moral turpitude.

(3) The person once appointed as Member of the Commission shall not be eligible for appointment to any other government service.

(4) The Chairperson or Member of the Commission shall not be entitled to carry on professional business as long as he/she 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 and be sued in its own name.

4. Appointment of Chairperson and Member :

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

(2) For the purpose of recommending the appointment of the members of the Commission there shall be a Recommendation Committee consisting of the following office holders:

a. The Prime Minister Chairperson

b. The Chief Justice Member

c. The Leader of the Opposition in the House of Representative Member

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

(4) It shall be the responsibility of the Chief Secretary of His Majesty's Government to make necessary arrangements for holding the meetings of the

committee mentioned in sub-section (2).

5. Terms 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. Vacancy of Office: The office of a Member shall be vacant in the following circumstances: -

- (a) In case of death ,
- (b) In case of resignation accepted by His Majesty the King,
- (c) In case of Completion of the term of office 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 fit to hold office by reasons of incompetence or misbehavior, and the resolution so adopted is approved by the House of Representatives.

Provided that a Member so charged shall be given a reasonable opportunity to defend himself /herself 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 Chairperson 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. Meetings of the Commission:

- (1) The meetings of the Commission shall be held on such date and in such place as the Chairperson decides.
- (2) The Commission shall normally meet twice a month.
- (3) If three Members are present in a meeting of the Commission, it shall be deemed to constitute the quorum for the meeting.
- (4) The meetings of the Commission shall be chaired by the Chairperson and in the absence of the Chairperson the meeting shall be chaired by the senior most Member.
- (5) The decisions of the Commission shall be made by the majority of the Members. In the event of a tie, the Chairperson shall exercise the casting vote.
- (6) No act or proceeding of the Commission shall be deemed invalid merely on the ground of vacancy of the post of a Member.
- (7) The Commission may itself regulate other procedures relating to its meetings.

Chapter – 3 Provisions Relating to the Functions and Procedures of the Commission

9. Functions and Duties of the Commission:

(1) It shall be the primary responsibility of the Commission to protect and promote the human rights,

(2) In order to perform the responsibility mentioned in sub-section (1), the Commission may carry out the following functions:

(a) Conduct inquiries and investigations on the following matters, upon a petition or complaint presented to the Commission by the victim himself /herself or any person on his /her behalf or upon information received from any source, or on its own initiative:-

(1) Violation of human rights and abetment thereof,

(2) Carelessness or negligence in the prevention of violations of the human rights by any person, organization or authority concerned.

(b) Inquiries in or investigations on the matters mentioned in clause (a) conducted by the Commission itself or caused to be conducted through any person or an authority or employee of HMG in accordance with the directions of the Commission and submit the report to the Commission,

(c) Order a petition or a complaint to be filed by giving reasons therefor if the Commission finds such a petition, complaint or information has no basis or is of such a nature that it cannot be enforced by the courts of Nepal,

(d) Inquire into a matter with the permission of the court in respect of any claim on violations of human rights which is sub-judice in the court,

(e) Visit, inspect and observe any authority, jail or any organization under His Majesty's Government and to submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights,

(f) Review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions,

(g) Study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty's Government for effective implementation of the related provisions,

(h) Undertake or cause to be undertaken research in the field of human rights,

(i) Publicize and propagate human rights education among the various sections of society through various seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights,

(j) To encourage the functioning and efforts of institutions working in the non-governmental sector,

(k) Evaluate the existing human rights situation of the country,

(1) Make necessary recommendations to His Majesty's Government regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights and

(m) Carry out such activities, 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 the opinion of the Commission thereon.

10. Matters Not Subject to the Jurisdiction of the Commission: The Commission shall have no power to inquire into or institute any other proceeding on any of the following matters pursuant to this Act:-

(a) Any matter within the jurisdiction of the Military Act, Provided that nothing will bar the Commission from carrying out the functions mentioned in this Act on a matter in respect of which the court may exercise its jurisdiction pursuant to the Constitution and the prevailing law.

(b) Any 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) Any matter certified by the Attorney General that it may have adverse effect on the conduct of an inquiry and investigation being carried out in accordance with the law for the purpose of identifying the crime or the criminal.

11. Powers of the Commission relating to Inquiries:-

(1) The Commission shall, while inquiring into the petition or complaints or reports within its jurisdiction, have the same powers as a court may have under the prevailing laws of Nepal in respect of the following matters:-

(a) Requiring any person to appear before the Commission for recording his/her statement and information within his knowledge,

(b) Summoning witnesses and examining them,

(c) Ordering the production of any document,

(d) Requisitioning any document or copy thereof from any governmental or public office or the court,

(e) Examining evidence,

(f) Carrying one or causing to be done an on-the-spot inspection, ordering the production of any physical evidence.

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

(3) In case, the Commission has the reasonable grounds to believe that any thing or document relating to the subject matter of its inquiry or investigation is in possession of any person or is in any place, it may, in

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 material or take or cause to be taken extracts or copies or duplicates of such document.

(4) The Commission may, if it thinks necessary, conduct a public hearing during its inquiry about any incident.

(5) The Commission may send along with 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 an inquiry or who does not cooperate in carrying out the Commission's functions or a person who does not appear before the Commission on being summoned.

(6) The Commission may, as required constitute committees or sub-committees to carry out its functions 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 required, avail itself of the services of experts or specialized agencies on a concerned subject. The service, condition and facilities of the experts rendering such a service shall be as prescribed by the Commission.

12. Complaints and Proceedings Relating to Violation of Human Rights : The procedures for filing complaints about violations of human rights and other proceedings relating thereto shall be as prescribed.

13. Process for Implementation of Decisions of the Commission :

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

(2) While writing pursuant to sub-section (1), if the Commission thinks it necessary to provide the victims with necessary compensation it shall also mention the nature of compensation in its recommendation.

(3) The basis and procedures to be followed for allowing compensation pursuant to sub-section (2) shall be as prescribed.

(4) Upon receiving written recommendation for action pursuant to sub-sections (1) and (2), the concerned body or authority shall take action as required by the Commission, or if such action cannot be taken, having set out the reasons therefor, the concerned body or authority shall send its report of the action taken within three months from the date of receipt of the intimation from the Commission.

14. To Submit Reports :

(1) Each year the Commission shall prepare its annual report on its activities and submit it to His Majesty the King and His Majesty the King shall cause

such report to be laid before the Parliament.

(2) Each year the Commission shall publish details of the activities carried out by it for the purpose of public information, provided that if the Commission deems it necessary, it may publish these details at any time.

15. Financial Management :

(1) The Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its functions.

(2) The Commission may receive financial assistance with a view to enable itself to carry out the functions mentioned in Section 9.

(3) The amount of financial assistance received pursuant to sub-section (2) shall be expended in accordance with the terms agreed upon between the donor agency and the Commission.

(4) The Commission shall maintain accounts of its income and expenditure and other relevant records in accordance with the prevailing law.

(5) The accounts of the Commission shall be audited by the Auditor General.

(6) Other matters concerning the financial management of the Commission shall be as prescribed.

Chapter - 4 Miscellaneous

16. Office of the Commission: The Central Office of the Commission shall be located in the Kathmandu Valley. The Commission may when necessary set up branch offices in different areas in the Kingdom of Nepal.

17. Secretary:

(1) There shall be appointed a Secretary in the Commission.

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

18. Employees of the Commission :

(1) The Commission may appoint employees as may be required to carry out its functions, and the service, terms and facilities of the employees so appointed shall be as prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Commission may request His Majesty's Government to provide employees required by it. It shall be the duty of His Majesty's Government to so provide.

(3) In case the Commission requests any government office for assistance in the performance of its functions, the office so requested must provide the required assistance.

19. Delegation of Powers: The Commission may delegate any of the powers conferred on it under this Act to the Chairperson or any Member or employee of the Commission or to an officer of His Majesty's Government or to the committee or sub-committee that may be constituted under this Act or to any person.

20. Acting Chairperson: In the event of vacancy of the Chairperson, His Majesty may authorize the senior Member of the Commission to act as Acting Chairperson until a new Chairperson is appointed.

21. Oath: Before assuming office, the Chairperson shall take an oath before His Majesty the King, similarly the Members will take the Oath before the Chairperson in the manner as specified in the Schedule of this Act.

22. Communication with His Majesty's Government: All communications of the Commission to His Majesty's Government shall be channeled through the Secretariat of the Council of Ministries.

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

24. Saving: No suit or legal proceeding shall be instituted against the Commission or the Chairperson or a Member or an employee or any person designated by the Commission in respect of any act done or intended to be done in good faith pursuant to this Act or rules framed under this Act.

Schedule

(Relating to Section 21)

Oath

I, swear in 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 Chairperson/Member assumed by me, without fear, favour, partiality, ill-will or greed and that I will not communicate or divulge any matter which becomes known to me in the course of discharge of my duties in any circumstance whether I shall be holding office or not, except in pursuance of the prevailing law.

Date of Royal Seal :- 2053-9-24-4 (8 January, 1997)

