National Human Rights Commission Act, 2068 (2012)

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Act No. 14 of 2068 (2012)

Preamble: Whereas, it is expedient to make legal provisions with regard to the functions, duties, powers and procedures of the National Human Rights Commission to ensure the respect, protection and promotion as well as effective implementation of human rights,

Now, therefore, be it in enacted by Constituent Assembly in the capacity of the the Legislature Parliament pursuant to Article 83 of the Interim Constitution of Nepal, 2063.

Chapter-1

Preliminary

1. **Short Title and Commencement:** (1) This Act shall be called the "National Human Rights Commission Act, 2068."

   (2) This Act shall come into immediately.

2. **Definition:** Unless the subject or context otherwise requires, in this Act:-

   a) "Chairperson" means the Chairperson of the Commission.

   b) "Commission" means the National Human Rights Commission established in accordance with Article 131 of the Constitution.

   c) "Complaint" means a petition or complaint regarding the violation of human rights or abetment thereof submitted to the Commission and the term also includes the information received by the Commission on the matter through any other

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source.

d) "Employee" means an employee of the Commission.

e) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules formulated under this Act.

f) "Human Rights" means rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party.

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

h) "Member" means a member of the Commission and this term also includes the Chairperson,

i) "Constitution" means the Interim Constitution of Nepal, 2063 (2007)

Chapter - 2

The meetings, functions, duties and powers of the Commission

3. Meeting of the Commission: (1) The commission shall meet at least twice a month.

(2) The meeting of the Commission shall be held on such date, time and venue as prescribed by the Chairperson.

(3) As directed by the Chairperson, generally the Secretary shall have to inform the members in writing at least Twenty Four hours in advance of the meeting citing the date, time, venue and agenda of the meeting of the Commission.

(4) If a majority of the existing number of members of the Commission are present in the meeting, it shall be deemed to

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constitute a quorum for the meeting.

(5) The Chairperson shall chair the meeting of the Commission and in his/her absence the senior-most member shall chair the meeting.

(6) The decisions of the Commission shall be made by a majority of the members present in the meeting and in case of a tie; the person chairing the meeting shall give a casting vote.

(8) The Secretary shall authenticate the decisions of the meeting of the Commission.

(9) Other procedures related to the meetings shall be as determined by the Commission.

4. **Functions, Duties and Powers:** (1) In addition to the functions, duties and powers as returned to in Article 132 of the Constitution, other functions, duties and powers of the Commission shall be as follows : -

(a) To conduct or to cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights, and to provide necessary suggestions or directives to the agency concerned with regard to the improvement to be made in such agency, institution or place for the protection of human rights,

(b) To conduct investigations with the permission of the court concerned in any sub-judice case in which claims involving human rights violation have been made,

(c) To monitor the implementation status of the

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prevailing laws regarding human rights and recommend to the Government of Nepal for effective implementation thereof,

(d) To undertake study and research into various aspects of protection, promotion, enhancement and implementation of human rights,

(e) To recommend to concerned institution for including human rights education oriented subject matter related into the syllabus of school and university,

(f) To review the existing state of human rights and make public reports to that effect,

(g) To carry out or cause to be carried out other activities as may be deemed necessary and appropriate for the protection and promotion, enhancement of human rights.

(2) The Commission shall be independent and autonomous in fulfilling the work of ensuring respect, protection and promotion of human rights.

5. May Draw Attention: (1) The Commission may draw attention of any agency or official, as may be necessary to any matter related to the protection and promotion of human rights.

(2) In case attention is drawn pursuant to Sub-section (1) by the Commission, the agency or official concerned shall have to take necessary action accordingly and inform the same to the Commission.

6. Commission May Provide Opinion or Consultations: (1) The Government of Nepal, regarding the matters in which it is obliged to submit a report to the concerned authority under the International Treaty related to Human Rights, shall have to write to the

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Commission for Opinion before forwarding the report.

(2) If the request for Opinion in writing is received pursuant to Sub-section (1), the Commission shall have to provide Opinion to the Government of Nepal on the matter as soon as possible.

(3) If the Government of Nepal seeks consultations from the Commission regarding the formulation of any legislation or the amendment of any existing legislation regarding Human Rights, the Commission may provide Opinion to the Government of Nepal on the matter.

(4) The Commission may make recommendations to the Government of Nepal to formulate new legislations or to make amendments in any existing legislation or to become a party to any International or Regional Convention regarding Human Rights.

(5) If the Government of Nepal seeks consultations from the Commission regarding becoming a party to any International or Regional Treaty (convention) related to Human Rights, the Commission may provide Opinion to the Government of Nepal on the matter.

7. **To Make Names Public and Keep their Record:** (1) The Commission may make public names of officials, persons or agencies that do not knowingly implement or observe the recommendations or orders or directives made by the Commission with regard to violations of human rights as Human Rights Violators.

(2) Prior to making public the names pursuant to Sub-section (1), the Commission shall have to write to officials, persons or agencies stating that they did not observe or implement the Commission's recommendations, orders or directives, giving a Fifteen-days timeline to such officials, persons or agencies to submit

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clarifications.

(3) In case such officials, persons or agencies do not submit clarifications within the stipulated timeline after receiving in writing pursuant to Sub-section (2) or in case the clarifications do not seem to be reasonable, the Commission may make public the names of such officials, persons or agencies as referred to in Sub-section (1).

(4) The Commission shall keep the records of the names of such officials, persons or agencies whose names have been made public pursuant to Sub-section (1).

(5) While recommending a person whose name has been made public pursuant to Sub-section (1) for appointment, promotion and career development in any public post, the concerned agency may take the records maintained pursuant to Sub-section (4) as a basis.

(6) While assigning new responsibility to an official whose name has been made public pursuant to Sub-section (1), the concerned agency may take the records maintained pursuant to Sub-section (4) as a basis in relation to his/her capability (competence).

8. **May Constitute a Committee or Taskforce:** (1) The Commission may from a committee or taskforce as it requires, for execution of its function.

(2) The functions, duties and powers of the committee or taskforce formed pursuant to Sub- Section (1) and the facilities of the members of such committee or taskforce shall be as determined by the Commission.

(3) The committee or taskforce formed pursuant to Sub-section (1), after completing the task assigned by the Commission, shall have to furnish a report to the Commission on the task which it has completed.

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(4) The Commission, if it finds appropriate, may dissolve the committee or taskforce formed pursuant to Sub-section (1) at any time.

9. Provision regarding Interim Relief and Rescue: (1) In case the Commission deems that if the victim is not provided relief or is not rescued immediately, it may cause further damage to him/her, the Commission may issue an order in the name of the agency concerned to immediately make interim relief available to the victim or to rescue such victim.

(2) The concerned agency shall have to provide relief to the victim immediately after the Commission issues an order.

(3) If such relief is made available in cash, the concern person or agency shall recover such amount from human rights violators as prescribed.

(4) The Commission may request any institution, organization or persons for cooperation to make available interim relief to the victims or to rescue the victims.

(5) Other arrangements with regard to interim relief and rescue shall be as prescribed.

Chapter - 3

Procedures Relating to Complaint Proceedings

10. Complaint may be Lodged: (1) In case of violation of human rights or abetment thereof, the victim himself or herself or anyone on behalf of him or her, may lodge a complaint as prescribed by the Commission.

(2) In case a complaint is received pursuant to Sub-section (1), the Commission shall have to provide a receipt of the registration to the complainant after registering such complaint in the registration

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book.

(3) In case information on human rights violation or abetment thereof is received through verbal means or through any other means, such information shall have to be registered in the registration book pursuant to Sub-section (2).

(4) Notwithstanding anything contained in the prevailing laws, no fee shall be charged for any complaint lodged pursuant to Sub-section (1) or information provided pursuant to Sub-section (3).

(5) Complaints regarding the incidents of human rights violation or its abetment shall have to be lodged at the Commission within Six months from the date on which the incident took place or within Six months from the date on which a person, under control of someone else, got released and became public.

11. **Preliminary proceedings on the complaint:** (1) The Commission shall have to initiate preliminary proceedings immediately as prescribed as soon as a complaint regarding the incidents of human rights violation or abetment thereof is received as referred to in Sub-section (1) of Section 10 or information pursuant to Sub-section (3) is received or if the Commission deems it appropriate to investigate into the matter on its own discretion.

(2) While taking an action in accordance with Sub-section (1), if the Commission finds *prima facie* that the human rights of any individual is being violated or abetted, it may issue appropriate orders in the name of concerned agency or official to immediately stop such act.

12. **Inquiry and Investigation into Complaints:** (1) If there seems, a situation where human rights of any individual has been or may be violated or abetted, from the preliminary proceedings pursuant to

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Sub-section (1) of Section 11, the Commission may itself or after appointing investigation team or investigation officer pursuant to necessity conduct or cause to conduct inquiry or investigation as prescribed.

(2) After completing inquiry and investigation pursuant to Sub-section (1), the investigation team or investigation officer shall have to submit a report thereof to the Commission.

(3) After receiving the report as referred to in Sub-section (2), the Commission may seek services of the expert, collect further evidence or summon witnesses or conduct public hearings as prescribed.

(4) Other provisions regarding Inquiry and Investigations shall be as prescribed.

13. Complaint may be Repealed or Put on Hold: (1) If the complaint or information received to the Commission or the matters investigated by the Commission on its own discretion seems baseless or does not seem to fall under the jurisdiction of the Commission, the Commission may dismiss or (*tameli*) such complaint, information or matter with reasons thereof at any time.

(2) In case of the complaint is dismissed or put on hold pursuant to Sub-section (1), the Commission shall have to inform the concerned individual of the same within fifteen days.

Provided that, it shall not binding to the commission to give information regarding the false complaint

14. Provisions Relating to Reconciliation: (1) Notwithstanding anything contained elsewhere in this Act, if the concerned parties lodge a joint petition for reconciliation in respect of any complaint that is under consideration in the Commission, the Commission may have them reconciled as prescribed.

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Provided that, regarding the matters which are considered as serious violation of human rights and humanitarian law under the international laws or regarding the matters in which reconciliation *(milapatra)* cannot take place in accordance with the prevailing laws, no reconciliation shall take place in accordance with this Section.

(2) It shall be the duty of the parties concerned to abide by the reconciliation reached pursuant to Sub-section (1).

(3) Once the reconciliation is reached regarding any complaint as referred to in Sub-section (1), proceedings thereof shall be considered to have ended and complaints cannot be lodged again on such matters.

(4) Other provisions regarding reconciliation shall be as prescribed.

15. Decisions to be made: The Commission shall, on the basis of the evidences acquired through inquiry and investigation with regard to the complaint or information received by the Commission or the matter on which it initiated action at its own discretion, make decisions, generally within six months from the date of complaint citing the grounds and reasons of whether or not human rights violation or its abetment has taken place.

Provided that, it shall cause no hindrance to decide the case upon showing reasons thereof if the case can not be decided within Six months.

16. Provision regarding Compensation: (1) If it seems necessary to provide compensation to the victim from the inquiry and investigation launched pursuant to Section 12, the Commission shall have to make a decision citing the same while making a decision pursuant to Section 15.

(2) The type, quantum or amount of compensation shall be determined in the decision taken pursuant to Sub-section (1).

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(3) The Commission may, while determining the amount pursuant to Sub-section (2), prescribe a maximum of Three Hundred Thousand Rupees depending on the condition of the victim.

(4) Notwithstanding anything contained elsewhere in this Section, the Commission shall not take any decision regarding compensation if the victim has already received compensation or if the proceedings for compensation have already been moved forward pursuant to other prevailing laws regarding human rights violation.

(5) The criteria to be adopted while taking decision to provide compensation pursuant to this Section and other provisions regarding Compensation shall be as prescribed.

17. Implementation of the Recommendation, Decision or Order of the Commission: (1) The Commission shall have to write to the concerned official, individual or agency for the implementation of the recommendation, decision or order issued by the Commission pursuant to the Constitution or this Act.

(2) In case of receiving in writing from the Commission to implement the recommendation, decision or order as referred to in Sub-section (1), the concerned official, individual or agency shall have to inform the Commission generally upon implementing such recommendation, decision or orders.

(3) The concerned official, individual or agency shall have to send a report to the Commission containing information about the difficulties in implementing the recommendation, decision or order of the Commission, citing the reasons thereof, within Two months from the date of receiving the recommendation, decision or orders from the Commission pursuant to Sub-section (2).

(4) If information pursuant to Sub-section (3) is received, the Commission shall reconsider the matter and take a decision and the

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Commission, while taking a decision accordingly, may make recommendations for implementation as it is or with amendments.

(5) If the Commission writes again for implementation after taking a decision again pursuant to Sub-section (4), the concerned official, individual or agency shall have to implement accordingly as soon as possible and inform the Commission.

(6) The concerned agency shall have to provide compensation to the victim within the period as referred to in Sub-section (2) in accordance with the decision of the Commission. If the victim has died or if he or she is not sound mentally, compensation shall be provided to the person considered appropriate by the Commission from among his or her dependents including husband or wife, father, mother, son, daughter, elder brother, younger brother, elder sister, younger sister, grandson, granddaughter or grandfather or grandmother.

(7) If in the decision of the Commission, it is deemed that human rights violation took place after an official acted with *mala fide* intention or with prejudice against anyone and that compensation has to be provided to the victim from such official, the compensation shall be provided by the agency in which such an official holds an office.

(8) The amount of compensation provided to the victim by the concerned agency pursuant to Sub-section (7) shall be deducted from the monthly salary or any other amount to be received by the concerned official.

Provided that, if such official has already been retired from service at the time of Commission's decision, the concerned agency shall have to provide the amount of compensation to the victim for the time being and shall have to recover such an amount from such individual pursuant to prevailing law.

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(9) If cash has been provided as an interim relief pursuant to Section 9 such as an amount shall be deducted as prescribed while providing compensation to the victim pursuant to this Section.

(10) Notwithstanding anything contained elsewhere in this Section, with regards to matters on which recommendation has been made by the Commission pursuant to Clause (c) of Sub-Article (2) of Article 132 of the Constitution, if the Attorney General decides that a case cannot be initiated pursuant to prevailing laws, the Office of the Attorney General shall have to inform to the Commission thereof.

(11) The Commission may write to the concerned authority for the departmental or other action to be taken against the official, person or the authority whose name has been recorded on the basis of their non-cooperation in connection with human rights violations or the investigation of inquiry carried out pursuant to this Act or on the basis of non-compliance of the directives issued by the Commission pursuant to Sub-section (7).

(12) The Commission may write to the concerned authority on the basis of the recommendations with regard to the official or the persons whose name has been made public as the human rights violators as referred to in the Sub-section (7),

(13) Other provisions regarding the implementation of recommendation, order or decision of the Commission shall be as prescribed.

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Chapter -4

Miscellaneous

18. Commission may Coordinate or Collaborate with Other Agencies: The Commission may, in the course of performing its

functions consult or seek assistance from or maintain necessary coordination or collaboration with any Commission, committee or any other agency.

19. May Provide or Seek Expert Services: (1) The Commission may, in relation to any matters related to human rights, provide specialized or expert services pursuant to the request made by any agency as prescribed.

(2) The Commission may seek the services of any specialized agency or expert in the course of performing its functions as prescribed.

(3) The functions, duties and powers of the agency or the expert providing specialized or expert services pursuant to Sub-section (2) and the facilities to be received by such agency or expert shall be as determined by the Commission.

20. Contact and Relation may be Maintained with Organizations: (1) The Commission may to discharge its responsibilities effectively in accordance with the Constitution, this Act and other prevailing laws, maintain necessary contact and relation with the national and international organizations related with protection and promotion of human rights and enter into agreements with them in order to exchange cooperation.

(2) If financial matters constitute part of such agreement struck pursuant to Sub-section (1), the Commission shall have to seek approval from the Finance Ministry with regards to such agreement.

(3) If any foreign organization wants to conduct programmes on the protection and promotion of human rights in Nepal, such an organization shall have to seek consent of the Commission.

21. To Help in the Functioning of the Commission: (1) Concerned

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agency or official shall have to provide assistance sought by the Commission.

(2) The Commission shall have to write to initiate departmental action to the agency concerned against the official who, intentionally has not provided information, papers or evidence sought by the Commission or who, intentionally, has not followed the recommendations, orders or decisions of the Commission or who, intentionally has not cooperate in its work or those who has intentionally refused to be present before the Commission on being summoned.

22. May send to Court or Other Agencies: In case, the Commission satisfies that victim shall get justice when a court or any other agency decides on the matter on which it had launched an inquiry and investigation or if it satisfies that the matter falls under the jurisdiction of a court or other agency, it may inform the party concerned to go to such court or agency to file petitions/lodge complaints on the matter pursuant to prevailing laws.

23. No Obstruction in the Commission's Functioning: It shall cause no obstruction in the functioning of the Commission merely on the ground that the post of any member is vacant.

24. May Function as an Acting: The senior-most member from among the members of the Commission shall function as Acting Chairperson if the post of the Chairperson is vacant or he or she is in foreign visits or on leave for more than Seven days.

25. Remuneration and Facilities: (1) The remunerations, conditions of services and other benefits of the Chairperson and Members shall be equal to those of the Chairperson and the Members of constitutional bodies pursuant to the prevalent law.

Provided that, this Clause shall not debar the office bearers to

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withdraw the remuneration and benefits which they are enjoying at the time of commencement of this Act.

26. Office of the Commission: (1) The central office of the Commission shall be located in Kathmandu valley.

(2) The Commission may establish its regional, sub-regional or liaison offices as it requires in consultation with the Ministry of Finance.

27. Organizational Structure of the Commission: The Government of Nepal shall, on the recommendation of the Commission, approve the organizational structure of the Commission and posts.

28. Secretary of the Commission: (1) There shall be a Secretary as an administrative head of the Commission.

(2) The Government of Nepal shall, on the recommendation of the Commission, appoint the Secretary.

(3) The eligibility, remuneration, facilities and service conditions of the Secretary shall be equal to that of the employee of Gazetted Special Class of the Government of Nepal.

(4) The Secretary shall carry out his/her function under the general direction of the Chairperson.

(5) Other functions, duties and powers of the Secretary, in addition to the functions, duties and powers prescribed in this Act and other prevailing laws, shall be as follows:

(a) To undertake administrative and management work,

(b) To prepare annual budgets, programmes and plans and submit them to the Commission,

(c) To take care of and maintain movable and immovable properties of the Commission,

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(d) To make necessary arrangements for smooth operation of the Commission's work and proceedings,

(e) To implement or cause to implement effectively the policies, programmes and decisions of the Commission,

(f) To undertake other works as prescribed.

(6) If the post of the Secretary falls vacant, the Commission may designate the senior-most officer as Acting Secretary from among the officer-level employees working in the Commission until further arrangement is made.

29. **Logo of the Commission:** The Commission may bring into use a separate logo apart from the *Coat-of-Arms* of the State.

30. **Delegation of Power:** The Commission may delegate some of the powers vested with it in accordance with the Constitution and this Act to the Chairperson, Member or any officer-level employee of the Commission, any officer-level employee of the Government of Nepal or a committee or taskforce formed by the Commission or any agency, organization or individual.

31. **Liaison with the Government of Nepal:** Office of the Prime Minister and the Council of Ministers, shall liaison the commission with Government of Nepal.

Provided that, this Section shall not be construed to have obstructed the Commission in maintaining direct contact with any other agency in course of performing of its functions.

32. **Power to Frame Rules, Procedures and Directives:** (1) The Commission may framing necessary Rules to fulfill the objectives of this Act. Among such Rules, while framing the Rules involving

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moneys to be charged on the Government of Nepal, it shall have to seek approval from Ministry of Finance.

(2) The Commission may formulate and implement necessary procedures or directives to carry out its functions in a well-organized way.

33. **Protection of action taken in Good Faith:** Regarding any act done or intended to be done in good faith by the Commission or the Chairperson or a Member or employee or any individual assigned by the Commission pursuant to this Act or Rules there under, no suit or legal proceedings shall be initiated.

34. **To be in Accordance with the Prevailing Laws:** In the matters contained in this Act, this Act shall prevail and in other matters, action shall be taken in accordance with prevailing laws.

35. **Repeal and Savings:** (1) Human Rights Commission Act, 2053 is, hereby, repealed.

(2) Functions and proceedings undertaken in accordance with Human Rights Commission Act, 2053 shall be considered as undertaken in accordance with this Act.

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