

The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014)

Date of Publication in Nepal Gazette

2071/01/28

(11 May 2014)

Act No. 1 of the year 2071 (2014/2015)

An Act Made to Provide for the Enforced Disappearances
Enquiry, Truth and Reconciliation Commission

Preamble: Whereas, it is proclaimed in Article 33 of the Interim Constitution of Nepal, 2063 (2007) to provide relief to the families of the victims who were subjected to disappearance during the course of armed conflict, based on the report of the inquiry commission constituted in relation to such persons and to constitute a high level truth and reconciliation commission to investigate the facts about those involved in gross violations of human rights and crimes against humanity during the course of armed conflict, and to create an environment of reconciliation in the society;

Whereas, it is proclaimed in clause 5.2.5 of the Comprehensive Peace Accord to constitute, with mutual understanding, a high level truth and reconciliation commission for finding out the truth about those who committed the gross violation of human rights and were involved in the crime against

humanity in the course of armed conflict and for creating an environment of reconciliation in the society;

Whereas, it is expedient to make necessary provisions in regards to constitution of the Enforced Disappearances Enquiry Commission and Truth and Reconciliation Commission to bring the facts out to the general public by making enquiry and investigation into the truth about the incidents of the gross violations of human rights and the crime against humanity in the course of the armed conflict and about those who were involved in those incidents, create an environment of sustainable peace and reconciliation by enhancing the spirit of mutual trust and tolerance upon bringing about reconciliation in the society, and to make recommendation for legal action against those who were involved in grave offences relating to those incidents including for reparation to the victims of those incidents by realizing the essence and spirit of the Interim Constitution of Nepal, 2063 (2007) and the Comprehensive Peace Accord;

Be this Act, therefore, enacted by the Constituent Assembly in the capacity of the Legislature-Parliament in accordance with Article 83 of the Interim Constitution of Nepal, 2063 (2007).

Chapter-1

Preliminary

1. Short title and commencement: (1) This Act may be cited as the “Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014)”.

(2) This Act shall come into force at once.

2. Definitions: Unless the context or subject otherwise requires, in this Act,-
- (a) “Chairperson” means the Chairperson of the Commission.
 - (b) “Commission” means the Enforced Disappearances Enquiry Commission or Truth and Reconciliation Commission constituted pursuant to Section 3.
 - (c) The term “complaint” also includes a petition.
 - (d) “prescribed” or “as prescribed” means prescribed or as prescribed in the Rules framed under this Act.
 - (e) “reparation” means compensation, facilities or concession, as well to be provided to the victims pursuant to Section 23.
 - (f) “family” means husband, wife, son, daughter, father, mother, mother in-law, father in-law, grandfather, grandmother, grandson, granddaughter, or brothers or sisters living in the same and joint family.
 - (g) “perpetrator” means the person who was involved in an offence relating to the gross violation of human rights in the course of the armed conflict, and this term also includes the person who ordered to commit such offence.
 - (h) “victim” means the person who died or suffered harm in the form of physical, mental or sexual violation or incurred financial loss and damage or detainee and his/her family as a result of the gross violation of

human rights in the course of armed conflict, and this term also includes the community which sustained severe adverse impact humanitarily, socially or communally as a result of the gross violation of human rights.

- (i) “Ministry” means the Ministry of Peace and Reconstruction, Government of Nepal.
- (j) “gross violations of human rights” means the following acts which were committed in the course of armed conflict directed against unarmed persons or civilian population or committed systematically:
 - (1) Murder,
 - (2) Abduction and taking of hostage,
 - (3) Enforced disappearance,
 - (4) Causing mutilation or disability,
 - (5) Physical or mental torture,
 - (6) Rape and sexual violence,
 - (7) Looting, possession, damage or arson of private or public property,
 - (8) Forceful eviction from house and land or any other kind of displacement.

- (9) Any kind of inhuman acts inconsistent with the international human rights or humanitarian law or other crime against humanity.
- (k) "act of enforced disappearance" means any of the following acts:
 - (1) not to produce before the adjudicating authority a person who is apprehended, detained or taken in custody in any other manner by the person or security personnel authorized to apprehend or make enquiry and investigation as per the law or to enforce law, or not to allow the concerned persons to visit such a person so taken in custody even after lapse of the deadline to produce such a person before the adjudicating authority pursuant to the law in force or not to give information to them as to where, how and under which condition such a person has been detained,
 - (2) to deprive a person of his/her personal liberty upon apprehending or abducting or capturing or taking in custody in any other manner in the name of any organization or organized or unorganized group in the course of the armed conflict.
- (l) "Comprehensive Peace Accord" means the agreement concluded between the Government of Nepal and the

then Communist Party of Nepal (Maoist) on 2063/08/05 (21 November 2006).

- (m) "Secretary" means the Secretary of the Commission.
- (n) "Member" means the member of the Commission and this term also includes the Chairperson.
- (o) "armed conflict" means the armed conflict between the Government of Nepal and the then Communist Party of Nepal (Maoist) from 2052/11/01 (13 February 1996) to 2063/08/05 (21 November 2006).

Chapter-2

Constitution of the Commission

3. Constitution of the Commission: (1) The Government of Nepal shall, upon a notification published in the Nepal Gazette, constitute separate independent, impartial, accountable and high level Enforced Disappearances Enquiry Commission and Truth and Reconciliation Commission for such acts as to bring the facts out to the general public by making enquiry and investigation into the truth about the incidents of the gross violations of human rights in the course of the armed conflict and about those who were involved in those incidents, bring about reconciliation between the perpetrator and victim, and make recommendation for legal action against those who were involved in grave offences relating to those incidents including arrangement for reparation to the victims

(2) The Commission which shall include at least one women member shall consist of five members including the Chairperson.

(3) There shall be a recommendation committee as follows to make recommendation for appointment of the Chairperson and Members:

- (a) A person designated by the Government of Nepal from amongst the former Chief Justices -Chairperson
- (b) Chairperson of the National Human Rights Commission or a member of the Commission designated by the Chairperson -Member
- (c) Three persons including at least one women nominated by the Government of Nepal from amongst the human rights activist, psychologist, legal expert, forensic expert, conflict expert, sociologist, women rights activist or persons involved in the peace process -Member

(4) The recommendation committee as referred to in sub-section (3) shall recommend the names of the Chairperson and Members for appointment from amongst the persons eligible for the Chairperson and Members.

(5) Prior to recommending the names of the Chairperson and Members, the recommendation committee as referred to in sub-section (3) shall set their public

selection process and publish such a selection process publicly.

4. Qualification of Chairperson and Members: The following person shall be eligible for appointment of the Chairperson and Members:

- (a) He/she has held a bachelor's degree from a recognized academic institution,
- (b) He/she is not a member of any political party at the time of appointment,
- (c) He/she is of high moral character,
- (d) He/she has worked in the field of human rights, peace, law, conflict management or sociology,
- (e) He/she has attained the age of thirty five years,
- (f) He/she has worked as a justice of the Supreme Court or Chief Judge of the Appellate Court, worked at the post of special class of the Nepal Judicial Service or possesses the qualification for the justice of the Supreme Court in the case of the Chairperson.

5. Disqualification for Chairperson and Members: The following persons shall be deemed to be disqualified for the post of Chairperson and Members:

- (a) He/she is a non-Nepalese citizen,
- (b) He/she is convicted of a criminal offence involving moral turpitude,

- (c) He/she is punished for the offence of gross violation of human rights,
 - (d) He/she is involved in the armed conflict,
 - (e) He/she has been recommended by the National Human Rights Commission for legal actions for the offense relating to the violation of human rights.
6. Terms of office: (1) The Chairperson and the Members shall hold their offices until the dissolution of the Commission pursuant to Section 39.
- (2) Notwithstanding anything contained in sub-section (1), if the Chairperson or any Member lacks competence or if he/she is involved in misconduct, the Government of Nepal shall constitute a three-member probe committee under the chairpersonship of a former Chief Justice and may relieve such Chairperson or Member of his/her office on the recommendation of that committee.
- Provided, however, that the Chairperson or Member being so charged shall not be deprived of an opportunity to defend himself/herself.
- (3) Other rules of procedure relating to the probe into the charge against the Chairperson or Member as referred to in sub-section (2) shall be as prescribed.
7. Vacation of office: (1) The office of the Chairperson or Member shall be deemed to be vacant in the following circumstance:

- (a) If he/she tenders resignation from his/her office to the Prime Minister,
- (b) If he/she is disqualified for his/her office under Section 5,
- (c) If he/she is relieved of his/her office pursuant to sub-section (2) of Section 6,
- (d) If he/she dies.

(4) If an office of the Chairperson or Member falls vacant for any reason, such an office shall be fulfilled by following the process as referred to in Section 3.

8. Conditions of service of Chairperson and Member: (1) The Chairperson and Member shall be full-time office-bearers.

(2) The remuneration of the Chairperson and Member shall be equivalent to that of the Chairperson and Member of the National Human Rights Commission.

(3) The conditions of service and other facilities of the Chairperson and Member shall be as determined by the Government of Nepal.

9. Meeting and decision of the Commission: (1) The meeting of the Commission shall be held as necessary at the venue, time and date as specified by the Chairperson.

(2) Notwithstanding anything contained in sub-section (2), the meeting of the Commission in the absence of the Chairperson shall be held at the venue, time and date as specified by the Secretary in consultation with the Members.

(3) Presence of the Members more than fifty percent of the total number of Members of the Commission shall be deemed to constitute a quorum for the meeting of the Commission.

(4) The Chairperson shall preside over, and in his/her absence, the Member senior most from amongst the Members present shall preside over, the meeting of the Commission.

(5) The decision of the Commission shall be taken by consensus. In the event of failure to reach a consensus, opinion of majority of votes of the meeting of the Commission shall prevail, and in the event of a tie, the person presiding over the meeting shall exercise the casting vote.

(6) The Chairperson shall authenticate the decision of the meeting of the Commission.

(7) The Commission may, if it desires, invite the expert of the subject relating to the business of the Commission to participate in the meeting of the Commission as an observer.

(8) Other rules of procedures relating to the meeting of the Commission shall be as determined by the Commission.

10. Secretary: A Gazetted Special Class Officer of the Nepal Judicial Service appointed or designated by the Government of Nepal shall act as the Secretary of the Commission.

11. Employees of the Commission: (1) The Ministry shall provide the employees necessary for the Commission. While providing the employees accordingly, the Ministry shall consult with the Commission.

(2) Notwithstanding anything contained in sub-section (1), if the Government of Nepal does not have the expert employee as requested by the Commission or if the Ministry fails to provide the employees in such a number as requested by the Commission, the Commission may appoint the employees in contract.

(3) The function, duty and powers, term of office, remuneration and facilities of the employees appointed in contract pursuant to sub-section (2) shall be as determined by the Commission.

Provided, however, that the remuneration and facilities of these employees shall not be more than the remuneration and facilities of the Government of Nepal working for the Commission at the same class or level.

(4) The employees working for the Commission pursuant to sub-section (1) shall be entitled to the allowance and facilities as determined by the Commission.

12. Means and sources of the Commission and its audit: (1) The Ministry shall make arrangements for an amount, building, means and other sources necessary for the business of the Commission.

(2) The Commission shall deposit the amount received by the Commission pursuant to sub-section (1) in an account opened by it in a commercial bank.

(3) All the expenses of the Commission shall be borne by the amount deposited pursuant to sub-section (2).

(4) The Commission shall maintain its accounts of incomes and expenditures in the format adopted by the Government of Nepal.

(5) The audit of the Commission shall be carried out by the Auditor General.

Chapter-3

Functions, Duties and Powers of the Commission

13. Functions, Duties and Powers of the Commission: (1) Functions, Duties and Powers of the Commission shall be as follows:

- (a) To investigate into the incidents of the gross violation of human rights, and find out and record the truth and bring it out for the general public,
- (b) To ascertain victims and perpetrators,
- (c) To endeavor to bring about reconciliation between the perpetrators and victims, and to bring about reconciliation,
- (d) To make recommendation on reparation to be provided to the victims or their families,

- (e) To make recommendation for legal action against those perpetrators to whom amnesty is not granted and in the case of whom reconciliation has not been reached,
- (f) To provide the victims with identity cards as prescribed and also provide them with information after completion of investigation.
- (g) To carry out, or cause to be carried out, other functions as specified in this Act.

(2) Notwithstanding anything contained in the prevailing laws, the Commission shall, in consultation with the concerned court and authority, investigate into the cases sub-judice under various courts and authorities on the matters concerning with the incidents taken place in the course of the armed conflict.

(3) Notwithstanding anything contained in the prevailing laws, the Commission shall investigate the complaints sub-judice under various authorities on the matters concerning with the incidents taken place in the course of armed conflict.

(4) If a dispute arises as to whether or not any incident had taken place in the course of the armed conflict, the Commission shall take a decision to that effect.

(5) The Enforced Disappearances Enquiry Commission shall investigate into the matters relating to the enforced disappearances and the Truth and

Reconciliation Commission shall investigate into the matters relating to other incidents of gross violations of human rights in accordance with this Act.

(6) The Commission may investigate into the incidents of gross violations of human rights on the following grounds:

- (a) If a complaint is filed by the victim or any person on his/her behalf,
- (b) If an information comes to the notice of the Commission from any source,
- (c) If the Commission deems appropriate to investigate.

(7) The Commission may make a separate arrangement as prescribed for facilitation of children, senior citizens, person with disability and person subjected to sexual violence in the act of filing complaint with the Commission.

(8) Other procedure relating to filing complaint with the Commission shall be as prescribed.

14. Powers of the Commission on Investigation: (1) While making investigation pursuant to this Act, the Commission may, with regard to carrying out the following acts, exercise such powers as the court may have pursuant to the laws in force:

- (a) To collect information or to take statement from any person upon making him/her present before the Commission,
- (b) To examine witness and take testimony,
- (c) To issue an order to produce any deed or document,
- (d) To procure any deed or its duplicate copy from any governmental or public office or court,
- (e) To examine evidence,
- (f) To carry out, or cause to be carried out, field inspection or to issue an order to produce an exhibit.

(2) In case of failure to make a witness or any other person present before the Commission from the viewpoint of security or for any other reason, the Commission may take testimony or statement from such a witness or person through video conference or any other means.

(3) The Commission may, if it deems appropriate, specify a time-limit for making any person present or for production of deed or document, exhibit or evidence pursuant to sub-section (1).

(4) If the Commission consider that any person possesses any goods, deed related with investigation or they are placed in any certain place, the Commission may, without notification, search, or cause to be searched, such a person or place, or seize, or cause to be seized, goods or

deed discovered, or cause to make duplicate or copy of such a deed in full or part.

(5) If an investigation is to be conducted pursuant to this Act against any person holding public office and if it appears likely that such a person would destroy an evidence while allowing him/her to hold the office, the Commission may write to the concerned authority to suspend him/her, and upon receipt of such correspondence, the concerned authority must also suspend such a person pursuant to the law relating to his/her conditions of service if such law contains the provision on suspension and if such law does not contain such a provision, suspend for three months in maximum.

(6) If the Commission believes that a person who was subjected to disappearance was killed and his/her dead body was buried in a place, the Commission may excavate that place and find out the facts.

(7) The excavation as referred to in sub-section (6) must be done systematically, and if a dead body or human remains of a deceased is discovered while excavating accordingly, the Commission must make DNA examination or autopsy examination of that dead body and hand over the dead body or human remains to the family member, if any, of the deceased.

(8) Other provisions relating to conducting investigation into a complaint and information received by the Commission shall be as prescribed.

15. Assistance to be made in the activities of the Commission:

(1) It shall be the duty of the concerned person, organization or authority to provide information and to make statement or testimony upon being present before the Commission and to produce a deed, documents, exhibit or evidence as sought by the Commission pursuant to Section 14.

(2) If a commission seeks an assistance of local administration to search any place or to produce a person to the commission in the course of investigation pursuant to this Act, it shall be the duty of the local administration to assist the Commission.

(3) If a person, organization or authority under the duty as referred to in sub-sections (1) and (2) fails to assist in the activities of the Commission, the Commission may impose a fine on such a person or on the in-charge of such an organization or authority up to fifteen thousand rupees on the case to case basis.

(4) If a person under the duty as referred to in sub-sections (1) and (2) is an office-bearer or official of any governmental agency or public corporation, the Commission may write to the concerned competent authority to take action on the charge of his/her failure to

fulfill the official duty pursuant to the laws in force or take departmental action against such office-bearer or official, and upon receipt of such correspondence, the concerned competent authority must take departmental action and inform the Commission,

(5) If any person obstructs the Commission in its act, the Commission may impose a fine up to fifteen thousand rupees on such a person on the case to case basis.

16. Action may be taken for contempt: (1) The Commission may initiate a proceeding for contempt of itself. If the Commission, while initiating such a proceeding, determines that its contempt is made the Commission may punish with a fine up to fifteen thousand rupees or with an imprisonment up to three months or with both.

(2) Notwithstanding anything contained in subsection (1), if the concerned person or authority submits an apology to the satisfaction of the Commission, the Commission may either pardon him/her or remit or commute the sentence if so imposed on him/her or may suspend the punishment on the conditions set by the Commission or order not to execute the punishment if the conditions set by it are observed.

17. Protection of witness and other persons: (1) If a person, victim or his/her family member who is present to make statement or testimony or provide information requests the Commission for his/her security or if it appears necessary

to provide security to such a person even though he/she does not so request, or to provide security to a person assisting in the Commission or working for the Commission, the Commission must make appropriate arrangement for the security of that person.

(2) The Commission may take assistance of the Government of Nepal as per necessity for security of any person as referred to in sub-section (1).

(3) No legal action shall be taken nor shall prosecution be brought against any person merely for the reason that he/she makes statement or testimony for, or provides information to, the Commission.

(4) If a person present to make a statement or testimony for, or provide information to, the Commission asks for actual cost incurred in travelling, food and accommodation, the Commission may provide reasonable cost to such person.

(5) If a person making a statement or testimony or providing any information or evidence desires to keep his/her name confidential, the Commission must keep his/her name confidential.

(6) The Commission may make separate provision as prescribed to facilitate children, senior citizen, person with disability or person subjected to sexual violence in the act of making a statement or testimony.

(7) If an employee or security personnel working at a government agency informs that he/she was not in a position for the reason of his/her security to make a statement or testimony or provide information to the Commission while working at the office where he/she is working, the Commission may write to the concerned authority to transfer him/her to the office where he/she may be transferred, and upon receipt of such correspondence, the said agency must transfer such an employee.

(8) Security and protection of mental and physical welfare, privacy and dignity of the witness, victim and the person assisting in the act of the Commission shall be as prescribed.

18. Public hearing may be conducted: (1) The Commission may, if it deems necessary, conduct public hearing to find out the truth and facts on matters of gross violation of human rights.

(2) Method and procedures for public hearing shall be as prescribed by the Commission.

19. Activities of the Commission to be open and transparent: (1) The activities of the Commission must be open and transparent.

(2) Notwithstanding anything contained in subsection (1), the activities which may have adverse impact on the prestige, dignity, privacy or security of a person, jeopardize the law and order situation and have adverse

impact on the process of investigation may be kept confidential.

(3) The Commission may make public the statement relating to its activities from time to time for information to the general public including the victims.

20. Independency and impartiality to be maintained: (1) The Commission must perform its activities independently and impartially.

(2) The Commission shall not act with prejudice, undue consideration or malice.

(3) The Commission must uphold the generally acceptable principles of justice and human rights in performing its activities.

(4) If any person against whom the Commission has to conduct an investigation or take an action is the relative of a Member or if a Member is directly related with that person in the course of any transaction, the Member shall not get involved in such investigation or action.

21. Proceeding on a complaint may be suspended: If there is no sufficient ground to take action upon conducting an investigation into a complaint or information filed with or provided to the Commission, the Commission may suspend the proceeding on such a complaint by giving the reason thereof.

Provided, however, that if evidence which requires an action on such a complaint is discovered later on, the

Commission may conduct investigation into such Complaint.

22. Reconciliation may be made: (1) If the perpetrator or victim makes an application to the Commission for reconciliation, the Commission may bring about mutual reconciliation between the perpetrator and victim.

(2) In the course of bringing about reconciliation between the perpetrator and the victim pursuant to sub-section (1), the Commission shall cause the perpetrator to regret the wrongful act he/she committed and also cause him/her to apologize to the victim.

(3) While bringing about reconciliation pursuant to sub-section (1), the Commission may cause the perpetrator to provide reasonable compensation to the victim for the loss and damage the victim suffered.

(4) The Commission may carry out or cause to be carried out the following acts to inspire the perpetrator and the victim in the course of bringing about reconciliation:

(a) To organize reconciliation functions at the sites of the armed conflict by involving the perpetrator, victim and his/her family,

(b) To cause to be constructed statue, public place or monument in commemoration of the deceased in the course of armed conflict by involving the perpetrator, victim and his/her family,

- (c) To cause to be published various article, literary work, essay, song, pictures, etc. concerning reconciliation,
- (d) To enhance social and communal good faith,
- (e) To carry out other appropriate acts.

(5) In the circumstance where the victim died or he/she is a minor or is mentally unsound, the Commission may bring about reconciliation between the perpetrator and the family of the victim.

(6) Notwithstanding anything contained in this Section, the Commission may not bring about reconciliation between the victim and the perpetrator with regard to whom recommendation is not made for amnesty pursuant to sub-section (2) of Section 26.

23. Recommendation to be made for reparation: (1) Upon completion of an investigation under this Act, the Commission shall make recommendation to the Government of Nepal to provide compensation to the victim, to make restitution or to rehabilitate or to make other appropriate arrangement.

(2) Notwithstanding anything contained in sub-section (1), the Commission may, if it considers appropriate, make recommendation to the Government of Nepal to provide the following facility and concessions to the victim or any member of his/her family as per his/her condition:

- (a) Free education and medical treatment,
- (b) Skill oriented training,
- (c) Loan facilities without interest or with concessionary interest,
- (d) Arrangement for settlement,
- (e) Facility of employment,
- (f) Other facility or concession as the Commission deems appropriate.

(3) Prior to making recommendation for providing any facility and concession or making other appropriate arrangement to the victim pursuant to this Section, the Commission must recommend the facility, concession and other arrangements as per his/her priority and upon asking his/her desire and demand.

(4) The criteria and standard to determine compensation, facility or concession to be provided pursuant to sub-section (1) or (2) shall be as prescribed.

(5) The victim shall not be deprived of the facility to be provided under this Section only for the reasons that the victim has been compensated by the perpetrator, that any perpetrator has been recommended by the Commission for amnesty or that any perpetrator has not been identified.

(6) In circumstance where the victim is dead, the compensation, facility or concession to be received by the victim pursuant to sub-section (1) or (2) shall be provided to the closest member of his/her family.

24. Recommendation to be made for return of property: (1) If it appears from the investigation conducted under this Act that any property of the victim is captured or seized by anybody, the Commission shall make recommendation to the Government of Nepal to return that property to the concerned person.

(2) The Commission shall determine the actual loss owing to the capture or seizure of the property of the victim and make recommendation to the Government of Nepal to provide reasonable compensation to the victim.

25. Recommendation may be made for action: (1) If it appears from the investigation under this Act that any person was involved in the offence of gross violation of human rights, the Commission may make recommendation to the Government of Nepal to take action against that person pursuant to the law.

(2) Notwithstanding anything contained in subsection (1), the Commission shall not make recommendation for action against the following perpetrators:

(a) Who entered into reconciliation with the victim pursuant to Section 22,

(b) Who were recommended for amnesty pursuant to Section 26.

Provided, however, that if a perpetrator is found guilty in more than one offence and is not recommended for

amnesty for any one particular offence, such perpetrator shall be recommended for action with regard to that offence not recommended for amnesty.

(3) Notwithstanding anything contained in sub-section (1), the Commission may, if it so wishes, make recommendation to the Government of Nepal in its interim report as referred to in sub-section (2) of Section 27 to prosecute the perpetrators who were found to be guilty of the offences of the gross violation of human rights prior to giving report pursuant to sub-section (1) of Section 27.

(4) If any person holding the public office is found to be guilty of offence of gross violence of human rights while conducting investigation pursuant to this Act, the Commission must write to the concerned competent authority to take departmental action against such a person, and the competent authority, upon receipt of such correspondence, must take departmental action along with the appropriate punishment against him/her pursuant to the laws within three months and inform the Commission to that effect.

26. Provision on amnesty: (1) Notwithstanding anything contained in Section 25, if it is found reasonable to grant amnesty to any perpetrator on the basis of the criteria and conditions as referred to in sub-sections (4), (5) and (6) while conducting investigation pursuant to this Act, the

Commission may make recommendation to the Government of Nepal setting out sufficient ground thereof.

(2) Notwithstanding anything contained in sub-section (1), the Commission may not make recommendation for amnesty in the case of the perpetrator who was involved in rape and who was involved in other offence of grave nature, where sufficient ground and reason are not found to grant amnesty from the investigation of the Commission[♦].

(3) Prior to making recommendation by the Commission pursuant to sub-section (1), the perpetrator must have submitted application to the Commission by completing the following process for amnesty:

- (a) Submitted an application in writing within the time-frame specified by the Commission,
- (b) Mentioned in the application that he/she has fully disclosed before the Commission the statement of truth and facts to the best of his/her knowledge in the context of the activities carried out by him/her in the course of the armed conflict prior to submitting the application, and he/she has recorded the statement with the Commission,
- (c) Completed other procedures as specified by the Commission.

[♦] This provision is declared void by the Supreme Court on 2071/11/14 (26 February 2015) in the case of Suman Adhikari et. al vs. the Office of Prime Minister and Council of Ministers.

(4) The application to be submitted pursuant to sub-section (3) must contain that the perpetrator has expressed the following commitments:

(a) He/she has accepted that he/she committed gross violation of human rights in the course of armed conflict,

(b) He/she has accepted that he/she regrets such an act and he/she agrees to apologize to the victim to his/her satisfaction before the Commission,

(c) He/she has promised that he/she would not repeat any such act in the future.

(5) If an application is submitted to the Commission for amnesty pursuant to sub-section (3), the Commission must decide to make recommendation for amnesty upon considering agreement and disagreement of the victim as well as the gravity of the incident for granting amnesty to that perpetrator.

(6) If it is found from the investigation that any perpetrator was involved in more than one offence of gross violation of human rights and if an amnesty may be granted to such a perpetrator only for any offences pursuant to this Section, the Commission may make recommendation for granting amnesty to the perpetrator only for those offences.

(7) Prior to making recommendation for amnesty pursuant to this Section, the Commission may cause the

perpetrator to provide reasonable compensation to the victim for the loss he/she suffered.

(8) If an amnesty is granted by the Government of Nepal to the person recommended by the Commission for amnesty pursuant to sub-section (1), the name of such a person shall be published in the Nepal Gazette.

(9) If an amnesty is not granted by the Government of Nepal to the person recommended for amnesty pursuant to sub-section (1), the procedure as referred to in clause (b) of sub-section (2) of Section 28 shall be followed to prosecute that person.

27. Report to be submitted: (1) Upon completing the investigation pursuant to this Act, the Commission must submit a report to the Government of Nepal by setting out the following matters:

- (a) Details on the complaints investigated and proceedings suspended by the Commission,
- (b) Details on the truth and facts discovered from the investigation,
- (c) Details on reconciliations brought about by the Commission between the victims and perpetrators pursuant to Section 22,
- (d) Matters on recommendation made to the Government of Nepal pursuant to Sections 23, 24 and 26,

- (e) Details of recommendation made for action pursuant to Section 25,
- (f) Root causes of the armed conflict and matters on policy, legal, institutional, administrative and practical reforms required for non-recurrence of such incidents in the future.
- (g) Matter pertaining to enactment of any law, if necessary, to implement the report,
- (h) Matters to be undertaken by the Government of Nepal immediately and in the future to promote human rights, strengthen the justice system and create of environment for reconciliation in the society,
- (i) Other matters as the Commission considers appropriate.

(2) Notwithstanding anything contained in sub-section (1), the Commission may submit interim report to the Government of Nepal along with its recommendation from time to time on the matters it has completed investigation.

(3) The Government of Nepal shall table the report received pursuant to sub-section (1) to the Legislature-Parliament within thirty days.

Chapter-4

Implementation and monitoring of report

28. Responsibility of implementation of the report: (1) The Ministry shall have the responsibility to implement, or cause to be implemented, the recommendations made in the report submitted by the Commission pursuant to Section 27.

(2) The Ministry shall implement recommendations made in the report of the Commission as follows:

(a) The Ministry shall itself implement, or cause to be implemented through the concerned authority, the recommendations as referred to in Sections 23 and 24 upon obtaining approval of the Government of Nepal,

(b) The Ministry shall undertake the procedures under Section 29 to implement the recommendations as referred to in Section 25,

(c) The Ministry shall make submission to the Government of Nepal to proceed the action for implementation of the recommendations as referred to in Section 26,

(d) If a legislation is to be enacted to implement the recommendation made in the report, the Ministry shall proceed the action for necessary enactment,

(e) The Ministry shall carry out, or cause to be carried out, other acts as it considers

appropriate for implementation of the report of the Commission.

(3) The Ministry shall set order of priority of recommendations as referred to in clauses (f), (g) and (h) of sub-section (1) of Section 27 and gradually implement them.

(4) The Ministry shall immediately provide compensation, facility or concession to the victim in a simple and convenient manner in line with the recommendation of the Commission.

29. Provision on prosecution: (1) If recommendation is made by[♦] the Commission to the Government of Nepal to prosecute the perpetrator found to be guilty of the offence of gross violation of human rights, the Ministry[♦] must write to the Attorney General to prosecute the perpetrator found to be guilty of the offence of the gross violation of human rights.

(2) The Attorney General or the Government Attorney designated by the Attorney General shall decide as to whether the perpetrator is to be prosecuted or not upon receipt of the correspondence for prosecution from the Ministry pursuant to sub-section (1).

[♦] This provision is declared void by the Supreme Court on 2071/11/14 (26 February 2015) in the case of Suman Adhikari et. al vs. the Office of Prime Minister and Council of Ministers.

[♦] This provision is declared void by the Supreme Court on 2071/11/14 (26 February 2015) in the case of Suman Adhikari et. al vs. the Office of Prime Minister and Council of Ministers.

(3) While taking a decision as to whether the perpetrator is to be prosecuted or not, the Attorney General or the Government Attorney must state the ground and reason thereof.

(4) If it is decided to prosecute the perpetrator pursuant to sub-section (2), the concerned Government Attorney shall bring prosecution against the perpetrator in the Special Court.

Explanation: For the purpose of this Section, “special court” means the special court constituted by the Government of Nepal pursuant to the law to try and settle the case which has been decided by the Attorney General or the Government Attorney designated by the Attorney General to prosecute against the perpetrator pursuant to sub-section (2) on the basis of the recommendation of the Commission.

30. Monitoring of the report submitted by the Commission: (1) The National Human Rights Commission shall carry out the act of monitoring on the matters as to whether the recommendation made in the report of the Commission is implemented or not.

(2) While carrying out monitoring pursuant to sub-section (1), if it appears that the Ministry has not implemented, or has not caused to be implemented, the recommendation made in the report of the Commission, the National Human Rights Commission may draw the attention

of the Ministry for the implementation of that recommendation, and the Ministry shall implement, or cause to be implemented, the matters as soon as possible to which its attention has been drawn.

Chapter-5

Miscellaneous

31. Sub-committee or task force may be constituted: (1) The Commission may constitute various sub-committees or task force as per necessity comprising experts of various sectors to smoothly operate its activities.

(2) The functions, duties, powers and proceedings of the sub-committees or task force constituted pursuant to sub-section (1), and the facilities and other arrangements to be received by the members of the sub-committees and task force shall be as stipulated by the Commission.

32. Service of Specialist may be received: (1) The Commission may receive the service of native or foreign expert of the concerned subject or specialist or specialized agencies as per the necessity to carry out any act by the Commission pursuant to this Act.

(2) The appointment, functions, duties, powers, and conditions of service of the expert and specialized agencies rendering the service pursuant to sub-section (1) shall be as stipulated by the Commission.

(3) If service of any institution or organization is necessary for the Commission, the concerned institution or organization must render to the Commission the service as sought by the Commission irrespective of anything contained in the prevailing laws.

33. Conduct of business may not be hindered: It shall not hinder the Commission from conducting its business only for the reason of the vacancy of the office of any Member of the Commission.

34. Power Delegation: (1) The Commission may, as per necessity, delegate some of the powers conferred to it pursuant to this Act to the Chairperson, Member, Secretary, or sub-committee or task force constituted pursuant to Section 32.

(2) Notwithstanding anything contained in subsection (1), the powers vested with the Commission to bring about reconciliation or to make recommendation for reparation, amnesty or action may not be delegated.

35. Informant may be rewarded: The Commission may reward a person, organization, institution or association assisting the Commission or investigating officer in the act of finding out the truth and facts in the matters investigated by the Commission under this Act.

36. Notice, statement, fact or information may be received: If any notice, statement, fact or information received by any Commission constituted under this Act upon investigation

is useful to any other Commission, the latter Commission may receive such a notice, statement, fact or information.

37. Coordination may be made: While conducting investigation under this Act, the Commission may carry out acts by maintaining coordination with the commission or authority, established under the laws in force or constituted by the Government of Nepal performing the functions similar to that of the Commission.

38. Term of office of the Commission: (1) The term of office of the Commission shall be two years from the date of its constitution.

(2) Notwithstanding anything contained in sub-section (1), if the Commission requests for extension of the term upon stating the reason as to why it was not in a position to complete its functions within the period as stipulated in sub-section (1), the Government of Nepal may extend the term of office of the Commission by a period up to one year.

39. Dissolution of the Commission: (1) If the Commission completes its assignment under this act or if the term of office of the Commission as stipulated in Section 38 expires, the Commission shall be dissolved.

(2) If the Commission is dissolved pursuant to sub-section (1), the property and the obligation of the Commission shall devolve on the Ministry.

(3) If the Commission is to be dissolved pursuant to sub-section (1), the Commission must hand over the records under its custody to the Ministry.

40. Re-investigation not to be made: No investigation shall be made by re-constituting a commission into the matters investigated by the Commission under this Act.
41. Oath: The Chairperson shall take an oath before the Chief Justice and Members shall take an oath before the Chairperson in the format as referred to in the Schedule prior to assuming the office.
42. Power to remove difficulties: (1) If any difficulty arises in connection with the implementation of this Act, the Government of Nepal may, in consultation with the Commission, issue an order to remove such difficulty by a notification published in the Nepal Gazette.
- (2) The Government of Nepal must table the order issued pursuant to sub-section (1) before the Legislature-Parliament within thirty days.
43. Liaison with the Government of Nepal: While keeping contact with the Government of Nepal, the Commission must do so through the Ministry.
44. Powers to frame rules: The Government of Nepal may, in consultation with the Commission, frame rules to implement the Act.

Schedule

(Related with Section 41)

Oath

I pledge with truth and dedication/take an oath in the name of God that I shall honestly perform the responsibility and duty of the Chairperson/Member of the Enforced Disappearance Enquiry Commission/Truth and Reconciliation Commission assumed by me being loyal to the Nepali people and the Constitution as well as other laws in force without anyone's fear, undue consideration, prejudice, malice or greed and shall not disclose any facts, known to me during the discharge of my duty, at any time while in the office or having ceased to work for the office except as otherwise required upon abiding by law.

Of the person taking an oath:
oath:

Signature:

Date:

Of the person administering an

Signature:

Name:

Designation:

Date: