

## **Necessity of amendments in National Human Rights Act 2012 for competence, autonomy and independence of the NHRC**

National Human Rights Act 2012 has replaced Human Rights Commission Act 1997 and it has been enacted from the date of 20/01/2012. It was expected that the new act would have provided competence, autonomy and independence to the Commission for fulfilling the duties of ensuring respect, protection, promotion and effective implementation of human rights as enshrined by the Interim Constitution. The basis and reason for such expectation were as follows:

- Competence, autonomy and independence that had been exercised by the Commission right from its inception in accordance with Human Rights Commission Act 1997 cannot be derogated or reduced without rational basis and reason by a new law promulgated in the democratic age,
- There would be no necessity of calling international organizations for monitoring human rights and humanitarian law even during internal conflict provided there is the existence of a consensual Commission qualified with attributes like competence, autonomy and independence,
- There is the need of upholding United Nations Paris Principles regarding competence, autonomy and independence of national human rights institutions.

Human Rights Commission is not like any other constitutional commission or government body in that it requires special kind of competence, autonomy and independence. The Interim Constitution has provided it with powers of rescuing the victim for the protection of a person's life. Various past practices of the Commission for protection of a person's life have even been deemed lawful as customary rules. The Commission has been able to successfully rescue government officials and leaders and activists of different political parties even from the base areas of non-state actors. The Commission requires legal environment to reach the base area of non-state actors in the future as well. Only then can the Commission be able to protect a person's life, independence and rights. It is imperative that the legal provisions that go contrary to the Commission's competence, autonomy and independence should be amended to maintain its status as a national institution that monitors accountability of the state and even the non-state actors during internal conflict. Especially the following should be amended in the act as envisioned from the perspective of competence, autonomy and independence:

- Guarantee of Commission's institutional competence, autonomy and independence in the

- preamble itself
- Guarantee of Commission's own separate fund, movable and immovable property and physical infrastructure
  - Guarantee of powers of filing and defending cases
  - Guarantee of Commission making its own mark
  - Guarantee of Commissioners' status being the same as of the judges
  - Guarantee of Commission dealing with donors, taking donations and having no financial control by the government
  - Guarantee of Commission having own secretary and employees, appointed by Commission itself
  - Guarantee of Commission opening new regional and branch offices, and setting its own organizational structure and posts
  - Guarantee of Commission not regulating an international organization working in Nepal
  - Guarantee of no statute of limitation for filing complaints about human rights violations.
  - Guarantee of not forcing the Commission to decide about giving compensation in a case just because the case had been taken forward elsewhere

<b>National Human Rights Commission Act 2012</b>	<b>Human Rights Commission Act 1997</b>	<b>Paris Principles</b>	<b>Comments</b>	<b>Recommendations</b>
<p><b><u>Not mentioned</u></b> No mention of autonomous and independent Commission in the preamble</p>	<p><b><u>Preamble</u></b> Mention of "independent and autonomous human rights Commission"</p>	<p><b><u>Principle</u></b> <b><u>Competence and Responsibilities</u></b> (1) A national institution shall be vested with competence to promote and</p>	<p>(1) Norms and values mentioned in the preamble are the backbone of the Act. Reluctance in mentioning independent and autonomous commission in the preamble has weakened the</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The preamble to 2012 Act should contain "independent and autonomous human rights commission."</p>

		<p>protect human rights.</p> <p><b><u>Principle</u></b>  Guarantee of the independence of national human rights institution</p>	<p>philosophical basis of the act.</p> <p>(2) Constituent Assembly has taken away the achievements received in 1997 Act. It has refrained from following Paris Principles.</p> <p>(3) Without the guarantee of institutional independence and autonomy, the Commission loses its ability to promote and protect human rights.</p> <p>(4) The Commission failing to have guarantees of independence and autonomy from the state can lose its ability to monitor whether parties in conflict (both state and non-state) have</p>	
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			<p>followed Common Article 3 of Geneva Conventions and Child Rights Convention and its Optional Protocol (dealing with child soldiers) and international organizations have to be called to carry out this duty.</p>	
<p><b>Section 4(2)</b> The Commission shall be independent and autonomous in fulfilling the work of ensuring respect, protection and promotion of human rights.</p>	<p><b>Preamble</b> Mention of "independent and autonomous human rights Commission"</p>	<p><b>Principle</b> <u>Competence and Responsibilities</u> (1) A national institution shall be vested with competenc e to promote and protect human rights. <b>Principle</b> Guarantee of the independence of</p>	<p>(1) Section 4(2) of the Commission Act 2012 has only provided for functional independence and autonomy. Due to this, it is clear that institutional independence and autonomy has been taken away. (2) Achievements received in 1997 Act have been taken away. It</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The Commission should be an independent and autonomous institution with perpetual succession.</p>

		national human rights institution	<p>has refrained from following Paris Principles.</p> <p>(3) Without the guarantee of institutional independence and autonomy, the Commission loses its ability to promote and protect human rights.</p> <p>(4) The Commission failing to have guarantees of independence and autonomy from the state can lose its ability to monitor whether parties in conflict (both state and non-state) have followed Common Article 3 of Geneva Conventions and Child Rights Convention and its Optional Protocol (dealing</p>	
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			with child soldiers) and international organizations have to be called to carry out this duty.	
<b>National Human Rights Commission Act 2012</b>	<b>Human Rights Commission Act 1997</b>	<b>Paris Principles</b>	<b>Comments</b>	<b>Recommendations</b>
<p><b><u>No provision</u></b></p> <p>(1) On whether the Commission would have perpetual succession or not.</p> <p>(2) On whether the Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.</p> <p>(3) On whether the Commission may, like an individual, sue</p>	<p><b><u>Section 3</u></b></p> <p>(5) The Commission shall be a body with perpetual succession.</p> <p>(7) The Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.</p>	<p><b><u>Principle Competence and Responsibilities</u></b></p> <p>(1) A national institution shall be vested with competence to promote and protect human rights.</p> <p><b><u>Principle</u></b></p> <p>Guarantee of the independence of national human rights institution</p> <p>(2) The</p>	<p>(1) Contrary to the achievements received in 1997 Act and guidance of Paris Principles, Commission Act 2012 has deprived it of all attributes of an institution with perpetual succession.</p> <p>(2) Has backed down from the guarantees of the Commission having its own physical infrastructure, property, funds and employees.</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b></p> <p>(5) The Commission shall be a body with perpetual succession.</p> <p>(7) The Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.</p> <p>(8) The Commission may, like an individual, sue and be sued in its own name.</p>

<p>and be sued in its own name.</p>	<p>(8) The Commission may, like an individual, sue and be sued in its own name.</p>	<p>national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject</p>	<p>(3) The Commission's independence and autonomy in filing and defending cases, and defending itself without going via the Attorney General's Office or without any kind of involvement of that office.</p> <p>(4) The new act has deprived the Commission of its powers to file cases at the court if its recommendations are not implemented.</p> <p>(5) Without the guarantee of institutional independence and autonomy, the Commission loses its ability to promote and protect human</p>	
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		to financial control which might affect its independence.	rights.	
<p><b>Section 29</b> The Commission may bring into use a separate logo apart from the <i>Coat-of-Arms</i> of the State.</p>	<p><b>Section 3(6)</b> The Commission shall have a separate seal of its own.</p>	<p><b>Principle</b> <u>Competence and Responsibilities</u> (1) A national institution shall be vested with competence to promote and protect human rights.</p> <p><b>Principle</b> Guarantee of the independence of national human rights institution</p>	<p>(1) If the Commission uses coat-of-arms of the State, it cannot credibly claim of its independence of the state.</p> <p>(2) Especially non-state actors can obstruct the Commission's works during internal conflict. It can affect the Commission's competence to protect human rights.</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The Commission shall have a separate seal of its own.</p>
<p><b>Section 25</b> The remunerations, conditions</p>	<p><b>Section 7</b> The remuneration, facilities and</p>	<p><b>Principle</b> <u>Competence and Responsibilities</u> (1) A national</p>	<p>(1) Achievements received in 1997 Act have been taken away in</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The remuneration,</p>

<p>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 withdraw the remuneration and benefits which they are enjoying at the time of commencement of this Act.</p>	<p>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.</p>	<p>institution shall be vested with competence to promote and protect human rights.</p> <p><b><u>Principle</u></b> Guarantee of the independence of national human rights institution. (2)The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be</p>	<p>that the Commission's status has been demoted. This can bear negative effects in protection of human rights.</p> <p>(2) The new act can refuse to appoint as commissioner a person who has been the chief justice or a justice in the Supreme Court which can belittle the constitutional provision.</p> <p>(3) The provision regarding the appointment of the chairperson and the secretary is in contravention with Article 131(1) of the Interim Constitution.</p> <p>(4) Demotion of status can</p>	<p>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.</p>
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		independent of the Government and not be subject to financial control which might affect its independence.	negatively affect the independence of the Commission. (5) The state exercises financial control over the Commission if it sets remuneration and facilities.	
<b>National Human Rights Commission Act 2012</b>	<b>Human Rights Commission Act 1997</b>	<b>Paris Principles</b>	<b>Comments</b>	<b>Recommendations</b>
<b><u>Section 20 (1)</u></b> (The Commission may maintain necessary contact and relation with the national and international organizations related with protection and promotion of human rights and enter into agreements with	<b><u>Section 15</u></b> (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	<b><u>Principle Competence and Responsibilities</u></b> (1) A national institution shall be vested with competence to promote and protect human rights. <b><u>Principle</u></b> Guarantee of the independence of national human rights institution (2) The national institution shall	(1) Achievements regarding financial independence received in 1997 Act have been taken away. It has refrained from following Paris Principles. (2) Lack of financial independence can bear negative effective in protection of human rights. (3) The Commission	<b>Provisions of the 1997 Act should be reinstalled</b> (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

<p>them in order to exchange cooperation), the Commission shall have to seek approval from the Finance Ministry with regards to such agreement.</p>	<p>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</p>	<p>have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.</p>	<p>has now to limit its expenditure to budget allocation approved by the government; if any event of emergency arises that is not mentioned in the budget, the Commission has to request the government for it; the Commission has even lost its powers to issue a check for expenditure in accordance with the allocated budget.  (4) It has stopped the Commission from entering into agreement with donors and expending the grants provided by donor agencies.</p>	<p>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.</p>
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	income and expenditure and other relevant records in accordance with the prevailing law.			
<p><b><u>Lack of provision</u></b> The Commission cannot appoint its own employees.</p>	<p><b><u>Section 18(1)</u></b> 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.</p>	<p><b><u>Principle Competence and Responsibilities</u></b> (1) A national institution shall be vested with competence to promote and protect human rights. <b><u>Principle</u></b> Guarantee of the independence of national human rights institution (2) The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular</p>	<p>(1) There is the lack of a provision of Commission appointing its own employees. It seems to be heading towards seeking policy approval of Ministry of General Administration for appointing employees. (2) The government sends employees for the Commission and it influences them which can negatively affect the Commission's functional and</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The Secretary shall be appointed by the President as recommended by the Commission.</p>

		<p>adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.</p>	<p>institutional independence and autonomy.</p> <p>(3) The credibility of Commission's employees appointed by the government is harmed.</p> <p>(4) The Commission influenced by the state can lose its ability to monitor whether parties in conflict (both state and non-state) have followed Common Article 3 of Geneva Conventions and Child Rights Convention and its Optional Protocol (dealing with child soldiers) and international organizations have to be called to carry out this duty.</p> <p>(5) It can affect the</p>	
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			Commission's competence to protect human rights.	
<p><b><u>Section 26</u></b> The Commission may establish its regional, sub-regional or liaison offices as it requires in consultation with the Ministry of Finance.</p>	<p><b><u>Section 16</u></b> The Commission may when necessary set up branch offices in different places of Nepal.</p>	<p><b><u>Principle Competence and Responsibilities</u></b> (1)A national institution shall be vested with competence to promote and protect human rights. <b><u>Principle</u></b> Guarantee of the independence of national human rights institution (2)The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have</p>	<p>(1) The Commission's credibility would be lost if Ministry of Finance interferes with the establishment of branch offices. (2) The Commission influenced by the state can lose its ability to monitor whether parties in conflict (both state and non-state) have followed Common Article 3 of Geneva Conventions and Child Rights Convention and its Optional Protocol (dealing with child soldiers) and international organizations</p>	<p><b>Provisions of the 1997 Act should be reinstalled</b> The Commission may when necessary set up branch offices in different places of Nepal.</p>

		its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.	have to be called to carry out this duty. (3) It can affect the Commission's competence to protect human rights.	
<b>National Human Rights Commission Act 2012</b>	<b>Human Rights Commission Act 1997</b>	<b>Paris Principles</b>	<b>Comments</b>	<b>Recommendations</b>
<b>Section 27</b> The Government of Nepal shall, on the recommendation of the Commission, approve the organizational structure of the Commission and posts.	<b><u>No such provision</u></b>	<b><u>Principle Competence and Responsibilities</u></b> (1) A national institution shall be vested with competence to promote and protect human rights. <b><u>Principle</u></b> Guarantee of the independence of national human rights institution (2) The national institution shall	(1) The Commission's credibility would be lost if Ministry of Finance interferes with the establishment of branch offices. (2) The Commission influenced by the state can lose its ability to monitor	Section 26 (2) of the Commission Act 2012 should provide for "the Commission should itself approve its organizational structure and posts".

		<p>have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.</p>	<p>whether parties in conflict (both state and non-state) have followed Common Article 3 of Geneva Conventions and Child Rights Convention and its Optional Protocol (dealing with child soldiers) and international organizations have to be called to carry out this duty.</p> <p>(3) It can affect the Commission's competence to protect human rights.</p>	
<p><b>Section 20(3)</b> If any foreign</p>	<p><b><u>No such provision</u></b></p>	<p><b><u>Principle Competence and</u></b></p>	<p>(1)The Commission cannot, unlike the</p>	<p>Repeal the provision of 20(3)</p>

<p>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.</p>		<p><b>Responsibilities</b>  (1) A national institution shall be vested with competence to promote and protect human rights.  2(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.  <b>Principle</b>  3(g) ... develop relations with the non-governmental organizations devoted to</p>	<p>government, carry out administrative regulation and monitoring of its cooperating institutions. This proves the Commission having equal status with government body.  (2) It can affect the Commission's competence to protect human rights.  (3) Since it can discourage the civil society, it contravenes with Article 132(2)(d) of the Interim Constitution.</p>	<p>of the Commission Act 2012 that states, " 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."</p>
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		promoting and protecting human rights, to economic and social development ...		
<b>National Human Rights Commission Act 2012</b>	<b>Human Rights Commission Act 1997</b>	<b>Paris Principles</b>	<b>Comments</b>	<b>Recommendations</b>
<b>Section 10(5)</b> 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	<b><u>No such provision</u></b>	<b><u>Principle Competence and Responsibilities</u></b> (1)A national institution shall be vested with competence to promote and protect human rights.	(1)The provision of statute of limitation of six months for lodging the incident has reduced jurisdiction of the Commission and shrunk its ability to protect human rights. The institution's real independence cannot be maintained without its competence. (2) This is a step more backwards than the provision of statute of limitation in other prevailing laws. (3) This provision contravenes with Paris Principles and even with Article 132(1) and (2) (a) of the Interim	No statute of limitation should be imposed in lodging an incident of human rights violation. However, a directive provision of not allowing for unreasonable delay in lodging a complaint can be incorporated.

became public.			Constitution.	
<p><b>Section 16(4)</b> 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.</p>	<p><b><u>No such provision</u></b></p>	<p><b><u>Principle Competence and Responsibilities</u></b> (1) A national institution shall be vested with competence to promote and protect human rights.</p>	<p>(1) It has shrunk the commission's ability to protect human rights. The institution's real independence cannot be maintained without its competence. (2) There might not have been a guarantee of compensation to the victim just based on the proceedings of other administrative bodies. Section 16(4) has not even allowed the commission to use its discretion in such matter. (3) This provision contravenes with Paris Principles and even with Article 132(1) and (2) (d) of the Interim Constitution.</p>	<p>Remove the phrase " if the proceedings for compensation have already been moved forward pursuant to other prevailing laws" from Section 16(4) of the Act.</p>

Reviewer: Om Aryal, Advocate, Ph.D. Candidate