

Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission

Preamble:

Whereas it is expedient to have legal arrangements to establish a **competent, independent, accountable and impartial** Commission on Investigation of Disappeared, Truth and Reconciliation to bring the actual facts to the public by investigating the truth on gross violation of human rights, incidents regarding crimes against humanity and the persons involved in such incidents during the course of armed conflict including for the investigation of the person disappeared;

To create an environment of peace and reconciliation in the society by enhancing mutual good wishes, and tolerance between the victims and perpetrators;

To recommend reparation for the persons victimized by the incidents; and

To end state of impunity by bringing perpetrators involved in incidents relating to serious violations under the ambit of law,

This Ordinance has been promulgated by the President on the recommendation of Council of Ministers as there is no legislature- parliament, pursuant to Sub-Clause (1) of Article 88 of the Interim Constitution of Nepal 2007.

Chapter-1

Preliminary

1. Short Title and Commencement:

- (1) This Ordinance may be cited as the "Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance 2069 (2012)".
- (2) This Ordinance shall come into force at once.

2. Definitions:

Unless the subject or the context otherwise requires, in this Ordinance:

- (a) "Chairperson" means the Chairperson of the Commission.
- (b) "Commission" means the Truth and Reconciliation Commission established pursuant to Section 3.
- (c) "Complaint" means an application as well.
- (d) "Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules framed under this Ordinance.
- (e) "Reparation" means the compensation, facility or concession made available to the victims as stipulated in Section 24.
- (f) "Family" means husband, wife, son, daughter, father, mother, father-in-law, mother-in-law, grandfather, grandmother, grandson, granddaughter or brother or sister of the victim living as a single family.

- (g) "Perpetrator" means a person involved in a crime committing gross violation of human rights in the course of armed conflict and the term also includes a person giving order to commit such crime as well.
- (h) "Victim" means a person either killed or physically, mentally, sexually or economically caused injury or loss as a result of serious violation of human rights during the course of armed conflict and a member of his or her family and the term also includes the community as well which has been caused serious adverse affect in humanitarian, societal and communal manner as a result of gross violation of human rights.
- (i) "Ministry" means the Ministry of Peace and Reconstruction.
- (j) "Serious violation of human rights" means following acts carried out systematically or targeting against unarmed person or civilian population:-
 - (1) Murder
 - (2) Abduction and hostage taking
 - (3) Disappearance
 - (4) Causing deformities or disablement
 - (5) Physical or mental torture
 - (6) Rape and sexual violence
 - (7) Looting, seizure, breaking or arson of private or public property, or
 - (8) Forceful eviction from house and land or displacement by any other means, or
 - (9) Any types of inhuman act committed against international human rights or humanitarian law or other crimes against humanity.
- (k) "Act of disappearing a person" shall refer to the following acts:
 - (1) If any person arrested, detained, or taking control of by any other means by any person given the authority by law to arrest, investigate or implement a law or by a security personnel is not allowed to meet concerned persons or concerned persons are not given information as to where how and in which state he/ she is kept in after the time period as provided for in the law that such a person needed to be presented before the authority that hears the case has elapsed.
 - (2) If any person is arrested or abducted, taken control of or deprived of from his/her personal liberty in any other ways by any organization or organized or unorganized group.
- (l) "Secretary" means the secretary of the Commission.
- (m) "Member" means the member of the Commission and it also includes the Chairperson and the Secretary.
- (n) "Armed Conflict" means the armed conflict carried out between the State Party and the then Communist Party of Nepal (Maoist) from February 13, 1996 to November 21, 2007.

Chapter-2

Establishment and Formation of the Commission

3. Formation of the Commission: (1) The Government of Nepal shall form a high level Commission on Investigation of Disappeared Person, Truth and Reconciliation by publishing a notice on gazette, inter alia, for investigating the truth of incidents of gross violation of human rights and about the persons involved in these incidents during the course

of armed conflict including investigation about persons disappeared during armed conflict; creating a conducive environment for reconciliation in the society; submitting a report with recommendation on reparations for victims, and **to end state of impunity by bringing perpetrators involved in incidents relating to serious violations under the ambit of law.**

(2) The Commission shall comprise of five members including the Chairperson, **with minimum one women member.**

(3) A Recommendation Committee shall be constituted as follows to recommend for the appointment of the Chairperson and Members of the Commission:-

- (a) Person designated by the Government of Nepal from among the former chief justices -Chairperson
- (b) Chairperson of the National Human Rights Commission or a member as designated by the Chairperson of the said Commission – Member
- (c) One person nominated by the Government of Nepal from among the Human Rights Activists, Psychologists, Legal Experts, Forensic Experts, Experts on Conflict Issues, Sociologists, Women Rights Activists or persons involved in peace process -Member

(4) The Recommendation Committee as referred to in Sub-section (3) shall make recommendations for the appointment of the Chairperson and Members, with appropriate numbers of Chairperson and members on the consent of political parties in accordance with the Ordinance.

(5) Prior to make recommendation the name of Chairperson and Members by the Committee as referred to in Sub-section (3), it shall have to be made public determining the public selection procedure of them.

4. Qualification of the Chairperson and Members:

- (a) At least bachelor's degree holder from a recognized educational institution;
- (b) Not the member of any political party at the time of appointment;
- (c) Has maintained high moral character,
- (d) Has worked in the field of human rights, peace, justice or conflict management or sociology,
- (e) Has completed the age of 35.
- (f) For the Chairperson, who has already worked as the judge of the Supreme Court or worked as the chief judge of the Appellate Court or worked as a Special Class Officer of the Judicial Service of Nepal.

5. Disqualification for Chairperson and Members: Following person shall be deemed ineligible for appointment to the post of Chairperson and member:

- (a) Who is not a Nepali citizen;
- (b) Who is convicted by a court on criminal offence involving moral turpitude;
- (c) Who has been punished in offences regarding gross violation of human rights,

(d) Who has been recommended to take actions for human rights violations by the National Human Rights Commission,

6. **Term of Office:** (1) The Chairperson and Members shall remain in their respective posts till the dissolution of the Commission pursuant to Section 36.
(2) Notwithstanding anything contained in sub-section (1), the Chairperson or Member shall *ipso facto* be relieved from his/her post, if a two-thirds majority of the total members of the International Relations and Human Rights Committee of the Legislature-Parliament adopts a resolution presented before it to relieve such Chairperson or Member on charge of failing to honestly discharge positional duties, lack of working-efficiency or being involved in bad conduct.

Provided that, such an accused Chairperson or Member shall not be deprived of an opportunity to defend himself/herself.

7. **Conditions for the Vacancy of the Post:** (1) The post of Chairperson or Member shall be deemed vacant on the following conditions:

- (a) If s/he tenders resignation from his/her post to the Prime Minister;
- (b) If s/he is deemed disqualified to remain in his/her post pursuant to Section 5;
- (c) If s/he is relieved from his/her post pursuant to Sub-section (2) of Section 6;
- (d) If s/he dies.

(2) If the post of Chairperson or Member falls vacant for any reason, the vacant post shall be fulfilled by following the procedures as referred to in Section 3.

8. **Service Conditions for the Chairperson and Members :** (1) The Chairperson and Members shall be full-time working officials of the Commission.

(2) The remunerations, conditions of services and benefits of the Chairperson and Members shall be equal to those of the Chairperson and Members of the National Human Rights Commission.

(3) The condition of the service and benefits of the Chairperson and Members will be as prescribed by the Government.

9. **Meetings and Decisions of the Commission:** 1) The meeting of the Commission shall be held upon necessity.

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

3) The quorum for the meeting of the Commission shall be deemed fulfilled, if more than fifty percent of the total members of the Commission are present.

4) The meeting of the Commission shall be chaired by the Chairperson, and in his/her absence, the senior most Member amongst the Members present shall chair the meeting.

5) A decision by majority shall prevail in the meeting of the Commission; and in case of a tie, the person chairing the meeting shall cast the deciding vote.

6) The Member Secretary shall certify the decisions taken during meeting of the Commission..

- 7) The Commission may, if so desires, invite experts on matters related to the activities of the Commission as an observer to the meeting of the Commission.
- 8) Other procedures related to the meeting of the Commission shall be as determined by the Commission itself.
- 10. Member Secretary:** (1) The Government of Nepal shall appoint a civil servant working as a Special Class Officer of the Judicial Service as the secretary of the Commission.
- 11. Personnel of the Commission:** (1) the Government of Nepal shall make available personnel required for the Commission. While making available such personnel to the Commission, the Government of Nepal shall have to consult with the Commission.
 - 2) Notwithstanding anything contained in Sub-Section (1), the Commission may appoint its personnel on a contract basis if the Government of Nepal does not have the expert personnel as demanded or the Government of Nepal is unable to provide required number of personnel as demanded by the Commission.
 - 3) The functions, duties and powers, term of office, remuneration and benefits of the personnel appointed pursuant to Sub-section (2) shall be as determined by the Commission.

However, remuneration and benefits of such personnel working in the Commission will not be higher than the remuneration and benefits of the staffs of the Nepal Government working at the same level
 - 4) The personnel working with the Commission pursuant to Sub-section (1) shall receive allowance and other benefits as determined by the Commission.
- 12. Resources, Materials and Auditing of the Commission:** 1) The Government of Nepal shall make arrangements for building, materials and other resources required for the functioning of the Commission.
 - 2) Notwithstanding anything contained in Sub-section (1), the Commission may avail required materials and resources in the form of grant from native and foreign agencies or associations after taking approval of Government of Nepal, if the materials and resources provided by the Government of Nepal are not sufficient.
 - (3) The Commission shall deposit any amount obtained to it pursuant to Sub-section (1) by opening an account in any commercial bank.
 - (4) All the expenses of the Commission shall be borne from the amount deposited pursuant to Sub-section (3).
 - (5) The Commission shall have to maintain its account of income and expenditure in accordance with the format adopted by the Government of Nepal.
 - (6) Auditing of the Commission shall be made by the Auditor General.

Chapter-3

Functions, Duties and Powers of the Commission

- 13. Functions, Duties and Powers of the Commission:** 1) The functions, duties and powers of the Commission shall be as follows:

- a) To bring the real fact before public by investigating truth of the cases in relation to the event of serious violation of human rights including the disappeared persons in course of armed conflict;
 - b) To get reconciled the perpetrator and the victim;
 - c) To make recommendations in relation to the reparations to be provided to the victim or her/his family;
 - d) To recommend actions against perpetrators not chosen for granting amnesty;**
 - e) To carry out other works as mentioned in the Ordinance.
- 2) The Commission shall investigate into the matters relating to the cases of serious violation of human rights including disappeared person in course of armed conflict on the following grounds:-
- (a) If a complaint is filed in the Commission by or on behalf of the victim,
 - (b) If the Commission takes the cognizance of such matter through any source,
 - (c) If the Commission deems it appropriate to investigate into such matters.
- 3) Other provision relating to the procedure of filing complaint to the Commission pursuant to Sub-section (1) shall be as prescribed.

14. Investigation Power of the Commission :

- (1) The Commission may, while carrying out the investigation pursuant to Section 13, exercise the same powers as conferred to the courts in accordance to the prevalent laws:
- (a) To obtain information or record testimonies by making someone present before the Commission,
 - (b) To summon witnesses and record testimonies,
 - (c) To pass orders for the submission of any document or paper,
 - (d) To avail any document or a copy thereof from any government or public office or the court,
Provided that, the approval should be taken from the concerned court while making available such document from the court
 - (e) To examine evidences,
 - (f) To carry out or direct others carry out the on-the-spot inspections or pass an order for the submission of evidences.
- (2) The Commission may, if it deems appropriate, prescribe a reasonable time period for summoning or submission of any document, paper, material or evidence pursuant to Sub-section (1).
- (3) The Commission, while carrying out the investigation pursuant to this Ordinance, may, without giving any notice, carry out or direct others to carry out the search operation of particular individual or a specific location if the Commission is convinced of the fact that any object or document is in possession of anyone or is in a specific location, and seize or direct others to seize the objects or document or obtain the whole or partial duplicate copy of such document.
- (4) If the investigation is to be carried out pursuant to this Ordinance against any person bearing public office, and if there is a possibility of loss of evidences if such person is allowed to continue in her/his post, the Commission may write in to the concerned authority to suspend her/him, and the authority concerned shall have to suspend her/him as according to the laws relating to her/his service terms and if

there is no such particular mention, the person shall have to be suspended for a maximum period of three months.

- (5) If the Commission is convinced to the fact that a disappeared person has already been killed and the dead body has been buried in a particular place, the Commission may ascertain the reality by carrying out the exhumation of such places,
- (6) If the Commission finds the dead body or human remains of a person while carrying out exhumation Pursuant to Sub- Section 5, the Commission shall as far as possible handover the dead body or human remains to the closest family member of the deceased person.
- (7) Other arrangements relating to the investigation of the complaints and information received by the Commission shall be as prescribed.

15. Support to be rendered in Commission's Work: (1) It shall be the duty of the concerned person, institution or agency to furnish the documents, papers, materials or evidences as ordered by the Commission pursuant to Section 14, and/or to furnish information, testimony or statements by being present in person at the Commission.

- (2) It shall be the duty of the local administration to give support to the Commission if the Commission, during the course of carrying out the investigation pursuant to this Ordinance, asks for the cooperation of the local administration to search any place or present any person before the Commission.
- (3) If a person, institution or agency that has the duty pursuant to Sub-Clauses (1) or (2) fails to render support in the work of the Commission, the Commission may impose a fine up to fifteen thousand rupees on each instance to such person, or the chief of such institution or agency.
- (4) In case a person that has a duty pursuant to Sub-section (1) or (2) being an office bearer or an employee of any government agency or public corporation, the Commission may forward in writing to the concerned agency to take departmental action or to take other necessary actions in accordance with the existing laws against such office bearer or employee on charge of failing to assume positional responsibilities.
- (5) If anyone causes hindrances to the smooth functioning of the Commission, the Commission may impose a fine up to fifteen thousand rupees for each instance of hindrance to such person.

16. May take action for contempt: (1) The Commission may take action for its contempt. While taking action thus, the Commission may impose a fine up to fifteen thousand rupees or imprisonment up to three months or both the punishment, if it concludes that its contempt has been committed.

- (2) Notwithstanding anything contained in Sub-Section (1), if the accused person or body apologizes to the satisfaction of the Commission, the Commission may forgive him or may, if the punishment has already been given, waive or commute it or may issue orders to not execute orders if the conditions put forth by the Commission by putting on hold the punishment are observed.

17. Protection of Witness and Other Persons:

- (1) If a person, victim or her/his family member who comes in the Commission to record testimony, statement or provide information requests the Commission for her/his security, the Commission shall make appropriate arrangements for the security of such person if the Commission, upon inquiry, reaches to the conclusion that the security is to be provided to such person.

- (2) If any employee of government agency or security personnel being on charge thereof informs to become unable to record her/his testimony, statement or provide information to the commission due to security reason, the Commission may forward in writing to the concerned agency to transfer his post to the place where appropriate to transfer her/his position, and if such writing is forwarded, the agency also should transfer the position of such employee to other agency.
- (3) The Commission may seek necessary assistance from the Government of Nepal for providing the security to any person pursuant to Sub-section (1).
- (4) No legal suit or action shall be initiated against any person merely on the ground that such person recorded her/his testimonies or statements or provided the information to the Commission.
- (5) If anyone, who comes in the Commission to record her/his testimony, statement or provide information, makes a request for a refund of the actual expenditure incurred on the traveling to and from the Commission-, food and accommodation; the Commission may provide reasonable expenses to such person.
- (6) The Commission shall keep the name of such persons who provide notice, information or evidence to the Commission but want wish to have confidentiality maintained over their names, confidential.
- (7) In the events that women or children are to be summoned before the Commission for obtaining information or recording testimony or statement, the Commission shall make special arrangements for ensuring their dignity and security
- (8) Any provisions related to protection of security, mental and physical wellbeing, confidentiality and dignity of the persons supporting the work of the Commission shall be as prescribed.

18. Public Hearing may be Made: (1) The Commission may, if it deems necessary to find truth and facts on matters relating to serious violation of human rights, carry out public hearings.

(2) The methods and processes for carrying out public hearing shall be as determined by the Commission.

19. Activities of the Commission to be Open and Transparent: (1) The Commission shall carry out its activities in an open and transparent manner.

(2) Notwithstanding anything contained in Sub-section (1), such activities that are likely to have adverse impact on dignity or security of any person or to jeopardize law and order or to have adverse impact on the process of inquiry and investigation may be carried out in a confidential manner;

(3) The Commission may, for the information of general public including the victims, publicize details relating to its activities from time to time

20. Independence and Impartiality to be Maintained: (1) The Commission shall perform its activities in an independent and impartial manner.

(2) The Commission shall not function by being biases or having affection or malafide intention to anyone.

(3) The Commission shall, while carrying out its activities, abide by the universally accepted principles of justice and human rights.

(4) A Member shall not be involved in inquiry and proceedings relating to such a person, who is either a relative of such Member or is directly related to any transactions with such Member.

21. **Complaint may be De-listed:** If any complaint or information is found baseless during the course of inquiry or if it cannot be implemented, the Commission may de-list such complaint by assigning reasons thereto.

Provided that the Commission may inquire into such complaint if it receives evidence requiring proceedings of the complaint later.

22. **Reconciliation may be Made:** (1) If a perpetrator or a victim files an application to the Commission for reconciliation, the Commission may reconcile mutually between them.

However, if there is not filed such application from victim or perpetrator, no restriction shall be deemed to have restricted the commission from undertaking reconciliation

- (2) The Commission may, in relation to making reconciliation pursuant to Sub-section (1), ask the perpetrator to make an apology with the victim by regretting for his/her past misdeeds.
- (3) The Commission may, in relation to making reconciliation pursuant to Sub-section (1), make the perpetrator provide reasonable compensation for damages caused to the victim
- (4) The Commission may in relation to making reconciliation pursuant to Sub-section (1), carry out or cause to be carried out the following activities in order to motivate the victim and the perpetrator:
- (a) To organize reconciliation functions in the conflict-ravaged areas by involving perpetrators and victims and their families,
 - (b) To make arrangements of erection of statutes or memorials in memory of those who were killed during the armed conflict with the involvement of the perpetrator and victim and his/her family;
 - (c) To make publication of various articles, essays, songs, arts, etc. relating to reconciliation;
 - (d) To increase social and societal harmony;
 - (e) To carry out other appropriate tasks.
- (5) **Prior to making reconciliation between victim and perpetrator pursuant to this Section, the Commission may seek necessary consent from victim.**
- (6) In case of victim being killed or being a minor or a mentally impaired person, the Commission may make reconciliation in accordance with this Section with family-members of the victim and the perpetrator.

23. **Provision regarding amnesty:** 1) While carrying out investigation pursuant to the ordinance, the Commission may, if deemed reasonable for amnesty to perpetrator, make recommendation to the Government of Nepal explaining sufficient grounds and reasons thereof.

2) Notwithstanding anything contained in Sub Section (1), serious crimes which lack sufficient reasons and grounds for granting amnesty following the investigation of

the Commission, including rape, shall not be recommended for amnesty by the Commission.

- 3) Prior to making recommendation by the Commission pursuant to Sub-section (1), such person shall be required to submit an application in writing for amnesty to the Commission by repenting for the misdeeds carried out by oneself during the armed conflict to the satisfaction of the victim within a time period as prescribed by the Commission.
- 4) In case of application for amnesty pursuant to Sub-section (2), the Commission may, prior to decide in relation to make recommendation or not for amnesty to such person, consult the victim as per need in such matter.
- 5) Prior to submit an application for amnesty pursuant to Sub-section (2), the applicant shall have to express the details of the truth and facts to the full extent of his/her knowledge in relation to activities conducted by him/her during the course of armed conflict and also the Commission shall have to document such details.
- 6) The bases and criteria to be adopted while making recommendation pursuant to Sub-section (1) shall be as prescribed.
- 7) The name of such person, who is granted amnesty by the Government of Nepal upon the recommendation of the Commission pursuant to Sub-section (1), shall be published in the Nepal Gazette.

24. Recommend for Reparation : (1) The Commission shall make recommendations to the Government of Nepal to provide any type of compensation, to provide restitution or rehabilitation or any other appropriate arrangement, as per necessity, to the victim through inquiry and investigation carried out in accordance with this ordinance.

- 2) Notwithstanding anything contained in Sub-section (1), the Commission may, if it deems appropriate, make recommendations to the Government of Nepal to provide facilities or concessions to victim or as per situation, any member of his/her family as follows:
 - (a) Free education and health-care facilities;
 - (b) Skill-oriented training;
 - (c) Loan facilities without or with concessional interests;
 - (d) Arrangements of habitation;
 - (e) Employment facilities;
 - (f) Other measures, facilities or concessions as deemed appropriate by the Commission.
- 3) While making recommendation in relation to the basis and criteria for determining relief, compensation, facilities or concession to be made available, the interest or demand of the victim or her/his family also shall be taken into consideration.
- 4) The basis and criteria for determining relief, compensation, facilities or concession to be made available pursuant to Sub-section (1) or (2) shall be as prescribed.

- 5) No victim shall be barred from the facilities to be made available to him/her pursuant to this Section only because he/she has been provided compensation from the perpetrator or the Commission has recommended for amnesty to the perpetrator or the perpetrator of the victim has not been identified.
- 6) The relief, compensation, facilities or concession in the form of reparations to be received by the victim pursuant to Sub-section (1) or (2) shall be received by his/her closest family-member in case of the death of the victim.

25. May Recommend for Action: 1) While carrying out investigation pursuant to this Ordinance, the Commission may recommend for action, as per the existing laws, to perpetrators not designated for amnesty pursuant to Section 23.

- 2) While recommending for action pursuant to Sub-section (1), the Commission shall do so through the report to be submitted pursuant to Section 27.
- 3) Notwithstanding anything contained in Sub-section (2), the Commission may correspond to the Office of the Attorney General to prosecute perpetrators not designated for amnesty prior to submission of the report pursuant to Section 27(1).

26. Land cause to be returned: While carrying out investigation in accordance with the Ordinance, if it is found the property of any victim has been seized or confiscated, the commission may cause to return such seized or confiscated property from the concerned person.

27. Report to be Submitted: (1) The Commission shall submit its Report, by mentioning details on following matters, to the Government of Nepal after the completion of its inquiry pursuant to this Ordinance:

- a) Details relating to the complaints inquired and investigated and de-listed by the Commission;
- b) Details relating to actual truth and fact found as a result of inquiry and investigation;
- c) Details relating to reconciliation made between victim and perpetrator pursuant to Section 22;
- d) Matters relating to recommendations to the Government of Nepal for necessary action pursuant to Sections 23 and 24;
- e) Root causes of the internal armed conflict, matters related to reforming policy, legal, organizational, administrative and practical issues for non-repetition of such incidents in future;
- (g) Matters relating to formulation of any law, if deemed necessary for the implementation of the Report;
- (h) Measures to be adopted forthwith and in future by the Government of Nepal in order to promoting human rights, strengthening justice system and creating an environment for reconciliation in the society;
- (i) Other matters deemed appropriate by the Commission.

- (2) Notwithstanding anything contained in Sub-section (1), the Commission may from time to time, make interim reports to the Government of Nepal on matters investigated by the Commission in pursuant to this Ordinance.
- (3) The Government of Nepal shall present the Report received within two months pursuant to Sub-section (1) to the Legislature-Parliament.

Chapter-4

Implementation and Monitoring of the Report

- 28. Responsibility to Implement the Report:** (1) The responsibility to implement or cause to be implemented the recommendations made in the Report submitted by the Commission pursuant to Section 25 shall lie with the Ministry.
- a. In order to implement the recommendation, among them the following recommendations, made in the Report of the Commission, the Ministry shall carry out the acts as follows:
 - (a) To forward in writing to the Council of Ministers of the Government of Nepal in order to implement the recommendations as mentioned in Section 23;
 - (b) To implement or cause to be implemented by the Commission itself or through other concerned agencies with the approval of the Council of Ministers, the Government of Nepal in order to implement the recommendations as mentioned in Section 24;
 - (c) To correspond to the Office of the Attorney General pursuant to Section 29 in order to implement the recommendations as referred in Section 25.**
 - (c) To take steps to formulate necessary laws, if it is deemed necessary to formulate laws to implement the recommendations made in the report;
 - (d) To carry out or cause to be carried out other acts that are deemed appropriate for the implementation of the Report of the Commission.
 - (3) The Ministry shall implement the recommendations as mentioned in Clauses (e), (f) and (g) of Sub-section (1) of Section 26 in an orderly manner by assigning priority to them.
- 29. Provisions relating to filing cases:** (1) The Attorney General or a Public Prosecutor designated by him shall, after necessary investigation, decide on the matter whether a case can be prosecuted or not against any person, if the Commission itself or the Ministry writes to it based on the report of the Commission to initiate a case against any persons who were found guilty on allegation of serious human rights violations.
- (2) The Attorney General or a Public Prosecutor, while deciding on the matter whether a case can be prosecuted or not pursuant to Sub-clause (1), should state the ground and reason thereof.
 - (3) The Public Prosecutor shall have to initiate a case against such person in such court wherein the Government of Nepal, upon publishing a notice on Nepal Gazette, notifies it; if a decision, after the necessary investigation pursuant to Sub-Clause (1), is reached to initiate a case against such person.

(4) If the Attorney General of a Public Prosecutor designated by him decides to prosecute pursuant to Sub-section (1), Case can be filed within 35 days of such decision notwithstanding anything contained in any other existing law.

30. Monitoring of the Report submitted by the Commission: (1) The National Human Rights Commission shall monitor the implementation of the recommendations made in the Report.

(2) The National Human Rights Commission may, if it is found while carrying out monitoring pursuant to Sub-section (1), that the Ministry has failed to implement or cause to be implemented the recommendations made in the Report of the Commission, draw the attention of the Ministry to implement such recommendations and the Ministry shall implement or cause to be implemented such matters drawn attention as soon as possible.

Chapter-5

Miscellaneous

31. Sub-committees or Task Forces may be Formed: (1) The Commission may, in order to function its activities smoothly, form various sub-committees or task forces by incorporating experts of concerned field as per necessity

(2) The functions, duties and powers; term of office of sub-committees or task forces formed pursuant to Sub-section (1); the benefits to be received by the members of such sub-committees or task forces and other provisions shall be as determined by the Commission.

32. Service of Experts may be Procured: (1) The Commission may, for the accomplishment of tasks in accordance with this Ordinance, procure services of native or foreign experts or specialized agencies of concerned field, as per necessity.

(2) The appointment; functions, duties and powers; conditions of services and benefits of the experts or specialized agencies providing services as referred to in Sub-section (1) shall be as prescribed by the Commission.

(3) Notwithstanding anything contained in existing laws, the concerned agency or association shall provide services as demanded by the Commission, if the Commission deems necessary to acquire service of such agency or association.

33. No Hindrance may be Occurred: There shall be no hindrance to carry out its activities by the Commission merely on the ground of any post of the Member being vacant.

34. Delegation of Power: (1) The Commission may, as per necessity, delegate some of its powers conferred to it by this Ordinance, to the Chairperson, Member Secretary or sub-committee or task force formed pursuant to Section 30.

(2) Notwithstanding anything contained in Sub-section (1), the power vested in the Commission in relation to reconciliation, reparation or recommendation for amnesty shall not be delegated.

35. Term of Office of the Commission: (1) The term of office of the Commission shall be of two years effective from the date of its formation.

- 36. Dissolution of the Commission:** (1) If the Commission accomplishes its tasks pursuant to this Ordinance, or if the term of office of the Commission is over pursuant to Section 34, the commission shall dissolve.
- (2) If a two-third majority of the total members of the Legislature-Parliament makes recommendation for its dissolution, the government of Nepal may dissolve the Commission.
- (3) All the assets and liabilities of the Commission shall be transferred to the Ministry if the Commission is dissolved pursuant to Sub-section (1) and (2) of this section.
- (4) If the Commission is dissolved pursuant to Sub-section (1), the Commission shall have to submit the archives under its responsibility to the Ministry.
- (5) The employees working with the Commission shall return to their previous offices and the employees appointed on a contract basis shall *ipso facto* be relieved from their respective posts, if the Commission is dissolved pursuant to Sub-section (1) and (2).
- 37. Oath of Office:** The Chairperson shall take the oath of office with the Chief Justice and member with the Chairperson in a format as prescribed in the Annex prior to the assumption of their duties.
- 38. Power to remove difficulties:** (1) If any difficulties arise in the course of implementation of this Ordinance, the Government of Nepal in consultation with the Commission may issue an order to remove the difficulties by publicizing notification in Nepal Gazette.
- (2) The Government of Nepal shall, the order issued pursuant to Sub-section (1), present to the Legislature-Parliament held forthwith.
- 39. Liaison with the Government of Nepal:** The Commission shall liaise with the Government of Nepal through the Ministry
- 40. Power to Frame Rules:** The Commission may frame necessary Rules for implementing the objectives of this Ordinance.