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

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

ı	Т	T	
	protect	philosophical	
	human	basis of the act.	
	rights.	(2) Constituent	
	<u>Principle</u>	Assembly has	
	Guarantee of the	taken away the	
	independence of	achievements	
	national human	received in 1997	
	rights institution	Act. It has	
		refrained from	
		following Paris	
		Principles.	
		(3) Without the	
		guarantee of	
		institutional	
		independence	
		and autonomy,	
		the Commission	
		loses its ability to	
		promote and	
		protect human	
		rights.	
		(4) The Commission	
		failing to have	
		guarantees of	
		independence	
		_	
		3	
		can lose its	
		ability to monitor	
		whether parties	
		in conflict (both	
		state and non-	
		state) have	

			followed	
			Common Article	
			0 01 0.0110.01	
			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.	
Section 4(2)	<u>Preamble</u>	<u>Principle</u>	(1) Section 4(2) of	Provisions of the
The Commission	Mention of	Competence and	the Commission	1997 Act should
shall be	"independent	Responsibilities	Act 2012 has	be reinstalled
independent and	and	(1) A national	only provided for	The Commission
autonomous in	autonomous	institution	functional	should be an
fulfilling the	human rights	shall be	independence	independent and
work of ensuring	Commission"	vested	and autonomy.	autonomous
respect,		with	Due to this, it is	institution with
protection and		competenc	clear that	perpetual
promotion of		e to	institutional	succession.
human rights.		promote	independence	
8		and	and autonomy	
		protect	has been taken	
		human	away.	
		rights.	(2) Achievements	
		Principle	received in 1997	
		Guarantee of the	Act have been	

national human	has refrained	
rights institution	from following	
rights mstitution	Paris Principles.	
	-	
	()	
	guarantee of	
	institutional	
	independence	
	and autonomy,	
	the Commission	
	loses its ability to	
	promote and	
	protect human	
	rights.	
	(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	

			with child soldiers) and international organizations have to be called to carry out this duty.	
National	Human	Paris Principles	Comments	Recommendations
Human Rights	Rights			
Commission	Commission			
Act 2012	Act 1997	D	(4) (1)	D 11 C 1
No provision	Section 3	<u>Principle</u>	(1) Contrary to the	Provisions of the
(1)0n whether	(5)The	Competence and	achievements	1997 Act should
the Commission	Commission	Responsibilities	received in 1997	be reinstalled
would have	shall be a	(1) A national	Act and guidance of Paris	(5)The Commission
perpetual	body with	institution shall be		shall be a body with
succession or not.	perpetual succession.	vested	Principles, Commission Act	perpetual succession.
(2) On whether	(7) The	with	2012 has	(7) The
the Commission	Commission	competenc	deprived it of all	Commission may,
may, like an	may, like an	e to	attributes of an	like an individual,
individual,	individual,	promote	institution with	acquire, use, sell,
acquire, use, sell,	acquire, use,	and	perpetual	dispose of
dispose of	sell, dispose	protect	succession.	or otherwise deal
or otherwise	of	human	(2) Has backed down	with movable,
deal with	or otherwise	rights.	from the	immovable
movable,	deal with	<u>Principle</u>	guarantees of the	property.
immovable	movable,	Guarantee of the	Commission	(8) The
property.	immovable	independence of	having its own	Commission may,
(3) On whether	property.	national human	physical	like an individual,
the Commission		rights institution	infrastructure,	sue and be sued in
may, like an			property, funds	its own
individual, sue		(2) The	and employees.	name.

and be sued in		national	(3) The	
its own		institution	Commission's	
name.	(8) The	shall have	independence	
	Commission	an	and autonomy in	
	may, like an	infrastruct	filing and	
	individual,	ure which	defending cases,	
	sue and be	is suited to	and defending	
	sued in its	the	itself without	
	own	smooth	going via the	
	name.	conduct of	Attorney	
		its	General's Office	
		activities,	or without any	
		in	kind of	
		particular	involvement of	
		adequate	that office.	
		funding.	(4) The new act has	
		The	deprived the	
		purpose of	Commission of	
		this	its powers to file	
		funding	cases at the court	
		should be	if its	
		to enable	recommendation	
		it to have	s are not	
		its own	implemented.	
		staff and	(5) Without the	
		premises,	guarantee of	
		in order to	institutional	
		be	independence	
		independe	and autonomy,	
		nt of the	the Commission	
		Governme	loses its ability to	
		nt and not	promote and	
		be subject	protect human	

Section 29 The Commission may bring into use a separate logo apart from the Coat-of-Arms of the State.	Section 3(6) The Commission shall have a separate seal of its own.	to financial control which might affect its independe nce. Principle Competence and Responsibilities (1) A national institution shall be vested with competence e to promote and protect human rights. Principle Guarantee of the independence of national human rights institution	rights. (1) If the Commission uses coat-of-arms of the State, it cannot credibly claim of its independence of the state. (2) Especially nonstate actors can obstruct the Commission's works during internal conflict. It can affect the Commission's competence to protect human rights.	Provisions of the 1997 Act should be reinstalled The Commission shall have a separate seal of its own.
Section 25 The remunerations, conditions	Section 7 The remuneration, facilities and	Principle Competence and Responsibilities (1) A national	(1) Achievements received in 1997 Act have been taken away in	Provisions of the 1997 Act should be reinstalled The remuneration,

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 of time commencement of this Act.

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 Iudges of the Supreme Court are entitled.

institution shall be vested with competenc e to promote and protect human rights.

Principle

Guarantee of the

independence of national human rights institution. (2)The national institution shall have an infrastructure which is suited to smooth the conduct its of 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

- that the Commission's status has been demoted. This can bear negative effects in protection of human rights.
- (2) The new act can refuse to appoint as commissioner a person who has been the chief iustice or iustice in the Supreme Court which can the belittle constitutional provision.
- (3) The provision regarding the appointment of the chairperson and the secretary is in contravention with Article 131(1) of the Interim Constitution.
- (4) Demotion of status can

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.

		independent of	negatively affect	
		the Government	the	
		and not be	independence of	
		subject to	the Commission.	
		financial control	(5) The state	
		which might	exercises	
		affect its	financial control	
		independence.	over the	
			Commission if it	
			sets	
			remuneration	
			and facilities.	
National	Human	Paris Principles	Comments	Recommendations
Human Rights	Rights	•		
Commission	Commission			
Act 2012	Act 1997			
Section 20 (1)	Section 15	Principle	(1) Achievements	Provisions of the
(The	(1) The	Competence and	regarding	1997 Act should
Commission may	Commission	Responsibilities	financial	be reinstalled
maintain	may obtain	(1)A national	independence	(1) The
necessary	such means	institution shall	received in 1997	Commission may
contact and	and	be vested with	Act have been	obtain such means
relation	resources	competence to	taken away. It	and
with the national	from different	promote and	has refrained	resources from
and	agencies by	protect human	from following	different agencies
international	way of grants	rights.	Paris Principles.	by way of grants as
organizations	as are	<u>Principle</u>	(2) Lack of financial	are required for the
related with	required for	Guarantee of the	independence	performance of its
protection and	the	independence of	can bear negative	functions.
promotion of	performance	national human	effective in	(2) The
human rights	of its	rights institution	protection of	Commission may
and enter into	functions.	(2)The national	human rights.	receive financial
	(2) The	institution shall	(3) The Commission	assistance with a

them in order to Commission has now to limit view to enable have an exchange may receive infrastructure expenditure itself to carry out its budget the functions cooperation). financial which is suited to to the Commission allocation assistance mentioned in the smooth approved by the shall have to with a view to conduct of Section 9. its seek approval enable activities. in government; (3) The amount of from the Finance itself to carry particular any event financial assistance adequate funding. Ministry with out the emergency arises received pursuant The purpose of to Sub-section (2) regards to such functions that is not mentioned in mentioned in the shall be expended agreement. this funding should in accordance with budget, Section 9. be to the (3) The enable it to have Commission has the terms agreed upon between the amount of its own staff and to request the financial donor premises, government for in agency and the assistance order to be it: the independent of received Commission has Commission. (4) The the Government lost pursuant to even its and **Sub-section** not be powers to issue a Commission shall check (2)subject maintain accounts to for shall be financial control expenditure of its income and in which accordance with expended in might expenditure accordance affect allocated and other relevant its the with the independence. budget. records in terms agreed (4) It has stopped accordance with upon between the Commission the prevailing law. the donor from entering agreement agency and into the with donors and expending Commission. the (4) The grants provided Commission bv donor shall maintain agencies. accounts of its

	income and expenditure and other relevant records in accordance with the prevailing			
	law.	_		
<u>Lack</u> of	<u>Section</u>	<u>Principle</u>	(1) There is the lack	Provisions of the
provision	<u>18(1)</u>	Competence and	of a provision of	1997 Act should
The Commission	The	Responsibilities	Commission	be reinstalled
cannot appoint	Commission	(1)A national	appointing its	The Secretary shall
its own	may appoint	institution shall	own employees.	be appointed by the
employees.	employees	be vested with	It seems to be	President as
	as may be	competence to	heading towards	recommended by
	required to	promote and	seeking policy	the Commission.
	carry out its	protect human	approval of	
	functions, and	rights.	Ministry of	
	the service, terms and	Principle	General	
	facilities	Guarantee of the	Administration	
	of the	independence of national human	for appointing	
	employees so	rights institution	employees. (2) The government	
	appointed	(2) The national	sends employees	
	shall be as	institution shall	for the	
	prescribed.	have an	Commission and	
	preserioeu.	infrastructure	it influences	
		which is suited to	them which can	
		the smooth	negatively affect	
		conduct of its	the	
		activities, in	Commission's	
		particular	functional and	

adequate funding. institutional The purpose of independence this and autonomy. funding should be (3) The credibility of to enable it to have Commission's its own staff and employees appointed by the premises, in order to government be independent of harmed. the Government (4) The Commission and not be influenced by the state can lose its subject to financial control ability to monitor which might whether parties affect in conflict (both its independence. state and nonstate) have followed Common Article of Geneva Conventions and Child Rights Convention and **Optional** Protocol (dealing with child soldiers) and international organizations have to be called to carry out this duty. (5) It can affect the

			0 1 1	
			Commission's	
			competence to	
			protect human	
			rights.	
Section 26	Section 16	<u>Principle</u>	(1) The	Provisions of the
The Commission	The	Competence and	Commission's	1997 Act should
may establish its	Commission	<u>Responsibilities</u>	credibility would	be reinstalled
regional, sub-	may when	(1)A national	be lost if Ministry	The Commission
regional or	necessary set	institution shall	of Finance	may when
liaison offices as	up	be vested with	interferes with	necessary set up
it requires in	branch offices	competence to	the	branch offices in
consultation	in different	promote and	establishment of	different places of
with the	places of	protect human	branch offices.	Nepal.
Ministry of	Nepal.	rights.	(2) The Commission	•
Finance.	•	Principle	influenced by the	
		Guarantee of the	state can lose its	
		independence of	ability to monitor	
		national human	whether parties	
		rights institution	in conflict (both	
		(2)The national	state and non-	
		institution shall	state) have	
		have an	followed	
		infrastructure	Common Article	
		which is suited to	3 of Geneva	
		the smooth	Conventions and	
		conduct of its	Child Rights	
		activities, in	Convention and	
		particular	its Optional	
		adequate funding.	Protocol (dealing	
		The purpose of	with child	
		this funding	soldiers) and	
		should be to	international	
		enable it to have	organizations	

		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.	
National Human Rights Commission Act 2012	Human Rights Commission Act 1997	Paris Principles	Comments	Recommendations
Section 27	No such	<u>Principle</u>	(1) The	Section 26 (2) of
The Government of Nepal shall, on the recommendation of the Commission, approve the organizational structure of the Commission and posts.	provision	Competence and Responsibilities (1)A national institution shall be vested with competence to promote and protect human rights. Principle Guarantee of the independence of national human rights institution	Commission's credibility would be lost if Ministry of Finance interferes with the establishmen t of branch offices. (2) The Commission influenced by the state can	the Commission Act 2012 should provide for "the Commission should itself approve its organizational structure and posts".
		(2)The national institution shall	lose its ability to monitor	

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

organization **Responsibilities** government, carry out of the Commission Act 2012 that wants to conduct (1)Anational administrative institution shall states, " If any regulation programmes and on the be vested with of foreign monitoring its protection and competence cooperating institutions. organization wants to promotion of promote and This proves the to conduct human rights in protect human Commission having programmes Nepal, such an rights. on the protection egual status with 2(e) To cooperate government body. and promotion of organization shall have with the United (2) It can affect the human rights in seek consent of Nations and any Commission's Nepal, such an the Commission. other competence to protect organization shall have to seek organization human rights. Since consent of the the United (3) it can the Commission." Nations system, discourage civil regional society, it contravenes the institutions with Article 132(2)(d) and of the national the Interim institutions of Constitution. other countries that are competent in the of areas the protection and promotion of human rights. **Principle** 3(g) ... develop relations with the nongovernmental organizations devoted to

		promoting and protecting human rights, to economic and social development		
National	Human	Paris Principles	Comments	Recommendations
Human Rights	Rights	i ai is i i ilicipies	Comments	Recommendations
Commission	Commission			
Act 2012	Act 1997			
Section 10(5)	No such	<u>Principle</u>	(1)The provision of	No statute of
Complaints	<u>provision</u>	Competence and	statute of limitation of	limitation should be
regarding the	_	Responsibilities	six months for lodging	imposed in lodging
incidents of		(1)A national	the incident has reduced	an incident of
human rights		institution shall	jurisdiction of the	human rights
violation or its		be vested with	Commission and shrunk	violation. However,
abetment shall		competence to	its ability to protect	a directive
have to be		promote and	human rights. The	provision of not
lodged at the		protect human	institution's real	allowing for
Commission		rights.	independence cannot be	unreasonable delay
within Six			maintained without its	in lodging a
months from the			competence.	complaint can be
date on which			(2) This is a step more	incorporated.
the incident took			backwards than the	
place or			provision of statute of	
within Six			limitation in other	
months from the			prevailing laws.	
date on which a			(3) This provision	
person, under			contravenes with Paris	
control of			Principles and even	
someone else,			with Article 132(1) and	
got released and			(2) (a) of the Interim	

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

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