

NEPAL :

Comments and Suggestions on
draft Bill made for making provisions
relating to Truth and Reconciliation
Commission



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draft Bill made for making provisions relating to
Truth and Reconciliation Commission

Government-formed task force has recently made the Truth and Reconciliation Bill public. Expecting it would be a help for all the concerned parties and general public, and for the establishment of independent, impartial and effective Commission, following comments and suggestions on the Bill are put forward. The text of the draft bill was extracted from the official website of Ministry of Peace and Reconstruction (www.peace.gov.np).

Some Crucial Issues		
Provision	Comments	Needs to be done
Overall Bill and its various provisions	International standards and practices are not adhered to while drafting the Bill	The Bill should be finalized after several amendments based on the human rights related UN laws, resolutions and declarations, Geneva Convention, International Humanitarian Laws and other established norms and practices.
	Bill is prepared without any consultation with victims and other concerned persons & organizations	It should be finalized after extensive discussion and consultation with the victims and concerned parties all over the country and on the basis of their feedback
	While looking into the Bill, we can assume that the Commission will be established under Peace and Reconstruction Ministry. There are provisions which suggest that Commission would be only a part of the Ministry.	As the Commission being established by an Act, it should be an independent entity. Its recommendations, decisions etc should be communicated with Nepal Government. For this, a clear provision should be mentioned. Function of Ministry and Commission and their relation should be clarified.
	Bill has not encompassed the rights of the victims.	Bill should be victim-focused. Victims' leadership should be ensured for their rights, mainly their participation, involvement, decision making and in overall processes.
	The Bill shows that that the Commission is being establish to pardon the offenders.	Stress should be on addressing victims' issues and justice. Gross human rights violation, war crimes and crime against humanity should be investigated and the findings made public, providing justice to victim and facilitating for reconciliation with the consensus of the victims.
		Before passing the Truth and Reconciliation Commission Bill, effective retrospective laws (like Impunity Act) and Victims' Reparation Act should be introduced which should also include issues on pardon, ways of reparation and its standards.

Section-wise comments and suggestions on the Bill

Section	Provision	Comments	Required Provision
Preamble	Whereas it is expedient to establish an independent and impartial Truth and Reconciliation Commission to bring the actual facts to the public by investigating the truth on persons involved in gross violation of human rights and crimes against humanity during the course of armed conflict;	Clear definition of "gross violation of human rights" is not given. "War crime" is not mentioned anywhere.	"To bring the fact to the public after finding truth about the incidents violating international human rights and humanitarian laws during the conflict and involved persons in those incidents" should also be included and all provisions should be changed accordingly. "War Crime" should also be added and included in other provisions too.

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	To bring impunity to an end by bringing the persons involved in gross violation of human rights and crimes against humanity by bringing them within the confinements of law and also to make all aware that such acts would be punishable in future too;	Issue of justice is ignored and Bill is prepared only with future violations in mind	Phrase "Justice will be guaranteed" should be added. Addressing the past violations should be the aim of the Bill.
	To demonstrate a justifiable conduct by the State by making arrangements for compensations in the form of reparations to the victims of armed conflict; and	Issue of Reparation is ignored. Compensation is only a part of reparation.	"To guarantee truth, justice, compensation, rehabilitation, satisfaction and no repetition of such incidents by the state" should be included.
	To create an environment of conciliation in the society by enhancing mutual good wishes, tolerance and fraternity among the victims, perpetrators and their families;		
Chapter- 1 Preliminary			
1. Short Title and Commencement:	(1) This Act may be cited as the "Truth and Reconciliation Act, 2064(2007)".		
	(2) This Act shall come into force on the forty-fifth day of its certification.		
2. Definitions:	<p>Unless the subject or the context otherwise requires, in this Act:</p> <p>(a) "Commission" means the Truth and Reconciliation Commission established pursuant to Section 3.</p> <p>(b) "Chairperson" means the Chairperson of the Commission.</p> <p>(c) "Member" means the member of the Commission and the word also includes the Chairperson.</p> <p>(d) "Secretary" means the secretary of the Commission.</p> <p>(e) "Armed Conflict" means the armed conflict carried out between the government and the C.P.N. (Maoist) from February 13, 1996 to November 21, 2007.</p> <p>(f) "Victim" means a person either killed or physically, mentally or economically injured as a result of incidents related to gross violation of human rights or crimes against humanity during the course of armed conflict.</p> <p>(g) "Perpetrator" means a person involved in gross violation of human rights or crime against humanity.</p>		<p>In the definition of the victim (s), civilian victims not directly involved in the conflict should be mentioned with priority.</p> <p>Likewise, terminologies like violation of human rights and humanitarian laws, crime against humanity and war crimes should be defined clearly.</p>

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	<p>(h) "Family" means husband, wife, son, daughter, father, mother father-in-law, mother-in-law, grand father, grand mother, grandson, grand daughter or brother or sister of the victim living as a single family.</p> <p>(i) "Complaint" means an application also.</p> <p>(j) "Ministry" means the Ministry of Peace and Reconstruction.</p> <p>(k) "Fund" means the Reconciliation and Peace Building Fund established pursuant to Section 29.</p> <p>(l) "Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules framed under this Act.</p>		
Chapter- 2 Establishment and Formation of the Commission			
3. Establishment of the Commission:	<p>(1) The Truth and Reconciliation Commission is hereby established for, <i>inter alia</i>, investigation of facts about persons involved in gross violation of human rights and crimes against humanity during the course of armed conflict and establishment of an environment of reconciliation in the society.</p>	<p>This provision leads only to reconciliation.</p> <p>It is not in the spirit of Preamble's 'To bring impunity to an end by bringing the persons involved in gross violation of human rights and crimes against humanity'</p>	<p>Prosecution of those involved in gross human rights violation should be TRC's top priority. Procedure for prosecution of those involved in crime against humanity and war crimes should be guaranteed. Issues of victim reparation should also be mentioned.</p>
	<p>(2) The central office of the Commission shall be located in Kathmandu valley and the Commission may, as per necessity, establish its offices at different places in Nepal.</p>		
4. Formation of the Commission:	<p>(1) The Commission shall consist of not more than seven members including the Chairperson.</p>		
	<p>(2) The Government of Nepal shall, with consensus of the political parties having representation in the Legislature-Parliament, constitute a three-member committee to make recommendations for the appointment of the Chairperson and Members; and the Government of Nepal shall, upon the recommendation of such committee, may appoint the Chairperson and Members.</p>	<p>The committee, to be set up to recommend chairperson and members is going to be a political one which would be focusing on political balance rather than adhering to principles of human rights and justice. The recommendation of</p>	<p>Basis of recommendations should be made clear and the provision should name Speaker of Legislature-Parliament, chief justice and chairperson of Legislature-Parliament human rights and social justice committee as the members.</p>

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		chairperson and members for TRC by such committee may invite controversy.	
	(3) The Committee as referred to in Sub-section (2) shall make recommendations for the appointment of the chairperson and Members, including at least a woman, from amongst, <i>inter alia</i> , human rights activists, psychologists, lawyers, civil society activists, victimologists and sociologists,.	Issues of inclusiveness and participation of victims are overlooked.	Provision for public hearing and holding discussion at the Legislature-Parliament about the recommended TRC members should be added. At least two of the TRC members should be women. Representation from victims' organizations should be ensured thus making it inclusive.
	(4)The working procedures of the committee as referred to in Sub-section (2) shall be determined by committee itself.		
5. Qualification of the Chairperson and Members:	Following person shall be deemed eligible for appointment to the post of Chairperson and Member: (a) Who is not member of any political party; (b) Who has maintained a high moral character; (c) Who is committed to human rights, democracy and rule of law	Eligibility for the members is mentioned lightly. There is a possibility of political parties influencing the Commission.	Eligibility of the chairperson and members should be clearer. Like, persons having special contribution in the field of human rights, long time involvement in judicial sector, conflict, peace academicians, clear of allegation of human rights and humanitarian laws violation.
6. 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 directly or indirectly involved in the armed conflict; (c) Who is convicted by a court on criminal offence involving moral turpitude; (d) If s/he is insolvent; (e) If s/he is insane.	No provision to disqualify persons enjoying impunity	Persons incriminated by Commissions including Mallik, Rayamajhi, findings of responsible organizations accusing them of being human rights violators should also be mentioned as unqualified to take position in Commission.
7. Term of Office:	(1) The Chairperson and Members shall remain in their respective posts till the dissolution of the Commission pursuant to Section 37.		
	(2)Notwithstanding anything contained in sub-section (1), the Chairperson or Member shall <i>ipso facto</i> be relieved from his/her post, if a two-thirds majority of the total members of the Special Committee on Parliamentary Hearings of the	It is not clear who would present the resolution before the Special Committee on Parliamentary Hearings of the Legislature-	Clear provisions should be made on presentation of resolution before the Special Committee on Parliamentary Hearings of the Legislature-Parliament or the Constituent Assembly to relieve the Chairperson or Member

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	<p>Legislature-Parliament or the Constituent Assembly adopts a resolution presented before it to relieve such Chairperson or Member on charge of failing to honestly dispense positional duties, lack of working-efficiency or being involved in bad conduct.</p> <p>Provided, however, that such an accused Chairperson or Member shall not be deprived of an opportunity to defend himself/herself.</p>	Parliament or the Constituent Assembly	his/her position.
8. Conditions for the Vacancy of the Post:	<p>(1) The post of Chairperson or Member shall be deemed vacant on following conditions:</p> <p>(a) If s/he tenders a resignation to the Prime Minister;</p> <p>(b) If s/he is deemed disqualified to remain in his/her post pursuant to Section 6;</p> <p>(c) If s/he is relieved from his/her post pursuant to Section 7;</p> <p>(d) If s/he dies.</p>		
	<p>(2) If the post of Chairperson or Member falls vacant for any reasons, the vacant post shall be fulfilled by following the processes as referred to in Section 4.</p>		
9. Conditions of Services for the Chairperson and Members and Other Provisions:	<p>(1) The Chairperson and Members shall be full-time working officials of the Commission.</p>		
	<p>(2) The remunerations, conditions of services and benefits of the Chairperson and Members shall be as determined by the Government of Nepal</p>		
10. Meetings and Decisions of the Commission:	<p>(1) The meeting of the Commission may be held upon necessity.</p>		
	<p>(2) The meeting of the Commission shall be held on such place, date and time as designated by the Chairperson.</p>		
	<p>(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.</p>		
	<p>(4) The meeting of the Commission shall be chaired by the Chairperson; and in his/her absence the Member chosen by the Members from amongst</p>		

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	themselves 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 Secretary shall function as the secretary of the meeting of the Commission as well.		
	(7) The minutes of the meeting of the Commission shall be certified by the Secretary.		
	(8) The Commission may, if so desires, invite native or foreign experts on matters related to the activities of the Commission in the meeting of the Commission.	It does not seem relevant to invite foreign expert in the meetings. The term 'experts' is not defined which might lead to political influence.	Provision on inviting foreign experts should be removed. Possibility of consultation with the foreign experts, if needed, should be added. Term 'experts' should be clearly defined.
	(9) Other procedures related to the meeting of the Commission shall be as determined by the Commission itself.		
11. Secretary:	(1) There shall be a Secretary in the Commission as an administrative chief for the dispensation of works of the Commission.		
	(2) A civil servant working as a special class officer of the Nepal Judicial Service shall function as the secretary of the Commission.	The provision may increase government influence on the Commission. Civil servant should not be its secretary.	Secretary should be chosen through open competition from among those having long experience in legal and judicial sector or having expertise in the field, not accused of violating human rights and humanitarian laws.
12. Personnel of the Commission:	(1) The Government of Nepal shall make available personnel required for the Commission. While making personnel available in such a manner, the Government of Nepal shall have to consult with the Commission.	This may lead to government influence.	Staffs should be recruited on contract basis through open competition.
	(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	It is pointless provision for government to provide staffs to the Commission.	Commission should be allowed to recruit required experts on contract basis.

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	demand 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.		
	(4) The personnel working with the Commission pursuant to Sub-section (1) shall receive allowance and other benefits as determined by the Commission.		
13. Resources, Materials and Examination of Accounts 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 foreign agencies or associations, if the materials and resources provided by the Government of Nepal are not sufficient. Provided that the Commission shall obtain an approval of the Government of Nepal prior to receiving of materials or resources from foreign agencies or associations.	Commission should be free to receive required materials and resources from foreign agencies or associations.	"but the Commission should report the government about the materials or resources received from foreign agencies or associations" should be included.
	(3) The Commission shall deposit any amount obtained to it pursuant to Sub-section (1) or (2) 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 account of income and expenditure of the Shall be maintained in accordance with the existing laws.		
	(6) The examination of accounts of the Commission shall be made by the Auditor General		
	Chapter-3 Functions, Duties and Powers of the Commission		
14. Power to Inquire and Investigate on Complaints:	(1) The Commission may, on following bases, carry out inquiries and investigations on incidents of gross violation of human rights and crimes against humanity during the course of	The word 'appropriate' can make the Commission unaccountable and can make it label	The word 'appropriate' should be defined. Commission should have the rights to investigate the issues including violation of human

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	<p>armed conflict:</p> <p>(a) If a complaint is lodged to the Commission by, or, on behalf of, the victim;</p> <p>(b) If the Commission receives any information on such matter through any source;</p> <p>(c) If the Commission deems appropriate to inquire and investigate on such matter.</p> <p>(2) Other provisions relating to lodging of complaints before the Commission pursuant to Sub-section (1) shall be as prescribed.</p>	<p>even serious issues as inappropriate for investigation</p>	<p>rights and humanitarian laws</p>
<p>15. Commission not to have Powers:</p>	<p>Notwithstanding anything contained in Section 14, the Commission shall not have power to inquire and investigate on following matters:</p> <p>(a) Any matter already decided in accordance with existing laws;</p> <p>(b) Any matter subjudice to the court in accordance with existing laws;</p> <p>(c) Any matter relating to incidents of gross violation of human rights or crime against humanity before or after the armed conflict.</p>	<p>Above mentioned provisions create a situation where the cases of gross human rights violation, crime against humanity and war crimes may not be inquired and investigated.</p>	<p>Cases of gross human rights violation, crime against humanity and war crimes which were withdrawn and convicts pardoned should also fall with the range of Commission's power to investigate</p>
<p>16. Powers of the Commission relating to Examination:</p>	<p>(1) The Commission may, in relation to carrying out following acts in course of inquiries and investigations pursuant to Section 14, exercise the same powers as conferred to courts in accordance with existing laws:</p> <p>(a) To acquire information or record testimonies by making someone present before the Commission;</p> <p>(b) To examine witnesses and record their statements;</p> <p>(c) To pass orders for the submission of any document or paper;</p> <p>(d) To avail any document or a copy thereof from any government or public office or court;</p> <p>(e) To examine the evidences;</p> <p>(f) To carry out or cause to be carried out on-the-spot-inspections or to pass orders for the submission of evidences.</p> <p>(2) The Commission may, if it deems appropriate, prescribe a</p>		

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	reasonable time period relating to make anyone present or submission of any document, paper or evidence pursuant to Sub-section (1).		
	(3) The Commission may, if it deems that any article or document relating to its investigation or inquiry is in possession of anyone or is in a specific location, carry out or cause to be carried out search of such person location without any information and take into or cause to be taken into possession of such article or document or cause to be taken the duplicate or copy of such document either fully or partially.		
	(4) Other matters relating to inquiry and investigation of complaints and/or information received by the Commission may be as prescribed.		
17. To Render Support in Functioning of the Commission:	(1) It shall be the duty of the concerned person, institution or agency to submit the documents, papers or evidences as demanded by the Commission and/or to submit information or statements by being present at the Commission pursuant to Section 16.		
	(2) If person, institution or agency having duty pursuant to Sub-section (1) fails to render support in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person, institution or the chief of such institution or agency.		
	(3) In case a person having duty pursuant to Sub-section (1) 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 existing laws against such office-bearer or employee on charge of failing to assume positional responsibilities.		
	(4) If any one causes hindrances	It is necessary to	Fine should be imposed only

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	in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person.	debate and discuss about the functioning of the Commission. The comments on the functioning should be taken in positive light. Otherwise, this provision can be used to put even the constructive criticism under this provision	for hindrances which would affect the functioning of the Commission.
18. Protection of Witness or Other Persons:	(1) If any person, being present before the Commission for statement or providing information requests the Commission of his/her security, and if, upon inquiry, it is deemed necessary to provide security to such person, the Commission shall make necessary arrangements for his/her security.		
	(2) The Commission may, upon necessity, take help of the Government of Nepal for the security of any person pursuant to Sub-section (1).		
	(3) No action shall be taken against any person only because of making statements or providing information to the Commission.		
	(4) If anyone being present to the Commission demands for reimbursement of the actual costs incurred for traveling to and from the Commission and for fooding during the course of making statements or providing information to the Commission, the Commission may provide reasonable expenses to such person.		
	(5) If any one, who provides any information, notice or evidence to the Commission, wishes to keep his/her name confidential, the Commission shall keep his/her name confidential.		
19. Public Hearing may be Made:	(1) The Commission may, if it deems necessary to find truth and facts on matters relating to gross violation of human rights and crime against humanity, carry out public hearings.		
	(2)The methods and processes for carrying out public hearing	Such methods and processes should be	

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	shall be as determined by the Commission.	in pursuant with the international standard and practices.	
20. 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 secret manner.		
	(3) The Commission may, for the information of general public, may publicize, from time to time, details relating to its activities.	"time to time" does not make the point of time clear	The Commission should make its activities public at least once a month. Likewise, each activity of the Commission should also be made public through various media on the regular basis.
21. Independence and Impartiality to be Maintained:	(1) The Commission shall perform its activities in an independent and impartial manner.		
	(2) The Commission must not function by being biased or having affection or malafide intention to anyone.		
	(3) The Commission shall, while carrying out its activities, abide by the universally accepted principles of law and justice.		
	(4) A Member shall not be involved in inquiry, investigation and other actions relating to such a person, who is either a relative of such Member or is directly related to any transactions with such Member.		
22. Complaint may be De-listed:	If any complaint or information is found baseless during the course of inquiry or investigation or if it cannot be implemented, the Commission may de-list such complaint by assigning reasons thereto.		
23. Reconciliation may be Made:	(1) The Commission may, by making the victim and the perpetrator present, cause to be made reconciliation mutually, if any individual is found guilty while carrying out inquiry and investigation in accordance with this Act.	The provision might lead to impunity of the perpetrators and no accountability from them which might promote the state of impunity. It does not have the policy to	Provision which makes the perpetrators answerable should be ensured. There should be a provision for prosecution of the perpetrators bringing him/her within the legal framework. A provision which would ensure

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		make the persons and institutions, guilty of violation during the conflict, accountable.	filing of the cases in the court to punish the guilty and reconciliation only through court should be included.
	(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.	It might lead to definition opposite to section 25 (2).	This provision should not be applied to the crimes mentioned in 25 (2)
	(3) The Commission shall, in relation to making reconciliation pursuant to Sub-section (1), make reasonable reparations available to the victim from the perpetrator after having consultations with him/her in lieu of the loss and damage caused to the victim.	This provision favours the perpetrators and completely ignores the victims.	It should be changed to "make reasonable reparations available to the victim from the perpetrator after having consultations with the victim in lieu of the loss and damage caused to the victim".
	(4) The Commission shall, in relation to making reconciliation pursuant to Sub-section (1), carry out or cause to be carried out the following activities in order to persuade both the victim and the perpetrator for reconciliation: (a) To organize various types of workshops, seminars, assemblies and conferences relating to reconciliation; (b) To organize rallies relating to reconciliation at the national as well as local level; (c) To conduct interaction programs through various means of communication relating to reconciliation; (d) To organize reconciliation ceremonies at the conflict-hit areas with the involvement of perpetrator and victim and his/her family-members; (e) 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-members; (f) To make publication of various articles, essays, songs, arts, etc. relating to reconciliation; (g) To carry out other appropriate tasks.		
	(5) In case of victim being killed or being a minor or a mentally impaired person, the Commission		

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	may make reconciliation in accordance with this Section with family-members of the victim and the perpetrator.		
24. To Recommend for Action:	(1) The Commission shall make recommendations to the Government of Nepal for necessary action against such person who is found guilty while carrying out inquiry and investigation in accordance with this Act.	The provision where the Commission is recommending only to the government may lead to its effectiveness dependent on the government will.	Instead of making recommendation to the government, there should be a provision for Commission to file case in the court. Supreme Court should be the one looking into the cases.
	(2) Notwithstanding anything contained in Sub-section (1), no recommendation shall be made to the Government of Nepal for action on such matters upon which reconciliation between the victim or his/her family members and the perpetrator has been made pursuant to Section 23.		
25. Recommendation may be made for Amnesty:	(1) Notwithstanding anything contained in Section 24, if any person is found to have committed gross violation of human rights or crime against humanity in course of abiding by his/her duties or with the objective of fulfilling political motives, the Commission may make recommendation for amnesty to such person to the Government of Nepal.	"in course of abiding by his/her duties or with the objective of fulfilling political motives" reveals that the Commission aims to pardon all violators and abusers, therefore, adopts the principle of pardon and reconciliation only. This will increase impunity and aggravate the pain of the victims. The Commission cannot be allowed to pardon or facilitate for reconciliation. Single work group cannot have the right to pardon and work for reconciliation.	"in course of abiding by his/her duties or with the objective of fulfilling political motives" should be removed. Persons proved guilty on the basis of Geneva Convention and international human rights and humanitarian laws should be recommended for prosecution. Provision of pardon should be done away. A provision should mention that only after filing of the case, the perpetrator is called accused and then only the court can pardon or facilitate for reconciliation. Other provisions should be changed in pursuant with the mentioned provision.
	(2) Notwithstanding anything contained in Sub-section (1), no recommendation for amnesty shall be made to a person involved in following acts: (a) Any kind of murder committed after taking under control or carried out in an inhumane manner; (b) Inhumane and cruel torture; (c) Rape.	No murder is humane. Likewise, crucial cases like disappearance are also excluded.	a. Word 'inhumane' should be replaced with cruel or brutal and extra-judicial murder and these too, should be well defined. Gross violation, genocide, crime against humanity and war crimes violating the Geneva Convention and international human rights and humanitarian laws including disappearance (after arrest or enforced), abduction and forceful recruitment of children thus

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			endangering their lives should also be added.
	(3) The Commission shall decide whether any act as referred to in Clause (b) of Sub-section (2) is an inhumane or cruel torture.		Commission's decision should be in accordance with the international standards.
	(4) 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 regretting for the misdeeds carried out by oneself during the armed conflict within a time period as prescribed by the Commission.		Regarding the cases where the perpetrator can be pardoned (like in civil cases or abduction and threats which did not result in physical or other harm of the victim), process for pardon can be forwarded after discussion with the victim.
	(5) The bases and criteria to be adopted while making recommendation pursuant to Sub-section (1) shall be as prescribed.		
	(6) 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.		
	(7) In case a person recommended for amnesty pursuant to Sub-section (1) is denied for amnesty by the Government of Nepal, the Ministry shall act pursuant to Clause (a) of Sub-section (2) of Section 28 relating to such person.		
26. Recommendations for Reparations may be Made:	(1) The Commission shall, if it is found necessary to provide reparations to the victim through inquiry and investigation carried out in accordance with this Act, make recommendations to the Government of Nepal therefore.		
	(2) Notwithstanding anything contained in Sub-section (1), the Commission may, if it deems appropriate, make recommendations to the Government of Nepal to provide concessions as follows, in the form of reparations to the victim or if the condition so desires, any member of his/her family as follows: (a) Free education and health-care facilities;		Employment guarantee should be ensured.

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	(b) Skill-oriented training; (c) Loan facilities without or with concessional interests; (d) Arrangements of habitation; (e) Employment facilities; (f) Other concessions as deemed appropriate by the Commission.		
	(3) The bases and criteria to be adopted while determining reparations pursuant to Sub-section (1) shall be as prescribed.		
	(4) The reparations to be received by the victim pursuant to Sub-section (1) shall be received by his/her nearest family-member in case of the death of the victim.		
27. Report to be Submitted:	(1) The Commission shall submit its Report, by mentioning details on following matters, to the Government of Nepal upon the completion of its tasks: (a) Details relating to the complaints inquired and investigated and delisted 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 23; (d) Matters relating to recommendations to the Government of Nepal for necessary action pursuant to Sections 24, 25 and 26. (e) Matter relating to formulation of a new law for the implementation of the Report, if any; (f) Measures to be adopted forthwith and in the long run by the Government of Nepal in order to create an environment for reconciliation in the society; (g) Inherent social, economic, cultural, political and other causes of the armed conflict and measures to be adopted by the State for non-repetition of such incidents. (h) Other matters deemed appropriate by the Commission.		
	(2)The Commission shall make the acts of recommendation pursuant to Sections 24, 25 or 26 through the Report as referred to in Sub-section (1).		
	(3) The Government of Nepal shall present the Report received	This provision might lead to	Adding one clause, the quarterly reports and final

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	pursuant to Sub-section (1) to the Legislature-Parliament or the Constituent Assembly.	delayed response of the government (like Rayamajhi Commission Report)	report of the Commission should be tabled at Legislature-Parliament. Within a week of submission to the government, it should be made public immediately. If not brought to Legislature/Parliament by the government, the Commission should initiate to table the report at Legislature-Parliament through Speaker.
Chapter-5 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 27 shall lie with the Ministry.		
	(2) In order to implement the recommendations made in the Report of the Commission, the Ministry shall carry out the acts as follows: (a) To forward in writing to the Office of the Attorney General with the approval of the Council of Ministers of the Government of Nepal for needful actions in order to implement the recommendations as mentioned in Section 24; (b) To forward in writing to the Council of Ministers of the Government of Nepal in order to implement the recommendations as mentioned in Section 25; (c) To do or cause to be done the needful actions by the Commission itself or through other concerned agencies with the approval of the Council of Ministers of the Government of Nepal in order to implement the recommendations as mentioned in Section 26; (d) To do the needful action for the formation of necessary laws; if it is felt necessary for the implementation of recommendations made in the Report; (e) To carry out or cause to be		

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	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 (f) and (g) of Sub-section (1) of Section 27 in an orderly manner by assigning priority to them.		
29. Reconciliation and Peace Building Fund:	(1) There shall be a separate fund named Reconciliation and Peace Building Fund under the Ministry.	The fund remains under Ministry. There is no need to mention about it in Commission's Act.	This section should be removed.
	(2) The Fund shall consist of following amounts: (a) Amount received from the Government of Nepal; (b) Amount received in the form of grant from foreign governments, native or international associations, institutions or agencies; (c) Amount received from any other source.		
	(3) The amount to be received by the Fund shall be deposited in any commercial bank in Nepal by opening a separate account.		
	(4) The operation of the Fund shall be as determined by the Ministry.		
	(5) The Ministry shall keep the descriptions of income and expenditure of the Fund in a format as determined by existing laws.		
	(6) The examination of accounts of the Fund shall be done by the Auditor General.		
30. Use of Amount of the Fund	(1) The amount deposited in the Fund shall be used for the implementation of recommendations as mentioned in the Report submitted by the Commission. (2) The Ministry may frame and enact necessary guidelines relating to the use of the amount deposited in the Fund.	This section is unnecessary after removing section 29.	This section should be removed.
31. Monitoring of the Report submitted by the	(1) The task of monitoring whether or not the recommendations made in the Report of the Commission shall be done by the National Human		

Section	Provision	Comments	Required Provision
Commission:	Rights Commission. (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 the recommendations made in the Report of the Commission, draw the attention of the Ministry to implement such recommendations.		There should be a provision allowing National Human Rights Commission to make recommendations to the government.
Chapter-6 Miscellaneous			
32. 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, if necessary.		
	(2) The functions, duties and rights; term of office; the benefits to be received by the members of such sub-committees or task forces and other arrangements of sub-committees or task forces formed pursuant to Sub-section (1) shall be as determined by the Commission.		
33. Service of Experts may be Procured	(1) The Commission may, for the accomplishment of tasks in accordance with this Act, procure services of native or foreign experts or specialized agencies of concerned field, if necessary.		
	(2) The appointment; functions, duties and rights; conditions of services and enefits of the experts or specialized agencies as referred to in Sub-section (1) shall be as determined 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.		
34. 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.		
35. Delegation of Power	The Commission may, as per necessity, delegate some of its powers conferred to it by this Act,		

Section	Provision	Comments	Required Provision
	to the Chairperson, Member, Secretary or sub- committee or task force formed pursuant to Section 32.		
36. Term of Office:	(1) The term of office of the Commission shall be of two years effective from the date of its formation.		
	(2) Notwithstanding anything contained in Sub-section (1), if the Commission demands for an extension of its term of office by explaining reason for the non-completion of its tasks within the term of office as mentioned in such Sub-section, the Government of Nepal may extend the term of office of the Commission for up to a period of one year.		
37. Commission may be Dissolved:	(1) The Government of Nepal may dissolve the Commission in cases if the Commission accomplishes its tasks in accordance with this Act or its term of office is over or the Commission is unable to accomplish its tasks for any reason.	"is unable to accomplish its tasks for any reason" does not make clear who would determine the reason and the its inability to accomplish task. Here, the government can dissolve the Commission arbitrarily.	In case the government has to dissolve the Commission before its term, it should provide details of the reasons for dissolution to Legislature-Parliament and the proposal should be endorsed by two third majority
	(2) All the assets, documents and liabilities of the Commission shall be transferred to the Ministry if the Commission is dissolved pursuant to Sub-section (1).		
	(3) The employees working with the Commission shall be returned back to their previous offices and the employees appointed on a contract basis shall <i>ipso facto</i> be relieved from their respective posts, if the Commission is dissolved pursuant to Sub-section (1).	There should a provision ruling out the government staffs working for the Commission. They should be recruited through open competition on contract basis.	As all the staffs would be appointed on contract basis, the provision saying all the staffs would be redundant automatically should be included.
38. Oath of Office	The Chairperson and Members shall take the oath of office in a format as prescribed in the Annex with the Chief Justice and the Chairperson respectively prior to the assumption of their duties.		
39. Liaison with the Government of Nepal	The Commission shall liaise with the Government of Nepal through the Ministry.	This provision can also limit the Commission within the Ministry.	

Section	Provision	Comments	Required Provision
40. Power to Frame Rules	The Commission may frame necessary Rules for carrying out the objectives of this Act.		
Relating to Section 38	<p>Oath of Office</p> <p>I,, hereby swear in the name of the God/ solemnly affirm that I will bear full loyalty to the Nepali people and existing constitution and other laws and that I will faithfully discharge the duties and responsibilities as a Chairperson/ Member of the Commission without fear or favor, affection or ill-will of or unto none and that I will not disclose any matter, in any condition whether or not being in any position, being known in course of discharging duties except in cases of abiding by the existing laws.</p>	Taking oath in the name of god should be stopped	Instead of 'in the name of god', it should be 'in the name of sovereign Nepali people'.

10 August 2007