

The Myanmar National Human Rights Commission Law

November 2014

The Myanmar National Human Rights Commission Law
The Pyidaungsu Hluttaw Law No.21/2014
The 13th Waning of Tabaung 1375 M.E.
(28 March 2014)

The Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I

Name and Definition

1. This Law shall be called the **Myanmar National Human Rights Commission Law**.
2. The following expressions contained in this Law shall have the meanings given hereunder:
 - (a) **State** means the Republic of the Union of Myanmar;
 - (b) **Government** means the Union Government of the Republic of the Union of Myanmar;
 - (c) **Human Rights** means the following:
 - (i) the rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar;
 - (ii) the human rights contained in the Universal Declaration of Human Rights adopted by the United Nations;
 - (iii) the human rights contained in the international human rights instruments applicable to the State;
 - (d) **Commission** means the Myanmar National Human Rights Commission established under this Law;
 - (e) **Member of the Commission** means any member, including the Chairperson and the Vice-Chairperson, of the Myanmar National Human Rights

Commission;

- (f) **Selection Board** means the board which selects prospective members of the Commission;
- (g) **Office of the Commission** means the Office which is established to carry out the office work of the Myanmar National Human Rights Commission.

Chapter II

Objectives

3. The objectives of this Law are as follows:
 - (a) to safeguard the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar effectively;
 - (b) to create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations;
 - (c) to effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations related to human rights accepted by the State;
 - (d) to coordinate and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and non-governmental organizations related to human rights.

Chapter III

Establishment of the Commission, Status and Rights

Establishment

4. The President shall establish a Myanmar National Human

Rights Commission consisting of not less than seven and not more than fifteen members.

5. The President shall form a Selection Board comprising the following members to establish the Commission:

- (a) Chief Justice of the Union;
- (b) Union Minister, Ministry of Home Affairs;
- (c) Union Minister, Ministry of Social Welfare, Relief and Resettlement;
- (d) Attorney-General of the Union;
- (e) a representative from the Bar Council;
- (f) two representatives from the Pyidaungsu Hluttaw ;
- (g) a representative from the Myanmar Women's Affairs Federation;
- (h) two representatives from registered Non-Governmental Organizations.

6. The Selection Board shall consider for nomination as prospective members of the Commission those who meet the following criteria:

- (a) a person who is a citizen of Myanmar;
- (b) a person who is not younger than 35 years;
- (c) a person who is recognized as being a person of integrity and good character, and is capable of fulfilling the responsibilities of a member of the Commission with independence and impartiality;
- (d) a person who has extensive knowledge or experience in any area of the following:
 - (i) principles of human rights and relevant domestic and international human rights laws;

- (ii) promotion and protection of human rights;
- (iii) good governance and public administration;
- (e) a person who demonstrates commitment to the achievement of the objectives of the Commission.

7. The Selection Board shall:

- (a) take into account the overall composition of the Commission in considering the nomination of prospective members of the Commission;
- (b) consider as prospective members of the Commission those who have knowledge of or experience or expertise in respect of the following:
 - (i) domestic human rights laws and international human rights laws;
 - (ii) current economic, employment and social issues;
 - (iii) cultural issues and the needs and aspirations of individuals, different communities and population groups in society;
 - (iv) other diverse matters likely to come before the Commission;
 - (v) human rights advocacy;
 - (vi) public education;
 - (vii) public governance, administration and financial management and
 - (viii) civil society, academia, social welfare, community development and legal affairs;
- (c) seek to ensure the equitable representation of men and women, and of national races, in considering the provisions under sub-section (a) and sub-section (b).

8. The Selection Board shall adopt procedures for nominating prospective members of the Commission and shall submit to the President a list of thirty nominees selected in accordance with those procedures.

9. The President shall, in coordination with the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, select and appoint suitable members of the Commission from prospective members of the Commission submitted under section 8. In selecting and appointing members, the Chairperson and the Vice-Chairperson shall be determined.

10. On appointment, a member of the Commission shall:

- (a) be deemed to have retired from the government service in accordance with the standing service rules and regulations, if the person is a government servant;
- (b) resign from any office or employment in domestic or foreign organizations that may conflict with the functions of a member of the Commission.

11. A member of the Commission shall act impartially and independently in carrying out the functions of the Commission and shall not hold any other office or engage in any activities or practices that conflict with or may be perceived to conflict with the functions of the Commission.

Status and Rights

12. (a) The Chairperson of the Commission shall have the rank of Union Minister and the Vice-Chairperson and other members of the Commission have the rank of Deputy Minister.

- (b) They shall be entitled to the honoraria, allowances and perquisites appropriate to the status determined in accordance with sub-section (a).

Chapter IV

Term of Members of the Commission, Resignation, Termination and Filling a Vacancy

- 13. The term of members of the Commission shall be five years.
- 14. The members of the Commission shall not serve more than two consecutive terms.
- 15. Except in case of resignation from the post or termination of service, a serving member of the Commission shall continue to serve in the current position until a new member of the Commission is appointed.

Resignation, Termination and Filling a Vacancy

- 16. If the Chairperson wishes to resign during the term of office of his/her own volition for any reason, he/she may do so by submitting a letter of resignation to the President.
- 17. If a member of the Commission except the Chairperson wishes to resign from office of his/her own volition for any reason, he/she may do so by submitting a letter of resignation to the President through the Chairperson.
- 18. The President may, in coordination with the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, terminate the term of office of any member of the Commission on any of the following grounds:
 - (a) if he/she is determined by a medical board of competent jurisdiction to be unfit to continue in office

- by reason of permanent physical or mental incapacity;
 - (b) if he/she is sentenced to imprisonment by any court for a criminal action;
 - (c) if he/she is declared insolvent by any court;
 - (d) if he/she fails to comply with the regulations laid down by the Commission.
19. The President shall:
- (a) in coordination with the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, fill the position vacated by the resignation or termination or death of a member of the Commission or for any other reason, with a person from the list of nominees submitted by the Selection Board;
 - (b) fill the vacancy in accordance with sections 4, 5, 6, 7, 8 and 9 in the event that no suitable nominee is available in the list of prospective members of the Commission.
20. Where the vacancy is the office of the Chairperson or the Vice-Chairperson, the President shall temporarily designate any remaining member to such position before filling the vacancy.
21. Notwithstanding any provision in respect of the term contained in section 13, the term of the member appointed under section 19 shall be the remaining term of the replaced member.

Chapter V

Duties and Powers of the Commission

22. Duties and Powers of the Commission are as follows:

by reason of permanent physical or mental incapacity;

- (b) if he/she is sentenced to imprisonment by any court for a criminal action;
- (c) if he/she is declared insolvent by any court;
- (d) if he/she fails to comply with the regulations laid down by the Commission.

19. The President shall:

- (a) in coordination with the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, fill the position vacated by the resignation or termination or death of a member of the Commission or for any other reason, with a person from the list of nominees submitted by the Selection Board;
- (b) fill the vacancy in accordance with sections 4, 5, 6, 7, 8 and 9 in the event that no suitable nominee is available in the list of prospective members of the Commission.

20. Where the vacancy is the office of the Chairperson or the Vice-Chairperson, the President shall temporarily designate any remaining member to such position before filling the vacancy.

21. Notwithstanding any provision in respect of the term contained in section 13, the term of the member appointed under section 19 shall be the remaining term of the replaced member.

Chapter V

Duties and Powers of the Commission

22. Duties and Powers of the Commission are as follows:

- (a) promoting public awareness of human rights and efforts to combat all forms of discrimination through the provision of information and education;
- (b) carrying out the following to monitor and promote compliance with international and domestic human rights laws:
 - (i) recommending to the Government the international human rights instruments to which Myanmar should become a party;
 - (ii) reviewing existing laws and proposed bills for consistency with the international human rights instruments to which the State is a party and recommending the legislation and additional measures to be adopted for the promotion and protection of human rights to the Pyidaungsu Hluttaw through the Government;
 - (iii) assisting the Government in respect of its preparation of reports to be submitted under obligation in accordance with the international human rights instruments to which the State is a party and on the contents of those reports;
- (c) verifying and conducting inquiries in respect of complaints and allegations of human rights violations;
- (d) visiting the scene of human rights violations and conducting inquiries, on receipt of a complaint or allegation or information;

- (e) inspecting the scene of human rights violations and, after notification, prisons, jails, detention centres and public or private places of confinement;
- (f) consulting and engaging the relevant civil society organizations, business organizations, labour organizations, national races organizations, minorities and academic institutions, as appropriate;
- (g) consulting, engaging and cooperating with other national, regional and international human rights mechanisms, including the Universal Periodic Review, as appropriate;
- (h) responding to any matter referred to the Commission by the Pyidaungsu Hluttaw or the Pyithu Hluttaw or the Amyotha Hluttaw or the Government;
- (i) responding to the specific matters referred by the President in connection with the promotion and protection of human rights;
- (j) preparing reports in respect of the functions of the Commission and publishing them as appropriate;
- (k) carrying out anything incidental or conducive to the implementation of any function of the Commission;
- (l) submitting to the President and the Pyidaungsu Hluttaw an annual report on the situation of human rights in Myanmar, the activities and functions of the Commission, with such recommendations as are appropriate;

29. In conducting an inquiry, the Commission shall abide by the principles of natural justice. In addition, the Commission may invoke the relevant provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the Evidence Act as appropriate.

30. An individual may lodge a complaint with the Commission on his/her own behalf, or on behalf of another person or on behalf of a group of persons with a similar cause of complaint concerning any alleged violation of human rights.

31. The complainant shall submit to the Commission in writing in carrying out the following:

- (a) withdrawing the complaint;
- (b) obtaining the permission of the Commission to amend the complaint.

32. The Commission shall conduct an inquiry into a complaint unless it decides not to do so for the following reasons:

- (a) the complaint is not made in good faith;
- (b) the complaint is not within the competence of the Commission;
- (c) a more appropriate remedy or reasonable channel of complaint is available to the complainant.

33. No decision by the Commission to decline to conduct or to defer or to discontinue an inquiry into any subject of a complaint shall affect the power of the Commission to inquire generally into a matter on its own initiative.

34. In addressing a complaint, if the Commission is of the view that the subject of the complaint is amenable to conciliation, the Commission shall address the complaint through conciliation. In doing so, this shall be done in accordance with the existing laws.

35. The Commission may summon in writing to testify, to take oath, for questioning and to sign affidavits any person who in its opinion is able to give any information relating to any matter being investigated by the Commission, to appear before the Commission at a time and place specified.
36. The Commission may summon in writing any person or office to produce any documents or evidence in their possession or control that, in the opinion of the Commission, relate to any matter being investigated by it except the following:
- (a) documents or evidence, the release of which would affect the security and defence of the State;
 - (b) documents which are classified by the departments and organizations of the Government.
37. The Commission shall not inquire into the complaint which violates any of the following:
- (a) cases under trial before any court, cases under appeal or revision on the decision of any court;
 - (b) cases that have been finally determined by any court.
38. The Commission shall, for further action on the complaint which involves the government departments, organizations or its related entity, refer its findings to the relevant government department or organization with recommendations. That department or organization shall respond to the Commission on its action regarding the Commission's recommendations within thirty days. In doing so, the action that ensures that complainants are not subjected to reprisals shall be mentioned.
39. At the conclusion of an inquiry, the Commission may report its findings and recommendations to the President and the Pyidaungsu Hluttaw and may publish them for public

information as may be necessary.

40. If the Commission finds out the credible evidence, in its inquiry of a complaint, of the violations of the rights of an individual or individuals, the report submitted under sections 38 and 39 shall mention the recommendations on the following:

- (a) a determination that a violation of human rights has occurred and a recommendation that such human rights violation and similar violations should not be repeated or continued;
- (b) appropriate measures by a person or any agency to redress the violation of human rights;
- (c) obtaining due compensation for the victim of violation of human rights for any loss or damage suffered;
- (d) recommending for action to any department, organization, service, person or the relevant authority and to require them to inform the Commission within a reasonable period of the steps that have been taken to give effect to that recommendation.

Protection

41. Anyone who threatens, hinders, obstructs, molests or interferes with a member of the Commission or a staff member of the Commission or a person acting on behalf of the Commission while that person is undertaking its functions under this Law shall be punished by the existing law.

42. A person shall not victimize, intimidate, threaten, harass or otherwise interfere with any person on the ground that that person, or any associate of that person:

- (a) intends to use of the rights under this Law;
- (b) has used the rights under this Law, or promoted those rights of some other persons;
- (c) has given information or evidence in relation to any complaint, investigation or proceedings under this Law;
- (d) has declined to do anything which would contravene this Law;
- (e) has otherwise done anything under or by reference to this Law.

The Inspection of Prisons, Jails, Detention Centres and Places of Confinement

43. The Commission has the power to inspect prisons, jails, detention centres, and places of confinement in order to ensure that persons imprisoned, detained or confined are treated humanely and in accordance with international and national human rights laws. The inspection shall be carried out in accordance with relevant laws.

44. In carrying out the functions under section 43, the Commission shall have the following powers:

- (a) right of inspecting prisons, jails, detention centres and places of confinement after notifying the relevant authorities of the time of its intended visit;
- (b) right of inspecting all areas and facilities for those detained or confined in prisons, jails, detention centres and places of confinement;
- (c) right of interviewing prisoners, detainees and those confined freely and privately;

- (d) right of recommending for action to the relevant departments and organizations and requiring them to inform the Commission of the steps that they have taken to give effect to those recommendations.

45. The Commission may inform the relevant organizations at the Union level of its findings and recommendations and make them public as appropriate.

Chapter VII

Financial Management

46. The State shall provide the Commission with adequate funding to enable it to effectively discharge the functions assigned to it by this Law.

47. The Commission may receive unconditional contributions from any individual or organization that do not prejudice the independence of the Commission concerning the promotion and protection of human rights.

48. The Commission shall cause proper accounts to be kept of its income, expenditure, assets and liabilities in accordance with financial regulations.

49. The accounts of the Commission shall be audited by the Office of the Auditor-General of the Union.

50. The Commission shall apply in accordance with the relevant existing Revenue Laws for exemption from assessment of taxes on its funds and monetary transactions.

Chapter VIII

Staff Organization Structure

51. The Commission shall:

- (a) establish a staff organization structure to assist the Commission to fulfill its functions and appoint the staff as required;
 - (b) prescribe regulations, bye-laws and benefits in respect of the personnel matters of the Commission.
52. The Commission may appoint the necessary staff including the Head of the Office of the Commission in order to effectively discharge its functions.
53. (a) The Head of the Office of the Commission shall act as Secretary of the Commission and also perform the other functions determined by the Commission.
- (b) The Head and staff of the Office of the Commission are accountable to the Commission.
54. The Commission shall determine the rank of staff of the Office of the Commission, subject to the laws and regulations for civil service personnel.
55. The Chairperson of the Commission may, by signed document, specifically delegate to any officer of the Office of the Commission, any of the functions of the Commission. The entrusted delegate shall perform only the function specified in the instrument of delegation.
56. The Chairperson of the Commission may revoke the function so delegated to the officer concerned at any time by written instrument.

Chapter IX

Miscellaneous

57. The Commission shall establish its headquarters and may establish its branches as required to implement its mandate.

58. The Commission shall hold its meetings as prescribed.
59. The Commission may establish the necessary separate groups and working groups, based on locations or themes and may entrust specific duties to them in order to effectively discharge the functions contained in this Law.
60. The Commission shall have the right to own name, logo and perpetual succession, and have the right to sue and to be sued.
61. In performing the functions under this Law, a member of the Commission and the person assigned by the Commission shall be deemed as a public servant under section 21 of the Penal Code.
62. No criminal or civil action shall be prosecuted against the Commission or a member of the Commission or the person assigned by the Commission for any act or omission, or observation made or opinion issued in good faith in the exercise of the functions and powers vested under this Law.
63. Documents, materials and information communicated and delivered to the Commission or the Office of the Commission, or collected by the Commission shall be exempted from censorship or interference.
64. The premises, archives, files, documents, communications, properties, funds and assets of the Commission, wherever located and by whomever held, shall be inviolable and exempted from trespassing, searching, confiscation, seizure, requisition or any other means of interference.
65. The Commission has the right to disclose, in order to conduct its investigation smoothly, such information which in its opinion ought to be disclosed.

66. The Commission shall ensure that the name and identifying information concerning any person appearing before it for examination, testimonies, documentary evidence, things furnished to it, are not published or disclosed by any person without the Commission's authorization. The Commission may also take other measures for the protection of witnesses.

67. The Commission shall refrain from using the information it has obtained in ways other than realizing its objectives.

68. Except in the case of trial of any person for perjury in respect of his statements, testimonies and answers, no person shall be prosecuted before any court on the basis of those statements, testimonies and answers. The statements, testimonies and answers produced before the Commission shall not be used in prosecuting any other person.

69. The Myanmar National Human Rights Commission established under Notification No. 34/2011 dated 5 September 2011 of the Government of the Republic of the Union of Myanmar shall continue to perform its responsibilities until the establishment of a Commission under this Law.

70. The Commission may issue notifications, orders, directives and procedures to implement the provisions of this Law.

**I hereby sign in accordance with the Constitution of the
Republic of the Union of Myanmar.**

Sd/- Thein Sein

President

Republic of the Union of Myanmar