

The Myanmar National Human Rights Commission Law (Draft)

Pyidaungsu Hluttaw Law No. -/2013

Myanmar Era 1375,

Introduction

In recognition of the Universal Declaration of Human Rights and with the objective of realizing a society where human rights are respected and protected, the Pyidaungsu Hluttaw hereby enacts this law in order to effectively promote and protect the fundamental rights enshrined in the Constitution of the Republic of the Union of Myanmar and the human rights contained in the international human rights instruments applicable to Myanmar.

Chapter I

Name and Definitions

1. This law shall be called the Myanmar National Human Rights Commission Law.
2. The terms contained in this law shall have the following meanings:
 - (a) **"Government"** means the Union Government of the Republic of the Union of Myanmar.
 - (b) **"Commission"** means the Myanmar National Human Rights Commission established under this law.
 - (c) **"Member of the Commission"** means any Member of the Myanmar National Human Rights Commission, including the Chairperson and the Vice Chairperson.

- (d) **"Selection Board"** means the board which selects the prospective Commission Members.
- (e) **"Office of the Commission"** means the Office of the Myanmar National Human Rights Commission.

Chapter II

Establishment of the Commission

Composition

- 3. The President shall establish a Myanmar National Human Rights Commission consisting of not less than 9 and not more than 15 Members.
- 4. 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) Chairperson of the Union Civil Services Board
 - (f) Two representatives from the Pyidaungsu Hluttaw (Union Parliament)
 - (g) A representative from Myanmar Women's Affairs Federation
 - (h) A representative from the Non-Governmental Organizations which are registered in accordance with the prescribed procedures.

Nomination, Selection and Appointment

- 5. The Selection Board shall consider for nomination as prospective Commission Members those who meet the following criteria:
 - (a) Person who is a citizen of Myanmar

- (b) Person not younger than 35 years and not older than 75 years
- (c) Person who is recognized as being a person of integrity and good character; and is capable of fulfilling the position with independence and impartiality
- (d) Person who has extensive knowledge or experience in one or more of the following:
 - i. the principles of human rights and relevant domestic and international human rights law;
 - ii. the promotion and protection of human rights;
 - iii. good governance and public administration;
- (e) Person who demonstrates a commitment to the achievement of the objectives of the Commission

6. In considering the nomination, the Selection Board should consider the overall composition of the Commission and also the need for the membership to have:

- (a) knowledge of, or experience in the following:
 - i. domestic human rights law and international human rights law;
 - 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; and
- (b) skills in, or experience in the following:
 - i. human rights advocacy;
 - ii. public education;
 - iii. public governance, administration and financial management; and
 - iv. civil society , academia, social welfare, community development and law;

- (c) the Selection Board must seek to ensure the equitable representation of men and women, and of national races.

7. The Selection Board shall adopt procedures for nominating prospective Members of the Commission and, shall submit to the President a list of thirty nominees to be appointed as Members of the Commission in accordance with these procedures.

8. The President shall select and appoint the Members of the Commission from the list of prospective Members of the Commission submitted by the Selection Board, taking into consideration the selection criteria in section 6. At the time of appointment, the Chairperson and the Vice-Chairperson shall be determined.

9. On appointment, a Member of the Commission shall:

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

10. 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 activity or practice that conflicts with or may be perceived to conflict with the functions of the Commission.

Status and Conditions of Service

11. The President shall determine the appropriate status of the Chairperson and Members of the Commission including the Vice Chairperson, and shall provide such conditions of service, including honorarium, allowance and other entitlements compatible with the status determined.

12. The status and entitlements determined under section 11 shall not be reduced during the term of a Member of the Commission.

Chapter III

Term of a Member of the Commission, resignation, dismissal and filling a vacancy

Term of a Member of the Commission

13. The term of a Member of the Commission shall be five years.
14. A Member of the Commission can serve two consecutive terms.
15. Except where a Member of the Commission resigns, or is dismissed, a serving Member of the Commission shall continue to serve in the current position until a new Member of the Commission is appointed.

Resignation

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.

Dismissal

18. A Member of the Commission vacates his/her office under one of the following circumstances:

The Member:

- (a) 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) is convicted and sentenced to imprisonment by a court of competent jurisdiction for a criminal offence;
- (c) is determined by a court of competent jurisdiction to be insolvent;
- (d) is deliberately engaged in actions to defeat the objectives of the Commission.

Filling a vacancy

19. When a vacancy arises in the membership of the Commission through resignation or dismissal or passing away or for any reason, the President shall appoint a replacement from the list of nominees that had been submitted by the Selection Board. Where none is available, the selection process outlined in sections 5, 6, 7 and 8 shall be followed.

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

21. Notwithstanding anything contained in section 13, the term of the member appointed under section 19 shall be the remaining term of the replaced member. The remaining term served as such shall be deemed as one term.

Chapter IV**Functions and Powers of the Commission**

22. In order to promote and protect human rights, the Commission shall have the following functions and powers:

- (a) to promote public awareness of human rights and efforts to combat all forms of discrimination through the provision of information and education;
- (b) to carry out the following to monitor and promote compliance with international and domestic human rights laws:
 - i. to recommend to the Government international human rights instruments to which Myanmar should become a party;
 - ii. to review existing legislation and proposed bills for consistency with the international human rights laws to which Myanmar is a

- party and to recommend to the Government additional legislation and measures to promote and protect human rights;
- iii. to assist the Government as appropriate on its preparation of reports to be submitted in accordance with the international human rights instruments to which Myanmar is a party and on the contents of those reports.
- (c) to conduct thematic inquiries into alleged human rights violations.
- (d) to conduct inquiries into a complaint by an individual of his/her own volition alleging human rights violations or on receipt of a complaint on his or her behalf by another individual, group of people or institution
- (e) to visit the scene of human rights violations and, after notification, prisons, jails, detention centres and public or private places of confinement.
- (f) to consult and engage relevant civil society, business and labour organizations, national races organizations and minorities, and academic institutions, as appropriate.
- (g) to consult, engage and cooperate with other national, regional and international human rights mechanisms including the Universal Periodic Review, as appropriate.
- (h) to respond to any matter referred to it by the Pyidaungsu Hluttaw or the Pyithu Hluttaw or the Amyotha Hluttaw or the Government.
- (i) to respond to the specific requests by the President in connection with the promotion and protection of human rights.
- (j) to produce reports on the functions of the Commission, and to publicize them as appropriate.

- (k) to do anything incidental or conducive to the performance of any function of the Commission.
- (l) to submit to the President an Annual Report on the human rights situation in Myanmar, the activities and functions of the Commission, with such recommendations as appropriate.
- (m) to submit to the President special reports on human rights issues as and when necessary.

23. The Commission shall independently consider and act on matters that fall within its powers.

24. The Commission shall have financial and administrative autonomy in conformity with the relevant provisions of this law.

25. Where a Member of the Commission becomes aware of an actual or perceived conflict of interest in his/her action, the Member must promptly inform the Chairperson and Members of the Commission, and take immediate action to avoid such a conflict.

26. The Commission has the power to engage thematic experts to be effective in undertaking its functions after informing the President.

Chapter V

Inquiries

Inquiries into human rights violations

27. Where the Commission becomes aware of widespread, systemic or entrenched situations or practices that violate human rights, the Commission may initiate an inquiry.

28. In conducting an inquiry, the Commission shall act in conformity with 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.

Handling of Complaints

29. 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.

30. A complainant may, by notification in writing:

- (a) withdraw a complaint;
- (b) seek the approval of the Commission to amend a complaint.

31. The Commission shall conduct an inquiry into a complaint unless it decides not to do so because:

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

32. 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.

33. 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. This shall be done in accordance with the existing laws.

34. The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter being investigated by the Commission, to attend the Commission at a time and place specified in order to testify, take oath and for questioning and signing of affidavits.

35. The Commission may, by instrument in writing, require 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 country.
- (b) Classified documents in the departments and organizations of the government.

36. The Commission shall not inquire into any complaint which:

- (a) involves any current proceedings before a court;
- (b) has been finally determined by a court.

37. Where a complaint involves a government department, organization or related entity, the Commission shall refer its findings on the complaint to the relevant government department or organization with recommendations for further action. That department or organization shall respond to the Commission on its action regarding the Commission's recommendations within a reasonable period and any action to ensure that complainants are not subjected to reprisals.

38. At the conclusion of an inquiry, the Commission may report its findings and recommendations to the President and may publish them for public information,

39. Where the Commission finds in its inquiry credible evidence of violation of human rights of an individual or individuals, its report may include:

- (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) a recommendation that a person or an agency should take measures as appropriate to redress the violation of human rights;
- (c) a recommendation that the victim of violations or his/her relatives are entitled to compensation for any loss or damage suffered; and

- (d) a recommendation for action to any department, organization, service, person or the relevant authority and a recommendation that requires them to inform the Commission within a reasonable period of the steps that have been taken to give effect to that recommendation.

Protection

40. A person 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 existing law.

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

The inspection of prisons, jails, detention centres and places of confinement

42. 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 should be carried out in accordance with relevant

laws. However, the application of the relevant laws should not unduly restrict the capacity of the Commission to effectively carry out its inspection.

43. In exercising this function in accordance with section 42, the Commission shall have the following powers:

- (a) to visit for inspecting prisons, jails, detention centres and places of confinement after notifying the relevant authorities of the time of its intended visits;
- (b) to inspect all areas and facilities for those detained or confined in prisons, jails, detention centres and places of confinement.
- (c) to interview freely and privately prisoners, detainees and those confined; and
- (d) to make recommendations for action to the relevant authorities and to require them to inform the Commission of the steps that they have taken to give effect to those recommendations.

44. The Commission may convey its findings and recommendations to the relevant Ministries and make them public as appropriate.

Chapter VI

Holding of meetings

45. The Commission shall convene its plenary meeting at least once a month at such place and time as are determined by the Chairperson and may convene special or emergency meetings if required.

46. Members of the Commission are obligated to attend the plenary meeting. In an unavoidable circumstance where some Members are not able to attend the plenary meeting, two thirds of the membership will constitute a quorum.

47. The Chairperson shall preside over the plenary meeting. When the Chairperson is not able to attend, either Vice Chairperson or, if he/she is not available, a Member of the Commission assigned by the Chairperson shall preside.

48. All matters before a meeting of the Commission shall be decided by consensus after consultations. When consensus cannot be reached despite repeated consultations, a decision may be made by a two thirds majority of votes.

49. The Commission shall:

- (a) draft its own rules of procedure for meetings of the Commission; and
- (b) cause minutes of its meetings to be kept.

Chapter VII

Finance

50. The Government shall provide the Commission with a budget required to enable it to effectively discharge the functions assigned to it by this law. The budget shall be appropriated in accordance with financial rules and regulations.

51. 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.

52. The Commission shall cause proper accounts to be kept of its income, expenditure, assets and liabilities.

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

54. Despite the provisions of any other legislation, the Commission's funds, monetary transactions and non-investment revenues shall be exempt from all taxes.

Chapter VIII

Staff organization

55. The Commission shall form a secretariat to assist the Commission to fulfill its functions and powers.

56. The Commission shall appoint a senior executive officer who shall be granted the status of a Director- General and appoint such other officers and employees as are necessary taking into consideration the Civil Service Law for the efficient performance of the functions of the Commission within the limit of funds lawfully available to it.

57. The senior executive officer shall perform the functions determined by the Commission and shall also act as the Secretary of the Commission.

58. The Secretariat is accountable to the Commission.

59. Subject to laws and regulations applicable to government employment, the Commission shall determine the terms and conditions of employment of its staff.

60. 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. In the delegation of functions, the entrusted delegate shall perform only the function specified in the instrument of delegation.

61. The Chairperson of the Commission may revoke by written instrument at any time the function so delegated to the officer concerned.

Chapter IX

General

62. The Commission shall have its headquarters in Yangon and may have its branches in such regions as are required to fulfill its mandate.

63. The Commission shall have its own seal, logo and perpetual succession and the right to sue and to be sued.

64. If the Chairperson is, for any reason, not able to perform his responsibilities, the Vice Chairperson shall assume the responsibilities of the Chairperson.

65. While performing the functions of the Commission under this law, Members of the Commission and any individual assigned by the Commission shall be deemed as public employee under section 21 of the Penal Code.

66. No criminal or civil law suit shall be prosecuted against the Commission or a Member of the Commission or an individual assigned by the Commission for any act done or omitted, or observation made or opinion issued in good faith in the exercise of the functions and powers vested under this law.

67. All correspondence addressed to the Commission or the Office of the Commission, or documents, materials and information obtained or collected by the Commission or its staff shall be immune from any kind of censorship or other interferences.

68. The premises, archives, files, documents, communications, properties, funds and assets of the Commission, wherever located and by whomever held, shall be inviolable and immune from search, seize, requisition, confiscation or any other forms of interference.

69. The Commission may disclose, for the purpose of any investigation being conducted by it, such informations which in its opinion ought to be disclosed in order to conduct its investigation smoothly.

70. The Commission may direct that the name and identifying information concerning any person appearing before it, or testimonies, documents or things furnished to it, be not published or disclosed by any person without the Commission's authorization. The Commission may also take other measures for the protection of witnesses.

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

72. Except on the trial of any person for perjury in respect of his statements, sworn testimony and answers, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Commission shall be admissible as evidence against any person in any court or at

any inquiry or any other proceedings, and no evidence in respect of proceedings before the Commission shall be given against any person.

73. 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 new Commission under this law.

Signed in accordance with the Constitution of the Republic of the Union of Myanmar.

(Signed) Thein Sein

President

The Republic of the Union of Myanmar