

Annex 9: Nepal: Human Rights Defenders Bill 2066 (2009) [Draft proposal]¹

PREAMBLE

The executive parliament has drafted this act in accordance with an interim constitution taking into the account that Nepal has been the party to various international covenants, treaties and agreements related to the protection, promotion and respect of human rights; excellently evaluating the significant role played by Nepalese human rights defenders at the time of Nepal's democratic movement (Loktantrik Aandolan), and recalling the national obligations following the adoption of UN General assembly of the "declaration 1998 on the rights and responsibilities of the individuals, groups and different social bodies regarding the promotion and protection of human rights and fundamental freedom which has been universally accepted"; and also taking into the consideration that threats to life looms on the human rights defenders actively engaged in Nepal's human rights movement, and protection and promotion of human rights can be achieved through the protection and management of their services; the need, therefore, has been felt for this Act.

Chapter One Preliminary

1. Name in short and beginning:

1. This Act is called Human Rights Defenders Security Act, 2066
2. This act will be immediately regulated.

2. Definition. In this Act, if not interpreted differently due to issues or instances:

- a. **Human rights defenders** mean any of the citizens, group of citizens or organization which are protecting and promoting human rights either in an individual capacity or in both organized or spontaneous manner. This term also indicates human rights activists, legal professionals, media personnel, social worker, health personnels or any other individuals who are actively engaged for the promotion and protection of human rights
- b. **Government bodies** mean associations, institutions or bodies established/created and being run in accordance with the existing law
- c. **Officials** refer to President or members including member secretary
- d. **Local administration** refers to district administration office, district police office or local police office or any other similar existing or ad hoc governmental security mechanisms
- e. **Commission** it should mean that it is a human rights defenders commission established in accordance with this law
- f. **By stipulated or in accordance with the stipulation** mean that it is stipulated in accordance with this law or stipulated as per the regulations of this Act.

Chapter Two Role, Responsibilities and Rights of Human Rights Defenders

3. Rights of Human Rights Defender: Human Rights Defenders will have the rights as follows:

1. Protect, promote and fulfil human rights in both individual and organized form
2. Establish/run or participate in any organization or association, as per the existing legislation, with an objective to protect and promote human rights
3. Receive, send or disseminate any human rights related information
4. Promote or widely disseminate or facilitate human rights related new principles and conduct necessary activities to obtain public support
5. Bring the immediate attention of government or concerned parties against any State or non-State actions taken against, or have the strong probability of being against, the human rights norms; and to organize peaceful protest programmes to meet this purpose

¹ Draft proposal sent by the Nepalese NGO Informal Sector Service Center (INSEC, <http://www.insec.org.np>), in September 2009, prior to it being discussed by the relevant authorities in Nepal.

6. Provide/receive legal or other forms of assistance for the protection of human rights
7. Provide necessary support to hold the government responsible to national and international human rights obligations; and create public census to serve this purpose
8. Receive assistance from the government bodies to access the places where either human rights have been violated or there is a strong possibility of human rights being violated; while visiting in and out of such places for the purpose of information collection, receive support from the local government bodies and security forces
9. Organize various programmes on both individual or in coordination with Government organizations or non-Government organizations/associations to protect and promote human rights
10. Provide suggestions to the government and other concerned bodies regarding the protection and promotion of human rights.

4. Responsibilities of Human Rights Defenders – Responsibilities of Human Rights Defenders will be as follows:

1. Advocate for all human rights for all
2. Abide by or made others to abide by the existing legislation while carrying on with their own activities
3. Be sensitive while collecting and disseminating information related to national security, sovereignty and indivisibility, social and religious harmony and national unity
4. To always consider the sensitivity and confidentiality of the victim side while carrying out your activities
5. To prioritise the security to life and relief of the individuals who could be victims or injured or are at risk rather than just collection of information
6. To carry on with your actions or make others carry on their action without creating obstacles in the investigation or enquiries being conducted by the state bodies in relation to establish the guilty or the crime
7. To completely support the other human rights defenders who could be at risk due to security or other reasons
8. To always practice and make others practice the universal understanding of human rights and its principles.

**Chapter Three
Human Rights Defenders Commission**

5. Human Rights Defenders Commission

1. Nepal Government will establish Human Rights Defenders Commission
2. The commission will be a continuous authoritarian autonomous institution. Can acquire, buy and sell assets as an individual
3. Officials and members will be in the commission as following:
 - a. Member nominated by the Commission from (amongst) the human rights commission members *Chairperson*
 - b. One legal expert nominated by Nepal Bar Association from (amongst) the senior advocate/advocates who have been actively engaged in human rights field for the last 15 years *member*
 - c. One journalist nominated by Federation of Nepalese Journalists from (amongst) the journalists whose journalism has been actively engaged in human rights and been collecting and disseminating news on human rights for the last 15 years *member*
 - d. Four human rights defenders with at least one woman nominated by Nepal Government, upon the recommendation of National Human Rights Commission, selected from (amongst) the famous human rights defenders who have been actively engaged and contributed in this field *member*
 - e. Joint-Secretary of Home Ministry, Nepal Government *member*
 - f. First Class Official serving in Nepal Justice Service, nominated by Nepal Government *member secretary*

6. Tenure of the Commission Officials

1. Except for the ex-officio, the tenure of other officials will be of 4 years
2. As per sub-article-1 - the appointed officials can be re-appointed.

7. Ineligibility The individuals as mentioned in the following will not be eligible to be appointed in the commission:

1. Has been found guilty in human rights violation charge
2. Has received sentence in Criminal cases effecting his/her moral degradation
3. Has been charged with corruption
4. Is neither below 25 years of an age nor above or has completed 70 years of an age
5. Has to have at least bachelors degree or has not completed any of the equivalent and relevant academic degree
6. Has been appointed or nominated in government service at the time of appointment in the commission.

Chapter Four

Role, Responsibilities and Rights of Human Rights Defenders Commission

8. Role, Responsibilities and Rights of the Commission:

Role, Responsibilities and Rights of the Commission will be as follows:

1. To take or to make others take up necessary actions regarding the protection of human rights defenders' service
2. To make or to make others take up necessary provisions with regards to coordination amongst all concerned parties to minimize the risk that the human rights defenders set out to collect information might face in their working areas
3. Collect details on human rights defenders and on the basis of which distribute human rights defenders identity card to the human on the basis
4. Formulate and implement code of conduct for human rights defenders
5. Organize national-level human rights defenders representational gathering at least once; prepare and submit a report to the government on the working condition of the human rights defenders
6. Either in coordination with other human rights defenders or alone, take or to make others take up necessary actions for the prevention of abuses against human rights defenders
7. To formulate and implement human rights defenders' protection policy and to have it implemented
8. Assist national human rights commission and Nepal government as required to implement human rights defenders declaration; and conduct necessary programmes to serve the purpose
9. To prepare and submit an annual report to UN special rapporteur on the security condition of human rights defenders, security to their service, human rights defenders related activities carried out by the government and non-government parties and the situation of the human rights defenders
10. Assist Nepal government or national human rights defenders as required on the protection and to capacitate professional competency of the human rights defenders
11. Distribute and renew institutional or individual membership of human rights defenders as identified.

Chapter Five

Protection of Human Rights Defenders' Service

9. Security of Human Rights Defenders

1. In the course of their professional activities, human rights defenders have to be supported by all government or administrative or security bodies, political parties and concerned all parties including local individuals – for or against – of the place where human rights have been violated or where the strong probability of the human rights violation exists; and each human rights defender holds the right to receive support in relation to the concerned subject
2. Local administration or the government bodies will have the responsibility to provide as much possible security as it is in its reach to the human rights defenders if such a request is made by the human rights defenders while collecting and disseminating information on their visit to and from the places where human rights violation has taken place or a strong probability of such violation exists

3. Local administration or the government bodies will have the responsibility to provide information as sought by the human rights defenders – during their visit, stay or in the aftermath of the incident – related to the places where human rights violation has taken place or a strong probability of such violation exists
4. Except in criminal cases, human rights defenders should not be arrested while they are fulfilling their professional responsibilities related to incidence of human rights violations or in due course of other investigations
5. In relation to any of the activities/actions carried out by the human rights defenders as human rights defenders, no case should be filed in the court against human rights defenders, and s/he will not be asked to be witness against his wishes and forcefully compel him/her to make public the information that s/he has received in his capacity.

Chapter Six **Right to Remedy**

10 Right to Remedy

1. As per this Law, human rights defenders can lodge complaint with the district court on the difficulties that they face if they are deprived of the use of facilities or against the restrictions imposed except in the cases when it is in accordance with this Act allowing the human rights defenders to enjoy their rights and facilities as per the act
 2. If such complaint is received, as per the law, the concerned district court can issue an order asking the defendant to be present with a reply in writing within three days
 3. After receiving the defendant's reply in writing, or after the time frame given to receive the defendant's reply passes out, the district court has to prioritise the case and decide on whether or not the concerned party should be subjected to the rights as per this Act
 4. If the decision is for the rights to be subjected as per sub-article 3, such order should be sent to the concerned party as soon as possible through the use of the most efficient means
 5. After receiving the order as per sub-article 3, the concerned party should immediately implement the order
 6. While executing the case or sidelining it as per this Act, the district court can use the rights that it has received from the existing law.
- 11. Interim Order** – As required, the court can hold unilateral hearing and can issue an interim order on the complaint received as per the sub-article 1; or an interim order can be issued by the district court after listening to both the parties. The other party can lodge a complaint with a court if an interim order has been issued based on the unilateral hearing requesting for its annulment; in such a case, the court may annul or modify its previous order. However, if such an interim order has been issued after receiving the written reply then this article will not be viewed as being an obstacle to the decision of the case.
- 12. Penalty Compensation** – According to this Act, the individuals or the concerned official who are not implementing the court order can be subjected to district court fine up to 10,000/- NPR and a letter can be sent to the concerned department directing appropriate departmental action. The amounts fined as such will be collected as the government dues.
- 13. Provision related to Appeal** – According to this law, the concerned party expressing dissatisfaction against the district court's decision on penalty/compensation may lodge an appeal with the concerned Appellate Court within the 15 days of the decision made. Hence, if such an appeal is received then the concerned Appellate Court will have to immediately proceed with and decide on the case as per this act.
- 14. Court Date and Extension** – According to this law, the concerned court can provide the court date or its extension up to 5 days if it is foreseen that the reply cannot be received in the previously decided court date or the appeal cannot be lodged within that time frame owing to situations beyond control.

Chapter Seven **Human Rights Defenders Fund**

- 15. Fund** – A fund will exist in the commission where the amount will be deposited as mentioned in the following:
- a. Contribution or loan received by the Commission from the government or non-government areas
 - b. Individual or institutional membership fee received from the human rights defenders

- c. Assisting contribution received from the national or international individuals or organizations/associations
- d. Amounts received from the assets of Commission
- e. Amount received from any other sources.

16. Use of Fund – Fund will be used by the joint signature of Fund Committee President or any member or secretary authorized by him/her.

Chapter Eight Miscellaneous

17. Action against contempt of the court – In the case under this Act, if an individual does not implement the court's decision or creates obstacles during or while implementing the decision, then the court can take action against such an individual for holding contempt of the court.

18. Contact with Nepal Government – Commission can contact Nepal Government through Home Ministry.

19. Office – Central office of the Commission will be in Kathmandu. It itself can open its regional and contact offices after pre-informing Nepal government. Till such offices are operated, with a pre-consent of National Human Rights Commission, Commission can operate its office in National Human Rights Commission's office.

20. Provision related to Personnel and Expense of the Commission – Nepal government has to provide the required personnel to the Commission. The officials and personnel of the Commission will be provided with the stipulated salary and allowances. These will be provided as stipulated by Nepal Government till the Commission stipulates on the salary and expenses.

21. Right to formulate Regulations

1. For the fulfilment of this Act, the Commission can formulate the rules and regulations as felt necessary
2. Rules and regulations as per sub-article 1 will be in force following the approval of Nepal Government.

22. As per the existing law – Everything mentioned in this Act will be as per this Act and other existing laws.