

ACT 611
NATIONAL RECONCILIATION COMMISSION ACT, 2002

ARRANGEMENT OF SECTIONS

Establishment and Functions of the Commission

1. Establishment of the Commission.
2. Membership of the Commission.
3. Object of the Commission.
4. Functions of the Commission.
5. Inauguration and duration, preparation and publicity.
6. Meetings of the Commission.
7. Committees of the Commission.
8. Independence of the Commission.

Investigations and Proceedings

9. Investigation unit.
10. Powers of the Commission in respect of investigations.
11. Entry and search of premises.
12. Public and private hearing.
13. Powers of the Commission in respect of proceedings.
14. Privilege of witness and indemnity.
15. Compellable witness and admission of incriminating evidence.
16. Production of official documents.
17. Representation by a lawyer at proceedings.
18. Disclosure of identity of applicants and witnesses.
19. Confidentiality.

Completion of Report and Related Matters

20. Completion of report and dissolution of the Commission.
21. Liability of the Commission and members of staff.
22. Offences and penalties.

Administration, Finance and Miscellaneous Provisions

23. Staff for the Commission.
24. Funds of the Commission.
25. Accounts and audit.

- 26. Interpretation.
- 27. Oath of office.

ACT 611
NATIONAL RECONCILIATION COMMISSION ACT, 2002(1)

AN ACT to establish a Commission to seek and promote national reconciliation among the people of this country by recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who have in any other manner been adversely affected by violations and abuses of their human rights arising from activities or inactivities of public institutions and persons holding public office during periods of unconstitutional government and to provide for related matters.

Establishment and Functions of the Commission

1. Establishment of the Commission

There is established by this Act a body to be known as the National Reconciliation Commission.

2. Membership of the Commission

(1) The Commission shall be composed of a chairperson and eight other members.

(2) The chairperson and the other members shall be appointed by the President in consultation with the Council of State.

(3) The President, in appointing the members of the Commission, shall consider the integrity, sense of fairness and ability of the persons to achieve the object of the Commission as set out in section 3.

(4) The members shall be appointed as full-time officers for the duration of the Commission and shall be paid the remuneration that the Minister responsible for Finance in consultation with the Public Services Commission shall determine.

(5) Where a vacancy occurs in the membership of the Commission because of dismissal, resignation, disability or death of a member, the President shall in consultation with the Council of State appoint another person to replace the member.

(6) A member of the Commission may resign membership by written notice to the President and may be removed from office by the President for inability to perform the functions assigned under this Act or for any other stated reason.

3. Object of the Commission

(1) The object of the Commission is to seek and promote national reconciliation among the people of this country

- (a) by establishing accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office or persons purporting to have acted on behalf of the State during periods of unconstitutional

government, namely from

- (i) 24th February, 1966 to 21st August, 1969;
 - (ii) 13th January, 1972 to 23rd September, 1979; and
 - (iii) 31st December, 1981 to 6th January, 1993; and
- (b) by making recommendations to the President for redress of wrongs committed within the specified periods.

(2) Despite the periods specified in subsection (1) (a), the Commission may, on an application by a person, pursue the object set out in subsection (1) in respect of any other period between 6th March, 1957 and 6th January, 1993.

4. Functions of the Commission

For the purposes of attaining its object, the Commission shall

- (a) investigate violations and abuses of human rights relating to killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties suffered by any person within the specified periods;
- (b) investigate the context in which and the causes and circumstances under which the violations and abuses occurred and identify the individuals, public institutions, bodies, organisations, public office holders or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses;
- (c) identify and specify the victims of the violations and abuses and make appropriate recommendations for redress;
- (d) investigate and determine whether or not the violations and abuses were deliberately planned and executed by the State or a person referred to in paragraph (b);
- (e) conduct investigations relevant to its work and seek the assistance of the police and any public or private institution, body or person for the purposes of an investigation;
- (f) investigate any other matters which it considers requires investigation in order to promote and achieve national reconciliation; and
- (g) educate the public and give sufficient publicity to its work so as to encourage the public to contribute positively to the achievement of the object of the Commission.

5. Inauguration and duration, preparation and publicity

(1) The Commission shall be inaugurated within two weeks of the appointment of its members and shall operate for a period not exceeding twelve months from the date of its first hearing, but for good cause shown by the Commission, the President may by executive instrument extend the term of the Commission for a further period not exceeding six months.

(2) The Commission shall on its inauguration undertake preparatory activities that it considers necessary for the public to become aware of its functions.

6. Meetings of the Commission

- (1) The Commission shall meet at times and places it considers necessary.

(2) The chairperson shall preside at meetings of the Commission and in the absence of the chairperson the members present shall elect one of their number to preside.

(3) The quorum at a meeting of the Commission is five members which shall include the chairperson or the member acting for the chairperson.

(4) Decisions of the Commission shall, as far as possible, be taken by consensus and in the absence of consensus, by the majority vote of the members, but where there is a tie in the votes the chairperson shall have a casting vote.

(5) Where a member of the Commission discovers during a meeting or the proceedings of the Commission that the member has or may have a financial or personal interest in the matter before the Commission which is likely to cause a conflict of interest for that member,

(a) the member shall make a full disclosure of the nature of the interest and shall not be present during the discussion of or participate in a decision on the matter; and

(b) the disclosure shall be entered in the record of the proceedings.

(6) A member who does not comply with subsection (5) is liable to be removed from the Commission.

(7) The Commission shall, subject to this Act, regulate its proceedings.

7. Committees of the Commission

(1) The Commission may appoint committees, consisting of persons who are or are not members of the Commission, to perform a function of the Commission assigned to the committee by the Commission.

(2) A committee of the Commission shall be chaired by a member of the Commission.

(3) Section 19 applies to a non-member of the Commission appointed under subsection (1) to a committee of the Commission with the modifications that are necessary.

8. Independence of the Commission

(1) The Commission shall, in the performance of its functions, be independent and not be subject to the direction or control of a person or an authority.

(2) The members and staff of the Commission shall, despite a personal opinion, preference or party affiliation, serve impartially and independently and perform the functions of office in good faith and without fear, favour, bias or prejudice.

Investigations and Proceedings

9. Investigation unit

(1) The Commission shall establish in the Commission an investigation unit to which the Commission shall, for the purposes of achieving its object, assign the investigative duties determined by the Commission shall determine.

(2) The staff requirements of the investigation unit shall be determined by the Commission.

(3) The investigation unit shall have the responsibility of gathering information from persons who claim to be victims of violations and abuses of human rights within the specified periods or from their representatives.

10. Powers of the Commission in respect of investigations

The Commission shall, for the purposes of investigations,

- (a) have access to information and records that relate to the performance of the functions of the Commission;
- (b) visit an establishment or a place in order to conduct investigations;
- (c) question a person in respect of a subject matter under investigation by the Commission;
- (d) require a person to disclose truthfully an information within that person's knowledge relevant to a subject matter under investigation by the Commission;
- (e) require a person to
 - (i) furnish any information;
 - (ii) produce a document or an article in whatever form which in the opinion of the Commission relates to an investigation under this Act and which is in the possession or control of that person.

11. Entry and search of premises

(1) The Commission shall have the powers of the police for the purposes of entry, search, seizure and removal of a document or an article relevant to an investigation under this Act.

(2) Despite subsection (1), the Commission or a person authorised by the Commission may

- (a) with the consent of the occupier of the premises enter, search, seize and remove a document or an article, or
- (b) where in the opinion of the Commission obtaining a warrant will defeat the purpose of the entry, seizure and removal of a document or an article relevant to the investigations, enter, search, seize and remove the document or article without a warrant, but the warrant shall be obtained within twenty-four hours of the search, seizure and removal.

(3) A document, an article or information obtained by the investigation unit shall not be made public unless authorised by the Commission.

12. Public and private hearings

(1) The proceedings of the Commission shall be held in public, but the Commission may for good cause have private hearings.

(2) A person may apply to the Commission to have a hearing involving that person to be held in private and the application itself shall be heard in private by the Commission.

(3) The Commission shall in all its proceedings both in private and public permit the presence of the victim in the matter and any other persons whose presence the Commission considers necessary.

(4) Where proceedings are held in private, the Commission shall direct that,

- (a) any information from the proceedings shall not be made public;
- (b) a person shall not disclose the identity of a witness in the proceedings;
- (c) records of proceedings be kept in the manner that will protect the identity of a witness,

but the Commission may for good reason direct otherwise.

13. Powers of the Commission in respect of proceedings

For the purposes of the conduct of its proceedings, the Commission shall have power

- (a) to require a person to disclose truthfully, an information within the knowledge of that person and which is relevant to the proceedings;
- (b) to examine a witness on oath or affirmation and to administer the oath or affirmation;
- (c) to issue subpoenas requiring the attendance of a person before the Commission and require the production of an article, documents or any other record relevant to the proceedings;
- (d) to cause a person who refuses to comply with an order or directives of the Commission or acts in a manner contemptuous of the Commission to be charged with contempt of court and for that person to be tried at the High Court; and
- (e) to require a person to fill a form providing the information and within the period specified in the form.

14. Privilege of witness and indemnity

(1) A witness appearing before the Commission is entitled to the same privileges to which a witness before the High Court is entitled.

(2) A person shall not be subject to civil or criminal proceedings under an enactment by reason of that person's compliance with a requirement of the Commission under this Act.

15. Compellable witness and admission of incriminating evidence

(1) Subject to subsection (2), in proceedings before the Commission a person called as a witness shall be compelled to produce a document or an article and to answer any question with regard to the subject matter of the proceedings although the document, article or answer may incriminate that person.

(2) Where a person gives incriminatory evidence under subsection (1) the evidence shall not be used in criminal or civil proceedings against that person.

16. Production of official documents

Article 135 of the Constitution which relates to production of official documents in a Court shall apply to proceedings before the Commission as it applies to proceedings before a Court.

17. Representation by a lawyer at proceedings

(1) A person who has been subpoenaed or called to appear before the Commission at a hearing of the Commission may be represented by a lawyer.

(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of a witness or an address to the Commission.

(3) The Commission may appoint a lawyer to act on behalf of a person appearing before it if it is satisfied that that person is not financially capable of appointing a lawyer and if it is of the opinion that it is in the interest of justice that that person be represented by a lawyer.

(4) A person referred to in subsection (1) shall be informed of the right to be represented by a lawyer.

18. Disclosure of identity of applicants and witnesses

(1) Subject to section 12, the Commission shall, with due regard to the purposes of this Act and the object and functions of the Commission, decide to what extent, if at all, the identity of a person who made an application under this Act or gave evidence at the hearing of the application or at any other inquiry or investigation under this Act may be disclosed in a report of the Commission.

(2) A person who believes that his or her safety may be jeopardized by a disclosure made under section 4 in the course of an investigation by the Commission, may request the Commission to take the measures that the Commission considers adequate for his or her protection.

19. Confidentiality

(1) A member of the Commission and every member of the staff of the Commission shall, with regard to

- (a) a matter dealt with by the Commission or that member of staff, or
- (b) information which comes to the Commission's or member of staff's knowledge in the performance of the functions or duties of the Commission or of the member of staff,

preserve and assist in the preservation of those matters which are confidential in terms of the provisions of this Act or which have been declared confidential by the Commission.

(2) A person holding office or appointment under the Commission who is likely to have access to confidential information of the Commission shall before proceeding to carry out the functions under this Act, take or subscribe to the Oath of Secrecy set out in the Second Schedule to the Constitution.

(3) The Commission shall determine the category of persons to whom subsection (2) of this section shall apply.

(4) A member of the Commission shall not, except

- (a) for the purpose of the exercise of the powers,
- (b) the performance of the functions,
- (c) the carrying out of the duties of office,
- (d) when required by a court of law to do so, or
- (e) under any law,

disclose to a person an information acquired by the member by reason of being a member of the Commission.

(5) Subject to subsection (4) and section 18, a person shall not disclose or make known an information that is confidential by virtue of a provision of this Act.

(6) A person who is not authorised by the Commission shall not have access to an information that is confidential by virtue of this Act.

(7) Subject to the Public Records and Archives Administration Act, 1997 (Act 535), the Commission shall, on the conclusion of its work, give directions as to the treatment, storage, safe-keeping and disposal of the information, material, record or document collected, gathered or used by it in the course of its work.

(8) A member of the Commission shall not

- (a) through association, statement, conduct or in any other manner jeopardize the independence or harm the credibility, impartiality or integrity of the Commission;
- (b) make use of or profit from a confidential information gained as a result of membership of the Commission; or
- (c) divulge an information relating to the work of the Commission to any other person except in the course of the performance of the functions of the member.

(9) A member of the Commission who contravenes any of the provisions of subsection (8) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

Completion of Report and Related Matters

20. Completion of report and dissolution of the Commission

(1) The Commission shall within three months of the conclusion of its work submit its report to the President.

(2) The report shall comprise the findings and recommendations of the Commission and shall among others,

- (a) provide proper documentation and establish the nature and causes of the serious violations and abuses of the human rights of persons;
- (b) provide an accurate historical record of matters investigated by the Commission;
- (c) identify the victims of violations and abuses of human rights;
- (d) recommend the appropriate response to the specific needs of each victim or group of victims;
- (e) suggest measures to prevent and avoid the repetition of those violations and abuses;
- (f) recommend reforms and any other measures whether legal, political, administrative or otherwise needed to achieve the object of the Commission;
- (g) promote healing and reconciliation; and
- (h) the setting up of a reparation and rehabilitation fund.

(3) The Commission shall, after the submission of its report, cease to exist on a date determined by the President by publication in the *Gazette*.

21. Liability of the Commission and members of staff

A member of the Commission, a member of staff of the Commission, or a person who performs a task on behalf of the Commission, is not liable in respect of anything contained in a report, finding, point of view or recommendation made or expressed in good faith under this Act.

22. Offences and penalties

(1) A person who

- (a) in anticipation of a finding of the Commission relating to an investigation, acts in a manner calculated to influence the Commission's proceeding or findings;

- (b) does anything calculated to influence improperly the Commission in respect of a matter being or to be considered by the Commission in connection with an investigation;
- (c) does anything in relation to the Commission which, if done in relation to a court of law, would constitute contempt of court;
- (d) without lawful justification or excuse, wilfully obstructs, hinders or resists the Commission, a member or member of the staff of the Commission in the performance of the functions under this Act;
- (e) wilfully makes a false statement to or misleads or attempts to mislead the Commission or any other person in the performance of functions under this Act;
- (f) without lawful justification or excuse, refuses or wilfully fails to comply with a lawful request of the Commission, a member or any other person under this Act;
- (g) having been subpoenaed under this Act, without sufficient cause fails to attend at the time and place specified in the subpoena, or fails to remain in attendance until the conclusion of the meeting in question or until excused from further attendance by the person presiding at that meeting, or fails to produce an article in that person's possession or custody or under that person's control;
- (h) having been subpoenaed under this Act, without sufficient cause refuses to be sworn or to make affirmation as a witness or fails or refuses to answer fully and satisfactorily to the best of that person's knowledge a question lawfully put to that person;
- (i) fails to perform an act as required in terms of this Act;
- (j) discloses confidential information in contravention of a provision of this Act; or
- (k) destroys a document or an article relating to or in anticipation of an investigation or proceedings in terms of this Act,

commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units, or to a term of imprisonment not exceeding two years or to both the fine and the imprisonments.

Administration, Finance and Miscellaneous Provisions

23. Staff for the Commission

(1) There shall be appointed by the President in consultation with the Attorney General and the Public Services Commission the administrative staff that the Commission may require for the performance of its functions.

(2) Public officers may be seconded or transferred to the Commission.

(3) The President may delegate the power of appointment of public officers under this Act in accordance with article 195 (2) of the Constitution.

24. Funds of the Commission

The funds of the Commission for its administrative expenditure include

- (a) funds provided by Parliament from the Consolidated Fund and any other public fund,
- (b) donations, and

(c) grants.

25. Accounts and audit

(1) The Commission shall maintain proper books of accounts and other records of account in the form determined by the Auditor-General.

(2) The Commission shall not later than three months after it has submitted its report, submit to the Auditor-General its books and records of account.

(3) The Auditor-General shall not later than three months after the receipt of the books and records of account of the Commission under subsection (2), audit the books and records of account, prepare an audit report and submit the audit report to the Attorney General who shall lay it before Parliament.

(4) The Auditor-General may issue instructions regarding the conduct of the audit or conduct of a supplementary audit.

26. Interpretation

In this Act unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Commission**” means the National Reconciliation Commission established in section 1;

“**functions**” includes powers and duties;

“**member**” means a member of the National Reconciliation Commission established under section 1;

“**specified periods**” means the periods specified in section 3.

27. Oath of office

On assumption of office each member of the Commission shall depose to “The Oath of Secrecy” and the Official Oath as specified in the Second Schedule to the Constitution.

Endnotes

1 (Popup - Footnote)

1. This Act was assented to on 9th January, 2002, and notified in the Gazette on 11th January, 2002.