

## **Tharu Commission Act, 2074 (2017)**

### **Date of Authentication and Publication:**

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### **Amending Acts:**

The Act Amending Some Nepal Acts 2019 (2075) March 3 2019 (2075.11.19)

### **Act No. 27 of the year 2017 (2074)**

### **An Act Made to Make Arrangements Relating to Tharu Commission**

**Preamble:** Whereas, it is expedient to make necessary arrangements relating to Tharu Commission for the identification of the history and culture of Tharu Community, protection and promotion of the rights and interests and the empowerment of the Tharu community,

Now, therefore, be it enacted by the Federal Parliament pursuant to Article 296 sub-article (1) of the Constitution of Nepal.

### **Chapter-1**

### **Preliminary**

1. **Short title and Commencement:** (1) This Act may be called "Tharu Commission Act, 2017 (2074)."

(2) This act shall come into force immediately.

2. **Definitions:** Unless the subject or the context otherwise requires, in this Act, -
- (a) "Chairperson" means the Chairperson of the Commission and the word also includes the member working as the Acting Chairperson.
  - (b) "Commission" means the National Tharu Commission established under Article 263 of the Constitution.
  - (c) "Prescribed" or "As prescribed" means laws prescribed or as prescribed under the Rules framed under this Act.
  - (d) "Tharu Community" means the indigenous Tharu community, as defined by the Government of Nepal on the basis of the recommendation made by the Tharu Commission.
  - (e) "Member" means the member of the Commission and the word also includes the Chairperson.
  - (f) "Constitution" means the Constitution of Nepal.

## **Chapter-2**

### **Qualifications of the Chairperson and Members and Vacancy of Post**

3. **Qualifications of the Chairperson and Members:** The following persons shall be qualified to be the Chairperson and Member of the Commission: -
- (a) person from the Tharu community, having contributed for at least ten years for the protection, promotion of the rights

and interests of the Tharu community, the empowerment and development of the Tharu community or having made significant contribution in the field of human rights,

- (b) holding a bachelor's degree in the relevant subject from a recognized university,
- (c) not being a member of any political party at the time of appointment,
- (d) having attained the age of forty-five years,
- (e) being of high moral character.

**4. Vacancy of post:** The post of the Chairperson or Member of the Commission shall be vacant in any of the following circumstances: -

- (a) if he or she tenders resignation in writing to the President,
- (b) if he or she attains the age of sixty-five years,
- (c) if the tenure of the post ends pursuant to sub-article (3) of Article 263 of the Constitution,
- (d) if a motion of impeachment is passed against him or her under Article 101 of the Constitution,
- (e) if he or she is removed from post by the President on recommendation of the Constitutional Council on grounds of his or her inability to hold office and discharge the functions due to physical or mental illness,

(f) if he or she dies.

5. **Reappointment shall not be done:** The Chairperson and Members appointed shall not be reappointed.

Provided that a member may be appointed to the post of the Chairperson, and when a member is so appointed as the Chairperson, his or her term of post shall be computed including his or her term as the member.

6. **Not to be appointed in other government services:** A person appointed as the Chairperson or a Member of the Commission shall not be eligible for appointment in other government services.

However, nothing in this section shall be deemed to be a bar to the appointment to any political position or to any position which requires making investigations, inquiries or findings on any subject, or submitting advice, opinion or recommendation after carrying out a study or research on any subject.

### Chapter-3

#### **Power, Functions and Duties of the Commission**

7. **Power, Functions and Duties of the Commission:** The power, function and duties of the Commission shall be as follows: -

(a) to conduct study on the overall situation of the Tharu community and to make recommendations in that relation, to the Government of Nepal, for policy, legal and institutional reforms,

- (b) to formulate national policy and program for the promotion and protection of the rights and interests of the Tharu community and the empowerment of such community and to make recommendations to the Government of Nepal for their implementation,
- (c) to conduct study and research on whether the arrangements made for the promotion and protection of the rights and interests of the Tharu community and their empowerment have been effectively implemented, and to make suggestions to the Government of Nepal with regards to measures that need to be taken for their effective implementation,
- (d) to make suggestions to the Government of Nepal regarding the reforms in the existing legal, policy and institutional arrangements, for the promotion and protection of the rights and interests of the Tharu community and the empowerment of such community,
- (e) to review, monitor and evaluate the implementation of the policy and programs related to the Tharu community,
- (f) to monitor or cause to monitor the implementation of the recommendations made or suggestions given by the Commission,
- (g) to formulate special programs for the development and empowerment of economically or socially indigent people

within the Tharu community and to make recommendations to the Government of Nepal for their implementation,

- (h) to conduct study and research into the language, script, culture, history, tradition, literature, art of the Tharu community and to formulate program for the protection and development of such language, script, culture, history, tradition, literature, art and to make recommendations to the Government of Nepal for its implementation,
- (i) to conduct awareness generating program for the protection and promotion of the rights and interests of the Tharu community and the empowerment of such community,
- (j) to formulate programs to end existing malpractices, superstitions and all forms of exploitation existing within the Tharu community and empower Tharu community and to make recommendations to the Government of Nepal,
- (k) to protect and promote the traditional skill, technology and special knowledge existing within the Tharu community and to assist in its application for commercial use,
- (l) to monitor the implementation of the international treaties, agreements relating to the Tharu community that Nepal is a party to, and to make necessary recommendations or

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• Amended by The Act Amending Some Nepal Acts 2019 (2075).

suggestions to the Government of Nepal for their implementation,

- (m) to collect complaints against the persons or organizations that violate the rights of the Tharu community and to make recommendation to the concerned agency to conduct investigation and prosecution over such complaints,
- (n) to identify the Tharu community, by means of detailed study and research and to make recommendations to the Government of Nepal to make lists of Surnames,
- (o) to formulate policy and programs to establish and mobilize living museum for the protection and promotion of the physical, non-physical culture of the Tharu community and to make recommendations to the Government of Nepal for its implementation,
- (p) to search for and investigate the place of origin of the Tharu community and to make recommendations to the Government of Nepal for the protection and promotion of those archaeological and ancient structures, objects and places,
- (q) to review, monitor and evaluate the awareness generating programs conducted by the Government of Nepal and other organizations and institutions for the protection, promotion and empowerment of the Tharu community,

- (r) to formulate and implement the code of conduct for the Chairperson, Members and employees of the Commission,
- (s) to approve the annual plans and programs of the Commission.

8. **May obtain opinion and consultations:** The Commission, with relation to its functions and duties, may coordinate and receive opinions or seek from any constitutional organ, government office or public entity.

9. **May obtain service of experts:** The Commission may receive services from experts, pursuant to the federal law by stating the reasons thereof, if the human resource employed within the Commission is unable to perform any work that the Commission is required to perform as per this Act and prevailing federal law.

10. **May form committee or working group:** (1) The Commission may form a committee or working group to perform specific tasks related to the Commission, by formulating a procedure.

(2) The terms or scope of operation of the committee or working group formed pursuant to sub-section (1), shall be as prescribed by the Commission at the time of its formation.

(3) While forming the committee or working group pursuant to sub-section (1), there shall be representation based on the principle of proportional representation, as enshrined in the Constitution.



11. **Coordination and Cooperation:** The Commission may, on the basis of necessity, coordinate and cooperate with government agencies or public entities.

#### Chapter- 4

#### **Operation of the Commission**

12. **Office of the Commission:** (1) An office of the Commission shall be established in the Kathmandu Valley for the operation of work of the Commission.

(2) The Commission may, on the basis of necessity, establish offices in the provincial level.

13. **Meeting of the Commission:** (1) The meeting of the Commission shall decide the functions to be performed by the Commission in accordance to this Act.

(2) The meeting of the Commission shall be held on such a date, time and venue as prescribed by the Chairperson, based on necessity.

(3) The Secretary of the Commission shall finalize and notify all members of the date, time and venue of the meeting along with a list of the agenda to be discussed in the meeting, at least 48 hours prior to the meeting.

(4) Any member interested to discuss additional issues, not included within the list of agenda set to be discussed in the meeting pursuant to subsection (3), shall notify the Secretary of those additional issues and reason

for their introduction to the meeting 24 hours prior to the meeting. Upon receipt of such information, the Secretary of the Commission shall notify all members and such issues shall be considered to have been included in the list.

(5) Notwithstanding anything stated in sub-sections (3) and (4), an issue not included within the list may be introduced and decided by the Commission, with the agreement of all members present in the meeting.

(6) The quorum of the meeting shall be deemed to have been fulfilled with the presence of more than 50 percent of the immediate members of the Commission.

(7) The meeting of the Commission shall be chaired by the Chairperson of the Commission.

(8) The decision of the majority shall be the decision of the Commission and in case of a tie, the Chairperson shall give a decisive vote.

(9) The Secretary of the Commission shall create a depository of the decision of the Commission, authenticating it with the signatures of the Chairperson and Members.

•(10) The Secretary of the Commission shall be a gazetted first class officer of the Nepal Civil Service. The seniormost official of the Commission shall act as the Secretary of the Commission until the appointment of such official.

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• Amended by The Act Amending Some Nepal Acts 2019 (2075)

(11) Other procedures related to the meeting of the Commission shall be as determined by the Commission.

**14. Not to take part in the decision making in case of conflict of interest:**

If any member of the Commission has any interest, concern or benefit arising from any issue under consideration in the Commission or if the near relatives of such persons stand to benefit directly or indirectly, such member should give prior information to the Commission regarding such matters and such member shall not take part in the decision making process of the Commission concerning such matters.

**15. Work Division:** The division of the work of the Chairperson and Member shall be as fixed by the Commission.

**16. Work to be performed as an acting:** The senior most Member of the Commission, shall work as the acting Chairperson, if the position of the Chairperson falls vacant due to any reason, is unable to perform work pursuant to sub-article (6) of Article 101 of the Constitution, has gone for a foreign visit or is on leave for more than 7 days.

**17. Work, performance of the Commission not to be interrupted:** The vacancy of post of any Member shall not interrupt the work, performance of the Commission <sup>⊗</sup>..... .

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<sup>⊗</sup> Removed by The Act Amending Some Nepal Acts 2019 (2075)

## Chapter-5

### Miscellaneous

**18. Organizational Structure and Employees of the Commission:** (1) The organizational structure and appointment of employees of the Commission shall be as approved by the Government of Nepal.

(2) The Government of Nepal shall make available the employees necessary for the Commission to perform its work.

**19. Duties and Conduct of Post:** (1) The duties and conduct of the post to be adhered by the Chairperson and Members of the Commission shall be as follows: -

- (a) to perform the obligations of the post independently, impartially and honestly for the protection and promotion of the rights, interests of the Tharu community and empowerment of the Tharu Community,
- (b) not to commit any act that would create discord in the relationship between different ethnicities, communities and identities.

(2) The Chairperson and the Members of the Commission shall adhere to the code of conduct as prescribed by this Act or prevailing federal laws.

20. **Cooperation to be extended:** It shall be the duty of any agency or official with which the Commission seeks assistance, to cooperate with the Commission in course of the performance of its functions.
21. **Power to send for implementation in writing:** If the Commission finds that any agency or official has not made available necessary assistance to the Commission, it may write to the higher agency or official above such agency or official for assistance in the matter.
22. **Annual report:** (1) The Commission shall submit an annual report of the work and activities of the Commission to the President, within three months of the date of expiry of the fiscal year.
- (2) The report made pursuant to sub-section (1) shall *inter-alia*, include the following matters, in addition to other details: -
- (a) Details of implementation of annual programs of the Commission and expenses incurred,
  - (b) Details of suggestions, recommendations given by the Commission to the Government of Nepal or any other agency,
  - (c) The status of the implementation of the suggestions, recommendations given in accordance to clause (b),
  - (d) Situation of physical and economic resources of the Commission and their utilization,
  - (e) Details of other activities performed by the Commission in course of fulfilling the responsibilities required of the Commission, in accordance to this Act.

23. **Liaison with Government of Nepal:** The Ministry of Federal Affairs and General Administration shall liaise the Commission with the Government of Nepal.

24. **Delegation of Power:** The Commission may delegate some authority accorded to it by this Act, as per necessity, with set conditions for its use and adherence, to the Chairperson, Member, official employee of the Government of Nepal, State Government, any agency or Local Government.

25. ....

26. **Protection of the action taken in Good Faith:** No legal proceedings shall be initiated against the Members of the Commission, employees or any person deputed by the Commission for any action performed under this Act or Rules framed under this Act, in good faith.

27. **Power to frame rules:** (1) The Commission may frame necessary rules for the implementation of this Act.

(2) The Commission shall have to get the approval of the Government of Nepal, Ministry of Finance, while making rules pursuant to subsection (1), on matters that impose financial burden or liability on the Government of Nepal.

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• Amended by The Act Amending Some Nepal Acts 2019 (2075).  
∞ Repealed by The Act Amending Some Nepal Acts 2019 (2075).

(3) The rules made pursuant to sub-section (1) shall come into force, from the date of publication in the Nepal Gazette.

- 28. Power to frame Directives:** The Commission may, subject to this Act or rules framed under this Act, issue directives to conduct or cause to conduct the smooth operation of its work.

## ∞Schedule

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<sup>∞</sup> Repealed by The Act Amending Some Nepal Acts 2019 (2075).