

# **Constitutional Council (Functions, Duties, Powers and Procedures) Act, 2066 (2010)**

Date of Authentication and Publication

2066.9.22 (6 Jan. 2010)

Act Number 8 of the Year 2066 (2010)

## **An Act made to provide for provisions on Functions, Duties, Powers and Procedures of Constitutional Council**

**Preamble:** Whereas, it is expedient to provide for legal provisions on the procedure of to the appointment of officials of constitutional bodies and on the function, duties, powers and procedures of the Constitutional Council,

Now, therefore, be it enacted by the Constituent Assembly pursuant to Sub-article (1) of Article 83 of the Interim Constitution of Nepal, 2063.

**1. Short Title and Commencement:** (1) This Act may be called "Constitutional Council (Functions, Duties, powers and procedures) Act, 2066.

(2) This Act shall come into force immediately.

**2. Definitions:** Unless, the subject or context otherwise requires, in this Act;-

(a) "Chairperson" means the Chairperson of the Council.

(b) "Officials" means the following officials to be appointed on the recommendation of the Council"

(1) The Chief Justice of Supreme Court.

(2) Chief Commissioner and Commissioners of the Commission for the Investigation of Abuse of Authority.

(3) Auditor General.

- (4) Chairperson and members of Public Service Commission.
- (5) Chief Election Commissioners and election commissioners of Election Commission.
- (6) Chairperson and members of National Human Rights Commission.
- (c) "Council" means the Constitutional Council constituted pursuant to Article 149 of the Constitution.
- (d) "Constitution" means the Interim Constitution of Nepal, 2063.
- (e) "Secretary" means the Secretary of the Council.
- (f) "Secretariat" means the Secretariat of the Council pursuant to Section 8.
- (g) "Member" means member of the Council.

**3. The functions, duties and powers of the Council:** Save as provided by the Constitution, the other functions, duties and powers of the council shall be as follows:

- (a) To recommend for parliamentary hearing for the purpose of Sub-article (1) of Article 155 of the Constitution.
- (b) To recommend before the President for the appointment of the person from among the person recommended pursuant to Clause (1) for whom the secretariat of the parliament writes that there is no bar to appoint him/her.
- (c) To maintain the record of the persons who are eligible for the recommendation pursuant to Clause (1).
- (d) To keep updated record of appointment, tenure, vacancy, and re-appoint etc of the officials.

**4. Record to be maintained:** (1) The Secretariat shall maintain separately the record of the persons who are eligible to be appointed in the post of officials of Constitutional body.

(2) The record maintained pursuant to Sub-section (1) shall be confidential and in the custody of secretary.

(3) The secretary shall not give the record pursuant to Sub-section (2) to anyone nor shall make it public without the approval of the Council.

(4) Notwithstanding anything contained elsewhere in this Section, there is no bar to recommend the person for constitutional position who is eligible pursuant to constitution and law only on the reason that his/her name is not included in the record.

**5. The procedures to be followed for making recommendation for appointment:** (1) The Council shall, while making recommendation to a person for the appointment in the official of constitutional body set out qualification mentioned in the Constitution and prevailing law and the reasons and grounds of the recommendation.

(2) The council shall, while making recommendation to a person pursuant to Sub-section (1) shall consider including his/her social prestige, high moral character, honesty, public attitude toward him/her and his/her previous service, if any, and professional experience.

**6. Procedures relating to the meetings of the council:** (1) The meetings of the council shall be held as may be required on the date, time and at the place prescribed by the chairperson.

(2) The Secretary shall, as per the direction of the chairperson, send a notice of date, time, place of the proposed meeting and the agenda to be discussed at the

meeting to the each member in the advance of Forty Eight hours of the proposed meeting.

Provided that, if a member thinks that discussion is necessary over a matter, which is not included in the agenda, at the meeting, he/she may, with the permission of the chairperson, put the proposal thereof at the meeting.

(3) It shall be deemed to have been achieved the quorum for holding a meeting if the chairperson and at least other Five members are present.

(4) The chairperson shall preside over the meetings of the Council.

(5) Each matter submitted at the meeting shall be decided unanimously.

(6) In case unanimous decision could not take place pursuant to section (5) no decision shall be made over such matter.

(7) The chairperson shall call next meeting to make decision on the matter which was not decided pursuant to Sub-section (6) and the decision shall be taken over that matter on the basis of the consent of the meeting.

Provided that, even the said meeting fails to make decision on the basis of the consent, the decision shall be taken by majority votes of the total members of the council.

(8) The Secretary shall maintain the record of the decisions of the council and shall keep the decision upon causing the signature of the chairperson and members.

(9) Other procedures of the meeting of the council shall be determined by itself as per necessity.

**7. Recommendation to be forwarded for parliamentary hearing:** (1) If the Council recommends to a person for an official of constitutional body, the

Secretary shall forward it to the Secretariat of Legislature Parliament for parliamentary hearing.

(2) In case Secretariat of the Legislature- Parliament writes that there is no bar to appoint a person, the Secretary shall, as per the decision of the Council, forward it to the office of the president to submit it before the president for the appointment.

**8. Secretariat of Council:** The functions of the Secretariat of the Council shall be performed by the office of Prime Minister and Council of Ministers.

**9. Information shall be forwarded when an official is relieved of his/her office:** (1) In case an official of a constitutional body is relieved of his/her office by any manner, the concerned constitutional body shall forward it to the secretariat within a period of Seven days from the date of his/her relief and shall also give information thereof to the concerned Ministry.

(2) The Secretary shall, after receiving the information pursuant to Sub-section (1) in the Secretariat, inform the matter to the Chairperson as soon as possible.

**10. The functions, duties and powers of secretary:** (1) Save as provided by this Act elsewhere, the other functions, duties and powers of the secretary shall be as follows:

- (a) To call the meeting as per the direction of chairperson.
- (b) To implement or cause to implement the decision made by the council.
- (c) To maintain up to date record to be kept in the secretariat and to arrange and manage for systematic and secured record.

- (d) To monitor, control, supervise and co-ordinate the act and activities to be performed by the secretariat and to depute the employees for their work upon making job assignment.
- (e) To authenticate the record of the council.
- (f) To liaise and co-ordinate with the various bodies of Government of Nepal and with other bodies as per necessity.

(2) Save as provided by Sub-section (1) other functions, duties and powers of secretary shall be as prescribed by the council.

**11. The provision of budget and employees for Secretariat:** (1) The Ministry of Finance shall release the budget as per necessity for the Secretariat in the name of office of Prime Minister and Council of Ministers.

(2) The Government of Nepal shall, as per necessity, arrange employees for the secretariat.

**12. Liaison with the Government of Nepal:** The Council shall liaise with the Government of Nepal through the Office of Prime Minister and Council of Ministers.

**13. Power to frame Rules:** (1) The Council may frame necessary Rules to implement the objectives of this Act.

**14. Repeal:** (1) Procedures of the appointment for the officials of constitutional organs and the functions, duties, powers and procedures of the Council Rules, 2065 are, hereby, repealed.

(2) An act or activity taken or done pursuant to the procedures of the appointment for the officials of constitutional organs and the functions, duties, powers and procedures of Constitutional Council Rules, 2065 shall be deemed to have been taken or done pursuant to this Act.