

# **Analysis of the Pakistan National Commission for Human Rights Bill, 2005**

**Submitted by the Commonwealth Human Rights Initiative, (CHRI)  
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## Introduction

The Commonwealth Human Rights Initiative (CHRI)<sup>1</sup> welcomes the Bill to set up the National Commission for Human Rights in Pakistan. CHRI believes that the establishment of the Commission under the Bill, which fulfils many of the requirements mentioned in the *Paris Principles*<sup>2</sup> will greatly enhance the protection and promotion of human rights in Pakistan.

After studying various aspects of the Bill, CHRI has drawn up a set of recommendations based on best practice encapsulated in the governing Acts of Human Rights Commissions across countries of the Commonwealth. Care has been taken not to interfere with the basic structure of the Bill. Therefore, the recommendations by their very nature do not seek to fundamentally alter the character of the Bill but suggest additions and point to omissions which taken together will contribute to sharpening the focus of the Bill towards its objectives.

CHRI calls upon the Government of the Islamic Republic of Pakistan to factor in these recommendations when presenting the Bill before Parliament. CHRI believes that inclusion of these recommendations will not only greatly strengthen the cause of human rights in Pakistan but will also greatly enhance the legitimacy of the proposed National Commission for Human Rights in international fora. Tuning the Act to maximise human rights considerations will inspire other countries wishing to set up National Human Rights Institutions to adapt and borrow from Pakistan's experience.

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<sup>1</sup> The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation mandated to ensure the practical realisation of human rights in Commonwealth Countries. CHRI is headquartered in New Delhi and has offices in London and in Accra.

<sup>2</sup> Principles relating to the status and functioning of national institutions for protection and promotion of human rights also known as the *Paris Principles* have been endorsed by the United Nations Commission on Human Rights in March 1992 and by the General Assembly of the United Nations in December 1993. The Paris Principles were developed after a consultation with representatives of National Human Rights Institutions; States; the United Nations and its specialised agencies; and inter-governmental and non-governmental organisations from across the world.

### **Summary of CHRI's recommendations**

- The definition of “human rights” under Section 2 (d) be amended to include the rights guaranteed in the International Bill of Rights and the core International Human Rights Instruments.
- The qualifications for holding the office of Chairperson and Members under each of the different categories of Section 3 (2) be amended to include “knowledge, background and a prior demonstrable commitment to human rights protection and promotion”.
- The stipulation for the appointment of two Members of Parliament to the Commission under Section 3 (2) (ii) be done away with.
- The appointment criteria under Section 3 (2) (ii) be qualified to include a stipulation of being “fit and proper” to hold the office of Member, National Commission for Human Rights.
- The appointment criteria under Section 3 (2) (iii) be amended to ensure that appointments in this category are carried out from amongst civil society activists, academicians, trade union representatives, journalists, social scientists or other professionals who are not serving or former government servants.
- Members appointed under Section 3 (2) (v) be designated as part-time Members. Their appointment criteria be amended to include the stipulation of one member from the medical profession, the other being a disabled person and/or a person with prior experience of supporting the advancement of disabled people’s rights.
- Chairpersons of the National Commission on the Status of Women and National Commission of Minorities be considered deemed or part-time Members of the Commission
- The appointment procedure in Section 4 (1) be amended to make it mandatory for the Federal Government to make a public announcement inviting suggestions for possible candidates from organisations and individuals working in the field of human rights.
- Appointments to the Commission under Section 4 (1) be carried out after obtaining approval of the Leader of the Opposition in Parliament; majority of the members of the NGO Advisory Committee mentioned in Section 28; and majority of existing Members of the Commission.
- A provision be included in the Bill that requires the Government to expeditiously fill vacancies to the Commission within three months of their occurrence.
- Section 10 be amended to read that the Commission may appoint independently, its Secretary and such other staff for the performance of its functions. The staff should be appointed on the basis of their knowledge and experience of human rights. The appointment of staff should reflect the diversity of the people of Pakistan, ensuring in particular, adequate representation to women and minorities.
- An express provision be included in Section 10 that makes it mandatory for the staff of the Commission to reflect the diversity of the people of Pakistan and provide adequate representation to women and minorities.

- Powers of the Commission under Section 11 (c) be amended to enable the Commission to visit any place of custody, reformation, rehabilitation or treatment run or funded by the government such as a police station, prison, juvenile home, women's home, beggar's home, hospital, mental health institution, refugee camp or like facility.
- The stipulation of having to give intimation under Section 11 (c) to the Provincial Government for visiting a jail where persons are kept for the purpose of treatment, protection or reformation be scrapped.
- Section 11 (k) be amended to read that the Commission may submit independent reports to United Nations bodies and committees on the state of human rights in Pakistan.
- Section 11 (m) which requires the Commission to pursue or defend issues, complaints and representations for and against Pakistan be scrapped as it will interfere with the independent and autonomous nature of the Commission.
- Three additional functions for the Commission be included in Section 11: (i) making public statements that promote an understanding of, and compliance with, the fundamental rights guaranteed in the Constitution of Pakistan and in the international instruments on human rights (ii) developing a national plan of action, in consultation with the Federal Government for the promotion and protection of human rights in Pakistan (iii) conciliating or mediating in situations where the Commission envisages an imminent violation of human rights arising out of a conflict between two or more State or non-State actors.
- A new section be added that makes it mandatory for all State organs to provide the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its duties and functions.
- A new section be added that makes wilful obstruction or interference in the performance of any of the Commission's functions, punishable by imprisonment up to two years and/ or a fine up to Rs 25,000.
- Failure of the government or the authority concerned to submit a report of the action taken or proposed to be taken within the stipulated time under Section 12 (v) should attract a fine of Rs 500 per day for any delays. This fine should be made recoverable from the officer whose duty it is to submit the report.
- Submission of the annual report by the Commission to the Federal Government under Section 19 (1) be carried out within three months of the ending of each financial year.
- The period for submitting a special report of the Commission to Parliament by the Federal Government under Section 19 (2) be reduced to within thirty days of its submission to the Federal Government by the Commission.
- A clause be added to Section 20 which makes it obligatory for Parliament to make an annual grant to the Commission, which is not less than the grant made in the previous year and which is adequate for the performance of the Commission's functions and to maintain its impartiality and independence.

## DEFINITION OF HUMAN RIGHTS

### **A national institution shall be vested with competence to protect and promote human rights- *Paris Principles***

The competence of a human rights commission to protect and promote human rights is greatly enhanced if the law provides for a broad and inclusive definition.

1. Section 2 (d) of the Bill describes Human Rights as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international instruments on human rights which the Government of Pakistan has ratified and are enforceable in the courts in Pakistan”. The Act governing the Fiji Human Rights Commission, defines human rights as “rights embodied in the United Nations Covenants and Conventions on Human Rights and includes the rights and freedoms set out in the Bill of Rights”.<sup>3</sup> CHRI advocates for a comprehensive *definition of human rights to include not only constitutionally guaranteed rights relating to life, liberty, equality and dignity of the individual but also to include the rights guaranteed in the International Bill of Rights<sup>4</sup> and the other core international human rights instruments.*<sup>5</sup>

## COMPOSITION OF THE NATIONAL COMMISSION FOR HUMAN RIGHTS

The effectiveness of a human rights commission and its responsiveness to addressing human rights concerns depends largely upon its Members, who in addition to possessing the requisite experience and orientation, must also reflect the diverse interests of society.

2. Section 3 (2) prescribes the composition of the Commission and lays down the qualifications and criteria for appointment of the Chairperson, Members, Adhoc Members and Ex- Officio Member of the Commission. CHRI recommends that *a stipulation be added that makes it essential for each person appointed under Section 3 (2) to have knowledge, background and a prior demonstrable commitment to human rights protection and promotion.*
3. *Section 3 (2) (ii) provides for the appointment of two Members of Parliament (one from the National Assembly and one from the Senate). CHRI recommends the deletion of this clause.* Parliamentarians have a forum in Parliament to represent and raise human rights concerns. Also they have responsibilities in

<sup>3</sup> Section 2 Human Rights Commission Act, 1999 (Fiji)

<sup>4</sup> Comprising the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

<sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child, 1989; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

Parliament, towards their political parties and towards their constituents, which may prevent them from fully exercising their functions as full-time Members of the Commission. Perhaps, this is why, in Uganda, Members of the Human Rights Commission are required on appointment to relinquish particular offices held by them including that of a Member of Parliament.<sup>6</sup>

4. If the appointment of the two Members of Parliament is to be carried out under the circumstances, they may be *designated as deemed or part-time members (exercising all other functions of the Commission except inquiry into complaints) with the specific responsibility of raising human rights concerns of the Commission and encouraging debate on its reports both inside and outside Parliament. A stipulation also be added that at least one of the Members of Parliament appointed in this category should be from the principal opposition party.*
5. Section 3 (2) (ii) provides for the appointment of one Member from each province who has been a High Court Judge of that province or a person qualified to be a Judge of the High Court or a Government Servant having retired from service in BPS-21 or above. CHRI recommends that the criteria for appointment of Members under this category be strengthened to include *knowledge, background and demonstrable commitment towards human rights and they should be persons, fit and proper to hold the office of Member, National Commission for Human Rights.* In New Zealand, the Minister, while recommending the appointment of human rights commissioners, has to take into account “not only their personal attributes but also their knowledge of or experience in the different aspects of matters likely to come before the Commission”.<sup>7</sup>
6. Section 3 (2) (iii) provides for the appointment as Members of the Commission, “two Members from minorities; at least two women Members; one Member each from Islamabad Capital Territory and Federally Administered Tribal Areas (FATA); one Member from each province having the knowledge, background and experience of human rights”. CHRI recommends that the appointment criteria in this section be amended to state that Members in this category shall be appointed *from amongst civil society activists, academicians, trade union representatives, journalists, social scientists or other professionals who are not serving or former government servants.*
7. Section 3 (2) (v) provides for the appointment of not more than two persons as adhoc Members by the Chairperson, with the President’s approval. Adhoc Member has not been defined in the Bill. CHRI recommends that the two Members mentioned in this category be designated as part-time Members (exercising all other functions of the Commission except the function of inquiry into complaints) with a stipulation that *one of them should have a medical background and the other should be a person with disability and/or a person with prior experience of supporting the advancement of disabled*

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<sup>6</sup> Section 6 (a) Uganda Human Rights Commission Act, 1997 (Uganda)

<sup>7</sup> Section 9 Human Rights Act, 1993 (New Zealand)

people's rights. In Australia, the Disability Discrimination Commissioner is a part of the Human Rights and Equal Opportunity Commission.<sup>8</sup>

8. CHRI recommends that the *Chairpersons of the National Commission on the Status of Women and National Commission of Minorities should be deemed or part-time Members (exercising all other functions of the Commission except inquiry into complaints) with the express responsibility of aiding and advising the Commission on matters relating to women and minorities.* A similar arrangement exists in India's Act.<sup>9</sup>

## PROCEDURE FOR APPOINTMENT OF THE CHAIRPERSON AND MEMBERS

**The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights... –Paris Principles**

Because, human rights commissioners are entrusted with great responsibility, they must be able to inspire public confidence. This can be ensured if the procedure for their appointment is open, transparent and democratic.

9. Section 4 (1) states that “The President shall appoint the Chairperson and the members and for that seek nominations and recommendations through the Federal Government”. CHRI submits that in order to guarantee their neutrality and commitment to human rights, *the Federal Government before drawing up a list of nominees should make a public announcement inviting suggestions for names of possible candidates from organisations and individuals working in the field of human rights. Before appointment by the President, the nominees of the Federal Government should be approved by the Leader of the Opposition in the Parliament; by the majority of the members of the NGO Advisory Committee mentioned in Section 28; and by the majority of existing members of the Commission.* In Malawi, the Constitution states that organisations which are considered reputable and which are representative of Malawian society and concerned with the promotion of constitutional rights and freedoms shall be invited to nominate Members of the Human Rights Commission.<sup>10</sup> In India, to guarantee political neutrality, the Leader of the Opposition in the House of the People and the Leader of the Opposition in the Council of States form part of a committee that recommends the appointment of the Chairperson and Members of the National Human Rights Commission.<sup>11</sup>

10. Section 4 (2) states that the constitution of the Commission shall not be invalid merely by reason of any vacancy or defect. CHRI recommends that *an*

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<sup>8</sup> Section 8 (1) (f) Human Rights and Equal Opportunity Act, 1986 (Australia)

<sup>9</sup> Section 3 (3) Protection of Human Rights Act, 1993 (India)

<sup>10</sup> Article 131 (1) (c) and 131 (2) Constitution of the Republic of Malawi

<sup>11</sup> Section 4 (1) The Protection of Human Rights Act, 1993 (India)

*ancillary provision be added that makes it incumbent for the Federal Government to expeditiously fill vacancies within three months of their occurrence.* In South Africa, a vacancy in the Human Rights Commission is required to be filled as soon as practicable, in accordance with constitutional provisions.<sup>12</sup>

## STAFF OF THE COMMISSION

A national human rights commission is an independent and autonomous body created by Parliament to protect and promote human rights. As such, its functioning must be flexible and non-bureaucratic. The staff too, should be specially recruited and attuned to human rights values.

11. Section 10 of the Bill deals with the appointment of the staff of the Commission. This section is heavily loaded in favour of employing Federal Government officers. The heavy reliance on the Federal Government negates the notion of independence from the government. Human rights commissions that draw their staff from amongst government servants whether on deputation or on reemployment have often found themselves being bogged down by bureaucratic procedures and functioning. Flexibility of a Commission to appoint its staff from private spheres, allows it to get a pool of employees who are trained and attuned to human rights concepts and issues.

12. CHRI recommends that Section 10 be amended to read that the *Commission may appoint independently its Secretary and such other staff for the performance of its functions. The staff should be appointed on the basis of their knowledge and experience of human rights. The appointment of staff should reflect the diversity of the people of Pakistan, ensuring in particular, adequate representation to women and minorities.* In Malaysia, the Human Rights Commission is empowered to appoint its Secretary and such other staff as may be necessary to assist the Commission in discharging its functions.<sup>13</sup>

## FUNCTIONS OF THE COMMISSION

**A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence - *Paris Principles***

Human rights commissions must have well defined functions that enable them to address a wide range of issues. They must be clothed with a mandate that facilitates their engagement at various levels with State and non-State actors.

13. Section 11(c) mentions as a function of the Commission to “visit any jail, under intimation to the Provincial Government where persons are lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates and make reports thereon”. CHRI recommends that the Commission be able to *visit any place of custody, reformation, rehabilitation or treatment run or funded by the government such as a police station, prison,*

<sup>12</sup> Section 11 (2) (b) Human Rights Commission Act, 1994 (South Africa)

<sup>13</sup> Section 16 Act Human Rights Commission of Malaysia Act, 1999 (Malaysia)



*juvenile home, women's home, beggar's home, hospital, mental health institution, refugee camp or like facility. Also the stipulation of having to give prior intimation to the Provincial Government should be done away with. In Mauritius, the National Human Rights Commission can visit any police station, prison or other place of detention without any stipulation of having to give a prior notice.*<sup>14</sup>

14. Section 11 (k) mentions as a function of the Commission to “contribute to the reports which Pakistan is required to submit to the United Nations bodies and committees pursuant to its treaty obligations and where necessary, may express an opinion on the subject, with due respect for their independence”. CHRI recommends that this section be amended to read that the Commission may *submit independent reports to United Nations bodies or committees on the state of human rights in Pakistan.*
15. Section 11 (m) mentions as a function of the Commission, “pursuing and defending issues, complaints, representations and matters for and against Pakistan relating to human rights before any official or non-governmental organisation, body or forum in Pakistan and, in consultation with Foreign Affairs Division, before any international organisation and foreign government or non-governmental organisation”. CHRI recommends the *deletion of Section 11 (m) as the Paris Principles require National Human Rights Institutions to be independent of the government.* The functions prescribed in Section 11 (m) fall within the sphere of the Federal Government and if the Commission is required to perform them, it will seriously infringe upon its functional autonomy and independence besides diverting its attention from its core mandate of protecting and promoting human rights within the country.
16. CHRI recommends the inclusion of *three additional functions (i) making public statements that promote an understanding of, and compliance with, the fundamental rights guaranteed in the Constitution of Pakistan and in the international instruments on human rights (ii) developing a national plan of action, in consultation with the Federal Government for the promotion and protection of human rights in Pakistan (iii) In situations where the Commission envisages an imminent violation of human rights arising out of a conflict between two or more State or non-State actors, it may appoint conciliators or mediators to act on its behalf to diffuse the situation and bring about an amicable situation.* The first two proposed functions are modeled on the additions made to the functions of the Human Rights Commission of New Zealand<sup>15</sup> and the third is modeled on the provisions of the Act governing the Human Rights Commission of Sri Lanka.<sup>16</sup>

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<sup>14</sup> Section 4 (1) (d) Protection of Human Rights Act, 1998 (Mauritius)

<sup>15</sup> Human Rights Amendment Act 2001, Sections 5 (2) c & d added to the Protection of Human Rights Act, 1993 (New Zealand)

<sup>16</sup> Sections 15 (2) & 16 Human Rights Commission of Sri Lanka Act, 1996 (Sri Lanka)

## POWERS OF THE COMMISSION

**A national institution shall, within the framework of its operation hear any person and obtain any information and any documents necessary for assessing situations falling within its competence – *Paris Principles***

The Commission must have adequate powers to facilitate the carrying out of its mandate. A broad range of functions is meaningless if not accompanied by authority that guarantees unhindered performance of its duties.

17. Section 12 of the Bill gives the Commission the powers of a civil court to perform its function of inquiring into complaints. It also makes it incumbent on all persons subject to privilege under law to furnish information in respect of inquiries and allows gazetted officers authorised on behalf of the Commission to seize or take extracts or make copies of documents relating to the subject matter of any inquiry.
18. CHRI submits that in addition to the power relating to inquiries, mentioned in Section 12, *all State organs should be required to provide the Commission such assistance as may be reasonably required for the effective exercising of its power and performance of its duties and functions.* Such a provision exists in the Act establishing the South African Human Rights Commission.<sup>17</sup> It will enable the Commission to seek information on human rights issues from government departments. For instance, the Commission, to perform its functions may wish to know why the percentage of women employed in a government department is negligible; or what measures the government has taken to prevent future occurrences of arsenic poisoning in drinking water.
19. To further strengthen the Commission in the performance of its functions, CHRI recommends that *a clause be added that makes wilful obstruction or interference in the performance of any of the Commission's functions, punishable by imprisonment up to two years and/ or a fine up to Rs 25,000.* In Uganda, any person who wilfully obstructs or interferes with the exercise of the Human Rights Commission's functions is liable to a fine and/or imprisonment up to two years.<sup>18</sup>
20. Section 18 (v) states that the Commission "shall send a copy of its inquiry report together with its recommendations to the government or authority and the government or authority shall within a period of one month, or such further time as the Commission may allow, forward its comments on the report including the action taken or proposed to be taken thereon, by the Commission". CHRI recommends that in light of the experience of other Commissions in the region, *failure of the government or authority to submit a report of the action taken or proposed to be taken within the stipulated time should attract a fine of Rs 500 per day for any delays. This fine should be made recoverable from the officer whose duty it is to submit the report.*

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<sup>17</sup> Section 7 (2) Human Rights Commission Act, 1994 (South Africa)

<sup>18</sup> Section 23 Uganda Human Rights Commissions Act, 1997 (Uganda)

## ANNUAL AND SPECIAL REPORTS OF THE COMMISSION

**A national institution has a responsibility for the preparation of reports on the national situation with regard to human rights in general, and on more specific matters – *Paris Principles***

An important function of a human rights commission is to prepare annual and other reports on the human rights situation and prevailing issues in a country. These reports are required by law to be laid before Parliament for discussion and action upon their recommendations.

21. Section 19 (1) of the Bill provides for the submission of an annual report to the Federal Government by the Commission. It does not stipulate the time within which the Commission will submit its annual report. CHRI recommends *that an addition be made to Section 19 (1) that makes it mandatory for the Commission to present its annual report to the Federal Government - for placing before the Parliament- within three months of the ending of each financial year.* A similar provision exists in the case of The Human Rights Commission of Zambia.<sup>19</sup>

22. Section 19 (2) provides that special reports of the Commission along-with a memorandum of action taken should be laid before Parliament within ninety days of submission to the Federal Government. CHRI recommends that *the period for submitting a special report of the Commission to Parliament by the Federal Government be reduced to within thirty days of its submission by the Commission as the need to submit a special report would arise out of a matter of urgency.*

## FUNDS

**The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence – *Paris Principles***

Human rights commissions need to be provided with adequate funds to carry out their mandate. They must not be constrained by the lack of funds especially in relation to the conduct of inquiries; running of projects and programmes; and support to civil society initiatives.

23. Section 20 of the Bill provides for the establishment of a Fund into which Parliament shall appropriate money for the purpose of incurring pay and allowances and other expenditure of the Commission. CHRI recommends that *a clause be added to this section that makes it obligatory for Parliament to make annual grants to this fund which shall not be less than the grant made in the previous year and which are adequate for the performance of the Commission's functions and are adequate to maintain its impartiality and*

<sup>19</sup> Section 25 (1) Human Rights Commission Act, 1996 (Zambia)

*independence*. In Fiji, it is the responsibility of the Minister responsible to ensure adequacy of funding for the Human Rights Commission.

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