

A Critique of the National Commission for Human Rights Bill, 2005

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With the passing of the National Commission for Human Rights Bill, 2005, Pakistan will join a growing list of countries to have National Human Rights Institutions (NHRIs). It is encouraging that the government, in drafting the Bill, has taken the first step to realise the “better protection and promotion of human rights” for the people of Pakistan. The test of its commitment to fulfilling this objective - through an effective National Commission for Human Rights – lies in attuning the Bill with international standards. NHRIs are expected to hold fast to the *Paris Principles*, a set of internationally recognised minimum requirements to guide their establishment. They have been endorsed by the United Nations¹ and were developed after extensive consultations between representatives of NHRIs; governments; the United Nations; and inter-governmental and non-governmental organisations from across the world. The *Paris Principles* require an NHRI to demonstrate the following:

Competence to promote and protect human rights

Competence is determined in large measure by the definition of human rights in the Act governing the NHRI. Any official definition of human rights in Pakistan will be truncated, as none of the successive governments have ratified the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Convention Against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).² Consequentially, the Bill contains a relatively narrow definition of human rights, which consists of the rights relating to life, liberty, equality and dignity guaranteed in the constitution, or embodied in the select few international instruments on human rights ratified by Pakistan and enforceable by its courts. Clearly, a restricted definition will serve only to limit the commission’s mandate. On the other hand, Fiji’s Human Rights Commission Act provides a good example of a broad and inclusive definition. This law strengthens its commission by defining 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”.

¹ Paris Principles have been endorsed by the United Nations Commission on Human Rights in 1992 (resolution 1992/54) and by the General Assembly of the United Nations in 1993 (resolution 48/134).

² Of the seven core international human rights instruments, Pakistan has ratified only three: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – with reservation; and Convention on the Rights of the Child.

Inadequate powers also constrain the competence of the commission. The Bill vests the commission with the powers of a civil court to conduct inquiries but it does not confer the same breadth of powers to the commission for the effective exercise of its other functions. For instance, if the commission is denied information by a government department, which will help in the spread of human rights literacy, the Bill lacks teeth to enforce this function. By contrast, South Africa's Human Rights Commission Act obliges state organs to provide assistance as may be reasonably required to aid its commission and even prescribes punishment - with fine or imprisonment up to six months - for failure to do so.

An appointment process that guarantees the representation of civil society

Appointments under the Bill are entirely controlled by the government, leaving no scope for public participation. Members are to be appointed by the President who may seek nominations from the Federal Government. The input of civil society, which is at the forefront of human rights protection and promotion, and often best placed to comment on human rights matters, is excluded. Malawi provides a good example of civil society involvement in appointments. The government is obliged under the constitution to invite credible civil society groups, who are representative of Malawian society and concerned with the promotion of constitutional freedoms, to nominate suitable persons as members of the human rights commission.

Guarantees of independence and pluralism

Perhaps the Bill's greatest flaw is that it expects the commission to pursue or defend complaints, and make representations for and against Pakistan, in consultation with the Federal Government's Foreign Affairs Division before "any international organisation and foreign government or non-governmental organisation". Such a provision, if legislated, will seriously impair the commission's autonomy, and make it subservient to the government's foreign policy.

It is heartening that the Bill provides for the appointment of two members from minorities; at least two women members; and a member from each province and the two federally administered territories, who are required to have "knowledge, experience and background of Human Rights". However, any influence these members may have in determining the thrust of the commission could be counterbalanced by the appointment of Members of Parliament and former judges or former senior government servants or persons qualified to be judges who do not have to demonstrate any commitment, experience or knowledge of human rights. The ability of Members of Parliament to properly discharge their functions as commissioners - including inquiry into complaints - throws up serious doubts, given their political affiliation, duties in Parliament and obligations to political parties and constituencies. In Uganda, members of the human rights commission are required on appointment to relinquish particular offices, including that of Member of Parliament.

As broad a mandate as possible

The value of the commission will be enhanced by prescribing a wider list of functions, based on international best practice. For instance, the development of a national human rights action plan as in the New Zealand Human Rights Commission's case, or the ability to mediate in situations of infringement or imminent infringement of fundamental rights as in the case of Sri Lanka's National Human Rights Commission.

Under the Bill, the commission can visit any jail to study and report on the living conditions of inmates, only after informing the provincial government. The requirement to notify the government defeats the very purpose of this important oversight function. It is essential that the commission is clothed with powers to carry out surprise visits, to keep a check on human rights violations in custodial institutions.

An independent staff and premises

Though the Bill allows the commission to independently appoint advisors and consultants, heavy reliance on government employees to fill top-level staff positions will undermine the commission's ability to work independently in a non-bureaucratic manner. The Secretary, who is the chief administrative officer, has to be a former high ranking government servant with experience of working in the human rights field. Director Generals, Directors, Deputy Directors and Assistant Directors are to be appointed from amongst Federal Government officers. In addition, the Bill stipulates that officers and employees of the Human Rights Wing of the Federal Government will be absorbed in the commission "if not found otherwise unfit". This contrasts with the Acts of most countries, who allow their commissions, the freedom to choose their staff whether from within or outside the government fold.

Adequate funds

The Bill provides for the creation of a separate fund to hold grants by Parliament and contributions from other sources for incurring the commission's expenses. However, it does not guarantee sustainability or adequacy of funding which directly affects performance and independence. In Malaysia, the government is obliged to provide its commission with adequate funds on an annual basis under the Human Rights Commission of Malaysia Act.

Because, the Bill has borrowed quite a few provisions from India's Protection of Human Rights Act, it is worthwhile to take into account, factors that bog down the working of India's human rights commissions. For instance, government departments in India routinely delay the submission of reports on the action they have taken or propose to take on the recommendations of the national and 14 state human rights commissions. Pakistan's Bill can avoid a similar scenario by levying daily penalties on officials who fail to forward reports to the commission within the stipulated time. Submission of annual reports to Parliament and state legislatures are frequently delayed in India. The law in Pakistan can prevent such a situation by compelling the proposed National Commission for Human Rights to submit its annual report to the Federal Government –

for presentation before the Parliament – within three months of the end of each financial year, as in Zambia.

Two especially positive features of the Bill are (i) it does not contain a limitations clause that would prevent complaints from being taken up after the lapse of a specified time period since the violations were committed (ii) it allows the commission to inquire into complaints against any state agency, including the armed forces. Civil society must convince the government to infuse the Bill with more positives. This will not only boost the protection and promotion of human rights in Pakistan but also enhance the credibility of the human rights commission internationally. Therefore, tuning the Bill to maximise human rights considerations - before it is placed before Parliament - is of utmost importance at this point.

For a detailed analysis of the Pakistan National Commission for Human Rights Bill, 2005 please visit CHRI's website at :

http://www.humanrightsinitiative.org/publications/hrc/chri_analysis_nchr_bill.pdf