

PAKISTAN'S NATIONAL COMMISSION FOR HUMAN RIGHTS

A KEY STEP FOR MANTAINING GSP+ STATUS

EXECUTIVE SUMMARY

The establishment of the National Commission for Human Rights (NCHR) is a key step to protect and promote the fundamental rights enshrined in Pakistan's Constitution, thereby helping to meet Pakistan's international obligations, as well as the commitments made under the European Union's Generalised Scheme of Preferences (GSP+) mechanism, which facilitates Pakistani exports to the EU. The NCHR is empowered to investigate human rights violations, spread human rights literacy, publish research on international law, raise awareness about human rights protections, make recommendations for the implementation of treaty obligations, and develop a national plan for the promotion and protection of human rights.

The National Commission for Human Rights Act 2012¹ gives the NCHR a broad mandate in the promotion and protection of human rights as provided for in Pakistan's Constitution and the international treaties Pakistan has ratified. The Act guarantees a pluralistic composition of members in the NCHR, the freedom to make rules and procedures, appoint staff and consultants, financial independence, and accountability through the submission of annual reports to the parliament. Though the Act provides the NCHR with investigative powers, the Commission is not authorised to enquire into human rights complaints concerning the military or intelligence agencies. The NCHR also does not have the power to enforce decisions related to the findings of its investigations, such as redress for victims of human rights violations, or action against guilty persons.

While the Act sets out the key parameters of the institution, once the Commission Chairperson, members, and Secretary are formally appointed, crucial decisions will need to be taken that will directly affect the institution's capacity and independence. In order to ensure the institution's effectiveness is in line with international standards and comparative practice, measures to guarantee the NCHR's independence are necessary. These include, among others, a carefully designed organisational structure, a transparent human resources policy, and sufficient funding to fulfil its mandate without government interference. Ideally, the members would engage in a strategic planning exercise and thoroughly plan the organisational development of the institution.

In addition, in order to work effectively towards the promotion and protection of human rights, avoid overlaps, and encourage cooperation among relevant actors, the NCHR should play a role in the definition of a national strategy for the promotion and protection of human rights. This should include a discussion of the modes of collaboration with other human rights institutions in Pakistan – such as the National Commission on the Status of Women, human rights bodies established by provincial governments, and civil society – as well as a definition of the role that Parliament has in promoting human rights in Pakistan and providing oversight of the NCHR and similar bodies.

¹ National Commission for Human Rights Act. (2012). Available online at: <http://goo.gl/ZSGnQ8>

1. INTRODUCTION

With the adoption of the National Commission for Human Rights Act in 2012, and the recent appointment of members to the NCHR, the government of Pakistan has brought the country closer to a national human rights institution (NHRI) with the power to promote and protect the fundamental rights of its citizens. Once fully established, the NCHR will not only promote and protect human rights enshrined in Pakistan's Constitution, but also those included in the international instruments "to which Pakistan is a state party or shall become a state party," thereby mandating the institution to apply both national and international human rights law.²

As an independent state body, the NCHR will not require government approval of its activities and answer only to the parliament, which will have the power to approve the NCHR's budget and receive its financial and performance reports on a yearly basis. The NCHR will furthermore be empowered to conduct investigations into allegations of human rights abuse, review existing and proposed legislation in relation to human rights, carry out research in the field of human rights, and contribute to awareness-raising about human rights in the country, along with many other functions.

The initial stages of the NCHR's set up will be critical to establishing an independent and effective institution. But practical questions remain regarding the NCHR's structure and operational requirements, such as adequate premises, administrative procedures, staffing, financial resources, the institution's strategy to support human rights in Pakistan, and many others. This Briefing Paper sets out the international standards which are relevant to the establishment of Pakistan's NCHR and provides an overview of the institution's mandate as laid out in the National Commission for Human Rights Act 2012. The paper uses examples from other countries to illustrate how the NCHR could exercise its mandate and identifies key aspects of the NCHR's setup, as well as the next steps in the implementation of the Act.

2. INTERNATIONAL STANDARDS FOR NATIONAL HUMAN RIGHTS INSTITUTIONS: THE PARIS PRINCIPLES

The "Principles relating to the Status of National Institutions," or "Paris Principles," are a set of standards drafted during an international workshop on national human rights institutions held in Paris in 1991. The Paris Principles are meant to frame and guide the work of NHRIs and include standards on their competencies and responsibilities; composition and guarantees of independence; pluralism; and the methods of operation of NHRIs, among other issues. These Principles

were adopted in 1993 by the UN General Assembly,³ but key aspects of the Principles are continuously updated by the International Coordinating Committee for National Human Rights Institutions (ICC), an international association of NHRIs around the world. In addition, the ICC's Sub-Committee on Accreditation (SCA) provides accreditation and international recognition to NHRIs that are in compliance with the Paris Principles. The ICC routinely reviews the accreditation of NHRIs and assesses their compliance with the Paris Principles. The ICC's assessment relies on the legal framework for the NHRI's establishment, its working methods, procedures, budget, annual reports, staff composition, and other activities.⁴ A core part of this assessment is how the NHRI interacts with civil society and functions in practice. Civil society organisations and other third parties are a valued source of information during an NHRI's accreditation processes, and they are routinely invited by the ICC to provide reports about the NHRI.

In addition, the SCA also issues General Observations on NHRIs. These General Observations interpret and clarify issues mentioned in the Principles, providing states with insight into the measures they can take to fully comply with these standards. While not legally binding under international law, the Principles and General Observations provide an authoritative framework for the basic guidelines states should follow when setting up an NHRI. They are intended as a resource for states committed to the promotion and protection of human rights and the implementation of relevant treaties.

Numerous UN monitoring bodies have emphasised the role of NHRIs and referred specifically to the Paris Principles in statements or general recommendations. These monitoring bodies include the Human Rights Committee,⁵ the Committee on the Elimination of Discrimination against Women,⁶ the Committee on the Elimination of Racial Discrimination,⁷ and the Committee on Enforced Disappearances.⁸ More recently, human rights conventions have also integrated the Paris Principles directly into their texts. For example, article 33(2) of the Convention on the Rights of Persons with Disabilities requires states party to the treaty to establish an NHRI to monitor the implementation of the convention, taking "into account the principles relating to the status and functioning

² National Commission for Human Rights Act. (2012). See opening paragraph under "Act No. XVI of 2012."

³ United Nations General Assembly. (1993). National institutions for the promotion and protection of human rights (Resolution 48/134).

⁴ International Coordinating Committee. (2013). Report and Recommendations of the Session of the Sub-Committee of Accreditation (General Observation 6.7).

⁵ Human Rights Council. (2012). Annual Report on National Institutions for the Promotion and Protection of Human Rights (Part C, UN Doc CCPR/C/106/3).

⁶ Commission on the Status of Women. (2008). Results of the fortieth session of the *Committee on the Elimination of Discrimination against Women* (UN Doc E/CN.6/2008/GRP.1).

⁷ Committee on the Elimination of Racial Discrimination. (1993). General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (UN Doc A/48/18).

⁸ Committee on Enforced Disappearances. (2014). The relationship of the Committee on Enforced Disappearances with national human rights institutions (UN Doc CED/C/6).

of national institutions for protection and promotion of human rights.”

Similarly, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) obliges states to set up a national preventative mechanism, giving “due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.”⁹

PAKISTAN'S NATIONAL COMMISSION FOR HUMAN RIGHTS AND THE GSP+ SCHEME¹⁰

At the beginning of 2014 Pakistan was granted the European Union's special incentive arrangement for Sustainable Development and Good Governance under the EU's Generalised Scheme of Preferences (GSP+). Pakistan's businesses now benefit from reduced duties on exports to the EU in industries such as textiles and garments, fresh and processed fruits, and many other goods. The potential in gains from increased exports have been estimated to be between USD 580 million and USD 1 billion.¹¹

These benefits are, however, conditional. In order to keep GSP+ status, Pakistan's government will need to participate and cooperate in the EU's monitoring procedure, maintain the ratification of 27 human rights, labour, governance and environmental treaties, ensure their effective implementation, and fulfil reporting obligations mandated by each treaty.

A first positive step undertaken by the government of Pakistan is the creation of dedicated GSP+ monitoring cells, which have been established at the federal and provincial level. These cells have been created to ensure compliance with GSP+ requirements, which include regular reporting to the treaty monitoring bodies of the relevant 27 international treaties. The NCHR should engage in close communication with GSP+ monitoring cells in federal and provincial governments in order to facilitate the effectiveness of these cells, act as a source of information and advice on the implementation of international obligations across all provinces.

Many of the committees that monitor implementation of treaties relevant to the GSP+ scheme consider NHRIs to be important actors of rights protection. This includes the Committee on the Elimination of Discrimination Against Women,¹² the Committee on Economic, Social and Cultural Rights,¹³ the Committee on the Rights of the Child,¹⁴ the Human Rights Committee,¹⁵ and the Committee on the Elimination of Racial Discrimination.¹⁶ When Pakistan's NCHR is finally established, the country will have demonstrated concrete progress in creating an institutional architecture that better protects human rights.

As an independent state actor, Pakistan's NCHR will be able to monitor how the government respects its treaty obligations, as well as to contribute to the reporting process by submitting its own independent reports to the government.¹⁷ These reports and those produced by civil society organisations can serve as an additional source of evidence for the European Commission in its biannual GSP+ monitoring procedure.

⁹ United Nations (2006). Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Doc A/RES/57/199): Article 18(4).

3. THE NATIONAL COMMISSION FOR HUMAN RIGHTS OF PAKISTAN (NCHR)

3.1. OVERALL MANDATE: THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

The NCHR's mandate, as outlined in the National Commission for Human Rights Act 2012, is in line with the Paris Principles, which require that a NHRI “be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text.”¹⁸ The NCHR's mandate covers both the *protection* of human rights as well as their *promotion*. This means that the NHRI will have the mandate to investigate and prevent human rights violations as well as to create awareness of human rights in the country. Pakistan's NCHR will be empowered to conduct a wide array of activities: investigating allegations of human rights abuse, recommending legal reforms, providing input to the government's treaty reports at the international level, submitting its own independent reports, taking part in state examination, and helping to develop the list of issues with the treaty bodies. The NCHR will also be mandated to disseminate knowledge about human rights obligations in Pakistan, build national capacity on human rights, and increase stakeholder engagement with civil society, media, parliament and government in the implementation of Pakistan's human rights commitments.

3.1.1. LEGAL POWERS FOR THE PROTECTION OF HUMAN RIGHTS

The NCHR is enabled to effectively protect human rights in Pakistan: it has quasi-judicial competence and the ability to investigate allegations of human rights abuse and state negligence. This includes the power to summon and examine witnesses; visit jails, detention centres, or other holding cells; procure public records, court proceedings, and other documents; forward cases to a prosecutor or magistrate for

¹⁰ For more information on GSP+ please see the [project brochure](#).

¹¹ Dr. Hafiz A Pasha. (2014). GSP Plus Status and Compliance of Labor Standards. Friedrich Ebert Stiftung: p. 12.

¹² Committee on the Elimination of Discrimination Against Women. (2010). General Recommendation on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (UN Doc. CEDAW/C/GC/28): para. 28

¹³ Committee on Economic, Social and Cultural Rights. (1998). General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights (UN Doc. E/C.12/1998/25).

¹⁴ Committee on the Rights of the Child. (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child (UN Doc. CRC/GC/2002/2).

¹⁵ Human Rights Committee. (2004). General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (UN Doc. CCPR/C/21/Rev.1/Add. 13): para. 15.

¹⁶ Committee on the Elimination of Racial Discrimination (1993). General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (UN Doc. CERD/GC/25/03/93).

¹⁷ National Commission for Human Rights Act. (2012). Chapter III (Art. 9(f)(j)).

¹⁸ Paris Principles, Section A.2

criminal proceedings; order reports from the federal and provincial governments; and advise the federal government on the appointment of special prosecutors in human rights courts.¹⁹ The Act does not, however, enable the Commission to make binding decisions to resolve complaints. Instead, following an inquiry, the Commission may refer the complaint to a relevant authority and recommend prosecution or other necessary action. The government or authority is required to respond to the NCHR on whether it implemented the recommendations, how it plans to do so, or why the recommendations “cannot or should not be implemented.”²⁰ Although the NCHR lacks the ability to follow non-compliance with any form of sanctioning, this can still be an effective follow-up mechanism because the NCHR can make public the outcome of its inquiries, recommendations, and the replies of the government.

The law limits the Commission’s mandate where the armed forces and intelligence agencies are accused of committing human rights violations; here, the Commission is not empowered to carry out an inquiry. The Paris Principles state that a NHRI’s prerogative relates to “any situation of violation of human rights which it decides to take up.” Limiting the Commission’s discretion in cases related to the armed forces or intelligence services compromises the powers and independence of the institution, which is expected to “promote and ensure respect for human rights, democratic principles...in all circumstances and without exception.”²¹

3.1.2. PROMOTION OF HUMAN RIGHTS: AWARENESS RAISING

The NCHR has a wide mandate to promote human rights in Pakistan, which includes spreading human rights literacy, publishing research on international law, raising awareness about human rights protections, making recommendations for the implementation of treaty obligations and developing a national plan for the promotion and protection of human rights.²² As a human rights body, the NCHR thus has the function to provide services to all stakeholders, including the judiciary, parliament, government, and Pakistan’s citizens.

NHRIs conduct many activities within the scope of these responsibilities. In 2013, for example, Bangladesh’s National Human Rights Commission issued a study on state compliance with ICCPR, analysing domestic legislation and gaps in international law, with recommendations on how to improve implementation of the treaty.²³ Nepal’s National Human Rights Commission (NHRC) has published similar

reports,²⁴ while the Afghanistan Independent Human Rights Commission (AIHRC) has also reported on violence against women and the denial of due process, among other issues.²⁵

One way to increase awareness about human rights would be to create internal follow-up mechanisms within the NCHR, such as units to monitor the government’s implementation of human rights obligations, or a legal department to closely follow criminal investigations or prosecutions the NCHR has referred to the judiciary. For example, when the judiciary is slow to take up a case, or the government fails to lead prosecution, the NCHR can use the media, special reports, or public statements to get the attention of the parliament, civil society, and the public to bring about judicial action.

Another way the NCHR can contribute to raising awareness is through education-related activities, such as human rights curriculum in the education system and training manuals for the police or other state institutions. By maintaining a database on human rights complaints, the NCHR will also be able to provide information about Pakistan’s most vulnerable groups and prioritise human rights reforms based on these statistics.

Finally, the NCHR is empowered to “develop a national plan for the promotion and protection of human rights.”²⁶ The NCHR could consider working on this national policy at the early stages of its establishment, since it will help to develop working relationships with other relevant state and non-state human rights actors. The national plan for the promotion and protection of human rights could include the formulation of policy priorities and a definition of the roles and responsibilities of the involved stakeholders. Other NHRIs have played an instrumental role in the development of their own country’s national action plans; in Georgia, for example, recommendations by the Public Defender of Georgia and other organisations formed the basis of Georgia’s Human Rights Strategy and National Action Plan, adopted by the parliament in April 2014.

¹⁹ National Commission for Human Rights Act. (2012). Chapter III, Art.9(a-c), IV-V.

²⁰ *Ibid.*, Chapter IV, Art. 18.

²¹ International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation 6.7): Pg 48

²² National Commission for Human Rights Act. (2012). Art 9.

²³ National Human Rights Commission, Bangladesh, *The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance* (March 2013).

²⁴ See the NHRC’s publications at its website: <http://www.nhrcnepal.org/publication.php?page=R>

²⁵ These and other AIHRC research reports are available at: <http://www.aihrc.org.af/home/research-reports>

²⁶ National Commission for Human Rights Act, 2012, Art. 9(k).

CASE STUDY: THE PUBLIC DEFENDER OF GEORGIA

Georgia has been a beneficiary of the GSP+ scheme since July 2005. Its NHRI, the Public Defender of Georgia, exercises a wide mandate in human rights. In 2014, the Public Defender participated in the treaty reporting process by submitting its own report to the Human Rights Committee regarding Georgia's implementation of ICCPR. The report highlighted key issues in the constitutional and legal framework, low levels of political participation by women, independence of the judiciary, and violations of media freedom. The Public Defender also contributed independent reports to the Committee on the Elimination of Discrimination against Women and participated in the first working session between the Committee on the Rights of Persons with Disabilities and NHRIs.

In parallel, the Public Defender organised numerous awareness-raising activities in Georgia. These included, among others, public debates on human rights, the government's implementation of the ICRPD, and the rights of ethnic minorities. As part of its mandate to advise the government, in 2014 the Public Defender also made 131 recommendations to government agencies on how to rectify human rights violations, with 38 of those recommendations fulfilled and another 12 partially fulfilled. Finally, the Public Defender lodged claims with the Constitutional Court regarding the constitutionality of clauses in the Criminal Code of Georgia and the Law of Georgia on Civil Service. The government budget for the Public Defender amounted USD 1,2 million in 2014.

Sources: Public Defender of Georgia, Written submission to the 111th Session of the Human Rights Committee (2014), Written submission to the 58th Session of the Committee on the Elimination of Discrimination against Women (2014), Activity Report 2014 of the Public Defender of Georgia (16 December 2014).

3.1.3. INDEPENDENT REPORTING

Pakistan's NCHR will also work on the promotion of human rights. It is mandated to "study treaties/international instruments in respect of human rights and the reports submitted by the Government of Pakistan on them" in order to make recommendations for their implementation.²⁷ This includes reviewing legislation in light of human rights, advising the government on how to implement international human rights treaties, spreading "human rights literacy," and other related research.²⁸

The NCHR will be able to submit "independent reports to the Government on the state of human rights in Pakistan for incorporation in reports to United Nations' bodies or committees."²⁹ The Paris Principles foresee two separate functions for NHRIs in this regard: first, the NHRI can "contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations," and, second, the NHRI can "express an opinion on the subject, with due respect for their independence."³⁰ Although the National Commission for Human Rights Act 2012 does not explicitly grant the NCHR the *right* to submit independent reports to treaty monitoring bodies, the law could be interpreted to suggest that nothing prohibits such reports. Indeed, the NCHR

²⁷ *Ibid.*, Section 9(f).

²⁸ *Ibid.*, Chapter III, Art. 9(d-h).

²⁹ *Ibid.*, Chapter III, Art. 9(j).

³⁰ The Paris Principles, Section A, Art. 3(d).

can engage in treaty reporting and any "other functions as it may consider necessary for the promotion of human rights."³¹

THE UNITED NATIONS TREATY REPORTING SYSTEM

Signing and ratifying a specific UN treaty creates legal obligations for a state to implement the treaty's provisions. But in addition to these obligations, states are also mandated to submit regular reports to specific treaty bodies about how the treaty is being implemented. This includes what national measures the state has taken to ensure the protection of rights is in line with the international human rights. State reports also include benchmarks for progress, salient shortcomings, how the state remedied violations, and the policies it will take to realise the rights found in a specific treaty.

The main international human rights treaties all have treaty monitoring bodies, composed of independent human rights experts, which consider state reports. These monitoring bodies also consider additional information as part of a state's review process, such as the independent submissions of NHRIs, civil society organisations, intergovernmental agencies, and others.

The SCA has issued a General Observation providing that NHRIs "should neither prepare the country report nor should they report on behalf of the government," mainly because NHRIs "must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right."³² This is a particularly salient point given that independent reports by an NHRI can "draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report."³³

The role of NHRIs in treaty reporting, however, varies from case to case. In Nepal, for example, the government must submit their report to the National Human Rights Commission for opinion before forwarding it to the relevant treaty monitoring body.³⁴ Meanwhile, Nepal's NHRIs—the National Human Rights Commission, the National Women Commission, and the National *Dalit* Commission—have jointly submitted independent reports to the Office of the High Commissioner for Human Rights on the Universal Periodic Review Process.³⁵ The Afghan Independent Human Rights Commission (AIHRC) provides "advice and necessary information to the government to prepare Afghanistan's reports which fulfil its treaty obligations,"³⁶ but this has not precluded the AIHRC from submitting its own separate reports to the treaty monitoring bodies; the AIHRC has produced and submitted

³¹ National Commission for Human Rights Act. (2012). Chapter III, Art. 9(l).

³² International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation 1.4.)

³³ *Ibid.*

³⁴ Nepal National Human Rights Commission Act (2012). Chapter 2, Art. 6(1-2): 2068

³⁵ See, for example, the National Human Rights Commission of Nepal, National Women Commission of Nepal, and National Dalit Commission of Nepal, *The Report of the NHRI of Nepal on the UPR Processes*, July 2010.

³⁶ Law on the Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission. (2005). Art. 21(17).

reports to the Committee on Economic, Social and Cultural Rights and to the Committee on the Rights of the Child.³⁷

The treaty monitoring bodies, for their part, have also issued various general comments on the role of NHRIs in the reporting process. CEDAW provides for submissions and oral presentations by NHRIs before pre-session working groups and the session of the committee, encouraging NHRIs to provide “comments and suggestions on a State party’s reports in any way they see fit.”³⁸ The Committee on the Rights of the Child (CRC) adds that “NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports,” but not be responsible for “the drafting of reports” or be included “in the government delegation when reports are examined by the Committee.”³⁹

For the Human Rights Committee (HRC), NHRIs can help develop the HRC’s lists of issues,⁴⁰ deliver oral and written presentations during examination of the state’s report, and importantly, monitor the state’s compliance with the HRC’s recommendations and concluding observations.⁴¹

In practice, this means that Pakistan’s NCHR could support the government in its task to incorporate the HRC’s recommendations on civil and political rights; evaluate the government’s efforts in implementing them; and conduct outreach on the HRC’s concluding observations for stakeholders in Pakistan, including the parliament, civil society, and the public. Such outreach would help to promote awareness about the treaty bodies’ recommendations regarding Pakistan and is in line with the NCHR’s functions as a national human rights institution.

| PARTICIPATION OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE WORK OF TREATY BODIES, APRIL 2013 – MAY 2014 | | |
|--|---|--|
| Committees | NHRIs that submitted information to the committee | NHRIs that provided a briefing to the committee |
| CAT | 10 | 3 |
| CERD | 3 | 6 |
| CESCR | 10 | 11 |
| HRCttee | 6 | 3 |
| CEDAW | 4 | 9 |
| CMW | 6 | 3 |
| CRC | 12 | 5 |
| CRPD | 2 | 3 |
| CED | 1 | 1 |
| TOTAL | 54 | 44 |

Adapted from Annex III of UN Doc. A/HRC/27/39

3.2 ORGANISATIONAL SETUP

The Paris Principles highlight that the composition and staffing of NHRIs are key to their independence. Members of NHRIs must be able to fulfil their responsibilities without fear and without inappropriate interference from the state and other donors. This means that members should enjoy security of tenure and that, while all members and staff are considered civil servants under Art. 31 of the Act, the executive shall not be able to dismiss any member for decisions taken in good faith.

Further, the SCA recommends ensuring pluralism in terms of gender, ethnicity and minority status, including equitable participation of women. This can be ensured through a) legally established and clear appointment criteria for commission members that provide for a membership that represents the different segments of society, b) inclusive appointment procedures in which the different segments of society are included in the selection process, c) establishment advisory bodies or consultative mechanisms that include different segments of society in activities and d) staff structures representing the different segments of society.⁴²

3.2.1. MEMBERS OF THE NCHR

The Act provides for a Commission composed of nine members, working on a full time basis. All of them must demonstrate experience in the field of human rights. The Commission will have one representative from each province, as well as one from the Federally Administered Tribal Areas (FATA) and the Islamabad Capital Territory (ICT), a member of the minority communities and a member of the National Commission for the Status of women (NCSW). At least two of

³⁷ Afghan Independent Human Rights Commission (AIHRC). (2011). *Fifth Report: Situation of Economic and Social Rights in Afghanistan* (fn. 6).

³⁸ *Committee on the Elimination of Discrimination Against Women (2008). Statement by the Committee on the Elimination of Discrimination against Women on its relationship with national human rights institutions* (UN Doc. E/CN.6/2008/CRP.1, para. 6-7, Annex III).

³⁹ Committee on the Rights of the Child (2002). *General comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child* (UN Doc. CRC/GC/2002/2, para. 20-21).

⁴⁰ The “List of Issues” is a document sent to States parties after reporting to which they should respond with written replies. Similarly, the “List of Issues Prior to Reporting (LOIPR)” is provided prior to reporting and gives states detailed guidance on the salient issues for the content of their reports. The LOIPR is not available to states submitting initial reports, however. For more information, see Human Rights Committee (2010). *Focused reports based on replies to lists of issues prior to reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR procedure)* (UN Doc. CCPR/C/99/4).

⁴¹ Human Rights Council. (2012). *Annual Report on National Institutions for the Promotion and Protection of Human Rights* (UN Doc CCPR/C/106/3, Part C).

⁴² International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation 1.8).

the Commissioners should be women. Formalised in the Act are key aspects of the NCHR, such as the appointment process for members, broad eligibility criteria for membership, and a mandate of four years. The Commission has the power to issue rules related to its own procedures and may appoint staff or consultants, as considered appropriate. This includes the appointment of a Secretary, who authenticates all decisions and regulations made by the Commission.

The SCA observes that to ensure the independence of and public confidence in the institution “it is important that the selection process for members of an NHRI be characterised by openness and transparency” and stresses that the process involve consultations with civil society.⁴³ However, while the Act required a public notice inviting nominations for members of the Commission, there are no reports of the parliamentary committee responsible for selection of the members consulting with civil society during the process or of the committee sharing publicly the notes of its proceedings.

3.2.2. STAFF

Staffing is key to the performance of the NCHR and, upon establishment, members should decide on the organisational structure needed to start operating. To ensure its independence, the NCHR is empowered to make its own regulations, which means it will be able to decide about its rules of procedure and the staff structures it needs. While the Act lacks a time-frame for the Commission to issue these rules, the members should decide on the operational needs without delay.

Procedures for the selection of staff should be fair, transparent and merit-based to ensure the independence and efficiency of the institution.⁴⁴ The criteria of pluralism should prevail, and staff diversity in terms of the different ethnicities and minorities should be promoted, including equitable participation of women. Diversity of staff is linked in part to the notion that staff members will better understand the challenges faced by vulnerable groups, and these groups may find it easier to appeal to the Commission. When deciding on the internal structure of the NCHR, several issues should be taken into consideration. These include the setup of specialised units, working groups, or departments focused on the rights of particular groups; a legal, investigative, or complaint handling division; research, outreach, and awareness-raising cells; coordination with domestic and international actors; regional offices or bureaus; financial and administrative oversight; and others.

The NCHR Act allows for the Commission to employ government employees on deputation. In order to guarantee the independence of the body, the SCA recommends a

maximum of 25% of seconded staff.⁴⁵ In financial terms, staff members recruited on a contract basis will ensure a better control of costs and will allow for a better tuning between expected skills and technical needs of the Commission. This also allows for the recruitment of junior staff that will help to enhance the Commission to build up competencies in the field of human rights.

3.2.3. ADVISORY COMMITTEE

The Advisory Committee is a positive step towards effective outreach to key human rights stakeholders. Composed of “human rights activists, civil society organizations, members of bar associations, members of press clubs” and others, the committee will be able to provide the NCHR with assistance in the members’ respective “areas of competence and expertise.”⁴⁶ Many of these actors have experience with the treaty reporting process; in 2013, for example, a number of CSOs submitted independent reports to CEDAW for the government’s fourth periodic report.⁴⁷

The role and operation of the advisory committee are up to the NCHR, but this mechanism could be used to strengthen the partnership between civil society and the NCHR in many ways, including follow-up on treaty implementation, public outreach, coordination of reporting, and more. This is particularly important given that this is the only area where civil society is explicitly mentioned in the Act constituting the NCHR.

3.2.4. BUDGET AND ALLOCATION OF FUNDS

The funds for the NCHR will be allocated by the government of Pakistan, as part of the annual budget, per Article 80(b) of the Constitution. The annual budget, containing the proposed amount for the Commission, will be subject to approval by the Parliament. The body responsible for disbursement of funds to the NCHR will be the Ministry of Law, Justice and Human Rights.

The Paris Principles require “adequate funding” to national institutions for them to effectively fulfil their mandated activities and to remain independent. The SCA’s observations further elaborate that institutions should be free to allocate resources to the priorities that they independently identify and ensure financial property of the NHRIs in the use of public funds, allowing NHRs to operate without the need of government approval of activities and spending.⁴⁸

⁴⁵ *Ibid.*, (General Observation 2.5).

⁴⁶ Pakistan National Commission for Human Rights Act. (2012). Chapter III, Art. 11.

⁴⁷ See, for example, the Aurat Foundation, *Pakistan NGO Alternative Report on CEDAW – 2005-2009* (2012), a report endorsed by more than twenty CSOs; Pakistan Dalit Solidarity Network, *Scheduled Caste Women in Pakistan* (2013); Shirkat Gah Women’s Resource Centre, *Obstructing Progress: Growing Talibanisation & Poor Governance in Pakistan* (2013).

⁴⁸ International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (pg. 34).

⁴³ International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation 1.8).

⁴⁴ *Ibid.*, (General Observation 2.4).

While the level of funding depends on the specific context, the SCA highlights the following criteria that should be considered when establishing the budget for a NHRI:

a) There needs to be sufficient funding accessibility of vulnerable groups to the institution should be ensured. This might mean that sufficient funds should be provided to establish branch offices, if needed to ensure that all groups can reach the NHRC. In order to protect their independence, the SCA recommends that NHRIs are not located in government premises, as this might compromise the trust of vulnerable communities.

b) Funding should also allow a robust communication infrastructure that allows for stable information flows and exchange both within the NHRI and the different units and branches it is composed of as well as between the NHRI and its stakeholders. The NHRI also needs to accommodate IT infrastructure that includes complaint filing and information databases.

c) The SCA adds that an institution's members and staff should be equivalent to the remuneration of civil servants with comparable levels of responsibility. In Pakistan, the NCHR Act contains a provision to ensure that salaries and allowances for members should not put them at a "disadvantage,"⁴⁹ presumably to those of other civil servants serving in similar capacities. The NCHR should set forth regulations that ensure fair, transparent and merit-based selection processes.

In light of the SCA's observations, while allocating resources to the NCHR, the Government of Pakistan should consider the need for the Commission to establish a fully functioning headquarters; regional offices;⁵⁰ communication facilities to ensure smooth day-to-day operations at the NCHR and its offices; and an efficient communication structure that allows easy public access of the Commission. Parliament should also consider these needs while debating the proposed budget for the body. Additionally, the Government could consult with the NCHR the amount of funds that the Commission would see as adequate for fulfilment of its mandate. This is the case, for example, with Afghanistan's Independent Human Rights Commission, which prepares its own budget and presents it to the government as part of the national budget.⁵¹ The NCHR may propose a budget to the government after consultation with other NHRIs and civil society, based upon the prioritisation and planning of its activities.

3.2.5. FINANCIAL INDEPENDENCE

The SCA promotes the need for NHRIs to have complete financial autonomy; it recommends that national legislation "indicate from where the budget of the National Institution is

allocated, ensuring the appropriate timing of release of funding. (...) This should be a separate budget line over which it [the National Institution] has absolute management and control."

Pakistan's NCHR Act includes financial provisions outlining a process for the provision of funds to the Commission, including the sources, use, and audit of these funds. In line with the SCA observations, the Act safeguards the Commission's financial independence by stating that "it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specific purposes."⁵² This means that the NCHR will not require funding approval from the government for its activities as long as they are within the mandate of the Commission as enshrined in the Act. However, what merits "approved" and "specific purposes" will rest on the government's interpretation of this mandate. It is essential that the government enables the Commission to "freely determine its priorities and activities"⁵³ and empowers it to determine expenditures independently. The only requirement that the government could make on the Commission is to respect the procedures for spending public money: that is that the rules be the same as for any other public institution. The NCHR Act does not contain a time frame for release of funds to the Commission, but the government should ensure that there is no delay in the transfer of resources to the Commission when it is established in the annual state budget.

The Act also allows the Commission to receive "unconditional grants or contribution from donors and non-governmental organisations in a transparent manner" which will be subject to approval by the federal government.⁵⁴ While the SCA is clear in cautioning that "funding from external sources...should not constitute the Institution's core funding," it also recognises that in situations where a NHRI does not receive adequate funding from the state, the NHRI "should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence."⁵⁵ Nevertheless, it is the government's responsibility to ensure that a NHRI has adequate funds. Provision of sufficient state resources is also indicative of the political will to prioritise the promotion and protection of human rights. Outside of external funding, Pakistan's NCHR could also benefit from technical support offered by domestic and international NGOs and international organisations. This support could include organisational development, advice on staffing structures and operational procedures, facilitating internal strategic planning and budgeting exercises, as well as training and capacity building on international law and treaty compliance monitoring.

⁴⁹ National Commission for Human Rights Act. (2012). Section 8

⁵⁰ International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation*.

⁵¹ National Commission for Human Rights Act. (2012). Section 25

⁵² International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation: 1.10).

⁴⁹ National Commission for Human Rights Act. (2012). Section 8

⁵⁰ National Commission for Human Rights Act. (2012). Section 3 (4)

⁵¹ Afghanistan Independent Human Rights Commission (2005). *Law on the Structure, Duties and Mandate* (Art. 29).

The Act also contains sections on financial reporting and accountability of the Commission, requiring its accounts to be audited by the Auditor-General.⁵⁶ The Commission is obliged to prepare an annual report at the end of each financial year to be laid before the Parliament and subsequently to place it on its website for the public.

4. THE NCHR AND HUMAN RIGHTS IN PAKISTAN: NEXT STEPS IN THE IMPLEMENTATION OF THE ACT

On 13 February, the designated parliamentary committee nominated the Chairperson and seven out of eight commissioners. As soon as the President confirms the appointments, the Commissioners should hold their first meeting and decide on the next steps required to start operating. The appointment of the NCHR Secretary will be a crucial step, as he or she will play a key role in the setup of the Commission's organisational structure and budget.

Drawing on the Paris Principles,⁵⁷ the SCA recommends that NHRIs "develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights."⁵⁸ This includes knowledge-sharing, research, training, coordinating activities, and data relevant to human rights, such as violations or abuse. The SCA also recommends establishing formal working relationships, for example, through memoranda of understanding.

As soon as the NCHR is formally established, its Chairperson, Commissioners and Secretary should engage in the development of a coherent framework for the institution. As a first step, this could include the preparation of a strategic plan, with the definition of the first set of organisational objectives and structures. Working on a strategic plan (perhaps first developing a working version that will be expanded when the organisational structure is in place) would guide the drafting of the necessary NCHR's operating procedures and regulations as well as the budget calculations, taking into account the SCA recommendations as discussed in the sections above.

The second step could consist of a discussion of the modes of cooperation between the existing governmental, independent and non-governmental human rights bodies, along with a definition of the role of the Parliament in monitoring and

oversight. While the Paris Principles foresee "effective cooperation" between parliaments and NHRIs, they do not provide practical recommendations, nor has the SCA. But regional guidelines and principles provide some guidance. For example, the Belgrade Principles recommend that parliaments "establish an appropriate parliamentary committee which will be the NHRI's main point of contact within Parliament."⁵⁹ This will be an important first step as a basis of cooperation. Other principles include that parliaments follow up on the implementation of an NHRI's recommendations and consult NHRIs on legislation with regards to human rights. Adopted by parliamentarians and NHRIs of the Commonwealth, the Ajuba Guidelines also outline a complementary approach to human rights, recommending regular meetings between NHRIs and parliaments, briefings by the NHRI for the parliament on state compliance with international obligations, and presentations before parliamentary committees.⁶⁰

A number of government bodies have already been created concerning human rights protection and promotion in Pakistan.⁶¹ In order to ensure transparency and enable coordination in the promotion of human rights, the NCHR could lead in the adoption of a national human rights policy framework, which outlines the different roles of each institution, as well as the modes of cooperation. These may include establishment of policy priorities, sharing of knowledge and statistical information, research studies, training programmes and regular consultations and monitoring.

⁵⁶ The Auditor-General is entrusted by the Constitution of Islamic Republic of Pakistan, under Articles 168 to 171, with the responsibility of reporting on the results of the financial operations of the Federal, Provincial, District Governments, authorities and the bodies that are established by and are under control of Federal, Provincial or District Governments to the National, Provincial and District legislatures.

⁵⁷ The Paris Principles, Section C(g).

⁵⁸ International Coordinating Committee. (2013). *Report and Recommendations of the Session of the Sub-Committee of Accreditation* (General Observation 1.5).

⁵⁹ Human Rights Council. (2012). *Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments*, Section II.20

⁶⁰ The Ajuba Guidelines on the Relationship between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions (NHRIs) (Abuja, Nigeria 23-26 March 2004)

⁶¹ The National Commission on the Status of Women and the Sindh Human Rights Commission have functioned since 2000 and 2013 respectively, while bills were approved enabling the creation of Provincial Commissions on the Status of Women in Khyber Pakhtoonkwa and Punjab.

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