

Pakistan: Recommendations for an effective National Human Rights Commission.

Pakistan

Recommendations for an effective National Human Rights Commission

Amnesty International welcomes the initiative of the Government of Pakistan to establish a National Human Rights Commission (NHRC) for the protection and promotion of human rights in Pakistan.

The Government of Pakistan submitted "a bill to provide for the setting up of the National Commission on Human Rights" to the National Assembly during its last session. The National Assembly in May 2005 referred the bill to the Standing Committee for Law, Justice and Human Rights for discussion. The National Assembly will consider the bill upon receipt of any comments and recommendations made by the Standing Committee.

Human rights institutions can play an important role in this regard by independently and effectively monitoring the human rights situation in the country, analyzing and proposing changes in laws and policies, conducting a continuous dialogue with both the authorities and the public on human rights issues, investigating human rights issues and individuals' complaints about human rights violations and making appropriate recommendations in light of relevant national legislation and international human rights law and standards.

NHRCs set up by the state as quasi-governmental bodies occupy a unique place between the judicial, the executive and the legislative branches of the state. They monitor the human rights performance of the state and act as a check on the state's performance in protecting human rights. They are thus institutions within the state structure and yet, where they function properly, are independent and, where necessary, critical. NHRCs can constitute an effective complement to the judiciary and other institutions of the state in promoting and protecting human rights standards. They cannot be an alternative, however, to an independent judiciary ensuring legal redress or to determined government policy and practice to respect human rights, prevent violations and hold the perpetrators of human rights violations to account.

The bill presented by the government of Pakistan lays down the composition of the NHRC, defines its functions, powers, procedures and funding and provides for the setting up of human rights courts. The NHRC's proposed functions include investigating complaints of human rights violations, intervening in court proceedings, visiting prisons, reviewing relevant national legal and constitutional provisions, making recommendations relating to ratification of international human rights treaties, conducting human rights education, supporting national human rights non-governmental organisations, contributing to government reports to international bodies and responding to representations from national and international bodies on human rights issues in Pakistan.

For NHRCs to play an effective role, it is important to ensure that the founding statute defines its composition, functions, powers and procedures as comprehensively and clearly as possible, keeping in mind the particular national context in which it is to function. Its composition must be appropriate to its task, ensure its independence and inspire confidence in victims and their families to approach it in the anticipation of help in obtaining relief and redress.

There are several guidelines for the setting up of NHRCs. Key amongst them are the “Principles relating to the status of national institutions” adopted by the United Nations (UN) Commission on Human Rights and later by the UN General Assembly, known as the Paris Principles.(1) Amnesty International has drawn up its own recommendations for the effective protection and promotion of human rights by national human rights institutions on the basis of observations of the work of human rights institutions and their impact around the world.(2) Both the Paris Principles and Amnesty International’s recommendations are attached to this paper.

Amnesty International believes that the bill for the setting up a NHRC in Pakistan contains many worthwhile provisions. However, some other provisions appear to be flawed when viewed in the light of the Paris Principles and Amnesty International’s recommendations for the setting up of effective human rights institutions.

In this document, Amnesty International lists its main concerns, and recommends that the bill be amended in the following ways.

1. Scope of human rights issues to be addressed by the NHRC

The scope of human rights within the NHRC’s jurisdiction as defined in the bill is too restricted. Section 2(d), defines “human rights” to mean “the rights relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution of Pakistan or embodied in the International Instruments on Human Rights which the Government of Pakistan has ratified and are enforceable by the courts in Pakistan”.

While the rights listed are core civil and political rights, and a wide interpretation of the concept of “dignity” may encompass all human rights provided for in international treaties and other instruments, Amnesty International is concerned that narrower interpretations are also possible. For instance, the definitions may be interpreted as excluding the entire range of economic, social and cultural rights, including the rights to health, education and food, which are provided in the International Covenant on Economic, Social and Cultural Rights.

Because Pakistan has ratified only a few international human rights treaties, the reference to human rights treaties ratified by Pakistan unduly limits the range of human rights to be promoted and protected. To date Pakistan has not ratified important treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, amongst others.

The reference to “international instruments of human rights which the Government of Pakistan has ratified and are enforceable by the courts in Pakistan” conceals the lengthy process by which the rights provided for in international treaties are incorporated in Pakistan law after ratification and made operative. Human rights treaties ratified by Pakistan are not self-executing, they require an act of parliament to be brought into domestic law and then need to be notified in the official gazette in each of the areas where they are to come into effect. Further, rules of procedure need to be notified before a law becomes operational and enforceable by courts.

Importantly, the definition does not take into account that the jurisdiction of the courts of Pakistan does not extend to the designated tribal areas where human rights remain unenforceable.

Principle 2 of the Paris Principles provides: “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”. Amnesty International urges that the range of human rights which the NHRC is to protect and promote be defined clearly and in the broadest possible terms as set out in international human rights law and standards.

Amnesty International urges that Section 2(d) be reformulated to include in the scope of human rights to be protected and promoted by the NHRC all human rights provided in the

International Bill of Rights(3) and other key human rights treaties and standards and that the jurisdiction of the NHRC clearly extend to all parts of Pakistan without distinction.

2. Composition, method of appointment and funding of the NHRC

Amnesty International is concerned that the composition of the NHRC (section 3 of the bill) and its administrative support staff (section 10), the method of appointment of its chairperson and members (Section 4) and the funding of the NHRC (sections 20-21) as provided in the bill do not adequately ensure the independence, impartiality and competence of the NHRC.

a. Composition

Amnesty International believes that the NHRC has to be manifestly and substantively independent of both the executive and the legislature if it is to be effective. It requires experienced, trained, skilled and dedicated staff and members as well as competent, independent and effective leadership. The chairperson and members of the NHRC should represent all sections of society, including women, ethnic and religious minorities and people with disabilities, who may be underrepresented in other official bodies and who may have particular problems having their concerns heard and attended to. The chairperson and members of the NHRC should have, and should be known to have, knowledge and experience in human rights issues to ensure that victims of human rights violations turn to them with confidence.

Amnesty International also believes that the composition of the NHRC as provided for in the bill in sections 3(2)(ii) and 3(2)(iii) does not ensure sufficient representation of all sections of society and does not sufficiently emphasize the human rights credentials of the members of the NHRC.

Amnesty International recommends that in sections 3(2)(ii) and 3(2)(iii) which enumerate the members from various groups to be appointed to the NHRC, a phrase be added to ensure that all nominees have proven experience of and commitment to human rights and that all sections of society are adequately represented in the Commission.

Section 10 of the bill provides that staff who are to assist the NHRC in the discharge of its functions are drawn from amongst officers of the federal government. Amnesty International believes that the NHRC must be, and must be seen to be, independent in its functioning from the government. Its staff, like its members, should be independent and known for their knowledge of and commitment to human rights.

Amnesty International recommends that section 10 of the bill be amended to remove the requirement that staff must be former government employees, and ensure that the Commission appoints its staff from amongst persons with known commitment to human rights, and adequately representing all sectors of society.

b. Appointment

Section 4(1) of the bill vests the power to select, appoint and dismiss the chairperson and members of the NHRC exclusively with the President and makes it optional for the President to seek nominations and recommendations. Nominations and recommendations are to be sought from the federal government alone.

Amnesty International believes that for the selection to be fair and transparent and to ensure the appointment of persons of competence, impartiality and independence who command respect and confidence, civil society, including human rights defenders representing the interests of vulnerable sections of society, opposition politicians, trade unionists, social workers, journalists, should be involved as far as possible in nominating possible candidates and selecting from amongst them those most suitable to head and work as members of the Commission. This could be done by means of a specially constituted advisory committee whose function it would be to invite nominations and vet candidates or by the federal government directly inviting nominations from civil society organizations or persons working in the field on human rights.

The Paris Principles in Article 1 under section “Composition and Guarantees of Independence and Pluralism” provides

“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 promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

Amnesty International recommends that selection and appointment of the chairperson and the members of the NHRC should be as open, transparent and inclusive a process as possible with ample scope for non-governmental human rights organizations to participate in the process.

Section 4 of the bill should be amended to provide that the chairperson and the members are appointed after thorough consultation with representatives of different sectors of society including human rights NGOs and other members of civil society, academic experts, and parliamentarians as provided in the Paris Principles.

The Committee may also consider including a provision in the bill in or before section 4 to set up an advisory body consisting of representatives of civil society whose function it is to vet and nominate members of the NHRC or for the federal government to directly invite nominations from civil society organisations working in the field of human rights.

c. Funding

Amnesty International is concerned that the provisions in the bill for “Finance, Accounts and Audit” (sections 20-21) may not secure sufficient funding for the NHRC and provide for too much control by the government of the NHRC’s funding. In addition to establishing, and in effect running, the fund into which parliamentary allocations and all other contributions should be paid (section 20(1)), the government may also approve the “financial institution” into which donations may be paid (section 20(2)) and appoint the officers who would do the administrative work (section 20(4)).

According to the Paris Principles, an NHRC should be funded so as “to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence”.

Amnesty International recommends that a provision be added to the bill to the effect that Parliament will make annual allocations to the NHRC which are adequate to allow it to carry out its mandated function properly, that the NHRC fully control and administer its funds and that accounting and auditing be performed by independent bodies. All subsections which vest such financial control functions in the hands of government officers should be deleted.

3. Functions and powers of the NHRC

The functions and powers of the NHRC identified in the Bill are wide and varied. However, some important powers and functions have not been included.

a. Power to research and report on any human rights issue

While the bill in section 11(1)(a) authorizes the NHRC to undertake inquiries into complaints of human rights violations either on its own initiative or on receipt of a petition by a victim or any

other person, it does not explicitly authorize it to undertake research on any human rights issue and to produce a report on its findings.

Article 3(a)(iii) of the Paris Principles lists amongst the responsibilities of the NHRC “the preparation of reports on the national situation with regard to human rights in general, and on more specific matters”.

Amnesty International recommends that a clause be added to section 11(1) to authorize the NHRC to undertake research on any human rights issue and to produce a report on its findings.

b. Power to require production of information

Amnesty International welcomes the fact that the powers of the NHRC to inquire into and investigate complaints of human rights violations are not limited in terms of when or where they occurred and who the perpetrators are. However, while the NHRC may under section 17 of the bill call for information from the government it does not provide for any sanction if such information is not forthcoming.

Amnesty International recommends that a clause be added to section 17 of the bill providing that suitable steps are to be taken against any government official or institution who refuses to respond appropriately to NHRC inquiries or requests to provide reports or information.

c. Power to undertake jail visits

Amnesty International believes that the provisions in section 11(c) of the bill relating to prison visits by the NHRC are too narrow to allow it to objectively ascertain the conditions of detention of all detainees in Pakistan.

The modalities of prison visits by “national preventive mechanisms” (NPMs), have recently been elaborated in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Protocol).(4) In addition to requirements of independence, funding, expertise and representation (Article 18 of the Protocol), the Protocol lays down, among other things, the following modalities:

NPMs should have unhindered access to all places where persons deprived of their liberty are held (Article 20(3)) and to all relevant information (Articles 20(1) and 20(2))

In addition to jails, detainees in Pakistan are also held in police stations, military detention and often in undeclared places of detention where detainees are held under security legislation or on suspicion of “anti-terrorist” activities. In addition, persons are deprived of their liberty in psychiatric institutions and other locations, all of which, without exception, should be within the Commission’s remit.

NPMs should be able to interview detainees without witnesses (Article 20(4))

The bill fails to mention this essential requirement for obtaining testimonies of detainees about their treatment in custody.

NPMs should have the liberty to select places they wish to visit and persons they wish to interview (Article 20(5))

The bill, by stipulating that state authorities are to be informed in advance of the NHRC’s intention to visit a place of detention makes it possible for prison authorities to conceal conditions of detention or even detainees. Amnesty International believes that the NHRC should be able to make unannounced visits to provide the commission with a true picture of conditions of detention.

Amnesty International recommends that section 11(c) be amended to grant the NHRC authority to function as a national preventive mechanism as provided in Part IV of the Optional Protocol to the UN Convention against Torture. This includes being assured unhindered access to all places of detention and to all relevant information, authorized to

interview detainees without witnesses and authorized to make unannounced visits to any place of detention.

d. Power to review of laws and legal safeguards

A review of existing laws as to their effectiveness in protecting human rights is provided for in sections 11(1)(d) and 11(1)(e) of the bill is an important function of national human rights institutions. Amnesty International believes that all relevant new legislative proposals should also be placed before the NHRC for it to examine their compliance with national and international human rights law and standards.

Amnesty International recommends that a phrase be inserted in section 11(1)(e) providing that the NCRC will also review new bills before parliament as to their compliance with national and international human rights law and standards.

e. Contributing to reports to UN bodies and defending Pakistan in international fora

Under section 11 (1)(m) the NHRC is required to pursue or defend matters relating to human rights in Pakistan in national and international fora. Amnesty International believes that this function is incompatible with the independence and impartiality which are core requirements of an effective NHRC. The intention to use the NHRC to defend the country's human rights record is also evident in the Statement of Objectives and Reasons attached to the bill which describes the NHRC as "'a driving force for negating the propaganda of human rights violations in Pakistan'".

In pursuance of the NHRC's function to monitor the government's fulfilment of its international treaty obligations, the NHRC should submit reports to the UN treaty monitoring bodies on its own behalf, not on behalf of the government or as part of the state's submissions. In international fora the NHRC should participate as an independent human rights institution, not a representative of the government.

Amnesty International recommends that section 11(1)(k) be amended to provide that the Commission report independently to international human rights bodies including treaty monitoring bodies on the human rights situation in Pakistan, including Pakistan's fulfilment of its human rights treaty obligations. Amnesty International recommends that section 11(1)(m) be deleted.

f. Reporting of activities and recommendations

The bill does not clearly provide the NHRC with the authority to publicise its own reports and other findings. The provision under section 19 of the bill requiring the NHRC to submit its annual and other reports to the Federal Government which has to present these to Parliament within 90 days, is not sufficient to ensure the transparency of the NHRC's workings and the government's responses to its recommendations, if their publication is dependant on either the Federal Government's or Parliament's discretion.

Amnesty International believes that NHRC reports, including annual reports and reports of findings of inquiries, should be promptly made accessible to the public, both to render its working transparent and to inform the public of the issues it has taken up, the recommendations it has made and the initiatives that the state had taken on that basis. Only by being seen to be undertaking effective human rights work, will the NHRC gain the public trust which will persuade victims of human rights to turn to it for relief.

Article 3(a) of the Paris Principles in the section on "'Competence and Responsibilities'" provides that a national human rights institution shall "'submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its powers to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights; the national institution may decide to publicize them'". Article (c) in the section on "'Methods of Operation'" provides that "'the national institution shall ... address public opinion

directly or through a press organ, particularly in order to publicize its opinions and recommendations””.

Amnesty International recommends that a provision be added to section 19, to the effect that NHRC reports and other findings, including the annual reports and reports of findings of inquiries, of the Commission are to be made public, at the Commission’s discretion, and be circulated widely.

4. Other provisions lacking in the draft bill

Amnesty International suggests that the following issues be considered for inclusion in the bill.

a. Defining the relationship of the NHRC with other state institutions

The relationship of the NHRC to other state institutions whose mandates include human rights promotion and protection is not clarified. These institutions include the National Commission on the Status of Women, the National Commission on Minorities, the Standing Committees on Human Rights of the General Assembly and the Senate and the Federal and Provincial Ombudsmen. The relationship between the various institutions needs to be defined in the bill so that the NHRC and these other institutions can develop such relationships, clarify respective mandates, avoid duplication and make co-operation fruitful.

Amnesty International recommends that the draft bill define the relationship of the NHRC with other national bodies having a human rights mandate so as to enable efficient coordination and collaboration among them.

b. Defining the relationship of the NHRC with civil society

The relationship of the NHRC to civil society is described in section 11(1)(j). The NHRC’s function is defined somewhat restrictively, to “”encourage and facilitate the efforts of non-governmental organizations and institutions working in the field of human rights””. Amnesty International believes that this relationship should be more comprehensive and include exchanges of views, insights and information and whenever appropriate joint initiatives to end specific human rights violations.

The Paris Principles in Article (g) in the section on “”Methods of Operation”” provides that the “”national institution shall ... in view of the fundamental importance played by non-governmental organizations in expanding the work of national institutions, develop relations with non-governmental organizations devoted to promoting and protecting human rights, economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas””.

Amnesty International recommends that the bill define the relationship which the NHRC should develop with civil society organizations in wider terms, to enable the full range of cooperation necessary for their mutual benefit.

c. Location of the NHRC

To be accessible to all victims or complainants, Commission offices must be easily accessible to the public and placed in appropriate locations, not too near to police stations or military installations, where complainants or victims must fear being noticed, monitored or even stopped. Within offices, there should be facilities such as private meeting rooms where complainants can discuss their concerns with Commission staff in confidence.

Amnesty International recommends that the draft bill specify that NHRC offices be suitably located and equipped to facilitate victims and complainants contacting them in confidence.

Appendix:

1. The Paris Principles

2. Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights
3. Draft Bill of the Government of Pakistan for the setting up of a National Human Rights Commission

THE PARIS PRINCIPLES (Principles relating to the status of national institutions)

Commission on Human Rights resolution 1992/54 of 3 March 1992, annex. 1 (Official Records of the Economic and Social Council, 1992 Supplement No.2 (E/1992/22). chap.11. sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. 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.
3. A national institution shall, inter alia, have the following responsibilities :
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well provisions relating to judicial organization, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To 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, where necessary, to express an opinion on the subject, with due

respect for their independence;

- (e) To co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.

Composition and Guarantees of Independence and Pluralism

1. 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 promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
 - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - (b) Trends in philosophical or religious thoughts;
 - (c) Universities and qualified experts;
 - (d) Parliament;
 - (e) Government departments (if they are included, these representatives should participate in the deliberations only in advisory capacity).
2. The national institution shall have an infrastructure with 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 its independence.
3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of Operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by non-governmental organizations in expanding the work of national institutions, develop relations with non-governmental organizations devoted to promoting and protecting human rights, economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional Principles Concerning the Status of Commissions with Quasi-judicial Competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organization. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commission, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or where necessary, on the basis of confidentiality;
- (b) Informing the party who filled the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

AI INDEX: IOR 40/007/2001

NATIONAL HUMAN RIGHTS INSTITUTIONS

Amnesty International's recommendations for effective protection and promotion of human rights

INTRODUCTION: STANDARDS ARE A PRE-REQUISITE FOR EFFECTIVE ACTION

National human rights institutions (NHRIs) include institutions such as ombudspersons for the defence of human rights, and the institutions in Latin America known as "*defensorias del pueblo*" and "*procuradorias de derechos humanos*". Such NHRIs can be distinguished from non-governmental human rights organizations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The aim of their establishment should be to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly.

Amnesty International has developed the following recommendations, based on the organization's observations of the work of NHRIs and their impact throughout the world. This document includes examples of good and bad practice. Amnesty International believes that these recommendations are essential elements to ensure the independent and effective establishment and functioning of national human rights institutions. They should be considered alongside other guidelines such as the "Principles relating to the status of national institutions"(adopted in the UN Commission on Human Rights Resolution 1992/54, known as "the Paris Principles") as a tool both to assess the effectiveness of existing national human rights institutions, and to ensure that new NHRIs are set up with the requisite ingredients for effective and independent functioning.

The recommendations set out in this document are Amnesty International's assessment of a foundation for effective work to promote and protect human rights. However, implementation of these recommendations on a formal level should not be seen as an end in itself - NHRIs should be judged on their results in effecting improvement in the human rights situation in their country, and in providing investigations and remedies in individual cases. The results of their investigations should be open to scrutiny by civil society, including human rights defenders. They should work to combat impunity for all those who order, carry out, and cover up human rights violations. NHRIs should be judged on how they implement these goals, not solely on their legal or institutional framework. Amnesty International has received reports of many examples of good practices and good results in these aims, but also many shortcomings, and these recommendations are meant to encourage best practices in all NHRIs. It is Amnesty International's experience that those NHRIs which have been set up according to the principles in these recommendations and are functioning well and enjoy a level of credibility and trust which facilitates their relationship with the executive, the judiciary and most importantly, the victims of human rights violations, and makes their work even more effective.

Some of the recommendations concern the establishment of NHRIs and as such are aimed at governments, but others concern the operation of NHRIs, and are therefore aimed at governments, so that they can do all that is necessary to facilitate the efficient running of NHRIs, but also the NHRIs themselves. They may also be useful to those in civil society who are monitoring their performance.

The position of NHRIs as institutions within the state structure and yet independent - and where necessary, critical - is relatively new development in the protection of human rights. It is important to clarify their true role: NHRIs should never be seen as a replacement or alternative to an independent, impartial, properly resourced, accessible judiciary, whose rulings are enforced. NHRIs can however constitute an effective complement to the judiciary and other institutions within the state in promoting and protecting human rights standards. There can be no alternative to a determined government policy to holding the perpetrators of human rights violations accountable.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS ON EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. Establishment of NHRIs to ensure independence and effective action

The following recommendations on the establishment are to ensure that action

can be taken by the NHRI in full independence and to ensure its ability to take effective action to address violations. Formal independence without effective action is not sufficient.

1.1 Founding legislation

NHRIs must be independent from the executive functions of government and its founding charter should reflect this. It is essential therefore that NHRIs should be established by law or, preferably, by constitutional amendment. Where NHRIs are established merely by presidential or other kinds of decree, it is easier to abolish them, or to limit powers which are necessary to their effective functioning.

1.2 Consultation with civil society

The consultation process on and about the establishment of NHRIs should include representatives of civil society, such as human rights organizations, human rights defenders, lawyers, journalists, academics, the medical profession, social workers, trade unionists, and non-governmental organizations generally. Members of sectors of the population such as women, children and those representing their interests, religious, ethnic and racial groups, and other groups which are vulnerable to human rights violations (and which may be under-represented amongst civil society bodies) should also be consulted about the kind of assistance they require to promote and protect their human rights. The consultation process should be transparent, adequate, effective and properly resourced to ensure proper consultation.

1.3 Effective jurisdiction in federal states

Amnesty International has frequently noted that NHRIs have difficulties in ensuring that they can address violations throughout the territory of federal states. In some federal countries, NHRIs have been established with mandates that only permit them to consider cases where federal personnel commit human rights violations, or where human rights violations take place during the enforcement of federal law.

Amnesty International recommends therefore that any legislation in federal systems setting up an NHRI is made explicitly applicable to all parts of the federal system so that there are no *de facto* gaps in jurisdiction. Any NHRI, whether in a federal state or otherwise, should be able to examine all human rights violations, as defined by international human rights law, throughout the country's territory and regardless of the identity of the perpetrator.

All citizens with complaints of human rights violations should be able to bring them to an NHRI.

1.4 Cooperation with other institutions

The founding legislation of an NHRI should include provisions whereby the NHRI is empowered, on its own initiative, to submit reports to, and where appropriate, to address in person, legislative bodies, the executive, or other political institutions.

The NHRI should be directed to establish effective cooperation with other human rights institutions, whether domestic or from other countries, non-governmental organizations, including human rights organizations, and UN human rights bodies. In some cases, it may be useful to develop memoranda of

understanding between NHRIs and other institutions to facilitate such relationships. NHRIs should use such contacts to exchange first-hand information about reports of human rights violations and also to share expertise and experience of best practices.

The NHRI should consider using the NGO sector's wider social outreach mechanics, which in many cases is larger than that of the NHRI itself, to publicise its activities and to facilitate receiving complaints from sections of society who are either geographically, politically or socially remote. In all its contacts with NGOs and other organs of civil society an NHRI must take steps to protect its independence and impartiality.

1.5 Referrals

Where complainants raise problems which are outside the mandate of the NHRI, referrals may be appropriate to other organizations. This may be appropriate to help with, for example, medical, housing or social problems or consumer difficulties, particularly where complainants coming to the NHRI for help are having difficulties in obtaining assistance. In one case reported to Amnesty International, the NHRI gives the complainant a short letter on NHRI letterhead to bring to the referral agency outlining the problem and suggesting an appropriate response, which frequently leads to a quicker solution for the complainant and is a much appreciated service.

1.6 Assess priorities, measure goals, follow up

NHRIs frequently have a broad remit and scarce resources. It is therefore important to assess priorities through consultation with those affected, and work on priorities strategically, ensuring that those goals are met before ending work on the issue.

Violations of the right to life and the right to physical and mental integrity frequently involve crimes under international law, such as extrajudicial and other unlawful killings, torture, "disappearance", war crimes and crimes against humanity. In many countries NHRIs will need to prioritize work on such violations in order to be effective and credible in their work to protect and promote human rights.

NHRIs should also be empowered to take action on violations of other rights particularly social, cultural and economic rights.

NHRIs should assess priorities and needs through consultation with victims of human rights violations, and the availability of redress through other institutions within the country.

2. Membership

NHRIs require experienced, trained and skilled staff, and particularly strong, independent and effective leadership. NHRIs workers include those who lead the NHRI and take main responsibility for the work. In many cases they are appointed by the legislative or executive parts of government. Amnesty International refers to them in this document as "members." NHRI workers also include the staff who assist them, either through administrative or substantive investigative and legal work.

2.1 Qualities of members of the NHRI

Members should be selected on the basis of proven expertise, knowledge and experience in the promotion and protection of human rights. They should have practical expertise and abilities.

2.2 Leadership

It is Amnesty International's experience that the leadership of NHRIs is particularly important, indeed vital, for the effective functioning of NHRIs, as frequently the actions of the senior leadership of the organization sets the tone for the activities of the institution as a whole. It is of primary importance that the highest calibre candidates, with proven expertise of practical human rights work, be appointed.

2.3 Selection procedures and consultation

The independent procedures of selection, appointment, removal and terms of tenure of NHRI members and staff should be clearly specified, laid down in its founding legislation, so as to afford the strongest possible guarantees of competence, impartiality and independence.

The selection, appointment, and removal procedures of the members of the NHRI should not be handled exclusively by the executive branch of government.

The method of selection and appointment of the members of the NHRI should be fair and transparent, so as to afford all necessary guarantees of independence. Broad representation is also important, and steps should be taken to guarantee this - for example - by allowing members of civil society to nominate possible candidates for membership of the NHRI.

The selection and appointment process should involve representatives of civil society, especially human rights defenders representing the interests of particularly vulnerable sections of society (and members of those groups also), and may also include NGOs, opposition leaders, trade unionists, social workers, journalists.

Civil society should participate in the selection and appointment process as far as possible.

2.4 Representation of society

The NHRI members and staff should as far as possible include representation of all sections of society, including women, ethnic minorities, and people with disabilities, who may be under-represented in other official bodies and would have particular relevant experience of the needs of those sectors of society. Non-nationals should not be deterred or specifically prohibited from taking up a post at the NHRI.

2.5 Freedom from bias and expectations for further career advancement

The members and staff should consist of men and women known for their integrity and impartiality of judgement who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason, for example, allegiances to political parties, or strong links with the executive part of government.

In some cases, there may be an expectation that office in an NHRI is a stepping stone leading to ministerial or other political office which limits the independence of NHRI members and staff - as with such expectations, they may be less willing to criticize the executive.

Salaries and working conditions have a positive role to play in recruiting and retaining effective staff, and in ensuring independence. This, along with local factors, such as salary levels for similar positions, whether in the public or private sector, must be taken into account when setting and revising staff terms and conditions.

2.6 Effective support to fulfil tasks

There should be sufficient staffing to fulfil the tasks allotted to the NHRI. The key issue is to ensure effective oversight and action. NHRIs must have a functioning and efficient secretariat to carry out the tasks entrusted to the members.

2.7 Privileges and immunities

Like the judiciary, members of NHRIs should be immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions. However, decisions made by them in their official capacity should still be subject to judicial review by the courts.

3. Mandate and powers

The mandate should make the NHRI truly independent in action, to promote and protect human rights in whatever manner is most appropriate. It should not be set up as a purely advisory body to advise the government, rather it should listen to victims of human rights violations, and have their concerns at the heart of its work. It should also work to promote a culture of respect for human rights through education and raising of awareness of human rights issues.

The scope of the NHRI's concerns should be principally and clearly defined in terms of international human rights law. This should include states' obligations under international law to respect and also to ensure that rights are respected by all, that is, to take steps to ensure that domestic law and practice form a framework where the abuses of human rights by non-state actors are effectively addressed. NHRIs should make recommendations for changes in law and practice where states are not fulfilling their obligation to be able to take reasonable steps to protect citizens from abuses of their human rights by other citizens.

3.1 Scope of human rights within an NHRI's jurisdiction

NHRIs should enjoy the broadest possible mandate to address human rights concerns as set out in international human rights law and standards. The mandate should not be defined solely in terms of those rights that are specifically provided for in the country's constitution - particularly as some constitutions do not contain key rights such as the right to life. Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties. The mandate should include the power to protect and promote economic, social and cultural rights, as well as civil and political rights.

This is particularly important to ensure that human rights violations are monitored and acted upon in an accurate way. For example, Amnesty International has received reports that cases of torture are routinely described as "abuses of official position" rather than torture, which leads to a misleading assessment of human rights violations occurring in the country, as well as a failure to take appropriate action.

3.2 Accountability to ensure effective action

NHRIs should report publicly on their activities and be held accountable for their results - either to an independent civil society body, or to a functioning and exacting parliamentary body. This is particularly important as an ineffective NHRI which does not address human rights violations actively can be an instrument of impunity, rather than a tool to promote and protect human rights.

3.3 Asserting human rights for all

The mandate should include the power specifically to promote and protect the rights those sections of society which are particularly at risk of violations of human rights, for example, children, women, people with disabilities, ethnic minorities, refugees, human rights defenders and non-nationals such as asylum-seekers and migrant workers. It should promote the right not to suffer discrimination, as this is often the source and motivation of other human rights violations, such as torture.

Frequently Amnesty International has received information indicating that NHRIs encounter difficulties because they are perceived to be promoting the rights of criminals because of their work on prison conditions, or the torture of criminal suspects. It is therefore important that all NHRIs emphasise the universal applicability of human rights standards to **all** persons.

3.4 Participation in international human rights law fora

NHRIs should recommend and facilitate the signature, ratification or accession of its state to new human rights treaties.

The mandate should include the power to monitor government fulfilment of international and regional human rights treaties and human rights obligations under domestic law. This should include the power to monitor and report - independently on its own behalf, not on behalf of its government - on compliance with and implementation of relevant and necessary international human rights standards, essential to the promotion and protection of human rights, including the Universal Declaration of Human Rights, the International Covenant on Cultural and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Declaration and Convention against Torture, the Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, as well as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Principles on

the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions. They should also assess compliance with standards relating to the administration of justice, such as the Basic Principles on the Role of Lawyers, the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

NHRIs should as far as possible attend and participate in international meetings and fora including the treaty monitoring bodies and UN political bodies concerned with human rights. When doing so, they should represent themselves as independent NHRIs, rather than representing their government.

NHRIs should have the power to take note of and ultimately apply international human rights law and standards in their work. It is essential therefore that NHRIs establish effective means to keep abreast of recent developments of international human rights law and standards.

The NHRI should possess the power to follow-up on recommendations and reports made in relation to implementation and compliance with international human rights standards mentioned above. This should include a suitable framework within which the NHRI may compel the relevant authority to explain and report to the NHRI, within a reasonable period of time, as to why, for example, it has not followed and did not apply recommendations made by human rights treaty bodies or thematic mechanisms.

NHRIs should prepare "shadow reports" (reports of their assessment of the human rights situation in their country) to submit to the UN human rights treaty monitoring bodies on their own behalf; they should not write the state's reports to treaty monitoring bodies.

3.5 Advising governments on domestic legislation

The mandate should include the power to review the effectiveness of existing legislation or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary.

This is especially important regarding internal security laws, administrative detention laws, and police detention and interrogation procedures, which can often facilitate human rights violations, or where enabling legislation implementing international standards does not implement the international obligations effectively.

The NHRI should also examine bills and proposals for new legislation put forward by the government or parliament to assess its conformity with international human rights standards and to ensure the state's compliance with international human rights standards.

3.6 Participation in domestic legal cases

NHRIs should have the power to bring legal cases to protect the rights of individuals or to promote changes in law and practice. Amnesty International has received information about excellent work including the use of legal applications such as judicial review, constitutional applications and challenges, etc.

NHRIs should have the legal power to bring applications on behalf of those who

may be unable to bring cases to protect their rights themselves (for example, children, those with mental health problems or otherwise lacking mental capacity, prisoners).

NHRIs should also have the legal power to bring cases (such as judicial review) to challenge the legality of executive action and to obtain judicial orders to remedy the situation, particularly where the executive has ignored the NHRIs recommendations on the subject.

NHRIs must also have the legal power to submit advice to the courts, such as *amicus curiae* briefs or third party interventions, on legal issues within its field of expertise in an independent capacity, without being a party to the case. This is important to ensure that the courts are informed about specialized human rights law concerns and to ensure that human rights standards are actively implemented in court decisions.

3.7 Effective communication with government to bring about change

NHRIs should be mindful of their official position within state structures and communicate their recommendations confidently and with the expectation that the executive part of government, or the prosecuting authorities, should implement them. NHRIs should open strong and effective methods of communication with all agencies of government, the prosecuting authorities and the judiciary in order to promote their recommendations, and should ensure compliance with recommendations, and not accept recommendations being ignored. NHRIs should also make recommendations to parts of the state, for example, the judiciary and the legislative organs.

4. Investigations and Inquiries

4.A General recommendations on investigations

The NHRI should have the powers to conduct wide-ranging national enquiries on human rights concerns; they should have access to government information; they should respond to victims' concerns in their investigations.

4.A.1 Time limits

Although some reasonable time limits may be used to ensure that complainants come forward speedily with their complaints, NHRIs should undertake any investigation where there is evidence in existence to consider: they should not be inhibited by arbitrary time limits on investigations, and should not be inflexible in rejecting cases for being brought to their attention outside of time limits.

4.A.2 Power to investigate on its own initiative

NHRIs should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations. It should be able to set clear priorities for its work in accordance with the seriousness of the violations reported to it, specifically including alleged violations of the right to life and security of the person, and the right to physical and mental integrity, including the right not to be tortured; as well as to the right not to be arbitrarily arrested or detained.

Many NHRIs lose credibility within their countries by failing to engage with such

issues directly, and instead focussing almost exclusively on human rights education or promotion or implementation of those rights which involve less criticism of the government.

NHRIs should accept information from any reliable source, and should cooperate with national and international NGOs.

4.A.3 Investigating individual cases and wider patterns

Pending completion of investigations the NHRI should always identify any systematic pattern of human rights violations, and address the root causes, rather than solely treating each case in isolation. They should not look at individual cases in isolation, nor report abstractly on trends and developments - rather they should focus on the facts of individual cases, and identifying patterns, using well-researched, well-attested and evidenced cases.

4.A.4 Persistent problems and root causes

In their reports, NHRIs should conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory. This should include an assessment of the failure of existing institutions and legal mechanisms to provide adequate human rights protection, and its links with impunity, the administration of justice, and for example, treatment of foreign nationals, women, and prisoners.

Recommendations for legal and institutional reform to address human rights violations should be proposed on the basis of the findings.

4.A.5 Addressing all perpetrators without fear

Many NHRIs undermine themselves and lose credibility by asking the alleged violators of human rights - such as the armed forces or the police - to investigate allegations of violations of human rights themselves, rather than the NHRI making an investigation itself. On some occasions, NHRIs simply forward the complainant's initial communication of his or her complaint to the alleged perpetrators (including the complainant's name, address, and other details) to ask the alleged perpetrators, or their colleagues, to investigate. This does not constitute an impartial investigation and can put complainants at risk.

Especially, NHRIs should be authorized to investigate the conduct of the police and the security forces throughout the national territory, and should promptly, effectively, independently and impartially carry out such investigations - especially in situations of internal armed conflict, and during states of emergency. This authorization should not just be made explicit in its implementing legislation; it should also be made a practical reality in its work. NHRIs should not be debarred from operating during states of emergency.

NHRIs should also undertake investigations into human rights violations, even if those responsible include politicians or other powerful agents in society. To do this effectively, the NHRI should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess. It should also have effective powers to protect its own staff and witnesses engaged in such investigations.

This is an all too frequent failure of NHRIs around the world, and a major cause of frustration and cynicism towards NHRIs from victims and the general

population within countries, as well as NGOs, especially when the actions of major violators of human rights have not been addressed in a satisfactory way.

4.A.6 Compelling evidence

State officials should be legally obliged to cooperate with the NHRI's investigations.

NHRIs should have full and effective powers to compel the attendance of witnesses and the disclosure and production of documents and other pieces of evidence. Effective sanctions should be in place to use when the NHRI's work is obstructed or otherwise interfered with.

4.A.7 Accurate statistics lead to an accurate picture of human rights violations

NHRIs should collect and publish accurate data on, for example, reports of "disappearances", deaths in custody, rape and other forms of torture. Collection of data should be a by-product of day to day work, rather than an aim in itself. Statistics should detail the nature of the complaints, how and when they were investigated, the findings, and follow-up to recommendations.

4.B. Methodologies of investigation

In carrying out investigations NHRIs should pursue all available sources of information. These may include statements from victims, witnesses and alleged perpetrators; medical reports; police investigation files; court files; media reports; information from NGOs, families of victims and lawyers.

This is particularly important as investigations that, for example, simply constitute an examination of an existing police investigations file, may lead to a repetition of failures in investigation and in such cases, this may promote or contribute to impunity.

Amnesty International has also received information about cases where the onus of proof is on the complainant to prove his case, rather than the NHRI carrying out an investigation. NHRIs should always take steps to investigate information independently.

4.B.1 Independent investigation professionals

NHRIs should have their own investigative machinery and should have access to expert assistance (forensic pathologists, forensic doctors, ballistic experts, specialists on sexual violence etc.) whenever required to investigate alleged violations of human rights, particularly those involving physical injury (including injuries from sexual violence) and death. It is also important to have access to relevant experts to assist with interviews with victims who may be suffering from the psychological effects of torture, including sexual violence, to identify and record the psychological effects, and to ensure that interviews are conducted in a manner which does not lead to further psychological damage.

Sometimes it will be necessary to bring expertise in from outside the country, where no trained expertise is available.

Wherever possible, such forensic expertise should be at hand at short notice so that effective investigations and recording of, for example, injuries caused by torture or sexual violence, or post mortem investigations, can be made

efficiently. When such reliable forensic information is available, then it is much more likely that effective action can be taken in prosecutions of perpetrators.

Such experts should be truly independent - frequently Amnesty International has received reports that such experts have strong links with state officials such as the police, as most of their work is for such state officials. Amnesty International has received some reports of investigators for NHRIs who are actually police officers on secondment from the regular police forces - who were unwilling to investigate allegations against fellow police officers.

NHRIs should have adequate facilities to carry out on-the-spot investigations, including transport, to be able to obtain access to any place in the territory where human rights violations take place.

4.B.2 Training

Effective and practical training of staff working on investigations - especially sharing of skills and best practice from colleagues abroad - should be a priority. Frequently investigations undertaken with good will fail because of lack of training in investigative sciences and skills. They should also receive training in international human rights law so that they can identify and understand legal issues regarding their investigations.

4.B.3 Protection of witnesses

NHRIs should have full and effective access to mechanisms to ensure that witnesses, complainants, or others providing evidence to the NHRI are given appropriate protection. Mechanisms should be in place, which can be triggered by the NHRI, that can lead to the suspension or transfer of officials allegedly involved - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants.

4.B.4 Protection of evidence

Evidence gathered during investigations, such as witness statements, reports (including reports such as post mortem examinations or other expert reports) and physical evidence (such as evidence gathered during exhumations) should be kept securely by the NHRI.

4.C. Individual complaints

4.C.1 Who can complain?

NHRIs should have powers to begin investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if the complainants themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Individual complaints procedures should be free of charge.

It is important that all people have the opportunity to be represented in applications to NHRIs, regardless of their status under national law. Children, prisoners, the mentally ill, and foreign nationals, for example, must all have access to the NHRI.

4.C.2 Reaching out to victims

NHRIs should use networks of communication and outreach already existing among NGOs and civil society groups such as medical associations, to ensure that victims of human rights violations are aware of the procedures open to them.

4.C.3 Keeping the interests of victims at the centre of the process

Victims or relatives should have access to all relevant information and documents relating to the investigation into their complaints and be granted all necessary facilities to present evidence. Victims should in particular, be kept informed of the process of the NHRI's investigation, and be given reasons for decisions taken about their case, and consulted where there are choices as to how their case will develop.

NHRIs should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the NHRI.

Where the NHRI is unable to take up a case, for example, because it is outside its mandate, it should inform the complainant as soon as possible and give reasons for its decision.

4.D. Addressing failed investigations effectively

Where the police have made an inconclusive or otherwise unsatisfactory investigation, the NHRI should undertake a prompt, thorough, effective and impartial investigation and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. Investigations should not simply constitute an examination of an existing police investigations file.

An NHRI which fails to investigate individual complaints effectively may be an instrument of impunity - rather than allowing a victim access to a remedy, it closes off opportunities to secure a remedy, deterring the reporting of abuses.

4.D.1 Separation of roles of the NHRI and the judiciary

A clear line should be drawn between appropriate roles for the NHRI and the judiciary. The NHRI should be able to investigate, but should not have judicial powers. The result of the NHRI's investigations should be referred to appropriate judicial bodies without delay so that they can take appropriate action.

Evidence obtained by NHRIs should not be made inadmissible in other proceedings simply by virtue of having been first given to the NHRI.

Amnesty International has received reports which indicate that some NHRIs consider that investigations by the police or the security forces *prima facie* are sufficient investigations. It is important that NHRIs make their own assessment of the effectiveness of such investigations and follow up themselves with prompt, effective, thorough and impartial investigations where existing internal police or army investigations, or judicial investigations are not effective.

Where the NHRI finds evidence that certain individuals may have been responsible for committing human rights violations or for ordering, encouraging or permitting them, the facts of the case should be investigated promptly,

effectively, thoroughly and impartially by authorities empowered to bring criminal prosecutions, and if appropriate, those responsible should be brought to justice in legal proceedings which respect internationally-recognized rights to a fair trial, and do not lead to punishments involving torture or cruel, inhuman or degrading treatment, including the death penalty.

NHRIs should have powers to recommend that superior officers are brought to justice for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time. If the NHRI, in the course of its work, is able to identify short-comings in the law whereby it is not possible to hold such officers accountable, the NHRI should make recommendations for legal reform that would ensure that domestic law does not facilitate impunity.

The government should ensure that any prosecutions for crimes involving the abuse of human rights are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in human rights violations.

4.D.2 Parallel jurisdiction of NHRI and the judiciary

The fact that a complainant has been charged and a criminal prosecution is under way should not be a pretext for stopping NHRIs from acting on a complaint, or taking any other action within their mandate to address human rights concerns.

Where prosecutions are pending, the NHRI should not consider the substance of the criminal charge, but should be able to look at ancillary matters relating to the human rights of the accused person, for example, allegations that he or she has been tortured while in custody.

In some jurisdictions, the NHRI is not permitted to receive complaints from a person who has been charged with an offence or who is otherwise under judicial supervision; therefore if the judiciary is not taking appropriate steps to protect the accused person from human rights violations such as torture and ill-treatment in custody, then that person is without recourse to protect their rights.

4.D.3 Role of NHRI in following up the actions of prosecutors and the judiciary in cases of criminal acts

Although it is important to maintain independence of function between the judiciary and the NHRI, the NHRI should monitor whether its recommendations are followed up. Amnesty International frequently receives reports that an NHRI has recommended that, on the basis of their investigations, criminal investigations and prosecutions should be initiated - but the police or prosecuting authorities take no action.

NHRIs should not stand by in silence where recommendations to investigate and bring prosecutions are ignored. In such cases, the NHRI should continue to request that the authorities take up the case, if necessary through domestic and international publicity, or where possible, to bring judicial review action challenging the decision of the prosecuting authorities. NHRIs should not be complicit with impunity.

Where domestic remedies for human rights violations are exhausted or ineffective, NHRIs should raise the matter with the international bodies mandated to assess compliance with human rights standards, such as the human rights treaty monitoring bodies, or the United Nations' thematic mechanisms and special procedures, such as the Special Rapporteurs.

5. Recommendations and non-judicial remedies

5.1 Remedies and interim measures

NHRIs should have powers to ensure effective non-judicial remedies, including interim measures to protect the life and safety of an individual and adequate medical treatment where necessary; it should ensure measures of redress and rehabilitation are taken in appropriate cases.

5.2 Remedies but not impunity

NHRIs should not broker agreements for only reparations, such as compensation, to be paid, where the appropriate response would rather be reparation and prosecution of the perpetrator - for example in cases of torture.

Amnesty International has received reports that some NHRIs order compensation for crimes such as torture, and where the government encourages this or other forms of conciliation rather than bringing cases forward for prosecution. Conclusion of a case through friendly settlement should not prevent or hamper prosecutions for crimes under international law, such as torture, war crimes, or crimes against humanity.

5.3 Recommendations should be followed up

The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the NHRI. The government's response should be made public.

In cases where the government fails to respond, or refuses to respond or implement recommendations, the NHRI should continue to take all possible measures to press the government, for example, through pressure by the media, through parliament, and through international pressure of opinion and bringing the case to the attention of the international human rights bodies, such as the treaty monitoring bodies and the special mechanisms. Cases should remain open and as far as practically possible, the members and staff who dealt with the case up to the NHRI giving its recommendation should remain actively involved with the case and monitoring the implementation of the recommendation to ensure that the situation has been remedied. Continuity of staff is important to ensure that the initial problem has been addressed effectively.

6. Human rights education

Amnesty International has noted that a population which is educated in their human rights is an asset to assist NHRIs to carry out their task. Educating the population on human rights is a task that NHRIs working even under the most repressive governments are able to attempt, so it is important that it is done effectively.

General human rights education should be undertaken in a practical, illustrative

way - if possible using media broadcasts to illustrate or dramatise human rights issues - rather than producing glossy, but abstract, promotional material which simply sets out general principles. It is also vital to ensure that material is disseminated to suitable target audiences.

Human rights training should be targeted at people who may have to consider and apply human rights issues in their work - law-makers, administrative decision-makers, judges, lawyers, the medical profession, teachers, social workers, prison officers and police officers, and the armed forces - and they should be encouraged to promote human rights standards among their colleagues. Again, this professional education should be undertaken in a practical way to illustrate the transformative effect of using human rights standards in daily professional life. NGOs and victims groups should be encouraged to participate in such training to ensure that a variety of viewpoints are expressed within the education process.

7. Visits to places of detention

An important role that NHRIs can fulfil is as independent professional body empowered to visit places of detention, with the aim of making recommendations to change conditions in order to prevent the incidence of torture and other cruel, inhuman and degrading treatment or punishment.

Amnesty International has received reports of a wide range of competence in fulfilling this role among NHRIs around the world. Amnesty International has received information regarding cases where an NHRI has given assurances that a certain individual although reported to have been tortured, was fine and in good health, only for the organization's representatives to visit the same individual shortly afterwards to find him showing signs of torture consistent with earlier reports - giving rise to the possibilities that either the NHRI had not visited, or had mis-reported their findings, or lacked the necessary expertise to carry out visits. Thorough training is essential.

On the other hand, Amnesty International has received excellent general reports by NHRIs detailing the conditions of detention, and making recommendations which have led to a decrease in the incidence of torture and cruel, inhuman and degrading treatment and punishment. Unfortunately, recommendations are frequently not implemented by governments.

Even in cases where NHRIs undertake effective visits to places of detention, they are not provided with the human and practical resources (such as transport to all places of detention in all regions) so that they can ensure effective coverage and assessment of all places of detention.

7.1 Modalities of visits

The modalities of visits provided for in the Geneva Conventions of 1949 - Article 126 of the Third Geneva Convention, and Article 143 of the Fourth Geneva Convention - should be used by NHRIs in setting out the modalities for visits to places of detention.

These modalities are that:

1. the visiting mechanism shall have access to all places of detention, and have access to all premises in which detainees may be held.

Frequently, NHRIs are denied access to particular categories of places of detention, such as police stations, military prisons, or prisons where detainees are held under security or "anti-terrorist" legislation. These are frequently the very institutions from which many reliably attested complaints of torture are received, so it is vitally important that independent monitors have access to those places to assess conditions and make recommendations for change.

2. the visiting mechanism shall be able to interview detainees without witnesses, either personally or through the mechanism's own interpreter.

3. the visiting mechanism shall have liberty to select the places they wish to visit.

Frequently NHRIs are required to seek permission or give long notice of their visit. NHRIs should be able to visit "any place, at any time" without prior authorization in order to make a true assessment of conditions of detention.

4. the duration and frequency of visits shall not be restricted.

The only reason for denying access to a particular place of detention should be physical danger equal to the provision within the Geneva Conventions regarding compelling military necessity - which in practice means that a place of detention should only be out of bounds for visits if it is under weapon fire, and only during the period of danger. State security should not be an issue which would affect visits. The NHRI itself should assess and take appropriate precautions regarding any other risks, such as risk to health through disease prevalent within a certain institution.

8. Publicity

8.1 Media

NHRIs should ensure that they have access to the media in order to publicise their work to ensure that the population as a whole is aware of the services that the NHRI can provide; that they have human rights that can be protected and enforced; and to ensure a forum for discussion of human rights and publicity (therefore transparency) of the NHRI's activities. It is very important that the NHRI be seen by all to be taking effective action. NHRIs should also publicise their role as an institution independent from the executive part of the government, and its policies regarding confidentiality and security.

The NHRI should use the most effective media available to make contact with as many people as possible - so, for example, in places where illiteracy is high or where newspapers are hard to obtain, radio broadcasts should be used.

8.2 Annual reports

NHRIs should ensure that their reports, particularly their annual reports, are published and circulated widely.

Amnesty International recommends that NHRIs should be empowered to publish their materials at any time. Amnesty International has received reports that some NHRIs must present their reports to parliament or other political bodies before they are empowered to publish their reports, and frequently parliamentary time is not made available for this purpose. Therefore the NHRI is effectively silenced.

Many NHRIs do not produce annual reports - it is very important that they do so in order to be accountable and transparent, and to be seen to be fulfilling its role, evaluating its results, and planning its future activities. Statistics on the numbers and types of cases received, action taken and results achieved by the NHRI in resolving the cases should be included.

8.3 Confidentiality

Although there should be an assumption in favour of transparency, particularly in reports and the findings of investigations, in such publicity, care should be taken that sensitive details which could lead to complainants, their families, witnesses and human rights defenders being put in danger, or which leads to an invasion of their privacy, should not be released. However this need for confidentiality for sensitive information should not be used as an excuse not to publish any information at all, as this could be an excuse to cover up evidence of human rights violations.

9. Accessibility

9.1 Regional offices

Local and regional offices are vitally important to the effective functioning of NHRIs in a large country, or a country with isolated and inaccessible centres of population, or where transportation is difficult. Mechanisms should allow local offices a positive role in following up cases. Unfortunately Amnesty International has received reports of local offices undertaking prompt and effective investigations, but they are not empowered to follow up with local authorities: instead they have to refer cases to a central office. This can frequently become a "black hole" of bureaucracy, and effectively, cases are not followed up. Where there is a network of local and central offices, effective coordination and communication between all should be ensured. Responsibility for following up on cases must be clearly allocated and periodic evaluations should ensure that follow-up is taking place.

9.2 Accessible premises

NHRI offices must be stationed in appropriate places - unfortunately Amnesty International has received reports of NHRI offices being located near military installations or police stations. In such cases, potential complainants may fear being noticed or monitored by the security forces if they bring their complaints. Amnesty International has received other reports of offices being intimidatingly smart or located in very up-market areas, so that the poor and other disadvantaged groups feel too uncomfortable and conspicuous to be seen going there. Other reports indicate that some offices are located in inaccessible areas where it is difficult for complainants to visit.

Within offices, there should be facilities such as private meeting rooms where complainants can discuss their complaints with NHRI staff in confidence.

9.3 Communication with victims

NHRIs should take steps to ensure effective communications between itself and potential complainants.

Amnesty International has received reports of excellent initiatives to facilitate

such contact - such as free-phone (toll-free) telephone lines, email and internet access, and travelling offices (one example was a specially adapted bus) or travelling field officers who can go to very isolated areas. NGO networks can also facilitate contacts with victims and witnesses.

In countries where some complainants are likely only to be able to speak minority or local languages, these should be catered for. When using interpreters, careful consideration should be given to issues of confidentiality and impartiality. Cultural sensitivities should also be taken into account, which may include the gender of the interpreter. Interviewees (including complainants and witnesses) should consent to the use of interpreters.

In countries where there is widespread illiteracy, there should be common use of oral communication techniques, such as radio, and NHRI staff should take care to explain their procedures verbally, rather than relying on explanatory leaflets.

10. Budget

The government must provide the NHRI with adequate funding and resources in order to be able to fully carry out, and without restrictions and limitations, the aims and functions set out within the mandate, and particularly, to address the demands of the caseload that has been brought to its attention. The NHRI should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.

NHRIs are mandated by international standards, such as the Paris Principles, and by recommendations of civil society, such as the recommendations in this document, to cover a wide range of human rights issues, and clearly some prioritization of activities by NHRIs is required. Professional training and sharing of working skills so that NHRIs can maximise effective action within the bounds of resource constraints is therefore important.

Amnesty International has received reports that restrictions in NHRI budgets are used as a punitive measure to control an NHRI which is deemed to be too critical of government. AI has received reports of many examples where once set up, NHRIs are under funded to the extent that they cannot function effectively - leading to reasonable doubts about how serious the government was in the first place about improving the implementation human rights through the NHRI.

The mandate should specifically and explicitly include the power to be able to establish effective and alternative routes to receive funding, either from private donors or international agencies, for whatever human rights activities the NHRI is undertaking. NHRIs should develop guidelines to ensure that any such fundraising does not compromise its independence and impartiality.

Funding should be secured with a long term perspective to enable the NHRI to plan and develop its activities with confidence about being able to fulfil them

A Bill

To provide for the setting up of the National Commission for Human Rights

Whereas it is expedient to set up National Commission for Human Rights for better protection and promotion of human rights and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

Chapter-1

Preliminary

1. **Short title, extent and commencement;** (1) This Act may be called the National Commission for Human Rights Act 2005.
 - (2) It extends to the whole of Pakistan
 - (3) It shall come into force at once.
2. **Definitions:** In this Act, unless there is anything repugnant in the subject or context;
 - (a) "Chairperson" means the Chairperson of the Commission;
 - (b) "Commission" means National Commission for Human Rights constituted under section 3;
 - (c) "Federal Government" means the Law, Justice and Human Rights Division;
 - (d) "Human Rights" means the 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 Government of Pakistan has ratified and are enforceable by the courts in Pakistan;
 - (e) "member" MEANS A MEMBER OF THE Commission and includes the Chairperson; and
 - (f) "Prescribed" means prescribed by rules made under this Act.

Chapter-II

THE NATIONAL COMMISSION FOR HUMAN RIGHTS

3. **Constitution of National Commission for Human Rights.** (1) The Federal Government shall constitute a Commission to be known as the National Commission for Human Rights to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
 - (2) The Commission shall consist of:
 - (i) The Chairperson who **is a retired Judge of the Supreme Court** or an eminent person of known integrity and competence, having at least twenty years experience, knowledge and background of Human Rights.
 - (ii) **Two members of Parliament one from National Assembly and one from Senate;** one member from each Province who has been a judge of the High Court of said Province or a person qualified to be judge of the High Court or a Government Servant having retired from service in BPS-21 or above;
 - (iii) Two members from minorities, **at least** two women members, one member each from Islamabad Capital Territory and FATA and one

member from each Province, having the knowledge, experience and background of Human Rights;

- (iv) The Secretary of the Commission who shall be the ex officio member of Commission; and
- (v) Not more than two persons as ad-hoc members of the Commission to be appointed by the Chairperson, with the approval of President, having regard to the working of the Commission.

- (3) No member shall be less than **thirty** years of age.
- (4) The headquarters of the Commission shall be at Islamabad and Regional Offices shall be set up at all Provincial Headquarters as well as in Interior Sindh and Southern Punjab and in any other part of the country as the Commission may determine. The Regional Offices at Provincial Headquarter shall be headed by retired Judges of the High Courts or the Supreme Court.
- (5) The quorum for the meeting of the Commission shall not be less than simple majority of the total membership.
- (6) The Commission shall be a body corporate having perpetual succession and a common seal with powers among other to acquire, hold and dispose off any property and shall by the said name sue and be sued.

4. Appointment of Chairperson and other member; (1) The President shall appoint Chairperson and the members and for that may seek nominations and recommendations through the Federal Government.

- (2) Constitution of the Commission shall not be invalid merely by reason of any vacancy or defect in the constitution of the Commission.

5. Removal of a member of the Commission: The President may remove from office the Chairperson or any other member if the Chairperson or such other Member, as the case may be;-

- (a) **is accused of misconduct;**
- (b) **is adjudged an insolvent;**
- (c) engages during his term of office in any paid employment out side the duties of office;
- (d) is unfit to continue in office by reason of infirmity of mind or body;
- (e) is of unsound mind and stands declared as such by a competent court; or
- (f) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of member: - (1) A person appointed as Chairperson or a member, other than ex officio member, shall hold office for a term of four years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

- (2) The Chairperson or a member may resign his office in writing under his hand addressed to the Federal Government.

7. Acting Chairperson:- At any time when the Chairperson is absent or unable to perform functions of his office due to any other cause, or in the event of the occurrence of any

vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Federal Government shall appoint a person who is or has been a Judge of the Supreme Court to act as Chairperson until the Chairperson resumes his office, or as the case may be, until the appointment of a new Chairperson to fill such vacancy.

8. **Terms and conditions of service of members:-** The salaries and allowances payable to, and other terms and conditions of service of, the members, other than ex officio member, shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of a member shall be varied to his disadvantage after his appointment.

9. **Procedure to be regulated by the commission:-** (1) The Commission shall meet at such time and place as the Chairperson may deem fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf.

10. **Office and other staff of the Commission:** (1) The Commission, in consultation with the Federal Government, shall appoint:

- a. a retired government employee, of the status of the Secretary or an Additional Secretary to the Government of Pakistan, who has the knowledge, experience and background of working in the field of Human Rights as Secretary of the Commission who shall also be the Principal Accounting Officer; and
- b. such other staff including Director Generals, Directors, Deputy Directors and Assistant Directors from amongst Federal Government officers holding BS 20-17, on deputation basis or otherwise, as may be prescribed.

(2) without prejudice to the provision of sub-section (1) the commission, with the previous consent of Federal Government, may utilize the services of any officer, employee or agency of the Government if such services are required by the Commission for the purpose of discharging its functions.

(3) Without prejudice to the provisions of sub-section (2), the officers and other employees who were in the staff of Human Rights Wing before its constitution as a Commission, shall continue to be in the employment of the Commission if not found otherwise unfit.

Provided that the civil servant appointed to working in the Human Rights Wing shall upon their transfer to the Commission continued to be governed by civil servant Act, 1973 except those who may opt otherwise in pursuance of sub-section (4).

(4) The officers and staff of Human Rights Wing shall be given right of option for such appointments within a period of six months of the enforcement of this Act.

(5) The salaries, allowances and conditions of service of the officers and other staff appointed under this section shall be such as may be prescribed and shall not be less or to their disadvantage as already admissible.

Chapter – III

11. Functions and Powers of the Commission (1) The Commission shall perform all or any of the following functions, namely:-

- (a) inquire into, suo-moto or on a petition submitted by a victim or any person on his behalf into complaint of violation of human rights;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) 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 report thereon;
- (d) review the laws, including laws of terrorism which inhibit the enjoyment of human rights, and to recommend appropriate remedial measures;
- (e) review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend adoption of new legislation, the amendment of the existing laws and the adoption or amendment of administrative measures for their effective implementation;
- (f) study treaties and other International Covenants and Instruments on human rights and make recommendations for their effective implementation;
- (g) encourage ratification of International Human Rights Instruments or accession to those instruments, and ensure their implementation;
- (h) assist in the formation of programmes for teaching of, and research into, human rights and to take part in their execution in educational and professional institutions;
- (i) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (j) encourage and facilitate the efforts of non-governmental organizations and institutional working in the field of human rights;
- (k) 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;
- (l) refer and recommend investigation and inquiries in respect of any incident of violation of human rights;
- (m) pursuing or defending issues, complaints, representations and matters for and against Pakistan relating to human rights before any official or non Governmental organization, body or forum in Pakistan and, in consultation with Foreign Affairs Division, before any international organization and foreign Government or non-Governmental organization; and
- (n) Such other functions as it may consider necessary for prevention of human rights violations and or for promotion of human rights.

- (2) Subject to the provisions of this Act, the Commission shall have maximum administrative and financial autonomy in the discharge of its functions under this Act.

12. Power relating to inquiries: (1) The commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the code of civil procedure, 1908 (Ordinance V of 1908) and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witness or documents; and
 - (f) any other matter which may be prescribed.
- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to the subject matter of inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Pakistan Penal Code.
- (3) The Commission or any other officer, not below the rank of a Gazetted officer, specially authorized in this behalf by the commission may enter any building or palace where the commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copy there from subject to the provisions of section 102 of the code of criminal procedure, 1898 in so far as it may be applicable.
- (4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Pakistan Penal Code is committed in the view or presence of the Commission the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for the code of criminal procedure, 1898 forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 482 of the code of criminal procedure, 1898.

13. Investigation; (1) The Commission may, for the purpose of conducting any investigation pertaining to inquiry, utilize the services of any officer or investigation agency of the Provincial or Federal Government.

- (2) For the purpose of investigation into matter pertaining to inquiry, any officer or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Commission:-
- (a) Summon and enforce the attendance of any person and examine him,

- (b) Require the discovery and production of any document, and
 - (c) Requisition any public record or copy of thereof from any office.
- (3) The provision of this section shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency whose services are utilized under sub-section (1) shall investigate into matter pertaining to inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.
14. **Statement made by persons to the Commission:-** No statement made by a person in the course of given evidence before the Commission shall subject him to or be used against him, in any civil or criminal proceedings except for prosecution for giving false evidence by such statements.

Provided that statement-

- (a) is made in reply to the question which he is required by the Commission to answer or
 - (b) is relevant to the subject-matter of the inquiry
15. **Person likely to be prejudicially affected to be heard:-** If at any stage of the inquiry;
- (a) considers it necessary to inquire into the conduct of any person or
 - (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense.

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER-IV

16. **Independence of the Commission:** (1) The Commission and every member of its staff shall function without political or other bias or interference and shall unless this act expressly or otherwise provides the independent and separate from any party government administration or any other functionary or body directly or indirectly representing the interest of any such entity.
- (2) if at any stage during the course of proceedings at any meeting of the Commission it appears that a member has or may have a financial or personal interest which may cause a substantial conflict of interest in the performance of his or her functions as such the member shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as

to enable the remaining members to decide whether the member should be precluded from participating in the meeting by reason of that interest. Such a disclosure and the decision taken by the remaining members shall be entered on the record of the proceedings.

- (3) If a member fails to disclose any conflict of interest as required by sub-section (2) and is present at a meeting of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such nondisclosure is discovered, be reviewed and be varied or set aside by the commission without the participation of the member concerned.
- (4) Notwithstanding any personal opinion, preference or party affiliation, the member shall serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice.
- (5) No member of the commission shall:-
 - (a) by his membership of the commission, association, statement, conduct or in any other manner jeopardize his independence or in any other manner harm the credibility, impartiality or integrity of the Commission;
 - (b) make private use of or profit from any confidential information gained as a result of his membership of the commission, or
 - (c) divulge any such information to any other person except in the course of the performance of his functions as such a member of the Commission.

CHAPTER V

Procedure

17. **Inquiry into complaints:-** The Commission while, inquiring into the complaints of violation of human rights may;

- (i) call for information or report from the Government or any other authority or organization subordinate thereto within such time as may be specified by it:

Provided that:

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
 - (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the Government or authority, it may not proceed with the complaint and inform the complaint accordingly;
- (ii) without prejudice to anything contained in clause (i) if considers it necessary, having regard to the nature of the complaint, initiate any inquiry.

18. **Steps after inquiry:-** The Commission may take any of the following steps upon the completion of any inquiry held under this Act, namely:-

- (i) Where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of human rights by a public servant, it may recommend to the Government or authority the initiation of proceedings for prosecution or such other action on as the commission may deem fit against the concerned person or persons;

- (ii) approach the Supreme Court, or the High Court concerned, for such direction, orders or writs as that Court may deem necessary;
- (iii) recommend to the Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;
- (iv) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;
- (v) 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;
- (vi) the commission shall publish its inquiry report together with the comments of the Government or authority, if any, and the action taken or proposed to be taken by the Government or authority on the recommendations of the Commission.

19. Annual and special report of the Commission:- (1) The Commission shall submit an annual report to the Federal Government and may at any time submit special reports on any matter which, in its, opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

- (2) The Federal Government shall cause the annual and special report of the Commission to be laid before the Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The report shall be laid before the Parliament within (ninety) days from the date of its submission.

Chapter –VI

Finance, Accounts & Audit

20. Grants by the Government etc. (1) The Federal Government may, in such manner as it may deem fit, establish a Fund into which shall be paid;

- (a) all money appropriated by the parliament for the purposes of the fund;
and
- (b) all money donated or contributed to the Fund or accruing to the Fund from any source:

Provided that pay and allowances, etc. and other expenditure of the Commission shall be incurred from this Fund.

- (2) Donation or contributions received from the sources other than the Government may be invested with the financial institution approved by the Federal Government and may be with drawn when required.
- (3) Any unexpended balance of the money of the Fund at the end of the financial year, shall be carried forward as credit to the Fund for the next financial year and non shall be lapsable.
- (4) The administrative work, including the receipt of money appropriated by the Parliament for, or donated for the purposes of the fund or accruing to the fund

from any source and making payments from the fund in compliance with recommendations in the terms of this Act shall be performed by officers in the public service designated by the Federal Government.

- (5) The Federal Government shall appoint an officer designated under sub-section (5) as accounting officer in respect of the fund.

21. Accounts and audit:- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Auditor General of Pakistan.

- (2) The accounts of the Commission shall be audited by the Auditor General at such intervals as may be specified by him, and any expenditure incurred in connection with such audit shall be payable by the Commission to the Auditor-General.
- (3) The Auditor General and any person appointed by him in connection with the audit of the accounts of the commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Auditor General generally has in connection with the audit of Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the commission.
- (4) The accounts of the Commission as certified by the auditor general or any other person appointed by him in this behalf together with the audit report thereon shall be submitted by the Auditor General to the President who shall cause it to be laid before the National Assembly in terms of article 171 of the Constitution.

Chapter – VII **Human Rights Courts**

22. Human Rights Courts:- For the purpose of providing speedy trial of offences arising out of violation of human rights, the provincial Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Courts to try the said offences:

Provided that nothing in this section shall apply if:-

- (a) a Court of Session is already empowered or specified as a special court, or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

23. Special Public Prosecutor: For every Human Rights Court, Provincial Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than ten years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter – VIII **Miscellaneous**

24. Constitution of special Investigation Teams:- Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purpose of investigation and prosecution of officers arising out of violations of human rights.

- 25. Protection of action taken in good faith:-** No suit or other legal proceedings shall lie against the Federal Government, Commission, any member or any person acting under the directions either of the Federal Government or Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or any order made there under or in respect of the publication by or under the authority of the Government or the Commission of any report, paper or proceedings.
- 26. Members and officers to be public servants:-** Every member of the Commission and, every officer appointed or authorized by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.
- 27. Appointment of Advisor and Consultants.-** The Commission may appoint such advisors and consultants as it may consider necessary for the efficient performance of its functions on such term and conditions as may be prescribed.
- 28. Advisory Committee.-** The Commission may setup NGOs Advisory Committees consisting of human rights activists, civil society organizations and representative of Federal Ministries/Divisions and Provincial Departments concerned with the human rights issues.

STATEMENT OF OBJECTIVES AND REASONS

1. In pursuance of UN General Assembly Resolution No. 48/134 of 20th December, 1993, and such other relevant resolutions of the UN Commission on Human Rights, the UN Member States are under obligation to establish independent National Human Rights institutions which is considered as a singular criterion to judge a state's commitment towards the protection and promotion of human rights. Presently, the National Human Rights Commissions are functioning in 54 countries of the world out of which 13 are the Asian Countries, including India.
2. The formation of National Commission for Human Rights would not only fulfil the international obligation of establishment of such a Commission it shall also serve as driving force for negating the propaganda of human rights violations in Pakistan.
3. The President of Pakistan also made an announcement for early establishment of a National Commission on Human Rights on May 15 on the occasion of "the National Convention on Human Rights Sensitization and Adoption of Human Rights Standards in Pakistan".
4. The decision to establish an independent National Commission on Human Rights affirms government's firm commitment to the promotion and protection of human rights in the country.
5. The Bill is designed to achieve the aforesaid objects.

MINISTER-IN-CHARGE

(1) UN Commission on Human Rights Resolution 1992/54, 3 March 1992 (E/1992/22); UN General Assembly Resolution 48/134, 20 December 1993.

(2) National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights, AI Doc: IOR 40/007/2001, dated 1 October 2001.

(3) The International Bill of Right includes the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant of Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

(4) Adopted on 18 December 2002 by the UN General Assembly and yet to come into force. See Amnesty International, Preventing Torture Worldwide - The Optional Protocol to the Convention against Torture, AI index: IOR 51/002/2003; Preventing Torture at Home - A Guide to the Establishment of National Preventive Mechanisms, AI Index: IOR 51/004/2004, 1 May 2004.

Amnesty International, International Secretariat, 1 Easton Street, WC1X 0DW, London, United Kingdom