

CHRI 2019

Maharashtra Police Complaints Authorities

A User Guide



CHRI

Commonwealth Human Rights Initiative
working for the *practical* realisation of human rights in
the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation working in the area of human rights. In 1987, several Commonwealth professional associations founded CHRI, since there was little focus on human rights within the association of 53 nations although the Commonwealth provided member countries the basis of shared common laws.

Through its reports and periodic investigations, CHRI continually draws attention to the progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, the media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in the Commonwealth.

CHRI is headquartered in New Delhi, India, with offices in London, UK and Accra, Ghana.

International Advisory Commission: Yashpal Ghai, Chairperson. Members: Alison Duxbury, Wajahat Habibullah, Vivek Maru, Edward Mortimer, Sam Okudzeto and Sanjoy Hazarika.

Executive Committee (India): Wajahat Habibullah, Chairperson. Members: B. K. Chandrashekar, Jayanto Choudhury, Maja Daruwala, Nitin Desai, Kamal Kumar, Poonam Muttreja, Jacob Punnoose, Vineeta Rai, Nidhi Razdan, A P Shah, and Sanjoy Hazarika.

Executive Committee (Ghana): Sam Okudzeto, Chairperson. Members: Akoto Ampaw, Yashpal Ghai, Wajahat Habibullah, Kofi Quashigah, Juliette Tuakli and Sanjoy Hazarika.

Executive Committee (UK): Joanna Ewart-James, Chairperson. Members: Richard Bourne, Pralab Barua, Tony Foreman, Neville Linton, Suzanne Lambert and Sanjoy Hazarika.

Sanjoy Hazarika, International Director

ISBN: 978-93-81241-64-6

©Commonwealth Human Rights Initiative, 2019. Material from this report may be used, duly acknowledging the source.



CHRI Headquarters, New Delhi

55A, Third Floor
Siddharth Chambers
Kalu Sarai, New Delhi 110 017
India
Tel: +91 11 4318 0200
Fax: +91 11 2686 4688
E-mail:
info@humanrightsinitiative.org

CHRI London

Room No. 219
School of Advanced Study
South Block, Senate House
Malet Street, London WC1E
7HU, United Kingdom
E-mail:
london@humanrightsinitiative.org

CHRI Africa, Accra

House No.9, Samora Machel Street
Asylum Down, Opposite Beverly
Hills Hotel Near Trust Towers,
Accra, Ghana
Tel/Fax: +233 302 971170
Email:
chriafrika@humanrightsinitiative.org

Maharashtra Police Complaints Authorities

A User Guide

Written by

Pavani Nagaraja Bhat

Edited by

Devika Prasad and Richa Udayana

CHRI extends its deepest thanks to all those who contributed to drafting the User Guide.

Our special thanks to Aileen Marques, Anju Anna John, Dolphy D'souza and Richa Udayana for their valuable review and feedback. We express sincere gratitude to Anand Mahajan for the Marathi translation and Masihuddin for Hindi translation.

Our thanks to Gurnam Singh for designing the guide and Sangeeta Mukherjee for all her assistance.

Table of Contents

Introduction	1
Complaints Procedure	5
Decision and Final Orders	12
Transparency and Reporting	16
Annexure I – Supreme Court Directive Establishing Police Complaints Authorities in Prakash Singh and Ors. Vs. Union of India and Ors.	20
Annexure II – Police Rank Structure	21
Annexure III – Sample Complaint form for Filing A Complaint to The State/Divisional Police Complaints Authorities	23
Annexure IV – Self Attested Declaration	27
Annexure V – Addresses of The Operational PCAs	28

Introduction

Maharashtra established Police Complaints Authorities (PCAs) in 2014. These are independent bodies mandated to inquire into complaints by the public against police personnel, involving allegations of serious misconduct, corruption, and abuse of authority. They are set up at several levels; in Maharashtra, there is one PCA¹ at the state level and six at the divisional level² in Nashik, Pune, Aurangabad, Nagpur, Amravati and Konkan.

Districts covered under each divisional PCA are given below:³

Nagpur Division	Nashik Division	Pune Division	Aurangabad Division	Amravati Division	Konkan Division
Nagpur	Nashik	Pune	Aurangabad	Amravati	Mumbai
Chandrapur	Dhule	Satara	Jalna	Akola	Mumbai
Wardha	Jalgaon	Sangli	Latur	Washim	Suburban
Bhandara	Ahmednagar	Solapur	Nanded	Buldhana	Palghar
Gondia	Nandurbar	Kolhapur	Osmanabad	Yavatmal	Raigad
Gadchiroli			Parbhani		Thane
			Hingoli		Ratnagiri
			Beed		Sindhudurg

As of March 2019, only the state-level PCA in Mumbai and the divisional level PCAs in Pune and Nashik are operational.

The PCAs came into being after amendments were made to the state Police Act passed through the Maharashtra Police (Amendment and Continuance) Act, 2014.

The PCAs are meant to function as strong accountability bodies over the police. It is important that the public knows their mandate and powers. By using the PCAs, we can push them to fulfil their role as police accountability bodies.

This guide explains and provides information about what PCAs do, how they work, the types of complaints you can make to them, the process to make complaints, the rights of complainants and witnesses, and the kind of remedies you can expect from them.

1 Section 22P, Maharashtra Police (Amendment and Continuance) Act, 2014.

2 Section 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

3 <https://www.maharashtra.gov.in/1128/Districts>

| What can the PCAs do?

They can receive and look into complaints against police personnel and also take other actions to hold the police accountable. Both the state and divisional PCAs have the following powers:⁴

- To conduct inquiries into complaints, hear all concerned persons, receive evidence, and give recommendations to be implemented by the police department and the state government;
- To advise the state government to ensure the protection of witnesses, victims and their families who face, or may face, threats or harassment for filing a complaint against the police;
- To visit any police station, lock-up or other place of detention used by the police. Any member of a PCA, with the written authorisation of the Chairperson, can conduct these visits.

| Who sits on the PCAs?

The PCAs work full-time. Each member has a term of three years.⁵ There is no term specified for its Chairpersons.

A state PCA comprises the following:⁶

S. No.	Qualification	Post
1	A retired High Court Judge	Chairperson
2	A retired police officer not below the rank of Special Inspector General of Police	Member
3	A retired officer of the rank of Secretary to the State Government or above	Member
4	An eminent civil society member	Member
5	A police officer not below the rank of Additional Director General and Inspector-General of Police	Member-Secretary

⁴ Sections 22Q and 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

⁵ Section 22Q(3), Maharashtra Police (Amendment and Continuance) Act, 2014.

⁶ Section 22P, Maharashtra Police (Amendment and Continuance) Act, 2014.

The Divisional PCAs consist of the following:⁷

S. No.	Qualification	Post
1	A retired Principal District Judge	Chairperson
2	A retired police officer not below the rank of Superintendent of Police	Member
3	Deputy Commissioner of Police (Headquarter)	Member
4	An eminent civil society member	Member
5	A police officer of the rank of Deputy Superintendent of Police or equivalent	Member-Secretary

| What can you complain about?

The State and Divisional PCAs have the power to receive complaints of:⁸

1. Death in police custody
2. Grievous hurt (under Section 320 of the Indian Penal Code, 1860)
3. Rape or attempt to commit rape
4. Arrest or detention, without following the prescribed procedure
5. Corruption
6. Extortion
7. Land or house grabbing
8. ***Any other serious violation of law or abuse of lawful authority.***

According to Section 320 of the Indian Penal Code 1860, “grievous hurt” includes:

- Castration
- Permanent loss of sight of either eye
- Permanent loss of hearing of either ear
- Loss of any body part
- Permanent loss of the use of any body part
- Permanent damage to the head or face
- Broken bone or tooth
- Injury which is life threatening or which keeps you in bed for 20 days and prevents you from doing your daily tasks

⁷ Section 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

⁸ Section 22Q(1), Maharashtra Police (Amendment and Continuance) Act, 2014.

| Which PCA should I file a complaint to?

This depends entirely on the rank of the police officer you are complaining against. The State PCA can receive complaints against senior police officers, while the Divisional PCAs can receive complaints against police officers of and up to the rank of Senior Police Inspector.

Complaint against	PCA
Officers of, and above, the rank of Deputy Superintendent or Assistant Commissioner of Police ⁹	State PCA
Police personnel up to the rank of Senior Police Inspector ⁹	Divisional PCA

For example, if you have a complaint of corruption against the Superintendent of Police of Sangli (which falls in Pune division), you must send your complaint to the State PCA in Mumbai.

Or, if you have a complaint of torture against a Police Sub-Inspector posted in Saki Naka police station of Mumbai Police, you have to send your complaint to the Konkan Divisional PCA.

As a reference, the police rank structure is provided in Annexure II.

| Who can file a complaint?

The PCA can take up complaints against the police by itself (*suo moto*).¹¹

It can also receive complaints from the following:¹²

1. A victim of police misconduct/abuse
2. A victim's family member
3. Anyone on behalf of the victim (in this case, an affidavit must show the victim's consent allowing another person to file the complaint)
4. The National Human Rights Commission
5. The State Human Rights Commission
6. The police itself

⁹ Rule 3(3), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

¹⁰ Rule 3(3), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

¹¹ Sections 22Q and 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

¹² Sections 22Q and 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

COMPLAINTS PROCEDURE

| Is there a time limit within which I have to file a complaint?

Yes. The complaint has to be filed within one year of the date of the incident that you are complaining about.¹³ For instance, if the incident occurred on 30 November 2018, you must file the complaint latest by 29 November 2019.

| How do I file a complaint to the PCAs?

The Rules published by the Maharashtra Government for the State PCA and Divisional PCAs provide a format for filing a complaint.¹⁴ Based on this, a sample complaint format is provided as Annexure III to this guide.

The complaint has to be made in writing. Any person can file a complaint by themselves. You do not require a lawyer to make a complaint to the PCA. You are not required to pay a fee to submit the complaint. The complaint may be submitted by hand in person, post, courier, email or the online digital format.

Note: The PCA Rules specify the online digital format as a mode of submitting complaints. As of March 2019, this is not yet working.

1. The complaint should be written on a plain paper or in the online digital format.
2. It must be written preferably in Marathi, Hindi or English.
3. It should, as far as possible, include specific details.
4. It should consist of:
 - a. Your name
 - b. Your address
 - c. Your contact details (such as phone number and email address, if available)
5. You need to say:
 - a. What happened
 - b. The date of the incident
 - c. The place where the incident occurred

¹³ Rule 4, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016; Rule 4, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

¹⁴ Rule 6, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016; Rule 6, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

- d. The name of the police station, if the incident happened in a police station
 - e. The name(s) and designation(s) of the police personnel who caused the injury or damage, if you are aware of it. You should also state the total number of police personnel involved.
 - f. What was said or done
 - g. Whether there were any witnesses to the incident
 - h. The contact details of the witness(es), if any
 - i. A description of the injuries, if any
 - j. The steps you took after the incident
 - k. A description of damage to property, if any
6. You may submit photocopies or records of the following documents to add weight to your complaint:
- a. A medical report or any certificate issued by a **qualified doctor** about the nature of injuries, if any. As far as possible, the medical examination should be conducted immediately after the incident

Note: The PCA Rules state that the medical report or certificate must be issued by a “qualified” doctor.¹⁴ This means you can get a medical report/certificate from either a government medical officer or a private doctor. But it is advised, as far as possible, to get a medical report/certificate from a government medical officer as they will issue it in the format that the PCA will be familiar with. The PCA will probably send a report/certificate from a private doctor for further verification which will add time to your inquiry.

- b. Photographs of the injuries or damage
- c. Audio or video recordings relating to the incident
- d. Copies or evidence of any prior complaints filed to the police (such as the senior supervisory officer)
- e. Copy of the First Information Report (FIR)
- f. Copy of the memorandum of arrest
- g. Proof of diary entry at the police station
- h. Any other evidence relevant to the complaint

¹⁴ Rule 6(5)(a), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016; Rule 6(5)(a), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

Note: The PCA cannot reject your complaint if you do not have supporting documents or records. The Rules say you can give these if you “desire and to the extent possible”¹⁵

7. You need to submit a self-attested declaration stating that the details mentioned in the complaint are true and correct as per your personal knowledge (a sample affidavit is annexed).

Whatever mode you submit your complaint in, make sure to keep a copy of the complaint and the documents submitted with it. You must also keep the receipt with you as a record. If you send your complaint by registered post, use registered post AD, which can give you the proof of the PCA receiving your complaint.

Tip: The mandate of the PCAs includes complaints of “*any other serious violation of law or abuse of lawful authority*”. If your complaint falls under this, it will strengthen your complaint if you can name the relevant legal provisions that you feel have been violated. This is not mandatory, but it may help.

| What steps will the PCA take after my complaint is filed?

The PCA will first examine a complaint to decide whether it can admit it for inquiry or not, according to the following procedure:¹⁶

Within seven days of registering a complaint, the Member-Secretary (or any designated officer) of the PCA must place the complaint before the PCA.



The PCA can reject your complaint at this stage if:

- o The nature of the complaint does not fall in the PCAs’ mandate.
- o No prima facie case is made out in the complaint -- that is, the PCA fails to find proof of any misconduct or offence after going through the complaint.
- o For any of the conditions listed in the PCA Rules (details provided below)



If the PCA rejects your complaint, they must give you reasons in writing within 15 days of filing the complaint.

¹⁶ Rule 6(5), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016; and Rule 6(5), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

¹⁷ Rule 6, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016; and Rule 6, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017.

Additional reasons for dismissing a complaint in the first stage

Apart from the reasons mentioned above, the PCA can dismiss your complaint if.¹⁸

1. The complaint is vague (does not give enough facts or details), anonymous (it is not signed by anyone), pseudonymous (it is signed under a false name), illegible (it cannot be read), trivial or frivolous (it is seen as not serious or substantive); or
2. The complaint is presented a year after the alleged occurrence of the act/inaction; or
3. The dispute is of a civil nature (complaints of land/house grabbing are exceptions to this rule and will be taken up by the PCA); or
4. The complaint relates to service matters or labour or industrial disputes; or
5. The matter is sub-judice (being heard) by a court or any tribunal (***this means the PCA will not accept your complaint if you have complained to a court or any Commission like the State Human Rights Commission or the Women's Commission***); or
6. The matter is covered by a judgment or decision of any tribunal or any other judicial/ quasi-judicial authority; or
7. The matter is outside the jurisdiction of the PCA in which you filed the complaint. For instance, if you file a complaint to a Divisional PCA against the Superintendent of Police; or
8. The complaint was not made to the senior supervisory officer, or one month has not passed since the complaint was filed to the senior supervisory officer.

Note: The PCA Rules require you to make a complaint to the senior supervisory officer of the police officer you are complaining against before you file a complaint to the PCA.¹⁸ You may have to wait for one month, after you have sent it, for a response from the supervising officer before you can send your complaint to the PCA. Be sure to attach a copy of the complaint you sent to the supervising officer to your PCA complaint.

18 Rule 4, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 4, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

19 Rule 4(h), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 4(h), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

If the PCA finds that a case is made in the complaint, it must send you a written order, free of cost, to tell you it will commence its inquiry. Several immediate next steps follow:

- The PCA will issue a notice to the police personnel (Respondent(s)) against whom the complaint is registered and also give them a copy of the complaint and any supporting documents.
- ↓
- The notice will also be sent to the senior supervisory officer(s) of the Respondent(s)
- ↓
- Respondent(s) have 30 days to submit a reply to the complaint with supporting documents, if any.
- ↓
- The PCA's Member-Secretary (or designated officer) will send you a copy of the Respondents' reply with a copy of the supporting documents within seven working days of receiving them.

| How does the PCA conduct an inquiry?

The inquiry process is divided into three stages:

1. Inquiry
2. Hearing
3. Decision

| Who will conduct the inquiry?

The PCA can appoint its own investigating officer to conduct the inquiry, or it can ask another investigating agency or officer to do it. Whether the PCA's own or another agency's investigating officer, the investigating officer/agency has to complete his/her inquiry as quickly as possible, and submit a report to the PCA latest within 60 days.²⁰

| Is the PCA a court?

No, but the proceedings conducted by it can be like those in a court, and some of its powers are

²⁰ Rule 7, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 7, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

similar to a court's. This is why PCAs are “quasi-judicial” bodies. For instance, while conducting inquiry into a complaint, the PCA has powers similar to a civil court under the Civil Procedure Code, 1908.²¹ The powers are:²²

- Summoning and enforcing the witness to attend the hearing, and examining the witness on oath;
- Require the discovery and production of any document;
- Requiring evidence on affidavits;
- Calling for the production of any public record, or copy, from any court or office;
- Issuing Commissions for the examination of witnesses or documents (the PCA may appoint an independent member to examine a witness or a document);
- Any other matter prescribed by the state government.

This also means that if you give false evidence to a PCA or file a false or frivolous complaint, you may be asked to pay a fine or be imprisoned (details further below).

| Which languages can PCA proceedings be conducted in?

The PCA Rules say that the official language of the PCAs is Marathi “for all practical purposes”. This means proceedings will be conducted in Marathi, but the Rules also mention that exceptions can be made “according to the language of the complainant”.²³ If you do not speak or understand Marathi, tell the PCA in advance so suitable arrangements can be made.

| How will PCAs conduct hearings?

If the PCA decides it is necessary to hold hearings, it will follow these procedures to conduct them:²⁴

- The PCA must notify all the concerned parties of the date of a hearing well in advance, at least seven days before the date of the hearing. It will also send notice to the senior officer(s) of the Respondent(s).

Note: In case of an urgency, the PCA may give a notice sooner than seven days.

- The senior officer is required to permit the Respondent police officer to attend the hearing.

21 Section 22Q(4), Maharashtra Police (Amendment and Continuance) Act, 2014.

22 Section 22Q(4), Maharashtra Police (Amendment and Continuance) Act, 2014.

23 Rule 2(1)(k), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 2(1)(k), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

24 Rules 8 and 9, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rules 8 and 9, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

- Other than the concerned parties, the PCA may call any other person as and when required by issuing summons.
- It may also call for any document (including public documents) or record related to the case at hand from any police officer or public servant.

| Do I have to attend every hearing?

The parties to a complaint are required to attend every hearing they are called to.

| Can I ask for an adjournment of a hearing?

Yes.²⁵ You have to ask for an adjournment at least three days before the hearing. However, the PCA will not grant you more than three adjournments. Similarly, a Respondent too will get three adjournments only.

If a Respondent police officer requests for an adjournment due to unavoidable official duty or performance, the hearing may be held on the next working day.

The PCA will adjourn a hearing only if a *reasonable cause* is shown by the person requesting it. While granting or refusing an adjournment, the PCA will record its reasons in writing.

| Can someone represent me at a hearing?

It is possible for someone to represent a complainant. You have to get written permission from the PCA, you can submit a request letter to the Chair in advance.²⁶ The representative can be a lawyer or anyone else the complainant chooses.

Note: While the PCA Rules use the term “legal representative,” the State PCA has allowed non-lawyers to represent a complainant.

| What if I or my representative cannot attend the hearing on the date set by the PCA?

If you or your representative cannot attend a hearing, and you did not ask for an adjournment, it will be conducted in your absence.²⁷ This also applies if a Respondent is absent.

²⁵ Rule 10, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 10, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

²⁶ Rule 10, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 10, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

²⁷ Rule 10(9), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 10(9), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

| Are the hearings open to any member of the public?

Yes. But in exceptional circumstances, and due to reasons recorded in writing by the PCA, proceedings can be held in-camera.²⁸

| Is there a time limit to complete the entire inquiry process?

Yes.²⁹ The PCA must complete the inquiry and send the report to the state government within 90 days of receiving the complaint.

If the PCA takes longer than 90 days, it should give reasons in writing for the delay to the state Home Department.

| Will the PCA keep records of the proceedings?

Yes. The Member-Secretary (or designated officer) must keep a case record and progress report of each day of any proceeding or hearing.³⁰

DECISION AND FINAL ORDERS

| How does a PCA take decisions?

The PCA examines all the reports, evidence and submissions of all relevant parties. Every PCA proceeding must be attended by a minimum of three members, this has to include the Chairperson. This is called the quorum or full bench. Any decision is to be taken by the quorum. All decisions are taken by a majority of the members who are present and vote. Dissenting opinions are put on record. If there is a tie, the Chairperson gets a second vote. Any decision of the PCA cannot be held invalid on purely technical grounds.³¹

| What actions can the PCA recommend on completing an inquiry?

If the PCA inquiry establishes misconduct and/or an offence by the police officers involved, the PCA can recommend:³²

28 Rule 12, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 12, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

29 Rule 10(4), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 10(4), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

30 Rule 9(3), Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 9(3), Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

31 Rule 5, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 5, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

32 Sections 22R and 22S, Maharashtra Police (Amendment and Continuance) Act, 2014.

- The initiation of departmental proceedings against the Respondent(s)
- The registration of a First Information Report (FIR) against the Respondent(s), if there is preliminary evidence to show that a criminal offence was committed

| What will the decision include?

The PCA must give its decision in a written order, which should include:³³

1. A summary of the allegations given in the complaint
2. A summary of the reply of the respondent, report and submissions received by the Authority
3. The findings of the PCA

| How will the PCA communicate its order?

The Chairperson or any Member of the PCA will read aloud its findings in open proceedings. They will read out the operative part of the decision and explain it in the official language of the state. If required, you can tell the PCA to do this in Hindi or English or in the language requested by the complainant [in line with Rule 2(1)(k) of the State and Divisional PCAs]. The Member-Secretary (or designated officer) then authenticates the final decision and immediately is to give copies of it to the parties – the complainant or their representative, and any other party present -- free of cost.³⁴

| Who else receives a copy of the order?

The PCA will also send its findings to the state government, the concerned officer(s) and their senior supervisory officer(s).³⁵

| What if a party gives false evidence or intentionally interrupts a proceeding?

If the PCA finds that any of the parties submitted false evidence, or intentionally insulted or interrupted public servants sitting in the proceeding, it can:³⁶

- Impose a fine up to Rs. 200.
- If this fine is not paid, the PCA can sentence the defaulting person(s) to simple imprisonment up to a month, or

³³ Rule 11, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 11, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

³⁴ Rule 11, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 11, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

³⁵ Rule 11, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 11, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

³⁶ Sections 22P and 22Q, Maharashtra Police (Amendment and Continuance) Act, 2014.

- If the PCA finds it necessary, apart from the fine and simple imprisonment, it can forward the matter to a Judicial Magistrate.

| Is the PCA's recommendation final?

No. The PCA gives its report, with its findings and recommendations to the state government, which takes a final decision on the actions to be initiated.³⁷

| Who implements the PCA's order?

After the state government receives the PCA's order, it may do any of the following:³⁸

1. Accept the report and implement it; or
2. Treat it as a preliminary inquiry for instituting disciplinary proceedings. Then, the state government or the competent authority (the police department) should begin the disciplinary proceedings against the Respondent; or
3. If the report states that the Respondent committed a cognisable offence (a serious crime), the state government will forward the report to the concerned police station. Then, a First Information Report is registered under Section 154 of the Criminal Procedure Code, 1973 to initiate investigation; or
4. Reject the report in exceptional cases, reasons in writing must be provided.
5. Where the state government rejects the report, it may also ask the PCA to hold further inquiry and submit a fresh report.

| What can I do if I don't get a fair hearing from the PCA?

If a party to the proceedings feels that they have not received a fair hearing, they can approach the state High Court -- in this case, the Bombay High Court – and ask it to review the PCA's decision. This can be done by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India, 1950.

Some of the reasons for which you may approach the High Court are:

- If a member of the PCA was biased or had a personal interest in the result of the case;
- If any party was not informed of the charges filed against them;
- If the PCA did not hear any of the parties properly.
- If the PCA did not provide sufficient reasons in its decision.

³⁷ Section 22R, Maharashtra Police (Amendment and Continuance) Act, 2014.

³⁸ Section 22R, Maharashtra Police (Amendment and Continuance) Act, 2014.

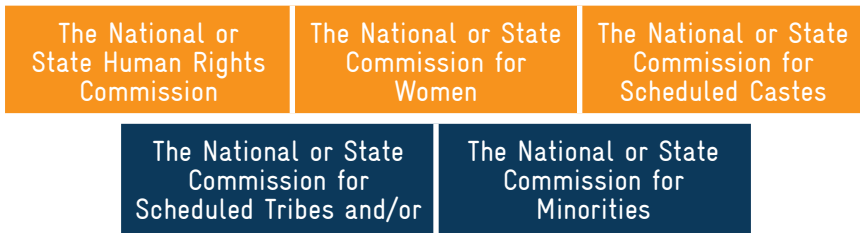
| If you are unhappy with the decision of the PCA, which other mechanisms are available to you?

If your complaint amounts to the allegation of a criminal offence, you can file a complaint in the police station and ask for registration of an FIR. If the police refuse to register an FIR, send the complaint to the District Superintendent of Police (SP). The SP can order the registration of the FIR.

If the FIR is still not registered, approach the nearest Judicial Magistrate. A Judicial Magistrate can direct the police to register a case and investigate it.³⁹ This case is then converted to an FIR.

If all these mechanisms fail, you may file a writ petition to the High Court under Article 226 of the Constitution of India, 1950. In this petition, you may ask the High Court to direct the police to register an FIR.

Meanwhile, you can also approach any of the following, if applicable to your case:



| Can the PCA take action against complainants?

If the PCA finds that you filed the complaint in “bad faith” (frivolous, false, vexatious, malicious or with an ulterior motive), it may recommend action against you under Section 22T of the Maharashtra Police (Amendment and Continuance) Act.

Under this provision, a complainant can be prosecuted and punished for filing a *false or frivolous complaint against a police officer*. The punishments are:

Type of complaint against police officer	Quantum of punishment that may be imposed on the complainant
Offences covered by Chapter XXIV of the Maharashtra Police Act	Simple or rigorous imprisonment up to two years or with fine or both
Offence is punishable by death/ life sentence/ imprisonment of seven years or above	Simple or rigorous imprisonment up to seven years and fine

³⁹ As per powers given under Section 156(3) of the Criminal Procedure Code, 1973.

While taking cognisance of an offence against a complainant for filing a false or frivolous complaint, Section 195 of the Criminal Procedure Code, 1973 will apply. If the complainant is convicted for the offence, s/he must pay the fine to the Respondent.

This makes it all the more important to ensure complaints are written clearly containing all the information known and available.

TRANSPARENCY AND REPORTING

| How does the PCA maintain transparency?

The PCA must be an independent and accountable body that is well known and fully accessible to all sections of society. It is, therefore, critical for each PCA to take wide measures to raise awareness about its existence, powers and its working. In their Rules, the state and divisional level PCAs commit themselves to setting up websites and using it as a medium to report cases and decisions, to have a strong presence in print and electronic/social media, to publish an annual report, and to publish a booklet/guide. For maximum outreach, all these documents must be published and disseminated in Marathi, Hindi and English.

✓ Minutes of hearings/meetings

The Member Secretary or the designated person must maintain records of the minutes of meetings of the PCA. The minutes of PCA meetings should be signed by the Chairperson and the members.⁴⁰ It would be good practice to post the minutes of every meeting on the PCA website.

✓ Official website:⁴¹

Each PCA must have a functioning internet website in its official language or English (it is advised that these websites be multi-lingual). It must contain information of the cases that the PCA will hear daily, weekly and monthly. All the decisions of the PCA must be uploaded on the website regularly without delay.

As of March 2019, no PCA in Maharashtra has a functioning website.

✓ Booklet/guide:⁴²

⁴⁰ Rule 5, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 5, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

⁴¹ Rule 12, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 12, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

⁴² Rule 12, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 12, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

Within six months of the constitution of a PCA, the Member-Secretary or designated officer must publish a booklet/guide, providing the following details:

1. Its contact details;
2. The powers and functions of the Authority;
3. The procedure for filing the complaint;
4. The prescribed forms for receiving/disposing complaints; and
5. The remedies available to the complainant under the Act and law.

The PCA must send these booklets/guides to all police stations and police department offices and have them kept there. These must be circulated free of cost.

✓ **Annual report:**⁴³

The PCA must prepare an annual report at the end of the financial year and submit it to the State Government. Their annual reports must be available on the PCA's website and related social media forums. The following details must be given in the annual report:

1. The number and type of complaints inquired into by the PCA;
2. The number and type of cases of misconduct inquired into by the PCA;
3. The number and type of cases if referred to any other agency or officer for inquiry;
4. The PCA's findings in each case;
5. The extent of any delay and reasons for such delay in completing the inquiry;
6. Identifiable patterns of police misconduct in the state; and
7. Recommendations made for enhancing the police accountability.

✓ **Active presence in print and electronic media**

The Member-Secretary or a designated official of the PCA must publish and disseminate basic information about the PCA and its procedure through print and electronic media. It is suggested they set up social media accounts on Twitter and Facebook and use these for outreach.

⁴³ Rule 13, Maharashtra Divisional Police Complaints Authority (Conditions of Service) Rules, 2017; Rule 13, Maharashtra State Police Complaints Authority (Conditions of Service) Rules, 2016.

⁴⁴ Every public authority shall: (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public.

⁴⁵ Every public authority shall: (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

Proactive Disclosure under the Right to Information Act

As public authorities, PCAs are bound by all the duties and obligations under the Right to Information (RTI) Act, 2005. Under Section 4(1)(b) of the RTI Act, this includes putting out the following categories of information in the public domain without anyone having to ask for it:

- 1) How each PCA is organised, its functions, the powers and duties of its officers and employees, procedures followed in decision making processes, the channels of supervision and accountability, norms, rules and regulations, instructions and manuals used by them in the discharge of their functions;
- 2) A statement of the categories of records and documents held by the PCA in physical copy and electronic form;
- 3) A list of boards, committees, councils constituted for the purpose of public consultation or advice and indicating whether minutes of their meetings will be available to the public;
- 4) A directory of officers and employees, including the salary and benefits they receive;
- 5) Details of the PCA's budget and expenditure, including reports on disbursement of funds;
- 6) The name and designation of the designated Public Information Officers within the PCA

This information has to be regularly updated – and in any case, at least annually. It must be disseminated in the local language of the area and through a variety of methods such as internet websites, notice boards, newspaper advertisements, public announcements and media broadcasts.

In addition, PCAs also have an obligation of routine disclosure under two circumstances. Under Section 4(1)(c) they are required to publish all relevant facts while formulating any important policy or announcing a decision which affect the public.⁴³ Further, Section 4(1)(d) obligates them to provide reasons for any of their administrative or quasi-judicial decisions to the affected persons.⁴⁴

ANNEXURES

| ANNEXURE - I

SUPREME COURT DIRECTIVE ESTABLISHING POLICE COMPLAINTS AUTHORITIES IN PRAKASH SINGH AND ORS. VS. UNION OF INDIA AND ORS.⁴⁶

There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired Judge of the High Court/ Supreme Court. The head of the State level Complaints Authority shall be chosen out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/ Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services of regular staff to conduct field inquiries. For this purpose, they may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation. The State level Complaints Authority would take cognisance of only allegations of serious misconduct by the police personnel, which would only include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

⁴⁶ Prakash Singh and Ors. vs. Union of India and Ors. (2006) 8 SCC 1; Writ Petition (C) No. 310 of 1996.

ANNEXURE - II - POLICE RANK STRUCTURE

Rank Structure of Maharashtra Police and PCAs' Jurisdiction

RANKS	RESPONSIBILITY	APPLICABLE PCA
INDIAN POLICE SERVICE		
DIRECTOR GENERAL OF POLICE (DGP)	HEAD OF STATE POLICE	STATE PCA
ADDITIONAL DIRECTOR GENERAL OF POLICE (ADG)	HEAD OF DEPARTMENTS	
INSPECTOR GENERAL OF POLICE (IGP) / SPECIAL INSPECTOR GENERAL OF POLICE	ZONE (GROUP OF RANGES)	
DEPUTY INSPECTOR GENERAL OF POLICE (DIG)	RANGE (GROUP OF DISTRICTS)	
SENIOR SUPERINTENDENT OF POLICE (SSP)	LARGER DISTRICTS	
SUPERINTENDENT OF POLICE (SP)	DISTRICTS	
ADDITIONAL SUPERINTENDENT OF POLICE (ASP)		
STATE POLICE SERVICE		
DEPUTY SUPERINTENDENT OF POLICE (DSP)/ SDPO	SUB-DIVISION	STATE PCA
ASSISTANT SUPERINTENDENT OF POLICE		
UPPER SUBORDINATE (STATE POLICE SERVICE)		
CIRCLE INSPECTOR	POLICE CIRCLE	DIVISIONAL PCA
INSPECTOR OF POLICE (PI)	POLICE STATION (STATION HOUSE OFFICER)	
ASSISTANT POLICE INSPECTOR (API)	POLICE STATION	
SUB-INSPECTOR OF POLICE (SI)		
ASSISTANT SUB-INSPECTOR (ASI)		
LOWER SUBORDINATE (STATE POLICE SERVICE)		
HEAD CONSTABLE (HC)	STAFF OF POLICE STATION	DIVISIONAL PCA
POLICE NAIK (PN)		
POLICE CONSTABLE (PC)		

Rank structure of Maharashtra Police Commissionerates and PCAs' Jurisdiction

RANKS	RESPONSIBILITY	APPLICABLE PCA
INDIAN POLICE SERVICE		
COMMISSIONER OF POLICE (CP)	HEAD OF CITY	STATE PCA
JOINT COMMISSIONER OF POLICE (JT.CP)	BRANCH	
ADDITIONAL COMMISSIONER OF POLICE (ACP)		
DEPUTY COMMISSIONER OF POLICE (SELECTION GRADE) (DCP)	ZONE/BRANCH	
DEPUTY COMMISSIONER OF POLICE (JUNIOR MANAGEMENT GRADE) (DCP)		
DEPUTY COMMISSIONER OF POLICE (LESS THAN 10 YEARS OF SERVICE) (DCP)		
STATE POLICE SERVICE		
ASSISTANT COMMISSIONER OF POLICE (ACP)	DIVISION (CITY LEVEL)	STATE PCA
UPPER SUBORDINATE (STATE POLICE SERVICE)		
INSPECTOR OF POLICE	POLICE STATION (STATION HOUSE OFFICER)	DIVISIONAL PCA
ASSISTANT POLICE INSPECTOR (API)	POLICE STATION	
SUB-INSPECTOR OF POLICE (SI)		
ASSISTANT SUB-INSPECTOR (ASI)		
LOWER SUBORDINATE (STATE POLICE SERVICE)		
HEAD CONSTABLE (HC)	STAFF OF POLICE STATION	DIVISIONAL PCA
POLICE NAIK (PN)		
POLICE CONSTABLE (PC)		

As of March 1 January 2017, there are 10 Police Commissionerates in Maharashtra. These are: Amravati, Aurangabad, Mumbai, Nagpur, Nashik, Navi Mumbai, Pune, R-Mumbai, Thane and Solapur.⁴⁷

⁴⁷ Data on Police Organisations, Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, pg. 31.

| ANNEXURE - III

SAMPLE COMPLAINT FORM FOR FILING A COMPLAINT TO THE STATE/ DIVISIONAL POLICE COMPLAINTS AUTHORITIES

To:

Chairperson

Divisional/ State Police Complaints Authority

(Postal Address)

VICTIM'S DETAILS:

- Full name of the victim:
- Father's/Mother's/Spouse's name:
- Address:
- Gender:
 - o Male
 - o Female
 - o Third gender
- Occupation:
- Phone number:
- Email id:

COMPLAINANT'S DETAILS:

- Full name of the complainant:
- Father's/Mother's/Spouse's name:
- Address:
- Gender:
 - o Male
 - o Female
 - o Third gender
- Occupation:
- Phone number:
- Email id:

POLICE OFFICER'S DETAILS:

Name/s of the Police Officials:

Rank of the Police Official *(Please tick the relevant rank):*

1	Director-General of Police	
2	Additional Director-General of Police	
3	Inspector General of Police	
4	Special Inspector General of Police	

5	Deputy Inspector General of Police	
6	Senior Superintendent of Police	
7	Superintendent of Police	
8	Commissioner of Police	
9	Additional Superintendent of Police	
10	Additional Commissioner of Police	
11	Deputy Superintendent of Police	
12	Deputy Commissioner of Police	
13	Assistant Superintendent of Police/SDPO	
14	Assistant Commissioner of Police	
15	Inspector	
16	Assistant Police Inspector	
17	Sub-Inspector	
18	Assistant Sub-Inspector	
19	Head Constable	
20	Police Naik	
21	Constable	

INCIDENT:

Date of incident:

Place of incident:

Name of the police station/location where the incident happened:

Type of misconduct: (*Please tick what is relevant*)

1	Death in police custody	
2	Grievous hurt (<i>please see the explanation after the sample complaint form</i>)	
3	Rape or attempt to rape in police custody	
4	Arrest or detention without following the prescribed procedure	
5	Corruption	
6	Extortion	
7	Land or house grabbing	
8	Any other matter involving serious violation of any provision of law or abuse of lawful authority	

Brief details of the incident (with the date and time):

Brief details of injuries, if any:

Brief details of damage to property, if any:

Steps you took after the incident:

Brief details of the complaint filed to the Senior Supervisory Officer:

DETAILS OF WITNESS(ES), IF ANY:

- Full name of witness:
- Father's/Mother's/Spouse's name:
- Address:
- Gender:
 - o Male
 - o Female
 - o Third gender
- Occupation:
- Phone number:
- Email id:

ATTACHMENTS:

- Photocopy of the doctor's report, if any
- Photocopy of any complaint filed, if any
- Photocopy of the First Information Report, if any
- Photographs of injuries/damage
- Audio or video recordings relating to the incident
- Photocopy of the memorandum of arrest
- Proof of diary entry at the police station
- Copy of complaint sent to supervisory officer of the police officer you are complaining against
- Any other supporting document

I swear that the information above is true and correct to the best of my knowledge.

Signature:

Date:

EXPLANATION OF GRIEVOUS HURT:

- If you will never see again from either one of your eyes
- If you will never hear again from either one of your ears
- If you have lost any of your body parts
- If you have lost the use of any of your body parts
- If your head or face have been damaged forever
- If you have a broken bone or tooth
- If you have an injury that could end your life
- If you have an injury that keeps you in bed for 20 days and stops you from your daily work

| ANNEXURE - IV

SELF ATTESTED DECLARATION

I Shri/Smt./Ms. _____
 _ son/ daughter/ wife/ widow of _____
 _ aged _____ years, permanent and current address as given below, having Aadhaar
 No. _____ (self-attested copy attached) do swear in the name of God and
 hereby affirm and state as follows:

1. That I am the complainant in the accompanying complaint / have authorised Shri/ Smt./
 Ms. _____ to file the accompanying
 complaint as I am unable to file the same because of _____

 reason.
2. That the facts stated in the attached complaint in paras _____ are
 true to the best of my knowledge and in paras _____ are
 true to my information and belief.
3. I therefore request you to enquire into the above complaint and take further action as
 deemed fit.

Deponent

Name:

Permanent Address:

| ANNEXURE - V

ADDRESSES OF THE OPERATIONAL PCAs

Maharashtra State PCA

Cooperage Telephone Exchange, 4th Floor,
Maharshi Karve Road,
Nariman Point,
Mumbai,
Maharashtra 400 021
Telephone number: 022-22820045 /22820046 /22820067
Email address - mahaspca@gmail.com

Pune Divisional PCA

Anant Heights, Survey No. 29/2/1
Jadhav Nagar Near Nanded City
Shivagad Road, Pune - 4110068
Telephone number: 020-24380074
Email address - dpcapune@gmail.com

| CHRI Programmes

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential for human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. It focuses on research, publications, workshops, analysis, mobilisation, dissemination and advocacy and informs the following principal programmes:

1. Access to Justice (ATJ)

Police Reforms: In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In East Africa and Ghana, CHRI examines police accountability and political interference.

We are preparing to add a portfolio on anti-discrimination on the basis of colour, appearance and gender.

Prison Reforms: CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting failures of the legal system that result in overcrowding and unacceptably long pre-trial detention and prison overstay, we engage in interventions and advocacy for legal aid and policy changes to revive prison oversight systems. Attention to these areas can bring improvements to the administration of prisons and conditions of justice.

2. Access to Information

CHRI is acknowledged as a key organisation working on the promotion of Access to Information. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana, and more recently, Kenya. In Ghana, CHRI is the Secretariat for the RTI civil society coalition. We regularly critique new legislation and intervene to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. We have experience of working in hostile environments as well as culturally varied jurisdictions; these enable us to bring valuable insights into countries seeking to evolve new laws on right to information. In Ghana, for instance, it has been promoting knowledge about the value of Access to Information and to campaign for the introduction of an effective law.

South Asia Media Defender's Network (SAMDEN)

CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia, especially in rural areas. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN is developing an interactive website platform to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with the Right to Information movements and activists.

3. International Advocacy and Programming

CHRI monitors the compliance of Commonwealth member states with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Secretariat, Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for and monitoring the Commonwealth reform, reviewing promised by Commonwealth members at the UN Human Rights Council, and the Universal Periodic Review. We advocate for the protection of human rights defenders and civil society spaces and monitor the performance of National Human Rights Institutions in the Commonwealth while pressing for their strengthening.



CHRI

Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the Commonwealth

55A, Third Floor, Siddhartha Chambers - I,
Kalu Sarai, New Delhi 110 016, India
Tel: +91 11 4318 0200 Fax: +91 11 2686 4688
E-mail: info@humanrightsinitiative.org
Website: www.humanrightsinitiative.org
Twitter: [@CHRI_INT](https://twitter.com/CHRI_INT)