

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Working in Partnership

Towards Institutional Protection of Human Rights

By A H Monjurul Kabir back from Kandy

"Human rights are in-scribed in the hearts of people; they were there long before law-makers drafted their first proclamation. Human rights are not against anyone but for everyone. Human rights are a legitimate claim and a solemn responsibility. Human rights must be the basic empowerment of all people, not only a privileged few...I am convinced that by combining our action and determination, by building partnerships between governments and civil society, international organizations and the media, religious and academic communities, we will succeed in realizing the vision of the future which the Universal Declaration first called for half a century ago." — Mary Robinson, United Nations High Commissioner for Human Rights on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights.

Culture of human rights is a must for full realisation of human potentials. It is crucial for human survival too. But placing human rights at the top of discussion agenda is not enough. Human rights need institutional protection through legal or constitutional mechanisms.

National human rights institutions (NHRI) have been evolving around the globe to cater this specific need. Australia, Indonesia, India, New Zealand, Philippines, Sri Lanka have already instituted their respective National Human Rights Commission. The Fijian Commission has just been established. The governments of Bangladesh, Cambodia, Mongolia, Nepal, Papua New Guinea, the Republic of Korea and Thailand have committed themselves to establishing a commission.

And in the last month members of the Asia Pacific Forum of National Human Rights Institutions and non-governmental human rights organisations met in Kandy, Sri Lanka to evolve and streamline strategy for action to protect and preserve human rights for all for the next millennium. The Forum organised this international workshop on 'National Institutions and Non-Govern-

mental Organisations: Working in Partnership' in a bid to further consolidate and encourage the development of national and regional partnerships between the Asia Pacific Forum of National Human Rights Institutions (APF), national human rights institutions, regional and national human rights non-governmental organisations (NGOs) in the protection and promotion of human rights in the Asia Pacific region. In the presence of observers from United Nations agencies and international non-governmental organisations, participants across the Asia Pacific region discussed the issues of mutual importance from 26 to 28 July 1999. The participants include former judges, lawyers, human rights commission officials, human rights commissioner, human rights activists and advocates.

The workshop took place in the context of increasing activity on the strengthening of human rights institutions and on the work of NGOs. This work has included the establishment of the Forum itself, the series of United Nations-sponsored workshops on regional arrangements in the Asia Pacific Region and a range of subsidiary meetings aimed at implementing agreed technical cooperation projects.

The workshop was one of the

projects identified by regional governments as part of their technical assistance under the auspices of the United Nations High Commissioner for Human Rights. This truly reflects the importance of multi-party co-operation for the protection and promotion of human rights.

The workshop was developed and organised by the APF, the Human Rights Commission of Sri Lanka (HRCSL) and the Asia Pacific Human Rights Non-Governmental Organisations Facilitating Team (NGOFT)

A Brief Background of NHRI

Traditional approaches to secure human rights through judicial enforcement are inadequate. This stark reality has successfully fueled to create a global trend of setting up specialised institutions. The purpose is simple — to make state and non-state entities aware of their responsibilities in the sphere of civil and political rights. National Human Rights Commission (NHRC) is one of such institutions. A human rights commission is a state sponsored and state funded entity generally set up under an Act of Parliament or under the Constitution with broad objec-

tive of protecting and promoting human rights. In doing so, it generally performs a wide range of functions. There include dispute resolution through adjudication or mediation, human rights education, documentation and research, advising governments on human rights issues and human rights standard setting.

Human rights commissions are being set up in many parts of the world. While the powers of these institutions in different countries vary, there seems to be a 'core concept' emerging. In many countries such commissions have not matched the expectations they generated when they were first set up. On the other hand, in some other countries, where the expectations were not so great, the commissions have brought some positive results.

No doubt, an effective National Human Rights Institution (NHRI), independent of government control, is a very useful mechanism in the promotion and protection of human rights in a country. The 1993 Vienna Declaration and Programme of Action, adopted by consensus of 171 countries, also addresses NHRI by urging governments to considerably increase the resources allocated

to the establishment and strengthening of NHRI, and by encouraging the establishment and strengthening of NHRI in accordance with the Paris Principles. The UN General Assembly has subsequently passed resolutions encouraging member states to establish or where they already exist, to strengthen NHRI.

Emergence of Asia Pacific Forum of NHRI

The Asia Pacific Forum of NHRI (Forum) is an organisation made up of six NHRI in the Asia Pacific region (India, Sri Lanka, Indonesia, Philippines, Australia and New Zealand). The Forum established in 1996, assists in establishing and developing NHRI and provides opportunity for greater cooperation between the NHRI (through actions such as information exchanges, training and development for commission members and staff, and specialist regional seminars on common theme and needs). The Forum's activities are mainly undertaken by its secretariat which is currently based with the Australian NHRI and receives funding from New Zealand and Australian governments and the United Nations. The Forum emphasises the importance of the Paris

Principles. Indeed, the Forum specifies: "Institutions can apply for membership of the Forum subject to meeting or committing themselves to meet the fundamental criteria... (of) independence guaranteed by statute or constitution; pluralism, including in membership; a broad mandate based on universal human rights standards, adequate powers of investigation (and) sufficient resources."

The Forum also permits NGOs and governments to observe and make some interventions in its annual meetings. The Asia Pacific Human Rights NGOs Facilitating Team (FT) has been involved in the Forum since the forum began.

The Workshop and the Agenda for Action

The workshop was divided into eleven working sessions in addition to formal opening and closing sessions. The working sessions include the following themes:

- (1) National institutions and NGOs — an international regional and national context
- (2) Structures and mechanism of cooperation
- (3) Major operational issues - Education
- (4) Major operational issues - Investigations
- (5) Major operational issues - National Inquiries
- (6) Major operational issues - Relations with parliaments and recommendations for human rights legislation.
- (7) Structures and mechanism of cooperation
- (8) Cooperation with civil society during the establishment of national institution.
- (9) Future Action - drafting a working agenda.
- (10) Future Action - Adoption of the Workshop Action Plan.
- (11) Next steps - A road map for implementing the Action Plan at the national and regional levels.

The workshop had been organised in a cooperative manner, with full opportunity having been given for input by both national institutions and non-governmental organisations.

The workshop is fruitful considering the successful adoption of a strategic planning (see below) at the threshold of a new millennium. The only thing the workshop could not cover is assessing and auditing the performance of the existing NHRI with a objective point of view. The Forum must involve such necessary assessment in their next programme.

mkabir99@hotmail.com



The opening session of the APF Workshop is in progress.

The Kandy Programme of Action

PARTICIPANTS from national institutions and organisations represented at the Workshop agreed on the following action strategies they committed themselves to implement as appropriate.

1. Structures and mechanisms of cooperation

1.1 Recognise the importance of, and implement, better consultation processes between national human rights institutions and NGOs, which should be regular, transparent, inclusive and substantive; encourage NGOs to decide on what processes and mechanisms best suit their circumstances and relations with the national human rights institution in their country; encourage national institutions to establish focal points to facilitate relations with NGOs;

1.2 Hold joint training programmes;

1.3 Consider temporary personnel attachments between national institutions and NGOs;

1.4 Cooperate where possible when making recommendations to governments or other national bodies;

1.5 Cooperate and seek advice from OHCHR in encouraging the development of national human rights action plans;

1.6 Hold workshops on specific issues of mutual interest, with a particular focus on ensuring a balanced approach to participation and organisation;

1.7 Establish mechanisms for discussion between national institutions and NGOs with a view to maximising possibilities of using information technology to keep each other informed of their activities and issues arising from monitoring of human rights questions as well as relevant recommendations;

2. Education

2.1 Recognise that effective human rights education must be based on an analysis of the human rights situation in the particular country and on the Universal Declaration of Human Rights and other international human rights instruments;

2.2 Adopt as the goal of human rights education the creation of an environment which enables recognition and respect for the human rights of all people and maximises individuals' and communities' awareness of their own human rights and their capacity to utilise available mechanisms for the enforcement of these rights;

2.3 Undertake an evaluation of existing programs at the national and regional level;

2.4 Use available tools for planning, e.g the guidelines for national action plans in the field of human rights prepared within the framework of the International Decade for Human

Rights Education;

2.5 Consult on human rights education in order to facilitate planning and implementation, to encourage governments to fulfil their obligations to provide human rights education, to identify the organisations best placed to undertake particular programs, to avoid duplication, to coordinate fund raising and to monitor the effectiveness of programs. A potentially fruitful area of cooperation would be for national institutions and NGOs to exchange materials and resources to enable them to carry out human rights education activities;

2.6 Consult in the development of curriculum designed for the mainstream education system, whether at the primary, secondary or tertiary levels;

2.7 Develop cooperative programs and facilitate joint participation in programs of training for teachers and public officials, including the military, the police and corrective services personnel;

2.8 Develop cooperative programs and facilitate joint participation in programs of training for human rights educators, including teachers and parents;

2.9 Cooperate with relevant judicial authorities in programs of training for members of the judiciary;

2.10 Develop memoranda of agreement with government agencies to facilitate the provision of training to government officials;

2.11 Develop panels of speakers from both NGOs and national institutions who would be available for human rights education presentations;

2.12 Cooperate in the dissemination of information on international and domestic human rights instruments, including the Paris Principles and the Declaration on Human Rights Defenders;

2.13 Where appropriate, promote human rights education through public or media campaigns, to be undertaken individually as well as jointly;

2.14 Develop relations with the media, particularly the state-owned media in some countries, to promote informed coverage of human rights issues;

2.15 Facilitate joint participation in public meetings, conferences and media events;

2.16 Establish mutual links on internet websites;

2.17 Develop joint or separate approaches to technical assistance and potential funding agencies, including OHCHR and UNDP, with proposals for

human rights education programmes;

2.18 Cooperate in using reports of national human rights institutions, NGOs, the United Nations human rights mechanisms and treaty monitoring bodies as tools for increasing public awareness and pursuing specific issues;

3. Complaints and Investigations

3.1 Agreed that it was vital that national institutions should have their own independent investigation capacity;

3.2 Arrange information sessions at which NGOs and national institutions would inform each other better about their complaints and investigations systems, to discuss trends, to improve mechanisms, to take into account international materials and to avoid duplication;

3.3 Facilitate public awareness of national institution complaints and investigations systems. This could include the preparation of relevant materials, such as a manual, as well as non-written materials targeted at people who are illiterate. Special attention should be given to vulnerable groups;

3.4 Consider joint action aimed at promoting changes to national institutions investigation mandates, where those mandates are too narrow or otherwise unsatisfactory in the investigations area;

3.5 Facilitate transmission of information from NGOs to national institutions and vice versa on specific cases, where appropriate;

3.6 Facilitate cooperation at the local level between NGOs and national institutions when inquiring into specific cases;

3.7 Develop transparent and inclusive mechanisms whereby NGOs could be involved in the investigation process;

3.8 Explore means of using information technology to facilitate exchanges of information on specific cases;

3.9 Arrange joint training courses aimed at strengthening the effectiveness of complaints and investigations and reporting systems;

4. Public Inquiries

4.1 Hold joint workshops aimed at promoting awareness of the concept of public inquiries, their objectives and their mechanisms and possible subjects; consult with national institutions and NGOs to ensure that best practice is followed;

4.2 Where consideration is being given to the establishment of a public inquiry, con-

sult in the development of its terms of reference and on a strategic plan for the inquiry;

4.3 Cooperate closely where a national institution is carrying out a public inquiry, particularly in the exchange of information and on-site activities;

4.4 Lobby for legislation to ensure that it is incumbent on legislatures to discuss national human rights institution reports within a specific time frame and that national human rights institutions are empowered in cases of undue delay to make their reports public;

4.5 Cooperate in facilitating media coverage of public inquiries; cooperate in conveying public inquiry reports to relevant UN mechanisms;

4.6 Cooperate in promoting the implementations of any public inquiry's recommendations;

4.7 Organisations represented also recommended that the Asia Pacific Forum should organise a regional workshop on public inquiries as part of the Forum's programme of annual thematic workshops;

5. Relations with Legislatures

5.1 Cooperate in promoting constructive relations and joint meetings with legislatures and legislators aimed at promoting and protecting human rights;

5.2 Consider holding workshops aimed at strengthening the capacity of national institutions and NGO personnel to lobby legislatures effectively including through campaigns aimed at promoting specific action by legislatures on human rights issues;

5.3 Consider jointly participating in workshops aimed at better informing legislators about human rights and the role and functions of national institutions and NGOs;

5.4 Encourage legislatures to establish human rights committees, where appropriate, approach the Inter-Parliamentary Union to encourage the national parliament to give greater emphasis to human rights;

5.5 Work jointly in order to bring the protection and promotion of human rights into political party platforms;

6. Legislation

6.1 Systematically review existing legislation and other instruments having the force of law to ensure consistency with human rights law, including relevant international humanitarian law standards, in a holistic way, to ensure compli-

ance with the principle of indivisibility of human rights with a view to recommending appropriate changes to ensure consistency with those standards;

6.2 Develop mechanisms for public consultation and discussion on proposed legislation and other instruments having the force of law to ensure consistency with human rights and related standards with a view to recommending appropriate changes to ensure consistency with those standards;

6.3 Cooperate in encouraging governments to develop mechanisms whereby government departments seek NGO and national human rights institution inputs into new legislation, review of legislation and human rights treaty negotiations;

6.4 Establish mechanisms whereby national institutions seek NGO input into national institution recommendations to government about legislation;

6.5 Cooperate in promoting the development of domestic legislation in accordance with international human rights norms;

6.6 Coordinate effort for the ratification and implementation of international human rights instruments and the removal of declarations, derogations and reservations to such instruments;

6.7 Encourage where appropriate the establishment of forums with a broadly based membership that could specialise in the review of the human rights aspect of legislation;

7. Establishment of new national institutions

7.1 Recommended that the Asia Pacific Forum, in consultation with NGOs, should adopt by its annual meeting in 2000, minimum standards for mechanisms and processes for the establishment of new national human rights institutions in the region in conformity with the Paris principles. These guidelines should pay particular regard to the need for new institutions to have independence built into their mandate for processes and mechanisms to be developed in partnership with NGOs, for public hearings and for public review of proposed national human rights institution legislation and for transparency in the appointment of commission members. Such institutions should have advisory, educational and investigatory functions;

7.2 Agreed that, in cooperation with the Office of the High

Commissioner for Human Rights, national institutions and NGOs would provide information and advice to governments and NGOs of other countries, where requested, on models for the establishment of national institutions in conformity with the Paris principles;

8. Asia Pacific Forum of National Human Rights Institutions

8.1 Requested the Forum Secretariat, in cooperation with NGOs, to disseminate this Programme of Action widely to governments, national institutions, non-governmental organisations, the United Nations and other international and regional organisations;

8.2 Requested the Forum Secretariat to collaborate with national institutions and NGOs of the region in the mobilisation of funds through programmes of technical cooperation aimed at giving effect to activities proposed in this Programme of Action;

8.3 Agreed that national institutions and NGOs would provide brief annual reports to the Forum on measures taken to give effect to this Programme of Action;

8.4 Took note of the arrangements for NGO participation at the third annual meeting of the Asia Pacific Forum of National Human Rights Institutions, held in Jakarta in September 1998, and requested that the Forum attempts to ensure that NGO participation continues to improve in future Forum meetings;

9. International activity

9.1 Cooperate in monitoring and encouraging government compliance with international obligations and implementation of recommendations, views or opinions given by international human rights monitoring bodies; cooperate in reporting to treaty monitoring bodies and in disseminating treaty body reports, recommendations, views and opinions;

9.2 Consult and cooperate in support of the participation of national human rights institutions and NGOs in international and regional human rights meetings under the auspices of the United Nations; cooperate for the strengthening of national human rights mechanisms, including where appropriate, through coordinated approaches to government and parliaments;

9.3 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.4 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.5 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.6 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.7 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.8 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.9 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

9.10 Conduct jointly information sessions on the United Nations protection mechanisms; work cooperatively to ensure that alleged violations of human rights are presented to appropriate United Nations or other inter-governmental mechanisms;

Law Watch

What the GoB is Doing

A draft bill for NHRC was prepared under the auspices of the IDHRB project through a participatory research methodology, popularly known as the Participatory Rural Appraisal (PRA) process. The draft bill has been approved by the cabinet on 12 April 1999. The Prime Minister has already constituted a high level sub-committee with members of the cabinet headed by the Minister for Education for further improvement of the Bill and keeping it in uniformity with national human rights institutions in other countries. The members of the sub-committee include among others, the Ministers of Home, Law Justice and Parliamentary Affairs, Commerce and Industries and the State Ministers for the Ministries of Textiles and Planning. The sub-committee in the meantime has already convened two meetings for this purpose. It is a matter of great encouragement, that the Prime Minister's office is taking keen interest in the activities of this Ministerial sub-committee. The Government of Bangladesh will introduce the bill in the forth coming session of the Parliament. All preparations are underway for enactment of the bill as soon as it is passed in the parliament. It may be mentioned here, that the IDHRB has already been working closely with the Office of the UN High Commissioner for Human Rights, Amnesty International, Asia Watch, and other national and regional human rights institutions and NGOs.

The Government of Bangladesh attaches top priority to the protection and promotion of human rights. As a member of the United Nations, it is committed to uphold the principles of the international human rights conventions. It has so far ratified or acceded to 39 human rights instruments, among which includes the Convention on the Rights of the Child, CEDAW, International Convention on the Elimination and Punishment of the Crime of Genocide and Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

This is a slightly edited version of the briefing presented by KM Haque Kaiser, National Project coordinator of IDHRB Project of the Government of Bangladesh at the Asia Pacific Forum of National Human Rights Institutions Workshop held at Kandy, Sri Lanka, on 26-28 July 1999.

Right to Information for Fighting Corruption

By Amina Rahman Chowdhury

A time when national level politics in India has been rocked by a number of corruption scandals, some grass-roots organisations are also fighting the somewhat neglected battle for eliminating or at least reducing corruption in various rural development programmes, particularly those aimed at helping the weaker sections.

The amount involved in a corruption scandal of a village or a cluster of villages may of course appear small when compared to a state level or a national level scandal, but we must remember that there are over five hundred thousand villages in India. Multiply what you see in a single village by this number and you get what is easily the biggest corruption issue, says Amina Rahman, Kisan Shakti Sangathan (MKSS), Adds Shankar Singh. "The fact that this village-level corruption generally involves snatching resources from the poorest people makes it all the more important that such corruption should be fought and resisted."

This is precisely what the MKSS has been consistently doing. First there was a long successful struggle against the non-payment of minimum wage at rural employment works. Secondly, there were a series of jan sunwais or public hearings at which many shocking exposures of corruption were made in front of a large audience by comparing official records of various government projects and programmes with the reality of these programmes as experienced by the villagers.

The concept of MKSS did not end merely with exposing corruption. As Nikhil Dey, an activist of MKSS, says "It is even more important to try to ensure that the money taken away from people living in poverty is restored so that it can be used for their actual welfare. After all our real concern is the welfare of people." Towards this end, MKSS has given a lot of attention to follow up work on its public hearings but the government has so far responded generally with half hearted measures.

This entire difficult and prolonged process convinced the MKSS that one of the most effective methods of fighting village-level corruption is to provide people the right to obtain copies of official records (such as muster rolls, bills and vouchers) relating to rural development and anti-poverty programmes implemented in their areas. This soon became a central point in the demands being raised by MKSS. Several other organisations were also quick to appreciate the potential of obtaining this 'Right to Information' and it began to appear that this demand raised by MKSS will have state-level or perhaps even national-level impacts.

This feeling was strengthened in 1995 when in his budget speech made on April 5 the Chief Minister of Rajasthan Mr. Bhairon Singh Shekhawat declared that he would allow photocopying of all records on development expenditure of the state, at the panchayat level, for a fee. He further said that this right to information will cover development expenditure going back to five years.

This was a major step forward in the efforts to obtain the right to information for checking village-level corruption, especially as nothing like this had been promised earlier by the Chief Minister of any other state in India. While waiting for the promise of the CM to take practical shape, the MKSS quietly continued the work to consolidate these gains, including follow up of public hearings. It also stepped up efforts to establish state level and national level linkages with other activists groups, lawyers, officials and media persons so that the struggle for the right to information could be broadened. A state level meeting was organised in Beware town of Rajasthan. A meeting of concerned officials and social activists in Mussoorie led to the formation of a national group on the right to information, support by the Lal Bahadur Shastri National Academy of Administration, Mussoorie. This committee has already prepared and circulated the draft of an access to Information Act.

The Press Council of India and the Press Institute of India have taken a lot of interest in this issue and extended support to the enactment of such an act.

However, the state government continued to delay issuing orders to the promise made by the CM. The state related demands made by MKSS, MKSS decided that if the relevant orders are not issued till one year, then it is time to initiate a movement on this demand. So it decided to start an indefinite Dharna in Beware town on April 6, exactly one year after the promise made by the CM. Fearing a political fallout of this Dharna at election time, the state government quickly issued a half-hearted order on the right to information which fell far short of the original promise made by the CM.

While providing for inspection of records and noting down details, the orders did not include photocopying of relevant records. This not only creates problems for illiterate or near illiterate persons, in addition the legal validity of the information written down by hand is doubtful. The order was silent on the period within which recourse would be available, also the number of recourse that may be inspected for the fee specified in the order. It also did not specify how delaying tactics on the part of reluctant officials can be avoided, or how illegally diverted money will be recovered and refunded to villagers. On all these accounts this order failed to do justice to the original promise made by the CM. Therefore, after seeing the order on April 8, the MKSS decided to continue the Dharna which continued for nearly six weeks.

From May 6 (a month after it started) it was also extended to Jaipur, the capital of Rajasthan.

While it was only to be expected that this Dharna will attract MKSS members from villages, what came as quite a surprise was that it also obtained very enthusiastic participation of the citizens of Beware town, many of whom had earlier not even heard of MKSS. These supporters ranged from editors and political leaders to vegetable vendors and daily wage workers. Some workers donated a part of their daily earnings while some vegetable vendors donated regular supplies of potatoes and tomatoes. Some photographers provided their services free while the tent shop charged only one third of its normal rate. Several rival trade unions forgot their differences for the time being to extend joint support to the Dharna. The honest image of the MKSS and the genuineness of the issue also contributed to this support.

The Dharna was withdrawn only after the state government constituted a high powered committee to look into the practical aspects of implanting the Right to Information.

monjurulkabir@usa.net