

"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

## Visiting Mechanisms to Control Torture

by Adilur Rahman Khan

**T**ORTURE is a common procedure followed by the law enforcing agents to extract confession or bribe. Unfortunately, there is no effective legal remedy to curb this practice from the society. Torture, in this article, means the violations of human rights carried out by the government agencies on individuals - mostly involving physical assault. These physical assaults can sometimes be so grave that they cause permanent physical disability, impairment, disfigurement etc. In order to suppress the detection of the marks of torture sometimes the lawful rights of the victims to meet own family, friends and lawyers to consult are violated.

### Prevalent Laws

#### The Jail Code

The (outdated) Jail Code prevalent in Bangladesh provides for the provisions of visiting prisoners, subject to the satisfaction of the authority. The authority usually does not allow such visit to inmates who have been allegedly tortured. Furthermore, the Jail Code has a provision to constitute a body from the citizens of Bangladesh to monitor and visit the prison. Unfortunately, this provision is there, but not implemented properly. When the government forms the committee (which is few and far between), such committee often has people who have hardly any knowledge about the prison system and the right of the prisoners.

#### The Code of Criminal Procedure

The Code of Criminal Procedure in Bangladesh does not contain any provisions to ensure the presence of any representative of the arrested person or the accused, at the time of enquiry or investigation. As a result, Police have unchallenged chance of misuse of their power in the name of interrogation of the remanded person.

### The Actors

#### The Police

The Law Enforcing Agencies in Bangladesh are beyond the scope of the implementation of Law. The reason for this is that, they are impugned by the inaction of the concerned authority against their criminal activities of violations of human rights by torturing a prisoner. If any action taken, at all, against the concerned police, the outcome is departmental action which may be one of followings, temporary suspension, show cause, deduction of pay and the like. But no action ever taken under the penal laws of the country.

#### The Courts

Our Courts are well aware of the fact that (many) Police torture the accused, or arrested persons in remand. Despite this, they sometimes order further remand of the victim, regardless of the fact that the victims' lawyers may have some reasoning and raised any objection.

#### The Examining Doctor

Unfortunately, in cases of torture by police or other law enforcing agencies, the examining doctors are shy to give any evidence (not inclined to give any evidence) or seem reluctant to go to court as an important witness to that.

#### The Role of the Media

The media is not always objective in projecting tortured victim's case. Some crime reporters have intimate link with policemen who occasionally defend the alleged perpetrators of torture for 'unidentified and undisclosed reasons' and most believe not to embarrass such a shoulder rubbing acquaintance. Unfortunately, the newspapers tend to sensationalize the crime, but hardly acts in highlighting the lack of implementation of laws and the highhandedness behind the police torture. In most occasions, they do not follow up on the victim or his family.

It would be useful and serve greater interest by publicizing preventive measures through print and electronic media for general public awareness. Creating awareness about the rights of the arrested would be a step to the right direction to combat the evils of custodial crime and bring in transparency and accountability as well.

#### The Role of Non Government Organisations

There are very few NGOs in Bangladesh who are able to visit police lock-ups and jails. The government is very selective in this matter and allows only a handful individuals to visit and make recommendations, those few submit to the authorities, hardly followed up or implemented as required.

The role of NGOs in Bangladesh in some aspects is also questionable. The present 'NGO Trend' takes care actively of those victims especially when fame, publicity, funds and other benefits are well ensured.

### The Application in Bangladesh

The visiting mechanism practice has not developed in Bangladesh as needed. This mainly is due to departmental blocks. Only a few, government-nominated

persons can visit regularly. Lawyers or human rights organizations can reach up to jail gate only after moving heaven and earth. Even if they acquired permission to visit the Jail or the police custody, the authority usually wary of their communication with the prisoners and hardly welcome the next visits. Since there is no watchdog like an Independent Human Rights Commission, thus most of the cases of brutality or police atrocity remain in the dark. In order to prevent police atrocity and torture such an Independent Human Rights Commission mechanism has become vital in Bangladesh.

### Things to Do

The following recommendations are in addition to the constitutional and statutory safeguards for the prevention of torture. These do not detract from various other directions, those are given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrested.

- There should be a separate agency/authority like an Independent Human Rights Commission to monitor the activities of law enforcing agencies.
- Old, outdated laws should be updated/enacted according to the guidelines of the present International Human Rights instruments.
- The particulars of all police personnel who handle interrogation of the arrested person must be recorded in a register.
- The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or in detention. The police officer should prepare a memo of arrest, at the time of arrest mentioning date and time of arrest and the name of officer made that arrest and which be attested by at least one witness. The same may also be countersigned by the person under arrest.
- If a person has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, a friend or relative or other person known to him or having interest in his welfare should be informed of his arrest and place of his detention, as soon as practicable.
- The arrested person should be bodily examined and recorded at the time of his arrest if any major or minor

injuries exist in his/her person.

- On detention, a qualified doctor must conduct medical examination of the detainee.
- Copies of all documents, including the memo of arrest should be sent to the concerned Magistrate for the record. The arrested person must be permitted to keep his lawyer present during interrogation session.
- A police information center should be established in all districts to where officer arresting a person can and must feed the information of arrest and place of custody within 12 hours of arrest.
- Any investigation should be carried out by a separate entity of the investigation branch and not by any ordinary police on normal general duties. These would call for establishment of a separate Investigation Department.

### The Need for a Human Rights Commission

Bangladesh urgently requires an Independent Human Rights Commission. The socio-political history of Bangladesh shows that there had always been incidences of violating the laws by the member of law enforcing agency. In different political regime this agency were armed with different oppressive laws and they also had utilized it mercilessly. As a result, a majority of the citizens of Bangladesh are wary of the police and other law-enforcing agencies. Due to this trend, voices were raised from various human rights organizations and other concerned sectors, for the creation of an independent Human Rights Commission.

Considering such pleas from different sectors, the previous Government established a project. Based on that project, present Government has gone a step further and made various drafts for a Human Rights Commission Act. On 3 April 1996, Prime Minister Sheikh Hasina assented to the Cabinet and a bill was about to be placed before the Parliament. Unfortunately, in the final stages of the establishment of a Human Rights Commission in Bangladesh, the Government retreated even after approving the draft.

On 2 January 2000, the then Home Secretary objected to the proposed Human Rights Commission Bill. Followings are the translation of the specific objections raised by the Home Secretary:

- Violation of human rights as defined in the Bill is a punishable



Jalal, another hapless victim of police brutality

offence. Thus, there will be cases even against the Prime Minister.

2. The law enforcing agencies will be faced with cases in each step they take owing to the provisions of the Bill. This will put them in a difficult position. As a result, the police will be reluctant to remand an accused person for interrogation.

3. NGOs will blackmail the government, if there is any scope for bringing cases on behalf of the accused under the Bill. Instead, there should be laws to control the NGOs.

4. If the Human Rights Commission becomes a party to a Human Rights case, then government officials will be embarrassed. There is no scope for appeal against the proposals submitted by the proposed Human Rights Commission.

5. If this Human Rights Commission bill is passed, then law enforcing agents will not take a tough stand during harkals and agitation programs.

6. For passing Human Rights Commission bill, the Special Powers Act 1974 implementation will be hardly possible.

7. On passing Human Rights Commission bill, even prisoners will have edge to complain that their human rights are being abused.

8. If there is any allegation against government servants for

violations of human rights, they can only be cautioned and departmental actions only taken. They should not be punished under the present laws.

The establishment of an independent Human Rights Commission would have been able to highlight incidences of torture to the public and to file cases on behalf of those so subjected.

It will be a gradual and arduous process to uproot the torture as a means of extracting money or a confession. Sometimes, torture is used as a mode of satisfying some policeman's squalid pleasure or to please a group. The 'Visiting Mechanisms' can prove to be a powerful and effective mode to prevent torture but to introduce 'Visiting Mechanisms', the Government has to take the initiative, remove bureaucratic bottlenecks and to establish an effective, independent Human Rights Commission. There are a few human rights organizations, which are working on death and torture in Police and Jail custody for last several years, yet they face many impediments and obstacles while working on any fresh/new case. Armed with such 'Visiting Mechanism' it would be possible to ensure prevention of torture in remand, custody and while in arrest.

The writer is an Advocate of the Supreme Court of Bangladesh.

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## Facts File

## Children's Rights

**E**VERY COUNTRY in the world except for the United States and the collapsed state Somalia has ratified the Convention on the Rights of the Child and pledged to uphold its protections for children. In 1999, the convention stood as the single most widely ratified treaty in existence. Adopted by the United Nations General Assembly on November 20, 1989, the promises of this historic document included children's rights to life; to be free from discrimination; to be free from military recruitment and to be protected in armed conflicts; to be protected from torture or cruel, inhuman, or degrading treatment or punishment; to be free from arbitrary deprivation of liberty; to special treatment within the justice system; and the rights to education, health care, an adequate standard of living, and freedom from economic exploitation and other abuse.

The decade since the adoption of the Convention on the Rights of the Child was marked by some significant advances on behalf of children. Many countries used the convention as the basis on which to revise domestic legislation and improve protections for children, or have appointed special ombudspersons or envoys for children. As the Committee on the Rights of the Child evaluated country reports under the convention, it developed new standards of protection and pressed governments for specific reforms.

A 1996 United Nations report on the impact of armed conflict on children raised international concern about the plight of children in war, prompting varied initiatives to end the use of child soldiers and other wartime abuses. The number of children killed every year by antipersonnel landmines dropped in the wake of massive efforts to end the use of the weapon and the adoption of the 1997 Mine Ban Treaty. The adoption of the statute for the International Criminal Court held out the hope of ending the impunity of those responsible for the recruitment of children under the age of fifteen in armed conflicts, as well as those who commit other war crimes, crimes against humanity, and genocide.

However, despite these advances, the promises of the Convention on the Rights of the Child were broken for countless children around the world. The armed conflicts that raged in all quarters of the world produced appalling abuses of children's rights. Hundreds of thousands of children were pressed into service as soldiers. Millions became refugees displaced from their homes, often separated from their families, their future and safety uncertain.

Children living outside war zones were also subjected to routine violence. Street children on every continent endured harassment and physical abuse by police. Even schools, intended to promote the healthy development of children, were the site of abuse. In some countries, the use of corporal punishment by teachers resulted in injury and even death. In others, gay and lesbian students endured harassment and violence by their peers while schools authorities failed to intervene.

Millions of children had no access to education, worked long hours under hazardous conditions, or languished in orphanages or detention centers where they endured inhumane conditions and daily assaults on their dignity, in violation of the rights guaranteed to them under the convention. The issues selected for attention below represent those which were the focus of Human Rights Watch investigation and advocacy over the past half-decade.

The tenth anniversary of the Convention on the Rights of the Child already marked an important milestone. The rights of children were recognized as never before. But it also posed a challenge for governments and civil society to take stronger action to implement its provisions, strengthen protections, and fulfill the promises made to the children of the world.

Courtesy: World Report 2000, Human Rights Watch.

## National Human Rights Commissions in South Asia An Agenda for Action

by A. H. Monjurul Kabir

**S**OUTH Asia is the land of one fifth of the mankind, an agglomeration of diverse nationalities, ethnic communities and cultures, which inherited a common legacy from the centuries old pre-colonial and colonial period. Issues and politics in South Asia are different from other regions of Asia. The formers are more plural with specific parliamentary traditions. In term of Human Development Index, the countries of South Asia occupy almost the same position. Wide-spread illiteracy, lower position of women, child malnutrition, low wages, poor health services, heavy incidence of external debt, unfinished agrarian reforms, fallout of structural adjustment programme at the behest of Fund-Bank, high military spending, discrimination against the indigenous peoples and the minorities, communal tension, ethnic conflict, migration, all these are some of the problems facing South Asian region as a whole.

Due to differences in historical background, social system, cultural tradition, economic development, countries differ in their understanding and practice of human rights with those of other parts of Asia. Human rights record of this region, as an obvious consequence, is not very encouraging. The level of institutional protection of human rights available in the countries of South Asia is also low. Since the last decade of the 20 century, countries of this region have been gradually moving towards establishing national human rights commissions. India, Sri Lanka and Nepal have already established their respective National Human Rights Commission. Bangladesh has been undergoing a drafting process for a legislative enactment to install one. One wholly unsatisfactory experience is with the Human Rights Ministry of the Government of Pakistan, which is, in no consideration, an independent national human rights institution. Bhutan and Maldives have not yet decided to constitute any national human rights institution.

Paradoxically, the credibility of a national human rights institution, created and funded by the state, depends on its ability as an independent body, to monitor and scrutinise the state's performance against human rights criteria. In many countries national human rights institutions failed to fulfil the expectation they created when they were first established. On the contrary, in some jurisdictions where the expectations greeted with profound suspicion, the institutions made explicit difference.

One potential problem is that for many governments, human rights commissions have the potential to become a cosmetic exercise aimed at boosting that government's human rights image in the eyes of the global community. Unfortunately the governments of those countries initially attempted to establish such institutions with mixed motives primarily to rebuff international pressure, criticism and scrutiny over some gross violations of human rights by the governmental forces and agencies. Instead of going for public debate, discussion and consultation, governments tried to proceed with secrecy making the whole process non-transparent. Often under-resourced, unknown and out of the reach of the population, human rights commissions in South Asia require independent input from civil society in order to become effective and accessible. The role played by the human rights NGOs, groups and members of civil society to ensure people's participation and contribution to the process created significant impacts in bringing positive changes to the proposed drafts, final acts, appointments of members to the commissions and their day to day functioning. As a consequence, the governments in the region are gradually accepting national institutions as 'critical partner having independent stature'. Still the ultimate credibility of a national institution depends on the effective and principled performance of its chairperson and members.

### An Agenda for Change

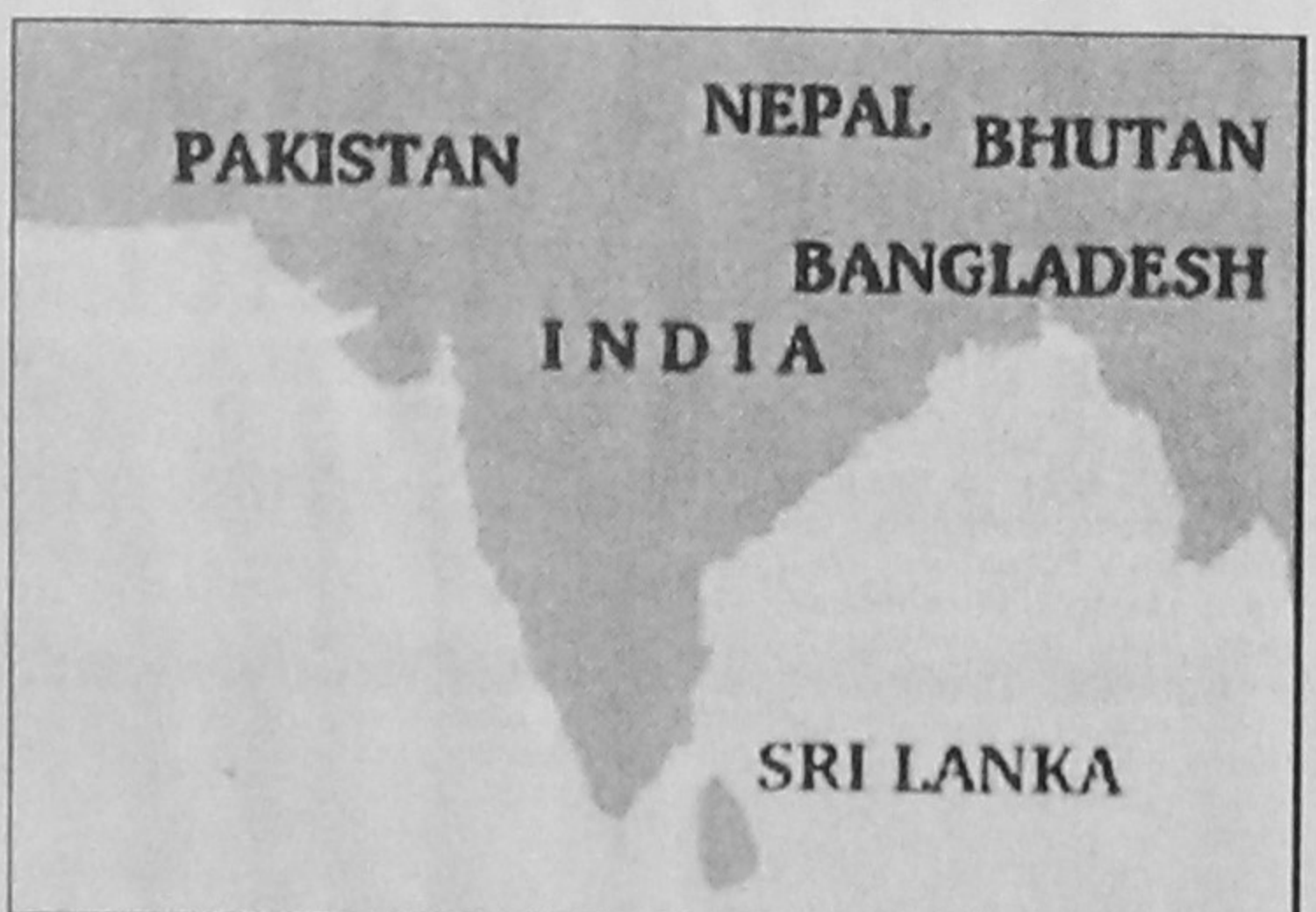
Assuming that the existing national institutions can still be improved and that future national institutions must be able to learn

from the experiences of the existing ones, the following 'agenda for change' voices a clarion call for an extensive review of the rationale and procedures of national institutions to find out how they can truly meet the downtrodden people's expectations.

### Strengthening Existing Role and Capacity

1. **Paris Principles and Beyond:** The Paris Principles (Principles Relating to the Status of National Institutions, adopted at First International Workshop on National Institutions for the Promotion and Protection of Human Rights, October 1991 Paris) constitute the basic minimum guidelines for the establishment of a national human rights commission. They prescribe that a national institution must be independent, have as broad a mandate as possible, be characterised by regular and effective functioning, pluralistic and representative composition, and adequate funding, and be accessible to the public. All existing and proposed national human rights commissions must adhere to Paris Principles as a minimum benchmark. The Paris Principles consider the power of investigation to be an optional function, which is, no doubt, a severe limitation of the guidelines. A human rights commission must have adequate power of investigation backed by adequate logistic supports. Investigations initiated by the Commission should be adequately publicised, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify. The result of the Commission's investigation should be referred to appropriate judicial bodies without delay for immediate action.

2. **Separate Investigating Agency:** The Commissions must have own adequately resourced and equipped investigation agency. They must not depend on other conventional law enforcing agencies for



investigation.

3. **Working in Partnership:** National human rights commissions of this region must develop a working relationship with active human rights NGOs, groups and coalitions on the basis of a regular, substantive and transparent process of mutual consultation. In addition to their assistance in providing valued information, specialised NGOs can effectively contribute to various investigations and public inquiries conducted by human rights commissions.

4. **Coalition of Watchdogs:** The human rights stakeholders of each country of the region should form national coalitions to play the role of 'watch dog' over their respective national human rights commissions. There can be a regional network of such national human rights NGOs coalitions. They can share their diverse experience with each other and learn from the best practices to formulate better working strategy.

5. **Reforming Appointing Committee:** The appointing committee

of human rights commissions should be formed with representatives from human rights community, Law Commission or other relevant policy forum along with member of the judiciary. The present practice of including political representatives into appointing committee should be discarded to avoid political manoeuvring and bias. There is an inherent conflict of interest embedded in a procedure whereby politicians are made the sole appointing panel. Human rights violations are by definition violations of the state, particularly the police, paramilitary forces, etc. Since politicians are either representing the state, it is arguably inevitable that they would seek to appoint those sympathetic to, or beholden to themselves. The nominees put forward by this expert committee can then be appointed by the head of the state. The South African example can be a model for South Asian Commissions to replicate.

6. **Mandate to be Reported:** The relevant Acts and the draft Bill should be amended to include an express provision that government organs shall provide the commissions with regular updates about what they have done to promote and realise human rights and such other assistance as may be reasonably required for the effective exercising of their power and performance of their duties and functions. The South African Human Rights Commission has a mandate to get reports from government departments each year about what they have done to promote and realise rights incorporated in the Bill of Rights in their work. The Commissions should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards.

7. **Holistic Approach:** National institutions must cover all human rights issues. There must be no limitation of coverage such as in focusing on either civil and political rights or economic, social and cultural rights, or so called fundamental or enforceable/justiciable rights. As explained by the Committee on Economic, Social and Cultural Rights and endorsed by the Commission on Human Rights, national institutions have a significant role to play in promoting and ensuring the indivisibility and interdependence of all human rights.

8. **Investigative Jurisdiction over Armed Forces:** Armed and para-military forces must be brought under the investigative powers of the National Human Rights Commissions.

9. **Openness:** The Commissions should function in an open way with its hearings generally open to the public. Private hearings should be an exceptional measure and be resorted to only in specific pre-established circumstances. The Commission's methodology and the results of its investigations, together with official reports, including *post mortem* and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensive form.

10. **Human Rights Courts:** There is a growing need to establish specialised judicial bodies, which can concentrate on adjudicating human rights violation cases. This will assure not only speedy disposition of cases but also proper application of human rights principles. In case the national institutions do not have the power to prosecute the cases they found deserving to be filed in the human rights courts, public prosecutors must be specifically assigned to work closely with the national institutions in prosecuting those cases. Judges should also be imparted special training on human rights.

### Exploring New Horizons of Programmes

11. **Participating in the Reporting Process:** The work of the National Human Rights Commissions of South Asia, whether it be in relation to advising government, investigating violations, education about human rights, must be undertaken with reference and in accordance with, international human rights treaty standards. They should

be associated with the preparation of reports and possibly be included in government delegations to the treaty bodies in order to intensify the dialogue between the treaty bodies and the State party concerned. They should also take concrete steps to encourage the respective governments to ratify all human rights instruments without declaration and reservation.

12. **Mainstreaming Women's Rights:** Human Rights Commissions must take the lead in promoting and protecting women's rights and make explicit in their internal structure and policies their own commitment to securing women's rights. They have to ensure the pluralistic representation in the membership and staff of the Commissions. Where the commission has not yet established, the issue of women's rights should find explicit recognition in the foundational documents establishing a Human Rights Commission.

13. **Developing National Plans of Action for Human Rights:** Human Rights Commissions can play an important role in developing a comprehensive, effective and sustainable national plans of action for the promotion and protection of human rights. The Commissions can be a focal point of co-ordination for implementing national plans of action.

14. **Monitoring Socio-Economic Rights:** The role of the Commissions is not simply to be a conduit of information. They must also analyse and evaluate whether the measures adopted by relevant organs of states to realise socio-economic rights are effective. Given the often systematic nature of violations in this area, an approach of undertaking a systematic inquiry leading to an in-depth sector oriented report is likely to be more productive than one of simply trying to address individual problems as they arise. The Australian Human Rights and Equal Opportunity Commission (HREOC) has conducted two major inquiries (on homeless children and on the mentally ill) with a strong economic, social and cultural rights perspective. The inquiry into homeless children led to approximately A\$100 million being allocated by federal and state governments to social and other services for this particularly vulnerable group.

15. **Providing Human Rights Education and Information:** Human Rights Commission can be the co-ordinating Center for a countrywide human rights awareness and education campaign. Simply by providing people easy access to its resources, periodic research findings and investigative reports, it can play an excellent role of educator. It should also take a leading role in educating the public about the international legal obligations which, the state has undertaken and the institutions and processes which exist to enforce protected rights.

16. **Protecting Human Rights Defenders:** Human Rights Defenders in the region must receive the support and protection of the Human Rights Commissions. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms extends its support for creation and development of independent national institutions in this regard. It also makes the state primarily responsible for protecting human rights defenders.

A national human rights institutions with the capacity to initiate its own investigations can make a significant contribution to ensuring that vulnerable groups are given a public voice and that human rights violations, wherever they occur, become a matter of general knowledge and concern. The situation can be further improved by adopting such an 'agenda for change' reflecting respective realities for National Human Rights Commissions of this region.