

The politics of National Human Rights Commission in Bangladesh Do we need a puppet Commission?

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Why does the Government of Bangladesh want a National Human Rights Commission?

THE simple answer is international community including the donor agencies and the United Nations want the Government to establish it. This may sound shocking to some idealistic people; it is in fact a reality in many countries of the developing world including the countries in South Asia. Diverse factors influence a government to create a national human rights commission; the motivation is not necessarily related to protection and promotion of human rights only. In South Asia, the governments primarily viewed such entity as an additional forum credible enough to resist international scrutiny of their domestic conducts. India's National Human Rights Commission was designed, as the then ruling party admitted, to 'counter western propaganda' especially on troubled areas like Kashmir, Punjab and northeast states. Engulfed by ethnic conflicts and separatist movement with the Liberation Tigers of Tamil Eelam (LTTE) primarily in the eastern and north-eastern provinces of the country and pressed from international community for addressing violations of human rights committed by government forces effectively, the Government of Sri Lanka established a number of national human rights institutions. The Government of Nepal had attempted initially to constitute human rights commission as a government department. The Governments of Pakistan, Maldives and Bhutan did set up any human rights commission. Unfortunately such initiatives lacked true political willingness and transparent process. Suffered from overlapping jurisdictions, limited authority, restrictive mandate and scant funding, those institutions did not attain much success.

To cut the long story short, our government requires a Commission that will:

- i. show the world that it is performing in accordance with international standards;
- ii. indicate that it has profound respect for human rights;
- iii. increase the human rights image of the government;
- iv. put rubberstamp to some governmental action or inaction in the face of external criticisms;
- v. add an item in the list of what "we have done for the people";
- vi. continue the flow of international assistance in good governance, human rights and other sectors.

When did the 'National Human Rights Commission' game begin?

By now, sadly, it becomes an old story with vibrant participation from successive democratically elected governments of Bangladesh. Each of the two major political parties of Bangladesh has a share in it. The game formally started in 1995.

In April 1995, after a lot of parleys, the then Bangladesh Nationalist Party (BNP) Government approved a Taka 2 crore project to assess the need for such a body and make recommendations on its establishment. The project entitled 'Action Research Study on the Institutional Development of Human Rights in Bangladesh (IDHRB)' formulated initially was to start in July 1995, but it was reportedly delayed due to prolonged political crisis (movement for caretaker government) in the country.

The Awami League Government came to the power in the next year. The project was revived in March 1996 when an agreement was signed between the Ministry of Law Justice and Parliamentary Affairs and the United Nations Development Programme (UNDP). Under the agreement, the Law Ministry is to supervise, monitor and evaluate the IDHRB project. It formally launched in July 1996. The generous funding was provided by the UNDP. The main objective of the project was to prepare the grounds for the eventual establishment of a viable institutional mechanism to promote and protect human rights as guaranteed under the Constitution of Bangladesh.

After rigorous exercises and without adequate consultations with the key human rights organisations, the IDHRB Project formulated a draft bill (titled 'The Bangladesh National Human Rights Commission Act') and submitted it to the Government in early 1998. The draft bill proposes that a National Human Rights Commission will be set up "for Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of human rights and for matters connected therewith or incidental thereto."

What did they do with the draft bill?

This is, again very interesting. The Awami League government (during 1996-2001) did everything with the bill except for, of course, passing that into the law. 'The House of the Nation', better known as 'Jatiya Sangsad'. Undoubtedly, a very fruitful exercise! This everything includes visits, study tours, pledges, training, participatory rural appraisal, seminar, commit-

ments, 'consultative meetings with local and foreign experts', cabinet approval, formation of high profile 'Cabinet Sub-Committee (conspicuously headed by the then Education Minister, who himself was a retired bureaucrat)'. The whole world, particularly the human rights community, was appraised of the government's sincerity and willingness to set up such body. The then Prime Minister, Speaker, Law Minister sang the same song at many national and international forums/events for the remaining period of their regime. The Cabinet-Sub Committee held a series of meetings without any tangible result. Afterwards, they were convinced of some ridiculous, meaningless opposition from certain top-ranking bureaucrats very much loyal to the regime. The Sub-Committee successfully kept the draft bill under lock.

Does the Government of Bangladesh really covet to establish a credible National Human Rights Commission?

A million dollar question (also in terms of project profile!) indeed. Apparently the newly elected '4-Party Government' led by the BNP is serious in its business. They included specific commitment in their election manifesto to establish a National Human Rights Commission (Surprisingly, Awami League also included the same pledge though they had not installed one in 5 years' time and no explanation was provided in the manifesto for such sheer inaction) though did not include it in their '100 days' programme. The Ministry of Law, Justice and Parliamentary Affairs has already re-written the draft bill (hereinafter 'new draft') prepared earlier by the IDHRB project. An eight-member Cabinet Committee, this time headed by the Law Minister himself,



Will the proposed National Human Rights Commission act for the downtrodden people of the Republic?

was formed. It is reported that the process of rewriting the draft bill has actually taken away some power and authority originally included in the earlier draft.

A brief look at the first draft and/or changed draft reveals a clear picture: **Constitution of NHRC:** For appointing Chairman and members of the proposed Commission, the new draft intends to minimise the Presidential consultation with the Chief Justice alone, which seems to be inconsistent with the exiting clear constitutional arrangement for President of the Republic of taking prior endorsement of the Prime Minister for almost all decisions. The provision of the old draft which obliges the President to consult with (a) Prime Minister (b) Speaker of parliament (c) Chief Justice (d) Leader of the Opposition in the Parliament for appointment should be upheld.

Qualification of the Members: The previous draft bill does not require special qualification for the members of the commission except knowledge of, and practical experience in, human rights. This qualification is quite vague. There must be some previous experience of public work or public record that shows that the person has a commitment to human rights. The word 'demonstrable' should be inserted before 'knowledge' in the draft bill. If the person cannot show from the public record that she/he has a commitment to human rights how can this qualified be verified? Without some defining category that can be tested before the public and a selection process that relies entirely on the subjective interpretation, the Commission's appointments will again be a place for political bargains and deals.

Functions of the Commission: In the new draft, the proposed Commission still remains a mere recommendatory body. It cannot inflict punishment upon any violator of human rights. Obviously, the present Government has happily kept this provision. Section 10 of the old draft enumerates as many as thirteen broad functions of the commission including inquiry and investigation, monitoring and intervention whenever necessary. The previous draft bill made it mandatory for all the executive authorities to assist

the Commission. Reportedly, the provision has been deleted to make the Commission a mere puppet body. The South African Human Rights Commission has a mandate to receive a report from each government department each year to find out what they have done to promote human rights in their work. It allows the Commission to look at the functioning of each department to make human rights assessment. This is linked to the performance of that department. In India, obeying the orders of the Commissions has become a convention though it is still a borderline case. The recommendations and orders of the women's commission of India, however, are routinely ignored.

The Commission will also submit annual and special report to the President. But no decision or findings of it has any binding force. So, what would be the case if government ignores its recommendation? According to the new draft, the proposed Commission, will, upon completion of the investigation, make recommendations to the government for 'initiation of proceedings for prosecution' or 'approaching the High Court for such orders or filing writ petitions on behalf of the victims'. However that is a government prerogative, the governments are generally more interested to keep any report in secret. The Commission must release its final findings to the media for public information. This is absolutely ESSENTIAL.

Investigating Agency: According to the old draft, the commission shall have its own investigating agency. But there is nothing mentioned in the bill about the nature and composition of the commission's 'own investigation agency.' There has to be money allocated; numbers defined; training needs specified. The new draft reportedly emphasise on taking service from existing dilapidated investigating agencies instead of forming its own

attempts to take away the power of the proposed Commission to act as a civil court to issue warrants for questioning the witnesses and examining the documents. A statutory footing is fine as long as it assures that the Commission can be independent and autonomous. This means having the independence to have its own personnel, especially its own investigators and a budget that does not come through the bureaucracy that make its own decisions or through a ministry that can bully it. Its budget must be reasonable in comparison to other ministries and should come from a consolidated fund. Its operation must be transparent rather than secretive. Its commissioners should be on the scale of high public servants but should not be bound by civil service rules, especially of secrecy.

Are the proposed changes in the new draft consistent with the 'Paris Principles'?

In October 1991, the United Nations convened in Paris, France, for the first time an international workshop on national institutions to explore, *inter alia* ways of increasing the effectiveness of national institutions widely participated in by the representatives of national institutions, states, the United Nations, its specialised agencies, inter-governmental and non-governmental organisations. A detailed set of guiding principles on the status of national institutions was developed in the workshop. These principles subsequently adopted by the UN Commission on Human Rights in 1992 and endorsed later by the General Assembly in 1993. These internationally acclaimed benchmarks concerning national institutions, provide 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 easily accessible to the public (See this week's 'Law Watch' section for details on 'Paris Principles'). In summary the key criteria of the Paris Principles are:

- independence guaranteed by statute or constitution
- autonomy from government
- pluralism, including in membership
- a broad mandate based on universal human rights standards
- adequate powers of investigation
- sufficient resources.

Undoubtedly, the new draft or the proposed changes are not consistent with the Paris Principles. Most of the ideals of the Paris Principles have been compromised severely. Such compromise can only create a **puppet Commission, not an independent one.**

Waiting for a toothless Commission?

This is an opportunity for any Law Minister to enact something the background of which has already been prepared. The Project is there. The draft is ready and requires a bit improvement. The party election manifesto had included the very promise to install an independent National Human Rights Commission. All he has to do is to enact the law in accordance with the 'Paris Principles' and establish a Commission with credible and independent Commissioner. With all its limitations, the previous draft was, at least, circulated informally for soliciting public opinion. The draft was also examined by the UN Office of the High Commissioner for Human Rights with a number of critical observations. Those observations were not taken into consideration. If the present Government wishes to rewrite the previous draft, it should do so for strengthening the proposed Commission, not to weaken it. It should also make the draft public before finalising it to be tabled in the Parliament. The Ministry should take into consideration the critical observations made on the previous draft (so far the only public draft) by the UN Office of the High Commissioner for Human Rights. **The Law Desk of the Daily Star** made several suggestions on a number of occasions on the content of the bill. The Campaign for National Human Rights Institutions (CNHRI) also did the same. Ignoring them would be an attempt to create a toothless barking dog, which will not cater the needs of the suffering humanity. It will not serve anybody including the present government.

The ruling BNP led Government's attempt to establish a National Human Rights Commission should not be a political exercise to differentiate it from its predecessors, Bangladesh Awami League. The process should be aimed at strengthening civil liberties and nascent democratic institutions in the country. Nobody will trust a subservient Commission without adequate power and jurisdiction. And the Government has no right to waste public fund in the name of protecting human rights.

The 'Asia-Pacific Journal on Human Rights and the Law' (Kluwer Law International) has recently published the writer's research critique on 'Establishing National Human Rights Commissions in South Asia: A Critical Analysis of the Processes and the Prospects'.

LAW watch

Principles relating to the status of national institutions

THE Principles relating to the status of national institutions or 'Paris Principles' is important because it sets out to clarify the concept of a 'national institution' by providing minimum standards on the status and advisory role of national human rights commissions. At a UN-sponsored meeting of representatives of national institutions in Paris in 1991, a detailed set of principles on the status of national institutions was developed - the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights and the General Assembly, have become the foundation and reference point for United Nations activity in the area.

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.

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Principles relating to the status of national institutions

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, *inter alia*, have the following responsibilities:
 - a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas.
 1. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislative and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the funda-

mental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

- ii. Any situation of violation of human rights which it decides to take up;
- iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- iv. Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- b. To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs. Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to

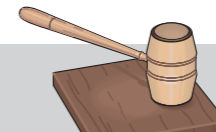
financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured. Methods of operation Within the framework of its operation, the national institution shall:

- a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- g. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas. Additional principles concerning the status of commissions with quasi-judicial competence

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

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



CNHRI corner

Colombo Meeting: A turning point

KIEREN FITZPATRICK

The Asia Pacific Forum is "a maturing organisation" and is at "a very important stage of its development". This was the opinion of Justice PN Bhagwati, Regional Adviser in the Asia Pacific to the UN High Commissioner for Human Rights, speaking at the Forum's 6th Annual Meeting, held in Colombo, Sri Lanka, 24-27 September 2001.

With the unanimous adoption of a draft Constitution by Forum members at the meeting, national institutions in the Asia Pacific have now laid a strong foundation for strengthening regional cooperation on human rights. At the meeting the Human Rights Commission of Sri Lanka was unanimously elected as the inaugural Chairperson of the Forum and the National Human Rights Commission of Nepal and the New Zealand Human Rights Commission were elected to the two Deputy Chairperson's positions.

The meeting was opened by the Chief Justice of Sri Lanka, the Hon. Sarath N. Silva, P.C and was also addressed by the Chairperson of the Asia Pacific Forum and the Chairman of the Sri Lankan Human Rights Commission, Mr Faisz Musthapha P.C.

The National Human Rights Commission of Mongolia was admitted as the Forum's ninth member. Other highlights of the meeting included the official launch of the Forum Video Documentary (see separate story inside); a commitment to developing a reference on trafficking for the Advisory Council of Jurists; a decision to hold a regional workshop in 2002 on trafficking with a focus on HIV/AIDS, internal displacement and the rights of women; and a commitment to seek funds for a regional workshop on the ratification of the Rome Statute.

Kieren Fitzpatrick is Director of the Asia Pacific Forum. Source: APF Bulletin

Australia - Youth Challenge

A new online teacher's resource

VICTORIA SMITH

Youth Challenge is a human rights education program developed by the Human Rights and Equal Opportunity Commission. It is designed to educate secondary school students about human rights and responsibilities through videos, role-plays, guided activities, surveys, personal stories and prompted questions for discussion. The Challenges allow students to focus on real-life issues such as sex, race and disability discrimination, sexual harassment and the rights and responsibilities of employers and employees. The Human Rights and Equal Opportunity Commission (HREOC) has run the Youth Challenge Program for school students across Australia since 1998. Following the success of the Program, the activities used in these workshops have been adapted in an online format for use by all Australian secondary school students. Youth Challenge online provides teaching strategies, structured activities and links to human rights resource material. Human Rights reaches into many areas of life and Youth Challenge is designed to encourage students to examine the links between human rights and responsibilities and demonstrate the relevance of human rights in every day situations.

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