Right to information is meaningless without information commissioners

Dr Shamsul Bari *and* **Ruhi Naz** *are chairman and assistant director (RTI), respectively, of Research Initiatives, Bangladesh (RIB). They can be reached at rib@citech-bd.com.*

SHAMSUL BARI *and* **RUHI NAZ**

Over one hundred days have passed since an interim government took over the reins of power in Bangladesh, promising a more just, democratic, law-based, and discrimination-free society. Fulfilling such expectations is not easy, as the transition from the violent overthrow of the previous regime is challenging and time-consuming. The new government soon recognised that a priority area for its attention would be governance and restoring governmental authority to ensure a smooth transition.

The Right to Information (RTI) Act 2009 has rich potential to contribute to good governance at this critical moment in our history. There can be no better law to promote a collaborative interaction between public authorities and citizens for transparent and accountable governance. But it needs guiding hands.

Like many other institutions of governance in the country, the RTI regime was disrupted in the aftermath of the July-August mass uprising. Following the spate of resignations or forcible removal of high officials of key public bodies, the country's three information commissioners also had to go. The Bangladesh RTI Commission was thus left rudderless and remains so till date. This must end quickly as citizens' role in utilising the law to monitor the work of all public bodies is crucial at this critical juncture of the nation. The Information Commission must be reconstituted as a matter of priority.

The RTI Act allows citizens to request information from public bodies primarily to check if they are fulfilling their duties abiding by the laws of the land. In recent years, such information requests have increasingly pertained to areas of government activities that are of public interest and susceptible to abuse. For example, inhabitants of an upazila may ask a concerned authority's Designated Officer (DO) for information relating to its tendering process for awarding a contract for the repair work of a local road. If the DO does not respond within 20 working days, applicants can appeal to the appellate authority within the same office. If that, too, does not yield a satisfactory response, the applicant can complain to the Information Commission, which must take the necessary action to resolve the dispute.

Without a functioning Information Commission, there is no one to attend to the complaint, and citizens' role in promoting transparent and accountable governance is thwarted. In the absence of the Information Commission, DOs can disregard citizens' RTI requests without fear of repercussion; any abuse or misuse of their authority remains unchecked, and the Information Commission's general role in promoting the proper implementation of the RTI Act is held in abeyance. An important area in the latter regard is ensuring that public

VISUAL: **ANWAR SOHEL**

bodies fulfil their proactive disclosure responsibilities under the law through their inclusion and regular website updates. The more public interest information is disclosed proactively, the less pressure there is to use the reactive disclosure process through individual requests.

Data from the Secretariat of the Information Commission revealed that from the time the three commissioners left in September 2024 until now, aggrieved citizens have filed around 190 complaints. All of these have remained unattended. The figure would be even higher if the commission were fully operational. There may be other complaints filed before the July-August uprising that have remained unattended. This is not healthy for the RTI regime.

Given the circumstances in the country, where other urgent matters await government attention, the seeming delay in filling the vacant posts of the three commissioners is understandable. Nevertheless, if the government assures citizens that the matter is under active consideration, this will encourage the use of the law. Even more reassuring would be a clear indication from the government that due process for selecting the commissioners would be respected, which was not the case previously. The law specifies the participation of all critical stakeholders, including citizens, who are the law's key players and primary beneficiaries. The interim government could set an example to ensure that transparency is respected in all processes related to the RTI Act, a law that promotes transparency.

The need for extra caution in selecting the commissioners will be evident from even a cursory look at the work of the Information Commission in the past 15 years. As a law that empowers citizens to monitor the work of government officials, there is an inbuilt assumption that citizens' requests should deserve priority at any complaint hearing. Unfortunately, this was not the case as most commissioners, as former bureaucrats, felt an affinity with respondent public officials who they considered old colleagues. As a result, such officials were allowed to get away lightly for their wilful neglect of the law.

More importantly, the lack of legal expertise of past commissioners often resulted in the wrong interpretation—and hence misuse—of the law. For example, there is a tendency among public officials to use the exemption provisions of the law, which are there to safeguard the interest of the state over citizens, without careful justification. The only way to challenge the Information Commission's acquiescence with public officials' use of the exemption provisions is to resort to a writ petition in the High Court, which most citizens cannot afford. All such hurdles have cumulatively added to citizens' frustration.

Reanimating the Information Commission and establishing a transparent selection process for the information commissioners would be a lasting contribution of the interim government to ensuring accountable governance in the country. It will be a step towards meeting the important aspirations of the people who put this government in place.

International courts impel advisory climate action

Mizan R Khan *is a board member at Scientific Council of COP29 Presidency, visiting scholar at Brown University, and technical lead at LDC Universities Consortium on Climate Change (LUCCC).*

MIZAN R KHAN

The quarters concerned with climate change are aware that since December 2, 2024, the world is witnessing oral hearings on climate change and state responsibility at the International Court of Justice (ICJ) at The Hague. More than 100 states and international organisations (IOs) will participate in the process. China and the US as the two largest global emitters will also attend the pleadings. This is perhaps the most attended hearing ever in the ICJ's history. The historic resolution adopted by consensus at the UN General Assembly (UNGA) on March 29, 2023, requested the ICJ to deliver its Advisory Opinion (AO) on climate change. Then the ICJ president set the deadline for states and IOs to make written submissions by March 22, 2024. The deadline to respond to written submissions was extended till August 15, 2024.

Vanuatu as a Pacific Small Island Developing State (SIDS) requested the UNGA for the AO. We may recall that Vanuatu was among a few SIDSs which maintained the reservation to approach alternative forums other than the UNFCCC process before ratifying the UNFCCC. As the SIDS are "nano-emitters" in real sense, they are likely to face "watery death" due to rapid sea level rise engendered by an ever-warming world. Developed countries, as historically the largest emitters, are mainly responsible for this. The hearings come at a time when the impacts of climate change are more evident than ever. But the just-concluded COP29 achieved a lackluster outcome, particularly in mitigation, transitioning away from fossil fuels and climate finance.

In response to such "active inaction," as I started calling the COPs years ago, 62 countries including Bangladesh have made written submissions and more than 90 comments have been recorded.

The Paris Agreement (PA), though, has an Article 8 on Loss and Damage, the decision text of the PA forecloses any step for liability and compensation under it. Then why did the developing countries accept such a provision? I have argued elsewhere that IPCC science has established "general causation" for the ever-increasing fever of our planet, liability and compensation through courts warrant "specific" causation that can link climate events to consequences. But it is still not possible to link specific climate events to specific consequences, as attribution science is not perfect yet. Under the PA, country-parties cannot go to court for litigation and seek for compensation. So, countries from both sides have agreed to go for negotiated settlements in loss and damage under Article 8 of the PA. But totally inadequate mitigation by major emitters is failing to curtail the rising harm and the antecedent depositions are making the climate system increasingly unstable, causing unprecedented impacts.

At the International Court of Justice, Bangladesh highlighted that the unendurable impacts of climate change are getting worse. FILE PHOTO: **STAR**

During the last two days, many countries from both the Global North and South have attended the hearings. There is a clear divide on perspectives. Developing countries have been stressing on climate science, violation of development and human rights from climate change, controlling harm through ambitious mitigation, due diligence, equity and climate justice, etc. Against this, developed countries have been arguing for limiting discussions on climate change within the UNFCCC process, restricting human rights in relation to climate change amongst other issues.

On December 2, Bangladesh participated in the hearings. Its main arguments, in line with other climate-vulnerable countries, stressed the importance of climate change-human rights nexus, highlighting that unendurable impacts will increasingly worsen in the coming years. The oral submission pointed out the need to clarify state obligations due to the slow progress of the climate negotiations. They rightly pointed out that to remedy harm, the applicable law that the court needs to consider must go beyond the climate regime, to clarify the secondary and primary obligations that states have in relation to adaptation and keeping in mind the principles of equity and differentiated responsibility.

We may cite the first AO given a few months ago by the International Tribunal of the Law of the Sea (ITLOS) under the UN Convention on the Law of the Sea (UNCLOS). On May 21, 2024, the first ground-breaking AO on the specific obligations of states to climate change was issued by the ITLOS, which provided interpretations of the UNCLOS' role on ambitious climate action. The request for the ITLOS AO was brought by the Commission of Small Island States (COSIS), that represent the SIDS of both the Pacific and Atlantic regions. COSIS came into being immediately after COP26 held in Glasgow, when SIDS joined forces to solicit AOs on international legal obligations to prevent climate change. ITLOS was requested for clear interpretations on the specific obligations of parties to UNCLOS arising from Article 192 to protect and preserve the marine environment and their obligations under Article 194 to "prevent, reduce and control" marine pollution. ITLOS AO detailed out the links between UNFCCC and UNCLOS, arguing that under UNCLOS, countries must reduce GHG emissions to protect the marine environment and its resources.

This ruling is the first from an international tribunal about state obligations regarding climate change mitigation. It also emphasised that Article 194.1 of UNCLOS imposes a duty of care and due diligence on states in combating climate change, focusing particularly on marine environments.

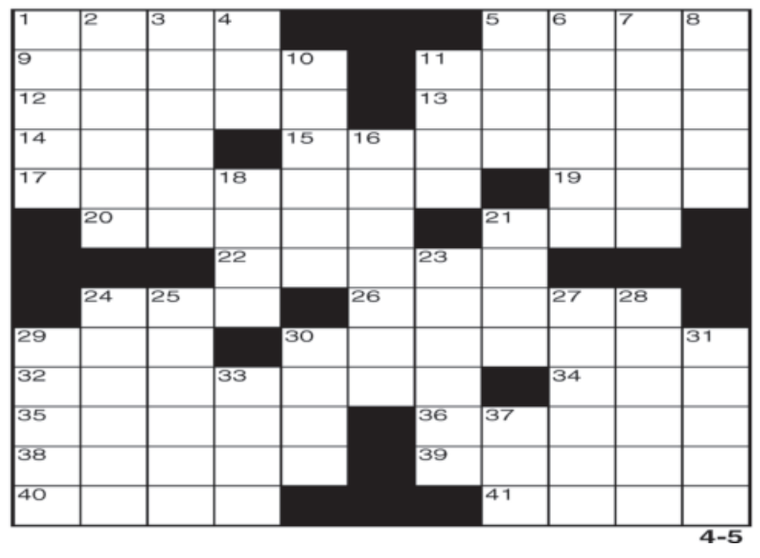
The ITLOS' AO is expected to influence legal opinions and significantly impact the international regimes regarding climate-related obligations. It reinforces the scientific consensus on climate change and underscores the urgent need for states to phase out fossil fuels to protect our oceans. The ITLOS' AO is the first of three advisory opinions, the other two to be issued after due process including by the ongoing ICJ proceedings and the third AO is expected from the Inter-American Court of Human Rights (IACHR), initiated by Chile and Colombia in March 2023.

The mission of all these AOs is to seek explication of the state obligations under related legal regimes toward climate change. While the legal nature of AOs is non-binding, it provides authoritative interpretations of obligations under global regimes. Positive AOs from the ICJ and IACHRs will surely galvanise global public opinion to impel speedier actions, and the global youth is likely to capitalise on the outcomes for pressurising their politicians to act and not just talk in the COP jamborees. Reports suggest that such AOs are being sought by countries and CSOs in other regional courts including the African Court of Human Rights. The more such AOs from global and regional courts, the better for the countries and communities facing existential threats from the runaway climate change.

CROSSWORD BY THOMAS JOSEPH

ACROSS
1 Mass unit
5 NYC cultural attraction
9 Dance party attendee
11 Lock setting
12 "Skyfall" singer
13 Houston player
14 Polite address
15 Fire
17 Quarterbacks, at times
19 Homer's bartending pal
20 Inclines
21 Kingsley or Affleck
22 Canyon of comics
24 Sit-up targets
26 Comfy spots
29 Hotel amenity
30 City north of Newark
32 Whole heaps
34 Sea, to Simone
35 Massage targets
36 Wipe away
38 Paper unit
39 Buoyant tunes
40 Base meal
41 Ham or lamb

DOWN
1 Understand
2 Tire type
3 Reluctant
4 Singer Tillis
5 Church event
6 Punctual
7 Strand
8 Without aid
10 Advice to sinners
11 One of the Mamas and the Papas
16 Weapons store
18 Pert talk
21 Harry's wife
23 Boat
24 Cochise's people
25 Big parties
27 Tex-Mex treat
28 Midday break
29 Twitch
30 Mosquito or gnat
31 Wave's top
33 Takes in
37 Crater part



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YESTERDAY'S ANSWERS

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