

BANGLADESH: STILL TO PROVE ITSELF

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I. General Overview

This report is a critical assessment of the performance of the National Human Rights Commission (NHRC) of Bangladesh in the protection and promotion of human rights, mainly between January to December 2012 as well as during the first half of 2013. This report draws attention to selected issues of concern on independence and effectiveness of the NHRC as an institution; and examines its full compliance with the international standards for national human rights institutions – the ‘Paris Principles’.

This country report is structured and prepared according to the guidelines of the 2013 ANNI regional report. It is divided into two major parts. Firstly, it looks at the general human rights situation of the country and the NHRC’s role in addressing the same. Secondly, it makes an assessment of the NHRC’s independence and effectiveness in the context of its performance in protecting and promoting human rights in the reporting period.

Bangladesh, no doubt, has seen some progress in economic and social sectors in 2012. Yet the overall human rights situation in 2012 was not satisfactory. As in previous years, extra-judicial killings (mentioned as “crossfire” and “encounter”) and enforced disappearances, with incidents of detention without trial, torture and death in police or jail custody, were reported too.

Law and Policy Development: Several positive measures for human rights have been taken through enactment of legislation by the Parliament and policy formulation by the executive and judicial directions in 2012. Some of the initiatives include the enactment of the Anti-Human Trafficking Act 2012, the Pornography Prohibition Act 2012, the Domestic Violence Resistance and Protection Act 2012, and the Hindu Marriage Registration Act 2012.

The Government has passed a much-awaited amendment to the labor law: the Bangladesh Labor (Amendment) Bill of 2013, on 15 July 2013. Under the new law, workers will no longer need approval from factory owners to form trade unions and any factory that sells products within Bangladesh must set aside 5 percent of net profits in a welfare fund.²

The new Children Act was passed on 16 June 2013 by the National Parliament. The new Act is harmonized with the United Nations Convention on the Rights of the Child (CRC) and has referred to the CRC in the preamble and replaced the Children Act 1974. The Act recognizes an individual [aged 18 or below] as a child, providing a universal and internationally recognized definition for a child.³

¹ *Sultana Kamal, Executive Director. The generous support by the NHRC in providing relevant information and input on the draft and the research support provided by Aklima Ferdows Lisa of ASK is gratefully acknowledged.*

² <http://online.wsj.com/article/SB10001424127887323664204578607814136238372.html>;

<http://www.thedailystar.net/beta2/news/more-clout-for-workers/>

³ <http://childrights.thedailystar.net/2013/08/child-act-2013-a-milestone-for-protection-of-vulnerable-children/>;

<http://www.askbd.org/ask/2013/06/18/children-act-2013-bill-finally-enacted-parliament/>

Law and Order: Throughout 2012, the law and order situation remained alarming. There were about 512 incidents (higher than the 375 incidents that occurred in 2011) of political violence in which 74 persons died and 7,327 were injured.⁴ The law enforcing agencies along with the ruling party cadres were threatening to foil the political demonstrations conducted by the opposition. One such incident was the brutal killing of a pedestrian Bishwajit Das, by ruling party cadres on 9 December 2012, during a strike by the opposition.

The Islamic outfit Jamaat-e-Islami and their student wing, Islamic Chhatra Shibir held violent demonstrations on numerous occasions to demand the release of their leaders accused and convicted for war crimes in 2013. It is reported that law enforcers were particular targets of attack including extortion of their arms. They also engaged in vandalism, looting, arson, and setting fire to vehicles, during these political activities. Following the sentence of Delwar Hossain Sayeedi on 28 February 2013⁵, activists of Jamaat-e-Islami and its student wing Islami Chhatra Shibir attacked the Hindu community in different parts of the country.⁶ Hindu properties were looted, their houses were burnt into ashes, and temples were desecrated and set on fire, which unfortunately is continuing till date.

Enforced Disappearances: Taking reference from media reports, ASK documented that in 2012, 56 people were reported to be missing; of them eight were released; the bodies of four were recovered; and six were handed over to the police, and the whereabouts of the rest remain unknown.⁷ The relatives of the victims alleged the involvement of law enforcement agencies, especially the Rapid Action Battalion (RAB), in these incidents. These incidents have sparked insecurity among people. Authorities concerned have not taken any initiative to solve the problem; but rather their inconsistent statements have hindered proper investigation.

Extra-Judicial Killings: Although the Awami League-led coalition took office on the promise of stopping extra judicial killings by law enforcement agencies, the incidents of “cross fire” and “encounter” have continued. ASK has conducted fact-finding in several such cases for confirmation. According to news reports, 91 persons were victims of extra judicial killing in 2012⁸; and 22 persons in 2013 (January-June).

Attacks on Journalists: Violence and harassment against journalists was a major concern in 2012. In many instances, law enforcement agencies were responsible for such violations; along with their failure to provide adequate protection for journalists to carry out their professional duties. ASK documented that at least 442 Journalists were attacked in 2012. Among them 74 were attacked by law enforcing agencies, 87 were attacked by terrorists, 72 by political leaders and five were murdered.⁹ While carrying out their professional duties about 50 journalists had been suited by Ministers, MPs or their party cadres. The television journalist couple Sagor Sarwar and Meherun Runi, were killed in their own residence on 11 February 2012.¹⁰ Despite repeated commitments from government high-ups, no progress has been made in the investigation of the case; leave alone bringing the perpetrators to book.

⁴ Ain o Salish Kendra Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486; http://www.askbd.org/e-newsletter/2013/03_march/index.html, http://www.askbd.org/web/?page_id=1331

⁵ <http://archive.thedailystar.net/newDesign/news-details.php?nid=270923>

⁶ <http://www.thedailystar.net/beta2/news/us-worried-at-violence/>

⁷ Ain o Salish Kendra Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486

⁸ Ain o Salish Kendra Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486

⁹ Ain o Salish Kendra Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486

¹⁰ <http://archive.thedailystar.net/newDesign/news-details.php?nid=240636>

Violence against Women: Violence against women was widespread resulting in many deaths of women due to domestic violence, rape, sexual harassment, dowry, fatwa, acid violence etc. In 2012, 538 women were tortured for dowry resulting in the killing of 263 and suicide by 19. One-thousand one-hundred and forty-nine (1,149) women and children were victims of rape in 2012. Last year, 48 women were tortured in the name of *fatwa*¹¹; among which only 16 cases have been filed with police. Twenty-two women were subjected to physical violence and mental torture as a result of *fatwas*.

Attacks on Minorities: Number of attacks on religious and ethnic minorities have heightened their insecurity throughout the year. Several attacks have taken place on the minority Hindu community in different parts of the country. Indigenous community in the CHT and in plain lands also came under various forms of attacks. The worst communal attack occurred in Ramu on 29 September 2012, when mobs burned down 20 Buddhist temples and over 100 houses in Ramu, Ukhiya of Cox's Bazar and Patiya in Teknaf.¹² On that day 7 ancient Buddhist temples were completely burned; and 13 were partially burned, looted and destroyed in Ramu, Ukhiya and Teknaf. In addition, 27 Buddhist houses were completely burned; and 77 were partially burned and destroyed.¹³ Besides, age old documents were destroyed; some valuable Buddhist monuments and other properties were looted. Police and the local administration did not take adequate deterrent action to prevent this; and no visible action has been taken so far against the perpetrators.

Safety of Workers in Garment Industry: A deadly fire at Tazreen Fashion Garments on 24 November 2012 caused the death of 112 workers and injury to 150 others.¹⁴ Five investigation teams were formed by the Government. The Fire Service investigation team found that the factory had violated the building code and safety measures prescribed by the Bangladesh Labor Act 2006. The deaths also occurred because the workers were prevented from leaving the shop floor. Compensation for the families of the dead and for medical treatment for injured workers was promised by the Bangladesh Garment Manufacturers and Exporters' Association (BGMEA) after DNA verification. However, there were complaints from workers of delays or non-payment of compensation. In a public interest litigation filed by ASK, BLAST, BRAC and Nijera Kori, the High Court directed to conduct immediate inspection of the working environment in garments factories, over which national and international community also expressed their concern.¹⁵

Border Killings: Killings at India-Bangladesh border by the Indian Border Security Force (BSF) was very alarming in 2012. Newspapers reported that 48 Bangladeshis have been killed and other 271 were tortured on the border by BSF (Border Security Force) in 2012.¹⁶

General Human Rights Situation in 2013: The general human rights situation in the first half of 2013 was similarly worsening. The current political tension has been heightened due to the ongoing rift between the government and opposition parties on the issue of a caretaker government. The opposition parties have been very active in street protests against the present government in recent times. In many instances such moves have turned into violence. Violent protest and excessive use of force by the law enforcement agencies were rampant following the verdicts given by the International Crimes Tribunal to hold the trial for war crimes during the liberation war of 1971. On many

¹¹ 'Fatwa' is a decision pronounced by Muslim religious leaders

¹² http://en.wikipedia.org/wiki/2012_Ramu_violence

¹³ Ain o Salish Kendra, Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486

¹⁴ <http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMTFfMjdfMTJfMV8xXzE1MTIzMg==>

¹⁵ Ain o Salish Kendra Human Rights Situation 2012, http://www.askbd.org/web/?attachment_id=2486

¹⁶ <http://archive.thedailystar.net/newDesign/news-details.php?nid=240109>

occasions, the violent protests by the anti-war crime trial groups have led to the looting and burning of houses of religious minorities and brutal killing of the members of law enforcement agencies. On the other hand, the excessive use of force has claimed the lives of some 100 people in three months.

Bangladesh has seen the emergence of a new religious group, Hefajat-e-Islam (Protector of Islam), in the early part of 2013. This group, for the first time, conducted violent demonstrations against the women's policy in 2011.¹⁷ However, in 2013 it made headlines after holding large rallies against the 'Shahbag protesters' – who were demanding highest punishment for war criminals – terming them as 'atheists'; and calling for action against them from the government.¹⁸

The group also put forward a 13-point demand, which includes banning women's interaction with men in the workplace, restriction on women's education etc.¹⁹ On 5 May 2013, Hefajat-e Islam organized a siege and rally in the capital city Dhaka, to press home their campaign. This turned violent; clashing with law enforcers, burning shops, buildings, and vehicles. Later in the evening, they gathered at Motijheel, the business center of the capital and refused to leave the place until their demands are met. Law enforcers then carried out a heavy handed midnight 'flush out' operation; allegedly leaving several protesters and police dead.²⁰

On 24 April 2013, an eight-story commercial building, Rana Plaza, collapsed in Savar, a sub-district close to the capital of Bangladesh.²¹ The search for the dead ended on 13 May with the death toll of 1,129.²² Approximately 2,500 injured people were rescued from the building alive. It is considered to be the deadliest garment-factory accident in history, as well as the deadliest accidental structural failure in modern human history.²³

NHRC's role in addressing the human rights situation: The NHRC has undertaken quite a few activities in 2012 for the protection and promotion of human rights. It has also been cited in the media on several occasions. However, its role was mostly limited to promotional activities like providing trainings; organizing seminars, conducting research etc. With regard to the protection of human rights, activities of the NHRC were largely limited to writing letters to relevant government authorities. However, the NHRC contests this assessment on the basis that having 453 complaints in 2011; it had disposed of 346 petitions within 2012.²⁴

The NHRC is perceived as very weak in accomplishing one of its critical mandates: fact-finding of human rights violations. It is true that the Chairperson paid solidarity visits to places of gross human rights violations including Ramu, Bashkhali, Sundorganj and the Rana Plaza site. However, systematic and institutional level fact-finding missions, with clear guidelines and expertise is not evident. The NHRC contests this view and insists that: "After the visit of honorable chairman, the commission sends the fact finding mission to the spot where the incidents have occurred. It is not true that the fact finding mission do not work following the appropriate methodology. It works very

¹⁷ http://newagebd.com/newspaper1/archive_details.php?date=2011-04-01&nid=13870

¹⁸ <http://archive.thedailystar.net/newDesign/news-details.php?nid=127788>;

<http://bdnews24.com/bangladesh/2013/04/04/hifazat-chief-implementing-jamaat-agenda>

¹⁹ <http://bdnews24.com/bangladesh/2013/04/06/govt-must-accede-to-our-demands-hifazat>

²⁰ <http://bdnews24.com/bangladesh/2013/05/05/hifazat-sets-vehicles-on-fire>

²¹ http://en.wikipedia.org/wiki/2013_Savar_building_collapse

²² <http://www.theguardian.com/world/2013/jun/23/rana-plaza-factory-disaster-bangladesh-primark>

²³ <http://www.bbc.co.uk/news/world-asia-22394094>

²⁴ NHRC response to draft report, 9 September 2013

sincerely. Several fact finding missions have been conducted by the Commission.”²⁵ It is worthwhile to take note that even the NHRC *Annual Report 2012* provides the information that the NHRC conducts fact-finding mostly on complaints on violation of the rights of individuals such as allegations of deprivation of the liberty of one Mr. Hossain, who was languishing in prison for several years even after the court ordered him to release; unfair treatment of Laboni Sultana- a teenage girl by the examiner, physical injury to a retired navy officer etc.²⁶

Moreover, even though the Chairperson makes comments on almost all major human rights violations, the NHRC has seldom issued official statements on human rights issues and situations. According to its *Annual Report 2012*, the NHRC issued 21 press statements in 2012, with no information on the issues concerned.²⁷ The NHRC website gives the impression that most of the press statements are on events organized by the NHRC and not on expressing its position on vital human rights issues.²⁸

The NHRC’s submission of its own report to the Universal Periodic Review of Bangladesh in the UN Human Rights Council was one noteworthy activity undertaken by the NHRC in 2012. The report failed to satisfy everyone; but the NHRC should be commended for taking its own position and initiating consultations with CSOs and the government around the draft report. The NHRC also organized a ‘mock UPR’²⁹ and participated in the UPR working group session in Geneva in April 2013 with a large delegation. However, the NHRC did not express its position or provide any reflection during or after the UPR Working Group session.

According to its *Annual Report 2012*, the NHRC has sent specific proposals on the formulation of the Human Trafficking Deterrence and Suppression Act 2012, the Pornography Control Act 2012, the draft Children Act 2012, and the draft Rights of Persons with Disabilities Act 2011, in conformity with international human rights standards.³⁰ Another positive note to be mentioned here is that, after the fire at Tazreen Fashion Garments on 24 November 2012, and upon the direction of High Court the NHRC recommended names for the probe committee.

At the same time it is important to highlight that certain inconsistencies have been seen in the position of the NHRC on many occasions. For example, on 4 July 2012, Human Rights Watch (HRW) released its report titled *The Fear Never Leaves Me – Torture, Custodial Deaths, and Unfair Trials after the 2009 Mutiny of the Bangladesh Rifles*. One of the recommendations was to “disband RAB and create a non-military unit within the police or a new institution, which puts human rights at its core to lead the fight against crime and terrorism”³¹ which resonated the views of many human rights organisations in Bangladesh.

This report immediately received strong criticism from the government, terming it as “interference to state sovereignty” and “part of conspiracy”. Interestingly, the NHRC Chairperson himself echoed these views with his comment that “a foreign organization like Human Rights Watch cannot recommend disbanding the Rapid Action Battalion”.³² He even went further in an article published on

²⁵ NHRC response to draft report, 9 September 2013

²⁶ <http://www.nhrc.org.bd/PDF/Annual%20Report%20English%202012.pdf>

²⁷ Ibid

²⁸ <http://www.nhrc.org.bd/news.html>

²⁹ <http://nhrc.org.bd/PDF/Mock%20UPR%20held.pdf>

³⁰ NHRC *Annual Report 2012*, http://www.nhrc.org.bd/About_NHRC.html

³¹ <http://www.hrw.org/reports/2012/07/04/fear-never-leaves-me>

³² <http://www.thedailystar.net/newDesign/news-details.php?nid=241279>

the online news portal BD News 24.com on 12 July 2012, to justify his position and said that anyone making a report on the human rights situation on Bangladesh, should first consult with the NHRC.³³

II. Independence

As provided in the Paris Principles, to be truly independent, a national human rights institution should be: (1) established by a distinct law or legislation; (2) financially solvent, and able to act independently with respect to budget and expenditures; (3) autonomous of any State agency or entity in carrying out its administrative functions.

With the mission to ensure the rule of law, social justice, freedom and human dignity through promoting and protecting human rights in Bangladesh, the National Human Rights Commission (NHRC) was re-constituted on 22 June 2010 under the National Human Rights Commission Act 2009 (NHRC Act 2009) passed by the National Parliament on 14 July 2009.

The establishment of a National Human Rights Institution for the promotion and protection of human rights was a long-standing demand from the civil society groups as well as members of the international community. The civil society and international community strengthened its advocacy to establish a state watchdog to monitor the human rights situation in the country. As part of the process, draft legislation was prepared in the 1990s following a wide range of consultations among the stakeholders.

After the general election in 2008, the Parliament enacted the National Human Rights Commission Act 2009, superseding the 2007 Ordinance, and reflecting the constitutional and international human rights obligation espoused in the 'Paris Principles' relating to the status of national human rights institutions. The UN General Assembly in 1993 endorsed a set of minimum criteria designed to ensure the independence, effectiveness and pluralism of the national human rights institution known as the "Paris Principles". Therefore, the National Human Rights Commission of Bangladesh was established as an independent and statutory institution.

Established by a distinct law or legislation: The founding Act (NHRC Act 2009) highlighted the independence of the National Human Rights Commission. According to Section 3(2) of the Act: "The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, dispose of property, both moveable and immovable, and shall by the said name sue and be sued." To strengthen the independence, holding the posts by the members have also been secured in the Act. According to Section 8(1) of the Act: "The Chairperson or any Member of the Commission shall not be removed from his office except in like manner and on the like grounds as the Judge of the Supreme Court, ensuring that they cannot be removed from their post merely by the wish of the executive."³⁴

To ensure further independence, the founding Act has also given the NHRC the power to formulate necessary rules for itself (Sec 30). However, a major constraint in this regard is that any rule, formulated by the Commission needs the approval of the President to be enacted. In the absence of its own secretariat, the NHRC needs to send the draft rules to the Ministry of Public Administration, and

³³ <http://www.nhrc.org.bd/PDF/chairman%20on%20bdnews.pdf>

³⁴ The National Human Rights Commission Act of 2009 (Founding Act), http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf

the Ministry of Law, Justice and Parliamentary Affairs, for vetting. This process enables the Executive to have its control in the whole process undermining the independence of the NHRC.

For example, to get the approval of the ‘staff rules’ of the NHRC took three years (2008-2011) and with a huge compromise. The compromise has fundamentally hindered the independence of the NHRC.³⁵ Except for the ‘staff rules’, the NHRC has not been able to move forward on any other rules like the rules on mediation or for complaint handling, that are very necessary for fulfilling its mandate.

Financial Independence: In terms of resourcing, the founding Act ensured the independence of the NHRC in using its resources. The NHRC Act 2009 reads: “the Government shall allocate specific amount of money for the Commission in each fiscal year; and it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specified purpose” (Sec 25).³⁶

However, the Act limits the NHRC in getting direct funding from donors. The current multi-donor ‘National Human Rights Commission Capacity Development Project’ is a joint project undertaken by UNDP and the Government of Bangladesh (GOB). The UNDP project is mobilizing maximum resources for the NHRC. In 2012 this project has contributed USD1, 400,000 while the government allocated a mere USD196, 250.

The very small allocation from the state and the limitation of not getting direct funding from the donors is hindering the independent functioning of the NHRC. The largest part of the amount provided by the state is being used for the salary and remuneration for the staff and members of the NHRC. On the other hand, since the UNDP is an inter-governmental agency, it has its own limitations and preference with regards to human rights activism i.e. the promotional activities, not the activities for the protection of human rights violations. Moreover, the dependency on the UNDP-led project is portraying the NHRC as an organization limited to seminars and symposiums in expensive hotels, ensuring the presence of a selected class of people, and not standing for the poor victims of human rights violations.

Autonomous of any State agency or entity in carrying out its administrative functions: According to the NHRC Act 2009, the institution is recognized as a ‘statutory independent body’. On many occasions, the NHRC has also given the impression that it does not face any interference from the government; and the Commission members time and again praised the cooperation they receive from the Government.³⁷ While we noted some examples of cooperation in case of increasing budgetary allocation, providing human resources, status and protocol to the NHRC members, examples of lack of cooperation from the executive branch of the government have also not gone unnoticed.

The National Human Rights Commission of Bangladesh is still below the standards set forth in the Paris Principles and ICC (International Coordinating Committee of National Institutions for the

³⁵ The rules regrettably made it possible for the government to ensure that the Secretary (key administrative person) will always be a seconded person from the government. Moreover, the service rule very cleverly ensured that senior positions like Directors and Deputy Directors within the NHRC can only be filled up with government seconded staff.

³⁶ The National Human Rights Commission Act of 2009 (Founding Act), http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf

³⁷ <http://opinion.bdnews24.com/bangla/2012/05/17>

promotion and protection of Human Rights) General Observations regarding the selection of the members. ICC General Observations clearly emphasize that the selection process has to be transparent, the vacancies should be advertized broadly, and broad consultation should take place throughout the selection and appointment process.³⁸ According to the NHRC, the representation of women and pluralistic composition of the Commission, in conformity with the Paris Principles, reflects the demand of civil society groups and other stakeholders from home and abroad.

The present Chairman and members of the National Human Rights Commission were appointed on 22 June 2010 for the first term and after the completion of the three (3) years term, they were re-appointed on 23 June 2013 for another term except Niru Kumar Chakma, who already served as a member for six years in two terms. A leading women's rights activist has been chosen in the place of Niru Kumar Chakma. This selection has brought some controversy – not because of her qualification for the position – but because she is married to the Law Minister, who is also one of the members of the selection committee.

There was no initiative from the selection committee for any open dialogue or public call or consultation with the civil society regarding the selection and appointment of the members of the National Human Rights Commission. *Ain o Salish Kendra* (ASK) even urged the Chair of the selection committee to set an example through initiating an open and transparent selection process that enables all stakeholders, including civil society and human rights organizations, to contribute in the process prior to the recent appointments to the Commission.³⁹

The Paris Principles state that “the national institution shall have an infrastructure which is suited to the smooth conduct of its activities”.⁴⁰ However, it still lacks an effective institutional frame-work and adequate person power to unleash the huge potential of a national institution like the National Human Rights Commission.⁴¹ Furthermore, it should be taken into consideration whether the honorary members of the Commission are able to make adequate contribution in the functions of the National Human Rights Commission as they are otherwise occupied. However, so long as the law is not amended, it should also be taken into consideration that the National Human Rights Commission needs honorary members who can really contribute to the functions of Commission.

III. Effectiveness

In this section, the effectiveness of the NHRC is assessed through its complaints-handling process. According to Section 2(f) of the National Human Rights Commission Act 2009, “Human Rights” means Right of Life, Right to Liberty, Right to Equality and Right to Dignity of a person guaranteed by the Constitution of the People's Republic of Bangladesh and such other human rights documents and ratified by the People's Republic of Bangladesh and enforceable by the existing laws of Bangladesh. The NHRC Act 2009 describes functions of the Commission in Chapter 3. The key functions are to inquire *suo moto* (that is complaints considered at the NHRC's own discretion); or into a petition presented to it by a victim of human rights violation or abetment caused by a person, state or government agency, institution or organization.⁴²

³⁸ <http://nhriwatch.wordpress.com/2011/05/25/nhrc-bangladesh-awaits-icc-accreditation/>

³⁹ Dhaka Tribune, <http://www.dhakatribune.com/law-amp-rights/2013/jun/14/ask-urges-speaker-engage-civil-society-selecting-nhrc-body>

⁴⁰ <http://nhriwatch.wordpress.com/2011/05/25/nhrc-bangladesh-awaits-icc-accreditation/>

⁴¹ *Annual Report 2012*, http://www.nhrc.org.bd/About_NHRC.html

⁴² The National Human Rights Commission Act of 2009, http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf

According to the National Human Rights Commission (NHRC) *Annual Report 2012*, the NHRC received a total of 635 complaints in 2012. Among these complaints, the Commission has resolved or disposed of 392 cases, while 236 cases remain pending; that means more than 62 percent of the complaints were disposed of. Moreover, the NHRC received 635 complaints excluding the e-copies (e.g. applications sent originally to someone other than the NHRC) of which 392 were disposed of and 242 are under review. The total number of complaints for the year 2012, including CC complaints is 885 (635 + 250).

The *Annual Report 2012* of NHRC also states that the number of complaints lodged with the NHRC in 2012 has witnessed a sharp increase and exhibits an increasing trend of complaints disposal over the last few years. It is a very positive sign that the number of complaints is increasing in every year, from 76 in 2009, 166 in 2010, 453 in 2011, to 635 in 2012. In the year 2012, the NHRC took up 14 *suo moto* complaints: of these 14 complaints, investigations have been conducted by the NHRC into nine cases.⁴³

In order to evaluate the complaints-handling process of the NHRC, a few cases are discussed below.

Case 1: Visually-impaired woman and her right to employment

Background of the case: A visually impaired woman, Farzana, completed her masters' degree from Dhaka University. She was living with her family members in Dhaka. Following wrong treatment given to her when she was studying in grade 12, Farzana became blind. She was facing various difficulties in everyday life. But that medical error could not demoralize her to face life with confidence and courage. She submitted an application for a job at Agrani Bank, Bangladesh. The Bank authority did not agree to allow her to sit for the entry examination for the vacant position. An article was published in a daily newspaper. The Bangladesh Legal Aid & Services Trust (BLAST) brought this issue to the attention of the NHRC and sought its support in this regard.

Action taken by the NHRC: The NHRC responded immediately to this case and directed the Managing Director of Agrani Bank, Bangladesh to accept Farzana's application. The same day, the Managing Director confirmed that Farzana was admitted to the entry examination for the position she applied for. Finally, Farzana met the eligibility requirements for that position.

Outcome of NHRC's intervention: The NHRC acted promptly on this issue and took necessary and justified measures by giving the direction to the concerned authority of Agrani Bank, Bangladesh to accept the application of Farzana. As a result, her right to employment has been ensured.

Comment: While we recognize and appreciate NHRC's effort to ensure the right of Farzana as individual, we are not sure whether the NHRC has taken this example to solicit specific policies and guidelines to address similar cases and sustain the impact.

Case 2: NHRC rescues Sri Lankan National: Collaboration between NIs

Background of the case: Mr. Abdur Rahim, a Bangladeshi citizen, moved to Sri Lanka in 1998 after marrying a Sri Lankan citizen, Ms. Mirzabeen. They set down their roots in Sri Lanka and even had a

⁴³ *Annual Report 2012*, http://www.nhrc.org.bd/About_NHRC.html

son. Fifteen years later on 28 July 2012, Mr. Rahim came to Bangladesh with his son Omar Rahim. Initially Mr. Rahim told his wife that Omar's grandmother wanted to meet him and that was not the reason for the trip, but soon it became clear that he was not being entirely truthful. After a few months in Bangladesh, Mr. Rahim refused to return to Sri Lanka and left his son with his grandmother and left for Norway. Ms. Mirzabeen had no clue what to do and finally lodged and won a case in a Sri Lankan court. After that, she lodged a complaint with the Sri Lankan Human Rights Commission and implored it to help in bringing her son back.

Actions taken by the NHRC: The Sri Lankan Human Rights Commission requested the National Human Rights Commission of Bangladesh to rescue her child. The NHRC Bangladesh presented the case to a court which issued a search warrant. Following the warrant, NHRC consulted with the Upazila Nirbahi Officer of Dohar, where Omar was staying, and the officer in charge of the Dohar Police Station established a rescue squad. The team rescued Omar and presented him to the court and the court ordered Omar to be sent back to his mother.

Outcome of NHRC's intervention: Finally, Omar Rahim was reunited with his mother in Sri Lanka in February 2013. Ms. Mirzabeen congratulated the NHRC Bangladesh by expressing her gratitude and appreciation of the initiatives taken by the NHRC.

Comment: The effective and efficient interventions of NHRC Bangladesh and the collaboration between the NIs of two countries have brought the result.⁴⁴

Case 3: Limon – the victim of the brutality of law enforcers

Background of the case: Limon, a 16 year old student was shot in the leg by RAB personnel on 23 March 2011, while he was grazing his cows by a river bank in Sathuria village, Rajpur Upazilla, Jhalakathi district. He was rushed to the hospital and survived but his leg had to be amputated.⁴⁵ Although the DG of RAB issued a statement the next day admitting that he had been shot accidentally, subsequently RAB filed two cases against him: first, one for possession of arms and the second, for obstructing them in their duties. His mother, Henoara Begum had filed an FIR on 10 April 2011 with the police accusing six members of RAB 8 Unit of shooting her son. When Limon's mother tried to file her complaint against RAB, the police didn't register this until the court ordered them to do so. Then after over a year of delay, the police investigation report in Henoara Begum's case (case filed by Limon's mother) absolved RAB of responsibility in shooting Limon.

The Government formed five investigation teams, but none of the reports were made public. In the police investigation, Limon and his family had not been interviewed or questioned by the investigators. After delayed submission of charge sheets, numerous postponements of court hearings, almost a year and a half later the police investigation report cleared RAB members on grounds of no evidence.

According to a newspaper report on 11 July 2012, the NHRC chairman has rightly reacted on 10 July 2012 to all vindictive police actions against Limon as “an act counter to the rule of law and a child rights violation”.⁴⁶ On 29 August 2012 *Ain o Salish Kendra* (ASK) issued a statement and demanded immediate, impartial and judicial inquiry. If Limon does not get justice, it would set a negative

⁴⁴ <http://www.nhrc.org.bd/news.html>

⁴⁵ http://www.askbd.org/web/?page_id=835&view=archive&bymonth=03&byyear=2011

⁴⁶ <http://newagebd.com/detail.php?date=2012-07-12&nid=16732>

example in the society and frustrate the nation's aspirations for democracy and promoting human rights and particularly the constitutional right to life and equality under the law, said the statement. After delayed submission of charge sheets, numerous postponed court hearings, 18 months later the police investigation report cleared RAB personnel of their involvement in the case citing the ground that there was no evidence.⁴⁷

In 2012, Limon and his family members were attacked and falsely accused by a local known RAB informant. According to Limon, that was an attempt to implicate him along with his family in a murder case by RAB source. Limon's mother also received a strange phone call from RAB official on 31 October 2012. In 2012, *Ain o Salish Kendra* (ASK) along with the human rights defenders in Jhalakathi and other support groups have continued to provide legal aid, medical and other support to Limon Hossain in his fight for justice against RAB's impunity.

Actions taken by the NHRC: The NHRC was vocal on this case. NHRC Chairperson has met Limon immediately after he was taken to the hospital and assured all support from the NHRC. Even the NHRC informed the media at a formal press briefing on 27 August 2012 that they will move to the High Court for Limon.⁴⁸

However, on 23 June 2013 the NHRC Chairperson made an ominous proposal to Limon and his family at the Commission office when he just attended the first day of his office as the Chairman after being reappointed for the second term. According to Limon, the NHRC Chairperson has advised to withdraw the case that his mother had filed against law enforcers after he was shot at near his village home in Jhalakati in 2011.⁴⁹ The NHRC Chairperson later contested this media report claiming that it had distorted his comments as he had only informed Limon that the government might make this proposal. However, on 10 July 2013, the government decided to withdraw two cases filed by RAB against Limon Hossain.⁵⁰

Outcome of NHRC's intervention: The National Human Rights Commission has raised its concern about the ordeal of Limon and advocated with the government. But the NHRC has not had its own investigation even when law enforcement agencies framed criminal cases against Limon and portrayed him and his family linked with notorious criminals.

It was possible for the NHRC to investigate whether the framed cases by RAB against Limon were real or not. However, while withdrawing the case against Limon, the government said that they have taken into consideration the request sent by the NHRC.

Comment: By standing by Limon to ensure proper justice for him, the NHRC could establish an exemplary precedent against impunity.

Case 4: Dismissal of an employee of Fire Service and Civil Defense

⁴⁷ <http://www.askbd.org/web/?p=1985>

⁴⁸ http://www.newagebd.com/detail.php?date=2012-08-30&nid=21898#.UhbU_n_z1rg

⁴⁹ <http://www.newagebd.com/detail.php?date=2012-08-28&nid=21664#.UIPUB8XR7dp>

⁴⁹ http://www.newagebd.com/detail.php?date=2013-06-24&nid=54341#.UhrNmn_z1rh

⁵⁰ http://www.theindependentbd.com/index.php?option=com_content&view=article&id=177156:govt-decides-to-withdraw-cases-filed-against-limon&catid=187:online-edition&Itemid=223 ,

<http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMDdfMTBfMTNfMV8xOTBfMTc1OTQx>

Background of the case: Mozammel Haque, an employee of the Directorate of Fire Service and Civil Defense of Bangladesh (cashier of Fire Service and Civil Defense's headquarter in Dhaka⁵¹) claimed that the authorities of the Directorate harassed him in different ways, including by filing departmental cases against him, as he protested against corruption in the office on different occasions.⁵² He filed a complaint with the National Human Rights Commission on 26 February 2012 for its intervention in this matter and prayed to the Commission to investigate the allegation.⁵³ It is reported that he stated in the complaint filed with NHRC that he was suspended by the Fire Service and Civil Defense on allegation of misconduct without giving him an opportunity of self-defense.⁵⁴

Actions taken by the NHRC: After that the National Human Rights Commission forwarded this issue to the Directorate of Fire Service and Civil Defense who dismissed him.⁵⁵ According to different media reports, the NHRC sent a letter to the Director-General of Fire Service and Civil Defense on 30 April 2012 asking him to take necessary steps about the allegation.⁵⁶ The complainant claimed that the NHRC sent a letter to the Information Commission on 29 May 2012 termed him as 'habitual offender' after he had repeatedly asked for information about the investigation into his complaint.⁵⁷

Outcome of NHRC's intervention: Later Mozammel Haque filed a writ petition with the High Court seeking its directive to form guidelines according to the Section 30⁵⁸ of the National Human Rights Commission Act 2009.⁵⁹ The High Court came up with the rules on 17 June 2013, in response to the writ petition, asking the National Human Rights Commission (NHRC) and its Chairman why they should not be directed to formulate a set of guidelines for disposing of complaints over human rights violations as per Section 30 of the NHRC Act 2009,⁶⁰ after a primary hearing on a writ petition.⁶¹

The High Court asked the Commission to explain in four weeks why it has not framed rules under the relevant law after its formation⁶² The Court also issued a rule asking the Secretary and the Director (RTI Officer) of the NHRC why the false, misleading, defamatory information given by the NHRC Deputy Director to the Chairman of the Information Commission and the Chief Information Officer should not be declared to have been "violation of law and justice".⁶³ The Chairman of the NHRC told New Age newspaper that a set of draft rules of procedure had already been prepared, but it was yet to be approved by the members of the Commission.

Comment: The NHRC could bring the Fire Service and Civil Defense into a place of liability regarding this complaint instead of denigration of the victim. By making specific rules for the disposal of complaints over human rights violations with the prior approval of the President under the relevant

⁵¹ <http://www.newagebd.com/detail.php?date=2013-06-18&nid=53486#.UhxFJNhP3Gj>

⁵² <http://bdnews24.com/bangladesh/2013/06/17/why-nhrc-runs-without-guidelines-hc>

⁵³ <http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMDZfMTThfMTNfMV8zXzE3MzQwMQ==>

⁵⁴ <http://www.newagebd.com/detail.php?date=2013-06-18&nid=53486#.UhwzyNhP3Gi>

⁵⁵ <http://bdnews24.com/bangladesh/2013/06/17/why-nhrc-runs-without-guidelines-hc>

⁵⁶ <http://www.thedailystar.net/beta2/news/hc-asks-nhrc-why-it-hasnt-framed-rules-for-action/>

⁵⁷ <http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMDZfMTThfMTNfMV8zXzE3MzQwMQ==>

⁵⁸ Power to make rules: The Commission may, with prior approval of the President and by notification in the official Gazette, make rules for carrying out the purposes of this Act (The NHRC Act 2009).

⁵⁹ http://theindependentbd.com/index.php?option=com_content&view=article&id=174338:high-court-rule-on-nhrc&catid=172:miscellaneous&Itemid=202

⁶⁰ <http://www.thedailystar.net/beta2/news/hc-asks-nhrc-why-it-hasnt-framed-rules-for-action/>

⁶¹ <http://bdnews24.com/bangladesh/2013/06/17/why-nhrc-runs-without-guidelines-hc>

⁶² <http://www.newagebd.com/detail.php?date=2013-06-18&nid=53486#.UhwvBdhP3Gi>

<http://www.thedailystar.net/beta2/news/hc-asks-nhrc-why-it-hasnt-framed-rules-for-action/>

⁶³ <http://bdnews24.com/bangladesh/2013/06/17/why-nhrc-runs-without-guidelines-hc>

law, the NHRC could bring more clarity, efficiency into the complaints handling mechanism and accelerate the effectiveness of the mechanism as well.

IV. Thematic Focus

The thematic focus of the 2013 ANNI report is (a) NIs as human rights defenders (HRDs) based on the 2013 Annual Report of the UN Special Rapporteur on Human Rights Defenders,⁶⁴ and (b) the Advisory Council of Jurists reference on Corporate Accountability.

Questionnaires prepared by ANNI were sent to the NHRC regarding its work in the chosen thematic areas. ASK acknowledges the cooperation of the NHRC in providing these inputs to the questionnaires. In the following discussion, the information provided by the Commission is presented. The written responses from the NHRC shows that the NHRC has started some initial activities in both areas, but that there are no concrete mechanisms in place.

NIs as Human Rights Defenders (HRDs)

According to the NHRC, members and staff working for the Commission haven't faced harassment, intimidation and attacks by State and non-State actors due to their human rights-related work and they are aware of the risks that their work could entail. The Commission informs that the members and staff have been trained to deal with hard situations and legal protection is available for them.

The mechanisms or channels available for staff to report or raise situations of threat, harassment and intimidation and legal frameworks or regulatory acts that safeguard against any form of retaliation, threat, intimidation or discrimination is Section 29 of the National Human Rights Commission Act, 2009.⁶⁵ There is no threat and risk assessment nor are there presently plans to implement various measures to guarantee the security of staff such as live monitoring, panic buttons connected to police, self-protection and risk awareness training for staff.

In response to questions on focal point/desk for HRDs with the responsibility of ensuring their protection, the NHRC referred to the focal point/desk for receiving complaints. Any person can submit complaints if human rights are violated, or abetment of violation exists, by a person, state or government agency, or institution, or organization, or a public servant. The NHRC has provided training for capacity strengthening of HRDs and this will continue.

With reference to the formal complaints mechanisms and protection programs, the NHRC informs that it can take any incident into its cognizance as *suo motu*, apart from receiving complaints and petitions. The Commission acknowledges that there are no specific remedies for witness protection, legal/financial/medical assistance in place yet.

The online submission of complaints is possible apart from other means of submission and the computerized Complaints Management System is also operational. The client satisfaction survey is

⁶⁴ *Report of the UN Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, presented to the UN Human Rights Council at the 22nd Session, 16 January 2013, UN Office of the High Commissioner for Human Rights, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/101/79/PDF/G1310179.pdf?OpenElement>

⁶⁵ "No suit or prosecution or other legal proceedings shall lie against the Government, the Commission, any Member, officer and staff of the Government or the Commission for any publication, report or any other activity of the Government and the Commission, for anything which is, in good faith, done under this Act or the rules made there under, for any damage caused or likely to be caused by such thing"

due for the last quarter of the year 2013. The proposed budget from the Government doesn't reflect the necessary and sufficient resources required by the Commission for the protection of defenders.

Regarding the questions on the recommendations made by the NHRC to the Government, relevant authorities and the mechanism used by NHRC to further strengthen their work, the NHRC referred Section 19 (4) of the founding Act. The Act states that the Commission shall send a copy of the inquiry report with recommendations to the Government or to the concerned authority and the Government or the concerned authority shall, within a period of three months from receiving the report, inform the Commission about the action taken or proposed to be taken thereon; provided that, if the Government or the authority has a contrary view to the Commission, or fails or denies taking decision according to the recommendations of the Commission, the Government or the authority shall inform the Commission about the reasons of such disagreement, inability or denial within the aforesaid time limit.

According to the NHRC, the Commission pronounces opinions and recommendations on the domestic legal framework to bring it into compliance with the country's international human rights obligations and the NHRC commits itself to monitoring the legal framework affecting the HRDs, its activities, and communicate or provide input to the government. The NHRC is engaged with 'Country Wide Awareness Raising Campaign', an ongoing activity, includes HRDs and Government authorities. Moreover, there have been many workshops and seminars conducted by the NHRC on NGO collaboration in human rights issues.

In response to question regarding the NHRC's interaction and participation in international fora such as the HRC, treaty bodies and Universal Periodic Review (UPR) and consultation with civil society and HRDs, the NHRC informs that the Commission prepared its stakeholder report for UPR after a series of consultations. It has also engaged with and participated in several national and international forums working for the protection and promotion of human rights.

According to the NHRC, in cases of violations, the NHRC responds or addresses in a timely manner through public statements (i.e. press statements, media interviews etc.). The NHRC informs that it has signed a number of MOUs with NGOs and INGOs for establishing forums to facilitate dialogue and cooperation with civil society. The NHRC also informs that the Commission will add information about the situation of HRDs in their next annual report in a systematic and comprehensive manner.

The NHRC responded to the questions related to visits to prisons, detention centers mentioning that the Commission conducts visits to prisons and detention centers; and there was only a single incident of initial refusal due to unawareness of the mandate of the NHRC which has been solved later. The NHRC acknowledges that the Commission is not in a position to provide free legal assistance yet; though human rights defenders are able to notify NHRC if they believe they are persecuted and face charges as a result of their activities related to the defense of human rights.

Corporate Accountability/Business and Human Rights

The second thematic focus of the 2013 ANNI Report is to audit or review the National Human Rights Commission of Bangladesh's implementation of the ACJ Reference on Corporate Accountability and its activities in general on business and human rights.

According to the NHRC, it has started focusing on Business and Human Rights issues. While exploring its next course of action in this area, the NHRC has conducted two roundtable discussions:

on 'Greater Protection for Women and Children working in Business and Industry' on 29 October 2012 at its premises; and more recently, on 15 June 2013 on 'Improving Working Conditions in the Ready Made Garment (RMG) sector' at Lakeshore Hotel, Dhaka.

In response to the question relating to the review of relevant domestic legislation to ensure that rules governing creation/conduct of business at home and extra-territorially are in full compliance with international, regional and domestic human rights standards, the NHRC informed that it conducted a Consultation meeting on 'Creating Better Environment for Garment Workers and Improving Working Conditions in the Readymade Garments sector: Reforming Labor Law' on 4 July 2013 at Brac-Inn Centre, Dhaka with different stakeholders and forwarded its recommendations to amend the existing labor law of Bangladesh to the Ministry of Law.

According to the Commission it couldn't include corporate human rights/corporate accountability in the National Human Rights Plan of Action, as corporate accountability is not mentioned in the Strategic Plan 2010-2015 of the NHRC. However workers' right and rights of the vulnerable groups are focused in every course of action of the NHRC and it has created a Business and Human rights Committee to address workers' rights.

According to the NHRC, it has undertaken measures and instituted programs or assisted in awareness and capacity-building of HRDs and communities affected through the human rights violations by transnational corporations and other business enterprises. There are capacity-building measures from the NHRC in dealing with business and human rights issues, such as training and exchange visits.

The NHRC cooperates regionally or internationally to examine existing domestic, regional and international standards to determine best practices in State and regulation of the conduct of TNCs. These would include using the ICC Working Group on Business and Human Rights as an appropriate vehicle for international cooperation.

The NHRC is working with one TNC to raise awareness about human rights and also advises the government on human rights implications of new legislation or policies relevant to the activities to TNCs. It engages with the government and relevant departments of state to promote a greater awareness of the impact of TNCs and other business enterprises on the realization of human rights, and the relevant State obligations with regard to the promotion and protection of human rights in their own jurisdiction and extra-territorially, including regulating the conduct of TNCs.

The NHRC does not advocate for human rights impact assessment reports by TNCs and other business enterprises to be a mandatory requirement in annual and other regulatory reporting regimes. The Commission undertakes measures on issues related to business and human rights such as facilitating dialogue between all stakeholders from government, corporations and other business enterprises and civil society, including HRDs and trade unions. The NHRC facilitates flow of information amongst stakeholders regarding violations by TNCs and does not conduct research to assess the impacts of business operations on the realization of human rights of communities.

The Commission states that it has advocated for the creation or amendment of laws that clearly identify the obligations of corporations and other business enterprises to respect human rights. It has already recommended a few amendments and initiated advocacy to get the labor law passed. The NHRC also utilizes information obtained in the review of existing domestic legislation and remedies to engage with the government and all relevant stakeholders to promote awareness on best practices and highlight the gaps in the current regulatory framework.

In response to the question regarding advocacy, the NHRC pointed out that it has started advocacy on ratification of the international instruments relevant to business and human rights. Advocacy or initiatives regarding the introduction of broad based and innovative sanctions i.e. negative publicity orders, corporate probations, fines, de-registration, reparations and guarantees of non-repetition, among others etc. are under active consideration of the NHRC.

In relation to the questions on complaints-handling, mediation and conciliation process, the Commission informs that:

- It has a complaints-handling function and there are initiatives to promote within the community and business sector an awareness of their respective role in monitoring and receiving complaints of human rights violations, as well as other remedies.
- It has started working on awareness raising among garment workers. The workers are being made aware about their rights, human rights violations, and the mandate of the NHRC. The information regarding complaints-handling mechanism of NHRC is also being disseminated to the workers.
- It has no limitation to receiving complaints to monitor the conduct on TNCs. As per law, any aggrieved person can submit complaints.
- It works closely with the judiciary to promote access to justice, and handling cases related to public interest litigation and it has a legal obligation to assist the judiciary as and when requested. It has already extended its assistance to the judiciary.
- It engages in mediation between enterprises, trade unions, governments and victims of business-related abuse and assists the victims of business-related abuse to seek redress and compensation. According to the Commission, it refers cases to the domestic jurisdiction and follow-up.

V. Conclusion and Recommendations

The foreword of the NHRC's *Annual Report 2012* claimed that "the National Human Rights Commission has become a household term. Not only in the big metropolitans, but by virtue of the media, especially the electronic media, the rural people are familiar with at least the name of the Commission."⁶⁶ As members of the civil society as well as citizens of the country, we wish to see the National Human Rights Commission of Bangladesh become more familiar and appreciated by virtue of its effective and prompt contribution for the protection and promotion of human rights around the country, not merely by the name of the Commission.

Recommendations to the Government of Bangladesh (GoB):

- Take concrete measures to make the NHRC institutionally, functionally, financially independent to uphold it as a dignified national institution as well as an internationally acclaimed institution;
- Take immediate steps to remove the inadequacy and loopholes in the governing legislation by incorporating the provision of an open dialogue or public call or consultation with civil society in the selection and appointment of members of the National Human Rights Commission;

⁶⁶ *NHRC Annual Report 2012*, http://www.nhrc.org.bd/About_NHRC.html

- Take necessary measures to amend provision in the enabling legislation regarding investigation of allegations against the security forces;
- Comply with the NHRC's recommendations with foremost preference and sincerity;
- Provide sufficient budget to reduce the Commission's dependence on donor funding as well as the right to receive direct funding;
- Cooperate with the NHRC in making the complaints-handling process more effective by respecting the recommendations of the Commission and thereby comply with the fundamental aim of the state enshrined in the Constitution emphasizing fundamental human rights and freedom which should be ensured for all citizens.

Recommendations to the National Human Rights Commission (NHRC):

- Take steps to enhance institutional visibility through formal positions, statements etc.;
- Focus on an effective process for complaints-handling so that it could make the state liable for proper outcome and explanation regarding the complaint and do its own investigation regarding human rights violations;
- Formulate guidelines on disposal of complaints to fulfil the objectives of the enabling law;
- Take concrete steps to set up its own secretariat independent from the executive;
- Take immediate steps to move to an accessible location;
- Set up branch offices so that people can access the NHRC very easily.