

NHRC, Bangladesh: Institutional, functional and financial independence need to be strengthened

-Ain o Salish Kendra (ASK)¹

[8 December 2013] 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 in the 1990s. As part of the process, draft legislation was prepared following a wide range of consultations among the stakeholders. The first National Human Rights Commission was set up following the adoption of 2007 ordinance. After the general election in 2008, the parliament enacted a fresh National Human Rights Commission Act 2009, superseding the 2007 Ordinance.

The founding Act (The National Human Rights Commission Act, 2009) talked about the independence of the National Human Rights Commission through Section 3(2) which states that: "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 immoveable, and shall by the said name sue and be sued." To ensure further independence, power to formulate necessary rules has also been given to the NHRC for itself according to the founding Act. 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 the Ministry of Law, Justice and Parliamentary Affairs, for vetting. This prolonged process enables the Executive to have its control in the whole process undermining the independence of the NHRC.

The NHRC first drafted its rule for the recruitment of staff in 2008² and sent them to the Ministry of Law and Justice to facilitate getting approval from the President. The Ministry then returned the rules with

¹ This submission was made as part of the Capacity Assessment of the Bangladesh National Human Rights Commission. The capacity assessment was done in December 2013 by the UNDP's Asia Pacific Regional Centre (UNDP-APRC), the Asia Pacific Forum of National Human Rights Institutions (APF) and the National Institutions and Regional Mechanisms Section of the Office of the High Commissioner for Human Rights (OHCHR-NIRMS) under the project to support the institutional capacity development of National Human Rights Institutions (NHRIs) in the Asia-Pacific region.

² The NHRC, Bangladesh was first established in 2008 under the NHRC Ordinance 2007. Later the new legislation-NHRC Act 2009 was enacted and the present NHRC was reconstituted in 2010 under that Act.

their objection on almost every clause of it. This started a long process of back and forth communication between the Ministry and the NHRC which ended with the NHRC getting the approval on the rules in mid 2011 and regrettably made it possible for the government to ensure that the Secretary (key administrative person) will always be a seconded person. Moreover, the service rule ensured that senior positions like Directors and Deputy Directors within the NHRC can only be filled up with government seconded staff; the risk of having all seconded staff at the top level is that the institution might establish the same bureaucratic procedure as the government bureaucracy which is one of the major obstacles to NHRC's becoming independent as a national human rights institution.

Mediation and arbitration is one of the important mandates given to the NHRC by its founding Act. Unlike NGO mediation, the NHRC is mandated to conduct mediation following an adopted rule and can even impose pecuniary penalties on any of the parties. The founding Act clearly describes- "the procedure of appointment and power of the mediator or arbitrator shall be determined by rules" sec 15 (2). Without having such rule, the ongoing mediation is very ad-hoc and creates some controversy. Keeping in mind the long rule making process, the NHRC should foster the adoption of such rule, including a similar one for inquiry and investigation and do its own investigation regarding human rights violations. Because no single investigation was conducted on any of the high profile human rights violation cases such as disappearances, extrajudicial killings, torture, mob violence etc. The NHRC may argue putting forward the limitation mentioned in Section 18 of the NHRC Act 2009 regarding investigation on cases against disciplined forces where it is said "notwithstanding any other provision of this Act, the Commission *suo-moto* or on the basis of any application, may call for report from the Government on the allegation of violation of human rights by the disciplined force or any of its members". The NHRC interprets this in a way that they cannot investigate cases on the allegation of disappearances and extrajudicial killings, rather they can only ask for reports from the concerned authority. But a proactive and creative interpretation may put forward that this provision does not impede the NHRC to conduct an investigation.

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 promotion and protection of Human Rights) General observation regarding the selection of the members. ICC General Observation clearly emphasizes 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. 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. It is dominated by the Executive and no representation from civil society is ensured. The selection committee merely assesses and selects from the candidates proposed by the Ministry of Law, which according to the NHRC Act, provides necessary secretarial assistance to the committee. *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.³

Following the selection process set forth in the NHRC Act 2009, of the seven commissioners, the chairman and only one member are full time, the other five are appointed on honorary basis and they do not serve full time. 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.⁴ 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 and the Commission needs honorary members who can really contribute to the functions effectively.

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. The current multi-donor 'National Human Rights Commission Capacity Development Project' is a joint project undertaken by UNDP and the Government of Bangladesh (GOB). 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 institution limited to seminars and symposiums in expensive hotels, ensuring the presence of a selected group of people, and not standing for the poor and helpless victims of human rights violations.

This dependency of NHRC on the project has gone in such interior that the NHRC has hired international consultants for almost all its major tasks, including such basic tasks as conducting a baseline survey of the human rights situation, formulating five years strategic plan and almost all operational procedures. This dependency on the funding of this project is crippling the NHRC to value their existing strength and reflects negatively on the vibrant human rights activism that had been nourished for years and still strongly exists in the country.

It is, however, welcoming that the NHRC has taken some commendable initiatives starting from the follow up of the implementation of the UPR recommendations and submitted its UPR stakeholders report for the second UPR-cycle. It shows their commitment to work as an independent body as it was the very first report from their end to engage with UN Human Rights Mechanisms. The NHRC delegation was also in Geneva during the review, but very little has been done in regard to push for strong recommendations and subsequent follow-up measures.

The *Annual Report 2012* of NHRC 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

³ Dhaka Tribune, <http://www.dhakatribune.com/law-amp-rights/2013/jun/14/ask-urges-speaker-engage-civil-society-selecting-nhrc-body>

⁴ *Annual Report 2012*, http://www.nhrc.org.bd/About_NHRC.html

years. It is a very positive sign that the number of complaints is increasing in every year, NHRC should 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 formulate guidelines on disposal of those to fulfil the objectives of the enabling law. There is no special complaint receiving desk for human rights defenders, women or persons with disability or any other vulnerable group. Very limited assistance is provided for persons with no literacy, to have their complaint in writing. The person who receives the complaints severely lacks knowledge of human rights and the mandate of the NHRC. The received complaints are not segregated according to gender, ethnicity, religion or age, which makes it difficult to draw any analysis of trends.

The NHRC can inquire and report a matter being referenced by the Supreme Court of Bangladesh on a writ petition heard by it. Apart from suggesting legal remedy, the commission is endowed with the power to recommend the government to provide temporary grant to the aggrieved persons or their family. The NHRC has started the discussion and process to identify a panel of investigators, mediators and lawyers from human rights organizations. But in order to exercise the mandate of providing legal remedy, the process of recruiting panel lawyers should also be initiated.

It is praiseworthy that the NHRC is open to cooperation and collaboration with civil society. The NHRC Chair and members regularly attend civil society events and the Commission also invites civil society members at their events. In many cases, the NHRC did seek and praised the cooperation of the civil society. There is a good cooperation with regard to referral of cases as well. In our opinion, this is because of the openness and easy accessibility of the Commission Members. Yet there is a need to take effective steps to institutionalize this cooperation to obtain better result.

Three and half years have passed and almost the same team has been reappointed. Now time has come for the NHRC to prove its effectiveness and the importance of such state institution as it is not at its early age anymore.

Contact Person:

Aklima Ferdows Lisa
Program Organiser
Media and International Advocacy
Ain o Salish Kendra (ASK)
7/17, Block-B, Lalmatia, Dhaka-1207.
Tel: 880-2-8126047, 0172-0242210(cell)
Fax: 880-2-8126045
E-mail: lisahayat@gmail.com