



OCCASIONAL PAPER 2

*Legislative Advocacy
for the Establishment of
Human Rights Commission
in Bangladesh*



*I have a say
গণস্বাক্ষর*

**Legislative Advocacy and Participation of the
Civil Society Project**

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Towards a Human Rights Commission for Bangladesh

INTRODUCTION

The quest for human rights has become a fundamental aim of the modern states. The 20th century has witnessed considerable efforts to develop national, regional and international measures for the protection and promotion of human rights.

Although nation-states have been able to match their profound willingness through impressive number of codification and prescription, human rights violations remain a great concern for all communities. It needs to be remembered that international commitments, standards and machinery have only moral appeal and these may not affect the realisation of human rights for most individuals who are subjects of nation states. Therefore, it is primarily at the national level that human rights must be made a reality in the lives of the people and the implementation of human rights largely depends on the domestic enforcement mechanism.

Traditionally, a strong and independent Court system is regarded as an ideal mechanism for the realisation of human rights. But with the increasingly newer forms and types of human rights violations and development of human rights law in its broader perspective, the Court system is often not in a position to deal with human rights problems in its broader perspective.

It is increasingly realised that innovative institutional measures are needed to convert the rhetoric human rights into reality, to clarify the meaning and scope of human rights, to actualise human rights in our social and economic contexts and to implant the values of human rights in our political landscape. In this context, institutionalising human rights through national institution is considered a realistic step towards protection and promotion of human rights. The concept of such national institution has been given its concrete shape by the international declarations and subsequent realisation through its establishment by many countries by Acts of Parliament, amendments of the Constitutions, and executive orders with the aim of both protection and promotion of human rights.

In its protectional function, the Commission focuses upon measures designed to prevent a broad range of violations of rights by governments and/or private sector bodies and to assist individuals and groups to resolve their grievances. Promotional functions aim at the increasing enjoyment of human rights for individuals and groups through policies and measures intended to develop awareness about human rights and facilitate their full

realisation through the provision of human rights education. The national commissions do not, nor it is expected to, come into conflict with the existing legal and other institutions concerned with human rights but go hand in hand with such institutions, in order to make human rights protection more effective.

CONCEPTUALISING THE HUMAN RIGHTS COMMISSION

The concept of national institution for the promotion and protection of human rights is of recent origin. The United Nations launched a programme in the 1980s to encourage the creation of National Institution for the Promotion and Protection of Human Rights. A significant step in the standard-setting of the nature, role and functions of such national institutions was the 1991 Paris workshop which drafted the "Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights." (The Paris Principles, as they are more increasingly known, were later approved by the United Nations Commissions on Human Rights in 1992 and further endorsed by the World Conference on Human Rights in 1993. The UN General Assembly annexed the Paris Principles to its December 1993 Resolution.)

In the Vienna Declaration and Programme of Action, resulting from the Second World Conference on Human Rights in 1993, the following observations were made:

The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, and in the dissemination and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognising that it is the right of each State to choose the framework which is best suited to its particular needs at the national level".¹ Since then, there has been an increasing visibility and acceleration in the establishment of such national institutions.

A conceptual framework have already been developed to refer such institution as "a body whose functions are specifically defined in terms of the promotion and protection of human rights" and which are considered to be "administrative in nature in the sense that they are neither judicial nor law-making." Such national institutions have advisory authority with respect to human rights and their purposes are pursued either in a general way, through opinion and recommendations, or through the consideration and resolutions of complaints submitted by individuals and groups. It has also been stressed that these special national human rights machinery are not intended to replace government, judiciary and legislature, the United Nations nor human rights non-governmental organisations; the role of national institutions should be seen as complementary to those of other agencies and that "a

¹ Paragraph 36. Part 1 of the Vienna Declaration.

strengthening of such (national) institutions can only enhance the effectiveness of both national and international systems for protection and promotion of human rights."²

For whatever specific purposes and by whatever means a national institution is created, one fact remains clear - it is established by the state which officially acknowledges its human rights obligations to its people by vesting such institution with the broad mandate and competence to protect and promote human rights. Morally and ideally, it should be a manifestation of the political will of the state to recognise the inherence of the human dignity of each human being. Politically, it should be an acceptance of the governing authority to fulfil its general social contract with the governed. Legally, it should be a means of ensuring government compliance with its human rights obligations under international customary law, as well as with international normative law, where applicable.

The national commission should not be seen as merely another office in the legal structure. It should have distinct mission of addressing human rights violations of people who are in a disadvantaged position and are vulnerable. The national commission, therefore, should be a dynamic institution which favours the discriminated, poor and oppressed through affirmative action. In this sense, the philosophy, policies, programmes and procedures should be responsive to the nature of the national context instead of being mere copies of the usual government mechanisms. It should not be constrained by the legalistic approach to human rights and be able to address human rights problems proactively. It should deal with all human rights issues by simple, efficient and effective complaint procedure. It should have the potential to provide an independent forum for protection of, dialogue about and promotion of human rights.

IMPORTANCE OF THE COMMISSION

The growing importance of human rights in contemporary society is shown not only by the increasing number of relevant texts of varying legal values, but also by the great diversity of institutions competent in the matter. The commission is an institutionalised means to protect rights of human beings against abuses of power committed by the organs of the state and, at the same time, to promote the establishment of humane living conditions and the multidimensional development of the human personality. Both national experience and the terms of international human rights instruments indicate that legislative measures alone are not adequate to guarantee an effective enjoyment of human rights. Other active measures of promotion and protection are also needed. In particular, it is necessary to ensure that effective and accessible remedies are available to translate the theoretical protection of the law into practice, and that human rights and the legislative machinery are made widely known to the victims of violations of rights, to government agencies, employers and others exercising significant power in society, and to the community in

² United Nations Human Rights Fact Sheet No. 19.

general. It is also important to promote consideration of human rights on a wider basis than simply that of individual violations. Laws and social policies should be formulated in the broad perspective of human rights. National commissions have extremely important functions in each of these respects.

Moreover, the commission may provide easy access for minority groups and disadvantaged people, compared with the judicial process. The cost of the latter and the complex procedures often make courts inaccessible. A key advantage of a human rights commission (provided it has appropriate infrastructure support) is that it can be a simple, efficient and effective complaint mechanism. Without embarking on the costly, complex and intimidating process of the law, it can often achieve desirable outcome in term of needs of the society and rights of the less advantaged persons and groups. Thus, the commission can empower disadvantaged people.

Also in many cases the composition of the judiciary is not representative of the social composition of the population, and in particular, contains few representatives of the classes of people most likely to suffer discrimination. In this regard, a highly representative commission comprising of all social forces may be easily accessible to those people whose voice is not likely to be heard.

STRUCTURAL ISSUES

Government sponsored national human rights bodies usually suffer from a lack of acceptance from the human rights community which affects effectivity and relevance. The harsh realities of scare resources and inadequate government expertise in human rights may further erode the effectiveness and may even 'excuse' the failure of what national institutions have been set out to be. The problems which the national commission confront may broadly be categorised in the following way:

Accessibility

National human rights institutions must be accessible from several perspectives; otherwise they will not be able to fulfil their functions.

a. Structural accessibility

The institution must be in a position to fulfil its functions and responsibilities by having the necessary resources in terms of budget, staffing and equipment.

b. Symbolic accessibility

People and officials must perceive the institution to be impartial and independent. In addition, government must see the institution as having some value e.g. leading to more efficient civil servants or to an improvement in its human rights record.

c. Administrative accessibility

The institution must ensure that its administrative procedures are as efficient and effective as possible.

d. Geographic accessibility

National institutions must strive to become accessible by all, including those living in rural areas and in high density/poorer sections of urban areas. It cannot fulfil its purpose if it is restricted to a small sector of society.

Independence

Independence is a key feature of national institutions. Independence is something which a national institution can never take for granted but must work hard to achieve, preserve and strengthen.

Independence means structural autonomy, including fiscal autonomy from the government, particularly from the executive branch. Another aspect of independence is the integrity and impartiality of the members of the commission. A human rights commission is a state sponsored and state funded entity set up under an Act of Parliament with a broad objective of protecting and promoting human rights. Yet it should possess sufficient measure of autonomy so that it can act independently of the government. Indeed, the question of independence is inextricably linked with the process of appointment, terms and conditions of the office, composition, finance and removal of members and officials of the commission.

The core of the issue is 'independence from whom?' It must be independent from the executive authority of the government. It must have a clearly defined relationship with the parliament and the judiciary. The Human Rights Commission must be substantially and personally independent. On the one hand, it must be free from any external control and, on the other hand, the members of the Commission must not yield to personal prejudices. Again, the independence of the Commission may be curtailed when the members of the Commission suffer from poor human rights knowledge, expertise and sensitivity towards the plight of the vulnerable sections of the groups.

Composition

The issue of composition of the Commission is central to its credible and effective functioning. The plurality of experience, vocation and gender are to be valued as they ensure diverse perspectives of the Commission which are vital for its credibility and effective functioning. The Paris Principles of 1991 emphasise the pluralist representation of social forces involved in the promotion and protection of human rights. The Commission shall represent human rights NGOs, trade unions, concerned social and professional organisations of lawyers, doctors, journalists, academicians and human rights experts and accommodate trends in philosophical or religious thought.

ORGANISATIONAL ISSUES

The Commission should take into account national conditions and existing institutional frameworks, as well as experiences of other countries. The national context within which a national institution operates is of immense importance to the efficacy of genuine protection and promotion of human rights. Part III of our Constitution guarantees fundamental civil and political rights through the judiciary, while Part II contains social, economic and cultural rights which are required to be realised by progressive measures, and, undoubtedly, is addressed to the judiciary, executive and legislature. However, a simplistic distinction between these two categories of rights may obscure the whole purpose of the constitutional spirit and, hence, a holistic approach should be adopted towards human rights. In this regard, the indivisibility or the unity of the human person in physical, intellectual and spiritual dimensions constitute a better foundation for approaching the question of the interdependence between civil and political rights, and economic, social and cultural rights. There is no denying the fact that without economic, social and cultural rights, civil and political rights might become nominal in character; without civil and political rights, economic, social and cultural rights could not be long ensured. Therefore, both the protectional and promotional functions of the national human rights commission should be viewed from that wider perspective.

To develop a viable framework for a national human rights commission, the following core issues should be taken into consideration on a priority basis:

a. Mode of establishment

National experiences of various countries show that the Commission may be established by an enactment of the Parliament, or by amendment in the Constitution, or by an executive order. In order to avoid the frequency of the amendment of the Constitution and needless political debate, it is not desirable to insert provisions in the Constitution for establishing the commission. Similarly, it should not be left to the sole discretion of the executive to appoint the commission. Considering above facts, the realistic mode of establishment may be through an appropriate enactment of the Parliament.

b. Appointment procedure

The issue of appointing authority and the procedure of appointment are of utmost importance for the independence and credibility of the Commission. The appointing authority itself must be a credible one. A definite norm has yet to be established in this regard. However, there is a trend among states to appoint the Commission through a "Selection Body" or "Selection Committee" which represents different organs of the state. In the context of our parliamentary form of government, the President may appoint the members of the Commission on the recommendation of a "Selection Committee" which may be comprised of the Chief Justice, leading members of the

House of the Nation, both from the ruling and opposition parties, and if necessary, representatives of the Bar Council, women, ethnic and religious minorities.

c. Composition

The composition must be a pluralistic one with representation of all segments of the society, particularly, women, children, physically and mentally disabled persons, religious and ethnic minorities, and, if necessary, different professional groups.

d. Qualifications, tenure, removal, terms and conditions of the members

Qualifications of the members of the Commission is of paramount significance. The Commission should consist of persons well known for their integrity and impartiality of judgement who shall resolve human rights problem without any restrictions, improper influence, inducements, pressures, threat or interference from any quarter or for any reason. The members of the Commission should have proven expertise and competence in the field of human rights.

In order to secure a stable mandate for the members of the Commission without which there can be no real independence, the office should be established for specific duration. The procedure of removal of the members must be based on the established principles and well grounded reasons. The members should be provided with adequate salaries and terms and conditions should not be varied to their disadvantage and must not be appointed to other government posts after expiration of their term.

FUNCTIONAL ISSUES

The mandate of the Commission should be defined as broadly as possible and reflect the concerns and needs of the community. It should also be sufficiently clear as to avoid misinterpretation and needless debate as to its jurisdiction. Wide mandate and informal ways of functioning unhampered by legalistic procedures or precedents are essential conditions for success of the Commission. Its broad mandate may include the following functions:

a. Inquiry into human rights violations

The Commission shall inquire into human rights violation at its own initiative or on any complaint by victim. The Commission should have jurisdiction to initiate investigations of human rights abuses without requirement of a formal complaint. This function is important because many sections of society remain inadequately aware of their rights and how to exercise them; that vulnerable groups or individuals suffering violations of human rights (for example, prisoners or persons affected by mental illness) do not always have effective representative organisations or advocates to act on their behalf; and that people or groups who are the victims of violations of human rights may be reluctant to approach any official agency with a complaint.

The Commission should also have the power to accept representative complaint by any person or group of persons, an association or organisation including trade unions and NGOs, on behalf of victims. Provisions for representative complaints help to ensure that more general social problems are not treated only on an individual basis in the complaint process. A representative complaint may also help to reduce the disparity in resources between individual complainants on one side and a large institution, such as a corporation or government agency, on the other. The most vulnerable members of society may not be in a position to lodge a complaint or authorise others to do so on their behalf, because of the very circumstances which render them vulnerable. Also, persons detained incommunicado, or people with severe physical, intellectual or psychiatric disabilities, or whose legal capacity is limited for other reasons may not be in a position to file complaints. This may also be addressed through provisions allowing the Commission to receive complaints from third parties or from non-government organisations or trade unions.

b. Facilitate judicial proceedings

While the creation of the Commission can potentially strengthen human rights protection, it can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial and accessible judiciary. However, in view of the fact that very often Courts may not be able to deal with some situations or legal remedies of the Court are inadequate in cases of human rights violations, or justice can not be fully done because of complex procedures of the Court, the Commission should have power to offer support, service and co-operation. Such intervention of the Commission may take the form of inquiry and investigation, report, recommendations and suggestions to the Court for protection and promotion of human rights.

c. Monitoring the welfare of prisoners

The Commission should be allowed to visit jail, prison and detention centres. They should have access at any reasonable time to find out the real situation of the prisoners. Over the years, human rights violations in such places have become a regular phenomena and such violations are almost always committed by the Government agencies themselves. This provides justification for interference by the Commission. The Commission should have power to make such recommendations as may be necessary for improving the conditions in detention centres.

d. Resolution of human rights disputes by Conciliation and Mediation

In order to resolve complaint regarding human rights violations speedily and effectively, the Commission must have the capacity to settle it without recourse to cumbersome rules of procedure and evidence. The Commission should seek amicable settlement through conciliation, mediation and arbitration which are not only more cost-effective than traditional adversarial or inquisitorial procedures but also are more 'user

friendly' to persons and groups which have traditionally been disempowered and frequently find the trappings of traditional Courts quite intimidating. These procedures are cost-effective in the sense that they result in substantial benefits to those whose rights have been abused as well as to the state by saving substantially the Court administration costs. Moreover, settling disputes by negotiation, conciliation and arbitration is more culturally appropriate in our society. The judicial system can be supplemented effectively by the Commission which is designed to facilitate the informal, speedy, effective and cheap resolutions of complaints. In this regard, the Commission should be essentially quasi-judicial in nature and settle dispute by amicable processes.

e. Advise and assist the government in formulating legislation and administrative directives for the promotion and protection of human rights

The Commission shall make recommendations regarding legislative or administrative provisions as well as provisions relating to judicial organisation, intended to preserve and extend the protection of human rights. The Commission should also have the power to make recommendations for the introduction of new legislation and amendment of existing ones to protect human rights. The Commission which is responsible for promotion of human rights will be in the best position to identify areas where legislation requires improvement either because of technical defects or experience has indicated human rights problems which existing legislations do not address. It shall also examine the legislation as well as bills and proposals in order to ensure that these provisions conform to the fundamental principles of human rights.

f. Make recommendations to the Government regarding international human rights instruments

The Commission can play a decisive role in relation to implementation of human rights instruments through advising the government concerning acceptance of international instruments and means necessary to ensure compliance with international obligations.

g. Promote awareness and human rights education

Human rights education can play an important role in the promotion and protection of human rights. The Commission shall undertake human rights education programme through research, human rights literacy campaign, training, seminars, workshops and other relevant activities including publication. Knowledge and awareness of rights are essential for realisation of human rights. Once people are educated about and aware of their human rights, they can demand that their governments observe those rights. Human rights education is essential for the formation of public opinion and generation of public pressure for compliance with human rights. In other words, such education is a *sine qua non* for the observance and the advancement of human rights. The Commission shall adopt human rights education systems to create awareness about human rights issues and culture of respect for human rights. This entails adopting methods that

facilitate self reflection and sharing of ideas. The prime target of the human rights education activities are government personnel including members of the Police, the BDR and other law enforcing agencies and authorities including the armed forces.

h. Encourage efforts of non-governmental organisations and institutions

Promotion and protection of human rights is the responsibility of all elements of society and all those engaged in the defence of human rights should work in concert to secure their advancement. So the Commission should work in close co-operation with associations, organisations and NGOs engaged in promoting and protecting human rights for sharing expertise and training and development of the skills of their members and staff. The Commission should have the power to solicit support from other agencies of governments in order to effectively address human rights problems without compromising their own independent operations. This can include organising joint projects, joint review of policies affecting human rights and setting up a system of alerting these agencies on the possibility of occurrence of human rights violations or on providing assistance to victims of human rights violations.

i. Review the safeguards provided by or under the Constitution or any law for the protection of human rights

The Commission shall evaluate the efficacy and reasonableness of the safeguards provided under existing laws for the protection and promotion of human rights. It shall recommend measures for improvement of procedural rules so that justice may not be defeated for technical reasons.

j. Prepare reports on the human rights situations

The Commission shall prepare report on human rights situation in general, and activities of the Commission in particular, for the general public, the government, and the House of the Nation.

Realisation of economic, social and cultural rights is essential for effective enjoyment of civil and political rights. Part II of the Constitution contains provisions regarding economic, social and cultural rights in the process of governance, yet these are not justiciable. Since it is impossible for an individual complainant to address the whole range of economic, social and cultural rights, the Commission can investigate and report on these problems generally and can play an important role in promoting these rights through the reporting process. Besides, it can conduct public inquiries in continuing and systematic human rights violations by taking oral evidence in public hearings, receiving written submissions from interested individuals, NGOs and government agencies and can carry out research and analyse the evidence in the light of relevant international human rights standards and then publish a report with findings and recommendations.

The publication of annual reports by the Commission is of considerable importance because:

- (a) it helps publicise the operations of the office to policy makers, legislators and public alike;
- (b) clarifies general expectations of the people regarding human rights implementation;

- (c) the widespread distribution of annual reports is a valuable means of publicising the work of the Commission and of gaining support for its activities;
- (d) it facilitates the educational function of the Commission by enhancing awareness about its activities;
- (e) it highlights the situation of those who do not have the financial and social resources to lodge individual complaints.

POWERS OF THE HUMAN RIGHTS COMMISSION

It is recognised that the Commissions are not alternative to Courts. This is a quasi-judicial body with pro-active powers of initiating investigation of the human rights abuses and problems. It does not and should not function as a Court. Rather, the Commission's mandate is to find out who is being abused, whose rights are being violated, by whom and how. Although no direct power of punishment of violators is possible under Human Rights Commissions Acts, the moral authority of these institutions decides their ability to provide practical relief.

While powers are necessary for the Commission to deal with many and varied situations that arise yet these should be used sparingly. There is no denying the fact that the credibility of any national human rights Commission depends heavily on public perception of its accountability, transparency and moral standing.

a. Power of investigation

The Commission shall adopt an expanded meaning of investigation to analyse the causes of human rights violations from a broad perspective. Particularly, it should be mass oriented so that the ordinary people can express their grievances before the Commission. People of proven integrity and experience in human rights work should be involved in inquiry and investigation. However, from purely legal stand point, it should (while inquiring into complaints) have all powers of a civil Court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters:

- i) summoning and enforcing the attendance of witnesses and examining them on oath;
- ii) discovery and production of any document;
- iii) receiving evidence on affidavits;
- iv) requisitioning any public record or copy thereof from any office;
- v) issuing commissions for the examination of witnesses or documents;
- vi) any other matter which may be prescribed.

b. Advisory vs Binding Jurisdiction

The fundamental issue in terms of power is the juridical qualification of the decision of the Commission. The relevant debate revolves around: whether its decision or recommendation will have the force of a judgement of a court, i. e., whether it will have concurrent jurisdiction with the courts; or its recommendations are mandatory for the government; or whether the government would only be duty-bound in good faith to implement the recommendations.

In many countries, human rights Commissions do not, generally, have power to make binding determinations. They either refer cases to the Courts or other bodies with power to take binding decisions, or make non-binding recommendations addressed to the government agency or, to the legislature to modify practices which have given rise to a fundamental rights violation. A number of human rights institutions also appear to have a purely advisory jurisdiction.

The principal force behind the recommendations of such institutions is that of public opinion. For such institutions to be effective, it is important that their reports and recommendations be made public and that this function should be independent of government control. Power to make non-binding recommendations may, in some instances, be useful as a transitional measure before the introduction of legislation providing for enforceable remedies. This process allows for a period of community education before legislation is introduced imposing binding obligations and affords government agencies, employers and other interested parties a period to adjust their practices. It may also be a means of ensuring that problems are discovered before enforceable legislation is introduced. Moreover, binding decision making power of the Commission may involve the technical and procedural requirements of pronouncing judgement and pose a lot of intractable issues of complex technical nature for the legal and judicial system which may defeat the ultimate purpose of such institution. So the Commission should have recommendatory jurisdiction and the principal force of the recommendations of such a Commission is the public opinion. The strength of its recommendations is of moral nature in accordance with the Commission's credibility in the society and is enhanced by the fact that failure to comply with its recommendations will be commented on its periodic reports which would imply a high political cost for the authority involved.

Ultimately, the strength of the Commission lies in the quality of work it undertakes. In the final analysis, the weight of the recommendations of such Commission will depend on the public perception of independence, sincerity, commitment and composition of the body. The government will also be committed to realise these recommendations in good faith. The most important point is that people should have trust and confidence in the institution. It also require a recognition by the general public of the value of such institutions in their lives.

c. *Relation with the Court*

The Commission with jurisdiction to receive complaints on human rights violations may overlap with the jurisdiction of the Court which is empowered to deal with rights enshrined in the Constitution. Where these jurisdictions overlap, complainants may be expected to approach whichever institution appears more likely to give the remedy desired. Problems in effective access to the Courts for members of disadvantaged groups may; ultimately, make the national Commission preferable to the Courts.

As administrative bodies, national Commissions established under human rights legislation should be subject to the supervision of the higher Courts, including their interpretation of the legislation. However, in specific cases where the Commission is not

directly bound by a Court decision, it may tend to take a broad approach on the purposes of the legislation, whereas Courts adhere closely to stricter domestic rules of legal interpretation.

FINANCE

The test of a government's sincerity towards human rights lies in the amount of financial independence it provides for the Commission. Financial independence must be written into statutes. It should be made available on a regular and normal basis. The fund should be of such an amount that will enable the Commission to perform its tasks. The fund can come from the consolidated fund of the government or any other equivalent budgetary categorisation that secures allocation of fund. Since the Commission will be set up by enabling legislation and not through constitutional amendment, it is important that firm criteria for financial allocation be incorporated in the Human Rights Commission Act. Without such a firm financial and resource foundation, the functioning of the Commission may be susceptible to political patronage. However, the Commission should not always rely on the government funding, it must be imaginative in their quest for adequate resource. A trust fund of the Commission may be created through contribution, donation or gift, in cash or kind, from individuals, associations, bodies, and companies. But steps must be taken to ensure that such contributors or donors of trust fund cannot influence the activities of the Commission.

STAFF OF THE COMMISSION

Like other institutions, the efficacy of the Commission will depend upon the quality of its staff. Therefore, an adequate number of qualified and trained staff must be ensured for effective operation of the Commission.

CONCLUSION

Political will and commitment is of paramount importance to the functioning of the Commission. For an effective and fruitful Human Rights Commission the Government should take meaningful measures with strong provisions for implementation. The Government should not form the Commission to camouflage the violations of human rights by it.

Human rights must involve opportunities for people to shape their own lives individually and collectively. A major challenge for human rights institutions is to ensure the promotion and protection of disadvantaged groups in society. So the Commission should display considerable imagination and flexibility in seeking ways to overcome problems of accessibility.

The Courts are for the protection of fundamental rights but the human rights Commission has both protective and promotional functions. With this in mind, the human rights Commission should be seen as an institution capable of existing side by side with the Court system; not confronting but assisting it and thus ensuring better protection of human rights.

Charter of Demands for the proposed Human Rights Commission of Bangladesh

Prepared by
THE LEGISLATIVE ADVOCACY AND PARTICIPATION OF THE CIVIL SOCIETY
PROJECT

Protection and promotion of human rights is one of the main functions of the state. An effective mechanism for prevention of human rights violations has become a constant search for the modern states. Due to the realisation that the traditional Court system is not enough to cope with the human rights violations, a different approach is needed to protect and promote human rights. Against this backdrop, the establishment of a national institution for the promotion and protection of human rights is seen as a reflection of an increasing demand for such mechanism all over the world. Over the years many states have established national human rights commissions in response to international declarations and constitutional mandates on human rights. Moreover, the international community has demonstrated its willingness to set out clear norms which should regulate the operation of such national institutions. The Paris Principle of 1991 on National Human Rights Commission is a concrete manifestation of such a willingness.

In our country, a consensus has developed to establish a national human rights commission. For our national human rights commission to become a credible and people-oriented institution, it should conform to the norms and principles set out by the United Nations and well established state practices in this regard. In the light of the above, we are presenting the following guide lines as a Charter of Demands which should be taken into consideration in establishing a National Human Rights Commission for Bangladesh:

General principles

1. The Human Rights Commission shall be independent of government control;
2. The Commission shall be established by an Act of the Parliament;
3. The Commission shall be in a position to assist all persons in safeguarding and enforcing their human rights and upholding human dignity;

4. The jurisdiction and function of the Commission shall be defined as broadly as possible and should reflect the concerns and needs of the community in terms of fundamental human rights;
5. Steps shall be taken to enhance public awareness of, and support for, the work of the Human Rights Commission;
6. Government shall act in aid of the Commission.

Composition

7. The composition of the Commission shall ensure the pluralist representation of all social forces involved in the promotion and protection of human rights;
8. The Commission shall be composed of not less than 3 members.

Appointment, tenure, terms and conditions, and removal

9. The procedure for appointment of the members of the Commission, their tenure of office, terms and conditions of their service and other relevant procedures shall be laid down by the Human Rights Commission Act.

Qualifications

10. The qualifications for appointment of the members of the Commission shall be determined by the Human Rights Commission Act.

Functions

11. The Commission shall:

- a. investigate and inquire into all violations of human rights;
- b. facilitate judicial proceedings involving violations of human rights;
- c. consult and work with non-governmental organisations;
- d. publish annual reports;
- e. promote human rights, human rights education and culture;

12. The Commission shall:

- a. assist the Government to formulate legislation for the promotion and protection of human rights;
- b. recommend to the Government to accede to or ratify international instruments on human rights;

- c. recommend to the Government the measures necessary to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
- d. take up promotional functions through research, human rights campaign, training and seminar and other awareness programmes;

13. The Commission, where appropriate, shall resolve disputes relating to violation of human rights through Conciliation and Mediation, and award interim relief, damage or compensation, where appropriate.

Powers

- 14. The Commission shall be vested with necessary powers for performing functions under the law;
- 15. The Commission shall have the power to accept complaints from any individual, group of individuals, associations, NGOs and others;
- 16. The Commission shall be authorised to undertake investigations on its own initiative;
- 17. The Commission shall have all powers of initiating investigations of human rights violations and for that purpose shall exercise the powers of a Civil Court in certain matters.
- 18. After investigation, the Commission shall have power to recommend necessary steps to the appropriate authority to remedy or rectify violations of human rights or desist from actions or measures which violate human rights;
- 19. The Commission shall be given the rule-making power to regulate its own affairs.

Finance

- 20. The Commission shall be provided with adequate resources and an independent budget.

Staff

- 21. Adequate numbers of qualified and trained staff shall be provided;
- 22. The appointment of the staff should be the responsibility of the Commission.

Draft Bill* on the Human Rights Commission of Bangladesh

(Prepared by the LAPCS Project)

*Whereas it is expedient to establish a Human Rights Commission of Bangladesh for the protection and promotion of human rights, and
Whereas the Constitution of the Peoples' Republic of Bangladesh enshrines human rights as one of the Fundamental Principles of the State Policy, and
Whereas the protection and promotion of human rights are among the main aims of the government; and
Whereas an effective mechanism for the protection and promotion of human right should be evolved to implement the constitutional commitment, and
Whereas the necessity for establishment of national institutions for protection and promotion of human rights is being increasingly recognised by the world community,
the House of the Nation has agreed to enact an Act to provide for the establishment of a Human Rights Commission of Bangladesh, to set out the composition, powers and functions of the Commission and to provide for matters connected therein or incidental thereto.*

CHAPTER - I

1. Short title, extent and commencement

- (1) This Act may be called the Human Rights Commission of Bangladesh Act, 1997 (Act ... of 1997).
- (2) It extends to the whole of Bangladesh.
- (3) It shall be deemed to come into force at once.

2. Definitions

- (1) "Chairperson" means the Chairperson of the Commission.
- (2) "Commission" means the Human Rights Commission of Bangladesh constituted under section 3.
- (3) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and economic, social and cultural rights enumerated in Part II of the Constitution as well those embodied in International Human Rights Charters, Conventions, Covenants and Declaration which Bangladesh has ratified or acceded to or may do so.
- (4) "Member" means a member of the Commission and also includes the Chairperson.
- (5) "Public Servant" shall have the meaning assigned to it in section 21 of the Penal Code, 1860.
- (6) "Notification" means a notification published in the official Gazette.
- (7) "Rules" means rules made under this Act.
- (8) "Supreme Judicial Council" refers to the Council as provided under Article 96 of the Constitution.

* The footnotes contained in the Draft are for explanation and are not intended for inclusion in the Act.

CHAPTER - II

3. Constitution of the Human Rights Commission of Bangladesh

- (1) There shall be established a Commission which shall be called and known as the Human Rights Commission of Bangladesh (hereinafter referred to as "the Commission").¹
- (2) The Commission shall consist of a minimum of three and a maximum of nine members, one third of whom will be appointed every two years for a term of six years each, from amongst persons with known high academic qualification; renowned for their moral integrity, impartiality, competence and experience; and with recognised contribution in matters relating to protection and promotion of human rights; particular consideration be given to persons with experience in legal matters;

Provided that the Commission shall first be constituted with three members and the number of members will be increased by three after two years and another three after two more years so that the Commission may have nine members after four years and thereafter new members shall be appointed every two years to fill up the vacancies on the expiration of the terms of office as provided under sections 4 and 6 of this Act;

Provided that the number of new members to be appointed every two years may be increased by the same number of members who may be removed or where vacancies occur according to sections 5 and 6, respectively, of this Act.

Explanation: If one member is removed under section 5 or the post of one member becomes vacant under section 6, the next number of biennial appointment of member will be four instead of three.²

- (3) The members of the Commission shall be appointed by the President, on the recommendation of a Selection Committee consisting of:
 - (i) Speaker of the House of the Nation,
 - (ii) Prime Minister,
 - (iii) Chief Justice,
 - (iv) Leader of the Opposition Parties, and
 - (v) Chief Advisor of the last Caretaker Government.

¹ Promoting, protecting and realising human rights require individual as well as societal support. Mechanism that promote, protect and realise human rights are, therefore, necessary. State is obliged to create such mechanism pursuant to international declarations and constitutional mandate on human rights. The establishment of a national human rights commission is a concrete example of a mechanism for promotion and protection of human rights.

However, the national commission should not be seen as merely another office in the legal structure. It has a distinct mission of addressing human rights violations. It will be established to respond to the grave problem of violations of human rights of people who can not protect themselves from the violators. It should, therefore, be a dynamic institution that favours the victims much like affirmative action programmes favouring the discriminated or social action litigation favouring the poor and oppressed. In this sense, the philosophy, policies, programmes and procedures should be peculiar to this nature of the national institutions, instead of being mere copies of the usual government mechanism. It should not be constrained by the legalistic approach to human rights and be able to proactively address human rights problems. It should cover all human rights issues. It should deal with human rights issues by a simple, efficient, and effective complaint procedure. It should have the potential to provide an independent forum for protection of, dialogue about, and promotion of human rights.

² Such a staggered system of appointment, particularly in view of the non-eligibility of a member or Chairperson for re-appointment, will ensure continuity of the work of the Commission.

- (4) Before finalising its recommendation the Selection Committee shall publicise the names of the persons it proposes to recommend as members and shall make arrangements for:
 - (i) any member of the public, or associations, bodies and groups including professional bodies and NGOs to place in writing before it their opinion, assessment or evaluation, for or against such proposed persons;
 - (ii) open discussion, if necessary, on such opinion, assessment or evaluation about the eligibility of the proposed persons to be selected as member(s) of the Commission;
 - (iii) the persons proposed to be selected as members of the Commission to clarify any matters relating to his selection; and
 - (iv) the final list of persons recommended for nomination as members of the Commission shall be made in a Report of the Selection Committee to the President.³
- (5) One of the members so appointed shall be elected by the members to be the Chairperson of the Commission for a term of four years. Two thirds of all members appointed to the Commission shall constitute the quorum for the election of the Chairperson of the Commission and a Chairperson shall not be eligible for re-election.

4. Term of office

Every member of the Commission shall hold office for a period of six years from the date on which he enters upon his office and a member shall not be re-appointed for a second term.⁴

5. Removal of a Member of the Commission

- (1) A member of the Commission may be removed from office-
 - i) by an order of the President, if such member-
 - a) is adjudged an insolvent by a competent court, or
 - b) is of unsound mind and stands so declared by a competent court, or
 - c) is convicted of a criminal offence and sentenced to any punishment as provided under section 53 of the Penal Code;
 - Or
 - ii) by an order of the President made on the ground of misconduct or incapacity after the Supreme Judicial Council on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Council, reported that the member ought on any such ground be removed.

6. Vacancies of Office

The office of a member shall be become vacant:

³ The issue of composition of the Commission is central to its independence. Undoubtedly the success of such composition depends on its ability to listen to the voices of those whose rights are most likely to be violated. A human rights Commission is a state sponsored and state funded entity set up under an Act of Parliament with the broad objective of protecting and promoting human rights. Yet it should possess sufficient measure of autonomy so that it can act independently from the government. In addition to legal guarantee of independence, the plurality of experience, vocation, and gender are to be valued as they ensure that diverse perspectives are brought to bear on human rights which is vital for its credibility and effective functioning. The Paris Principle of 1991 on National Human Rights Commission lays emphasis on the pluralistic composition of the national commission and appointments of its members.

⁴ In order to ensure a stable mandate for members of the Commission without which there can be no real independence, their appointment shall be affected by an official act which shall establish the specific duration of the mandate.

- (1) upon the death of such member, or
- (2) upon such member resigning such office by writing addressed to the President, or
- (3) upon such member being removed from Office on any ground and manner specified in section 5, or
- (4) on the expiration of his term of Office.

7. Member to act as Chairperson or to discharge his functions in certain circumstances

- (1) In event of the occurrence of any vacancy in the office of the Chairperson under section 5 or 6, a quorum of two thirds of all members appointed to the Commission shall elect an Acting Chairperson for the unexpired term. Such Acting Chairperson shall be eligible for re-election for further one full term.
- (2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members

The salaries and allowances payable to, and other terms and conditions of service of, the members shall be determined by the Parliament.

Provided that neither the salary and allowances nor the other terms and conditions of services of a member shall be varied to his disadvantage after his appointment.⁵

9. Vacancies, etc., not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission⁶

- (1) The Commission shall meet regularly and in any such place, in addition to its Head Office, as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) The Chairperson shall preside at all meetings of the Commission. In the event of his absence from any meeting, the members of the Commission present at such meeting shall elect one from amongst themselves to preside at such meeting.
- (4) Two thirds of the members shall constitute a quorum and decisions shall be reached at by the opinion of majority of members of such quorum.

11. Seat of the Commission

The permanent seat of the Commission shall be in the capital, but meetings of the Commission may be held at such other place or places as the Chairperson may from time to time determine.

⁵ To secure independence of the Commission from the Executive, the members of the Commission should be provided with adequate salaries and the terms and conditions of the members of the Commission should not be subject to political influence of the Government.

⁶ The Commission should have the power to promulgate their own rules of procedure governing their operations including the rules of inquiry that facilitate easier access by human rights violation victims to investigators and less burden on their victims to prove the violations that occurred.

CHAPTER - III

Functions and Powers of the Commission⁷

12. Functions of the Commission

The functions of the Commission shall be to:

- (1) inquire, *suo motu* or on a petition presented to it by a victim or any person or group of persons, an association or organisation including trade unions and NGOs on behalf of any victim or victims, into complaint of⁸ :
 - (i) violation of human rights or abetment thereof, or
 - (ii) negligence in the prevention of such violation by a public servant,
- (2) facilitate any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court⁹,
- (3) monitor the welfare of persons detained either by judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention¹⁰,
- (4) provide for resolution by conciliation and mediation, in accordance with the provisions hereinafter provided, in case of violation of human rights¹¹,

⁷ The jurisdiction of the commission should be defined as broadly as possible and reflect the concerns and needs of the community. The mandate of the Commission should also be sufficiently clear as to avoid misinterpretation and needless debate as to its jurisdiction. Wide mandates and informal ways of functioning unhampered by legalistic procedures or confining precedents are essential-conditions for the success of the Commission. Its accessibility to disadvantaged groups and responsiveness to human rights violations quickly enhances its credibility and effectiveness as an institution.

⁸ The Commission should be given the power to accept representative complaint to deal with human rights violations.. The most vulnerable members of the society may not be in a position to lodge complaint or to authorise others to do so on their behalf, because of the very circumstances which render them vulnerable, for example, persons with severe physical, intellectual or psychiatric disabilities or whose legal capacity is limited for other reasons. This last group includes children or persons who lack access to resources or otherwise constrained.

⁹ While the creation of the Commission can potentially strengthen human rights protection, it can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial and accessible judiciary. However in view of the fact that very often Courts may not be able to deal with some situations or legal remedies of the Court are inadequate in case of human rights violations, or justice can not be fully done because of complex procedure of the Court, the Commission should have power to offer support, service and co-operation. Such intervention of the commission may take the form of inquiry and investigation report, recommendations and suggestions to the Court for protection and promotion of human rights.

¹⁰ The Commission should be allowed to visit jail, prison and detention centers. They should have access at any reasonable time to find out the real situation of the prisoners. Over the years, human rights violations in such places become a regular phenomena and such violations are committed by the Government agencies themselves. This provides justification for interference by the Commission.

¹¹ In order to resolve complaint regarding human rights violations speedily and effectively, the Commission must have the capacity to settle it without recourse to cumbersome rule of procedure and evidence. So the Commission should seek amicable settlement through conciliation, mediation and arbitration which are not only more cost effective than traditional adversarial or inquisitorial procedures but also are more "user friendly" to persons and groups which have traditionally been disempowered and frequently find the trappings of traditional Courts quite intimidating. These procedures are cost-effective in the sense that they result in substantial benefits to those whose rights have been abused as well as to the state which save substantially on Court administration costs. Moreover, settling disputes by negotiation, conciliation and arbitration is more culturally appropriate in our society. The judiciary system can be supplemented effectively by the Commission which is designed to facilitate the informal,

- (5) advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, and for the promotion and protection of human rights¹²,
- (6) make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights and regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards¹³,
- (7) promote awareness of and provide education in relation to human rights through research, human rights literacy campaign, training, seminars, workshops and other relevant activities including publication¹⁴,
- (8) encourage the efforts of non-governmental organisations and institutions working in the field of human rights¹⁵,
- (9) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation¹⁶,
- (10) prepare reports on the existing human rights situations in general, and activities of the Commission in particular, for the general public, the government, and the House of the Nation¹⁷,

speedy, effective and cheap resolutions by complaints. In this regard, the Commission is essentially quasi-judicial in nature and settles dispute by amicable processes.

¹² The Commission shall make recommendations regarding any legislative or administrative provisions as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. The Commission should also have the power to make recommendations for the introductions of new legislation and amendment of existing legislation to protect human rights. The Commission which is responsible for promotion of human rights, will be in the best position to identify areas where legislation requires improvement either because of technical defects or experience has indicated human rights problems which existing legislation does not address. It shall also examine the legislation as well as bills and proposals in order to ensure that these provisions conform to the fundamental principles of human rights.

¹³ The Commission can play a decisive role in relation to implementation of international human rights instruments through advising the government concerning acceptance of international instrument and means necessary for ensuring compliance with international obligations.

¹⁴ Human rights education can play a very important role in the promotion and protection of human rights. The Commission shall adopt human rights education systems to create awareness about respect for human rights. This entails adopting methods that facilitate self-reflection and sharing of ideas. Prime target of the human rights education activities are government personnel including members of the Police, the BDR and other law enforcing agencies and authorities including the armed forces.

¹⁵ Promotion and protection of human rights is the responsibility of all elements of society and all those engaged in the defence of human rights should work in concert to secure their advancement. The Commission should have the power to solicit support from other agencies of governments in order to effectively address human rights problems without compromising their own independent operations.

¹⁶ The Commission shall evaluate the efficacy and reasonableness of the safeguards provided under existing laws for the protection and promotion of human rights. It shall recommend for improvement of procedural rules so that justice may not be defeated for technical reasons.

¹⁷ Realisation of economic, social and cultural rights is essential for effective enjoyment of civil and political rights. The fundamental principles of state policy of the Bangladesh Constitution contains provisions regarding economic, social and cultural rights in the process of governance, yet these are not justifiable. The Commission can play an important role in promoting these rights through the reporting process. Since it is impossible for an individual complainant to address the whole range of economic, social and cultural rights, the Commission can investigate and report on these problems generally. Besides, it can conduct public inquiries in specific, continuing and systematic human rights violations. Typically, public inquiries by the commission can involve taking of oral evidence in public

- (11) undertake such other activities as it may consider necessary for the protection and promotion of human rights.

13. Powers relating to inquiries

- (1) The Commission shall, while inquiring into complaints under this Act, have all powers of a civil Court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:
- i) summoning and enforcing the attendance of witnesses and examining them on oath,
 - ii) discovery and production of any document ,
 - iii) receiving evidence on affidavits,
 - iv) requisitioning any public record or copy thereof from any office,
 - v) issuing commissions for the examination of witnesses or documents,
 - vi) any other matter which may be prescribed.
- (2) The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and the person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Penal Code.
- (3) The Commission or any other officer, not below the rank of a Gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to subject -matter of the inquiry may be found and may seize any such document or take extracts or copies therefrom subject to the provisions of section 102 of the Code of Criminal Procedure 1898, in so far as it may be applicable.
- (4) The Commission shall be deemed to be a civil Court and when any offence as is described in sections 175, 178, 179, 180 or 228 of the Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 482 of the Code of Criminal Procedure.
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Penal Code.

hearings, receiving written submissions from interested individuals, NGOs and government agencies, research and analyses of the evidence in the light of relevant international human rights standards and publication of reports with findings and recommendations.

Apart from this, considering the fact that public inquiry bodies constituted by the government could not play an effective role in the past in case of human rights violation for the following reasons:

- delays in their establishment
 - the holding of an inquiry at sole discretion of the Government
 - possible political interference
 - recommendations often ignored by Government
 - unwillingness on the part of such bodies to undertake investigation into politically sensitive issues
 - reports of such inquiries bodies are not publicised;
- the publication of the Annual Reports by the Commission is of considerable importance.

14. Investigation¹⁸

The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or any association including trade unions and NGOs, investigate an allegation of the infringement or an imminent infringement of a fundamental right of such a person or group of persons caused by executive or administrative action of the government.

15. Powers of recommendations, recording, conciliation etc., after investigation

- (1) Where an investigation conducted by the Commission under section 14 does not constitute the infringement or imminent infringement of a fundamental right by executive or administrative action, the Commission shall record that fact and shall accordingly inform the person making the complaint as soon as possible but not later than ninety days.
- (2) Where an investigation conducted by the Commission under section 14 discloses the infringement of a fundamental right by executive or administrative action, the Commission shall have the power to conciliate or mediate the matter.
- (3) Where an investigation conducted by the Commission discloses the infringement or imminent infringement of a fundamental right by executive or administrative action, the Commission may where it appears to the Commission that it is not appropriate to conciliate or mediate the matter because all or any of the parties object to conciliation or mediation or where the attempt at conciliation or mediation is not successful:
 - i) recommend to the appropriate authority that prosecution or other proceedings be instituted against the person or persons infringing such fundamental right,
 - ii) refer the matter to any Court having jurisdiction to hear and determine such matter in accordance with such rules of Court as may be prescribed therefor, and within such time as is provided for invoking the jurisdiction of such Court, by any person,
 - iii) make such recommendations as it may think fit, to the appropriate authority or persons concerned, with a view to preventing or remedying such infringement or the continuation of such infringement,
 - iv) may recommend to the concerned authority to grant such immediate interim relief to victim or the members of his family as the Commissions may consider necessary,
- (4) Without prejudice to the generality of recommendations that may be made under para (iii) of sub- sect (3), the Commission may
 - i) recommend that the practice on which the decision, recommendation, act or omission giving rise to the infringement or imminent infringement of a fundamental right was based, be altered,
 - ii) recommend that reasons be given for the decision, recommendation act or omission giving rise to the infringement or imminent infringement of a fundamental right,
 - iii) recommend that the decision giving rise to the infringement or imminent infringement of a fundamental right be reconsidered or rectified.
- (5) No recommendation shall be made by the Commission under the preceding provisions of this section in respect of the infringement or imminent infringement without affording an opportunity of being heard to the person alleged to or about to infringe or to have infringed such fundamental right.

¹⁸ The Commission shall adopt an expanded meaning of "investigation" to able it to analyze the causes of human rights violations. Multidisciplinary approach should be adopted. It should likewise be oriented towards getting the people to come out and speak up. People of proven integrity and experience in human rights work should be involved in inquiry and investigation.

- (6) A copy of a recommendation made by the Commission under the preceding provisions of this section, in respect of the infringement of fundamental right shall be sent by the Commission to the person aggrieved, the head of the institution concerned, and the Minister to whom the executive or administrative unit concerned has been assigned.
- (7) The Commission shall require any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed to report to the Commission within such period as may be specified in such recommendation on the action which such authority or person has taken or proposes to take to give effect to such recommendation and it shall be the duty of every such person to report to the Commission accordingly.

Where any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed, fails to report to the Commission within the period specified in such recommendation or where such person reports to the Commission and the action taken or proposed to be taken by him to give effect to the recommendation of the Commission is inadequate, the Commission shall make a full report of the facts to the President who shall cause a copy of such report to be placed before the House of the Nation.

16. Power of reporting to the High Court Division

- (1) The High Court Division may refer to the Commission any matter arising in the course of a hearing of an application made to that Division under article 102 of the Constitution for inquiry and report.
- (2) The Commission shall inquire and report to the High Court Division of the Supreme Court on the matters referred to it under sub-section (1) within the period, if any, specified in such reference.

17. Staff of the Commission¹⁹

- (1) The Commission shall appoint a person not below the rank of a Joint Secretary or a person qualified for appointment as a judge of the Supreme Court of Bangladesh under Article 95 of the Constitution, as the Secretary to the Commission.
- (2) The Commission shall appoint such officers who shall be called as investigative officers and such other administrative and other personnel as may be necessary to assist the Commission in the discharge of its function under this Act.
- (3) The officers of the Commission so appointed shall be deemed to be public servants within the meaning of the Penal Code and every inquiry or investigation conducted under this Act, shall be deemed to be a judicial proceeding within meaning of that Code.

18. Secretariat

The Secretariat shall have five divisions, namely:

- (1) Finance and Administration,
- (2) Research and Documentation,
- (3) Education, Training and Information,
- (4) Inquiry and Investigation, and
- (5) Legal,

Each department will be headed by a departmental head appointed by the Commission.

¹⁹ Adequate number of qualified and trained staff must be ensured for effective operation of the Commission.

19. Finance

- (1) The financing of the Commission shall be provided from the consolidated fund of the national budget.
- (2) A Trust Fund of the Commission may be created through contribution, donation or gift, in cash or kind, from individuals, associations, bodies, companies or organisations including international agencies or donors, the income and interest only from which may be used for the purposes of this Act,
Provided that no such contribution, donation or gift shall be accepted from any individual, association, body, company or organisation whose act, action or activity are under inquiry or investigation by the Commission or the Government.

20. Accounts and Audit²⁰

- (1) The Commission shall cause proper accounts to be kept of its income and expenditure, and assets and liabilities.
- (2) The accounts of the Commission shall be audited by the Auditor -General at such intervals as may be specified by him.

21. Commission's Report

The Commission shall submit an Annual Report to the House of the Nation of all its activities during the year to which the report relates. Such Report shall contain a list of all matters referred to it, and the action taken in respect of them, along with the recommendations of the Commission in respect of each matter. The Commission may, whenever it considers necessary to do so, submit periodic or special reports to the House of the Nation in respect of any particular matter or matters referred to it, and the action taken in respect thereof.

22. Offices

The Head Office of the Commission shall be situated in the capital and it may have such offices in other places as the Commission may determine.

23. Immunities and Privileges

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him, in any civil or criminal proceedings except a prosecution for giving false evidence by such statement:

Provided that the statement:

- (i) is made in reply to the question which he is required by the Commission to answer,
- (ii) is relevant to the subject matter of the inquiry.

24. Rule Making Power of the Commission

The Commission may make rules to carry out the provisions of this Act.

25. Miscellaneous

Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.



²⁰ In order to ensure transparency, accountability and enhance moral standing, the human rights Commission should maintain proper accounts.

APPENDIX I

(We reproduce below the bill prepared and circulated by the Ministry of Law, Justice and Parliamentary Affairs for public consultation.)

THE BANGLADESH NATIONAL HUMAN RIGHTS COMMISSION ACT, 1998 (Act No. 1998)

An Act to provide for the constitution of a National Human Rights Commission for better protection of human rights and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the People's Republic of Bangladesh as follows:

CHAPTER - I

1. Short title, extent and commencement

- (1) This Act may be called the Bangladesh National Human Rights Commission Act, 1998.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. Definitions

- (1) In this Act, unless the context otherwise requires-
 - (a) "Chairperson" means the Chairperson of the Commission;
 - (b) "Commission" means the National Human Rights Commission constituted under section 3;
 - (c) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in Bangladesh;
 - (d) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;
 - (e) "International Human Rights Instruments" means the following Declarations and Covenants:
 - (i) Universal Declaration of Human Rights (General Assembly resolution 217 A (III) of December 1948)
 - (ii) International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI) of 16 December 1966)

- (iii) International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI) of 16 December 1966)
- (iv) Optional Protocol to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI) of 16 December 1966)
- (v) Second Optional Protocol to the International Covenant on Civil and Political Rights (General Assembly resolution 44/128 of December 1989)
- (vi) International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX) of 21 December 1965)
- (vii) Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180 of 18 December 1979)
- (viii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984)
- (ix) Convention on the Rights of the Child (General Assembly resolution 44/25 of 20 November 1989)
- (x) International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (General Assembly resolution 45/158 of 18 December 1990)
- (xi) Convention relating to the Status of Refugees
- (xii) Protocol relating to the Status of Refugees
- (f) "Member" means a Member of the Commission and includes the Chairperson;
- (g) "Notification" means a notification published in the official Gazette;
- (h) "Prescribed" means prescribed by rules made under this Act;
- (i) "Public servant" shall have the meaning assigned to it in section 21 of the Penal Code;
- (j) "IDHRB Project" means Action Research Study on the Institutional Development of Human Rights in Bangladesh under UNDP Project No. BGD/95/005/A/01/99.

CHAPTER - II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

- (1) The President in consultation with Committee consisting of the-
 - a) the Prime Minister
 - b) the Speaker of Parliament
 - c) the Leader of the Opposition in the Parliament

shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

- (2) The Commission shall consist of-
- (a) a Chairperson from among the retired Judges of the Appellate Division of the Supreme Court.
 - (b) four members from among persons having knowledge of, or practical experience in, matters relating to human rights.

Provided that in making the recommendation the Committee shall ensure the pluralistic representation of the civil society involved in the promotion and protection of human rights; and

Provided further that at least one member should be a woman.

(3) **Vacancies, etc. not to invalidate the proceedings of the Commission**

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

- (4) There shall be an Executive Director who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.
- (5) The headquarters of the Commission shall be at Dhaka and the Commission may, with the previous approval of the Government, establish offices at other places in Bangladesh.

4. Removal of a Member of the Commission

- (1) Subject to the provisions of sub-section (2) the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case be, ought on any such ground to be removed.
- (2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be-
- (a) is adjudged an insolvent; or
 - (b) engages during his term of office in any paid employment outside the duties of his office; or
 - (c) is unfit to continue in office by reason of infirmity of mind or body; or
 - (d) is of unsound mind and stands so declared by a competent court; or
 - (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

5. Term of office of Members

- (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years whichever is earlier, provided that in a special case the age bar may be relaxed.
- (2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.
Provided that no Member shall hold office after he has attained the age of seventy years.
- (3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of Bangladesh.

6. Member to act as Chairperson or a discharge his functions in certain circumstances

- (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.
- (2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

7. Terms and conditions of service of Members

The salaries and allowances of the members of the Commission shall be determined by the Parliament and shall be charged on the Trust Fund.

Provided that neither the salary and allowances nor the other terms and conditions of services of a Member shall be varied to his disadvantage after his appointment.

8. Procedure to be regulated by the Commission

- (1) The Commission shall meet at such time and place as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be authenticated by the Executive Director or any other officer of the Commission duly authorised by the Chairperson in this behalf.

9. Officers and other staff of the Commission

- (1) The Commission may appoint officers and other employees to assist him in the discharge of his functions.

- (2) The categories of officers and other employees who may be appointed by the Commission and their terms and conditions of service shall be such as may be determined after consultation with the Commission.
- (3) Without prejudice to the provisions of sub-section (1), the Commission may, with the previous consent of the Government, utilise the services of any officer, employee or agency of the Government if such services are required by him for the purpose of discharging his functions.
- (4) Without prejudice to the provisions of sub-section (2), the officer and other employees who were in the staff of the IDHRB Project, before its constitution as a body, shall continue to be in its employment if not found otherwise unfit.

CHAPTER - III

FUNCTIONS AND POWERS OF THE COMMISSION

10. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:

- (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of-
 - (i) violation of human rights or abetment thereof or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit any jail or other institution under the control of the Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend the adoption of new legislation, the amendment of the existing laws and the adoption or amendment of administrative measures for their effective implementation;
- (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) examine the draft bills and proposals for new legislation to verify their conformity with international human rights standards and to ensure the compliance with the international human rights instruments;
- (h) encourage ratification of international human rights instruments or accession to those instruments, and ensure their implementation;

- (i) assist in the formation of programmes for the teaching of, and research into, human rights and to take part in their execution in educational and professional institutions;
- (j) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (k) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- (l) 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;
- (m) such other functions as it may consider necessary for the promotion of human rights;
- (n) to contribute to the reports which Bangladesh is required to submit to the United Nations bodies and committees pursuant to its treaty obligations, and where necessary, may express an opinion on the subject, with due respect for their independence.

11. Powers relating to inquires

- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of witness and examining them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) any other matter which may be prescribed.
- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Penal Code.
- (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter, any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 102 of the Code of Criminal Procedure 1898 in so far as it may be applicable.

- (4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 482 of the Code of Criminal Procedure, 1898.
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

12. Investigation

- (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Government.
- (2) For the purpose of investigation into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,-
 - (a) summon and enforce the attendance of any person and examine him;
 - (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (3) The provisions of section 13 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency whose services are utilised under sub-section (1) investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

13. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement -

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of the inquiry.

14. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission-

- (a) considers it necessary to inquire into the conduct of any persons; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER - IV

15. Independence of the Commission

- (1) The Commission and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity.
- (2) To the extent that any of the personnel of the entities referred to in subsection (1) may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission.
- (3) If at any stage during the course of proceedings at any meeting of the Commission it appears that a member has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions as such a member shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as to enable the remaining members to decide whether the member should be precluded from participating in the meeting by reason of that interest. Such a disclosure and the decision taken by the remaining members shall be entered on the record of the proceedings.
- (4) If a member fails to disclose any conflict of interest as required by subsection (3) and is present at a meeting of the Commission or in any manner participates in

the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered be reviewed and varied or set aside by the Commission without the participation of the member concerned.

- (5) Notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice.
- (6) No member of the Commission shall -
 - (a) by his membership of the Commission, association, statement, conduct or in any other manner jeopardize his independence or in any other manner harm to the credibility, impartiality or integrity of the Commission;
 - (b) make private use of or profit from any confidential information gained as a result of his membership of the Commission; or
 - (c) divulge any such information to any other person except in the course of the performance of his functions as such a member of the Commission.

CHAPTER - V PROCEDURE

16. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-

- (i) call for information or report from the Government or any other authority or organization subordinate thereto within such time as may be specified by it;

Provided that -

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
 - (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

17. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

- (1) where the inquiry discloses, the Commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) approach the Supreme Court (High Court Division) for such directions, orders or writs as that Court may deem necessary;

- (3) recommend to the Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the Government or authority and the Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) the commission shall publish its inquiry report together with the comments of the Government or authority, if any and the action taken or proposed to be taken by the Government or authority on the recommendations of the Commission.

18. Annual and special reports of the Commission

- (1) The Commission shall submit an annual report to the Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
- (2) The Government shall cause the annual and special reports of the Commission to be laid before the Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The report should be submitted to the parliament within 90 (ninety) days from the date of its submission.

CHAPTER - VI

FINANCE, ACCOUNTS AND AUDIT

19. Grants by the Government

The Commission will be financed through a Trust Fund under this Act.

20. The Human Rights Commission Trust Fund:

- (1) The Government may, in such manner as it may deem fit, establish a Fund into which shall be paid-
 - (a) all money appropriated by Parliament for the purposes of the Fund, and
 - (b) all money donated or contributed to the Fund or accruing to the Fund from any source.
- (2) Any money of the Fund which is not required for immediate use may be invested with a financial institution "approved by the Government" and may be withdrawn when required.

- (3) Any unexpended balance of the Money of the Fund at the end of a financial year, shall be carried forward as credit to the Fund for the next financial year.
- (4) The administrative work, including the receipt of money appropriated by Parliament for , or donated for the purposes of, the Fund or accruing to the Fund from any source, and the making payments from the Fund in compliance with a recommendation in terms of this Act, shall be performed by officers in the Public Service designated by the Government.
- (5) The Government shall appoint an officer designated under subsection (5) as accounting officer in respect of the Fund.

21. Accounts and audit

- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such forms as may be prescribed by the Government in consultation with the Comptroller and Auditor-General of Bangladesh.
- (2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audits as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.
- (4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Government by the Commission and the Government shall cause the audit report to be laid, as soon as may be after it is received, before the Parliament.

CHAPTER -VII

MISCELLANEOUS

22. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution offences arising out of violations of human rights.

23. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Government, Commission, or any Member thereof or any person acting under the direction either of the Government, Commission, in respect of anything which is in good faith done or intended to be done

in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Government, Commission of any report, paper or proceedings.

24. Members and officers to be public servants

Every Member of the Commission, and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.

25. Power of Government to make rules

- (1) The Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) the salaries and allowances and other terms and conditions of service of the Members under section 7;
 - (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (1) of section 9;
 - (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 11;
 - (d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 21; and
 - (e) any other matter which has to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Parliament.

26. Power to remove difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.
- (2) Every order made under this section, as soon as may be after it is made, be laid before the Parliament.



APPENDIX II

Amendments suggested by the Legislative Advocacy and Participation of the Civil Society Project on the draft bill regarding the Human Rights Commission for Bangladesh (Prepared by the Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh)

The Bangladesh National Human Rights Commission Act, (Amendment) Bill, 1998

1. **Amendment of Preamble.** In the preamble of the said bill, for the words "for better protection of human rights", the words "*for the protection, promotion and creation of the conditions for the enjoyment of the human rights*" shall be *substituted*.¹
2. **Amendment of Section 2.-** In the said Bill, in section 2,-
 - (a) clause (c) of sub-section (1) for the words "means" and "the Constitution or embodied in the International Covenants and enforceable by courts in Bangladesh," the words "*includes*" and "*the constitution and embodied in the International Human Rights Instruments adopted by the General Assembly which Bangladesh has ratified or acceded to, or may do so*" shall be *substituted*.
 - (b) clause (d) of the sub-section (1) shall be *omitted*.
 - (c) in clause (e) of the sub-section (1), for the word "means", the word "*includes*" shall be substituted and the following words, "*(xiii) Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260A (III) of 9 December 1948)*" shall be *inserted*.
 - (d) clause (j) of the sub-section (1), shall be *omitted*.
3. **Amendment of section 3.-** In the said bill, in section 3-
 - (a) in sub-section (1), "*clause (d)*" and the words "*the Chief Justice of Bangladesh*" shall be *inserted*.²

¹ The preamble of the Act should reflect the constitutional commitment towards human rights and democracy. It may be mentioned that our Constitution contains the provision of human rights as a fundamental principle of state policy, therefore the aim and objectives of the commission should be interpreted, broadly, to protect, to promote and to create the conditions for the enjoyment of the human rights. Moreover, the necessity for establishment of national institutions for protection, promotion and creation of the conditions for the enjoyment of the human rights is being increasingly recognised by the world community by a number of international instruments. Therefore, the act should reflect the concern of the international community for the establishment of the national human rights commission.

(b) in sub-section (4), for the words "an Executive Director" and "as it may delegate to him", the words, "*a Secretary*" and "*as may be prescribed*" shall be *substituted*.

4. Amendment of section 4 .- In the said bill, in section 4,

(a) in sub-section (1), for the words "the Supreme Court", the following words, "*the Supreme Judicial Council as referred to in the first part of article 96(3) of the Constitution*" and "*the Supreme Judicial Council*" shall be *substituted respectively*.

(b) in clause (b) of sub-section (2), for the words "paid employment", the words "*gainful employment*" shall be *substituted*.

5. Insertion of new section.- In the said bill, after section 4, new section shall be *inserted*, namely: *5 Vacancies of the Office*

The office of a member shall become vacant:

(1) *upon the death of such member, or*

(2) *upon such member resigning such office by writing addressed to the President, or*

(3) *upon such member being removed from office on any ground and manner specified in section .. above, or*

(4) *On the expiration of his term of Office*

6. Amendment of section 8.-In the sub-section (3) of section 8, for the words "the Executive Director", the words "the Secretary" shall be *substituted*.

7. Amendment of section 9.-

(a) in sub-section (1), for the words "him" and "his," the words "*The Commission*" and "*its*" shall be *substituted respectively*.

(b) in sub-section (2), for the words, "determined after consultation with the Commission", the words "*determined by the Commission*" shall be *substituted*.

(c) in sub-section (3), for the words "him" and "his," the words "*it*" and "*it's*" shall be *substituted* respectively.

(d) sub-section (4), shall be *omitted*.

8. Amendment of section 10.- In the said bill, in section 10-

(a) in clause (b) of sub-section (1) for the words "to intervene", the words "*to appear*" shall be *substituted*.

(b) in clause (c) of sub-section (1), for the words "the control of the Government" and "protection", the words "*the control of the Government or approved by it*" and "*protection or welfare*" shall be *substituted*.

² It may be recommended that the Chief Justice of Bangladesh should be included in the appointing Committee to make it more representative. It may be pointed out that the President, should the need arise, may consult the above persons individually.

It may also be suggested that mechanism for a procedure for "open appointment" through "public hearing", as practised for appointments of all important officials and functionaries in USA or for the Human Rights Commission of South Africa may be considered.

It may be suggested that the Chairperson of the Commission should not necessarily be a retired judge of the Appellate Division but he may be a person from other discipline provided that he has proven track record of experience in the field of human rights and known for personal integrity and impartiality.

(c) clause (n) of sub section (1), shall be *omitted*.³

9. Amendment of section 12.- In the said bill, sub-section (1) of Section 12 "The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Government" shall be *substituted* by the following words, "*The Commission shall have its own personnel for the purpose of conducting any investigation pertaining to the inquiry.*"

10. Amendment of section 15.- In the said bill, section 15 shall be *omitted*.⁴

11. Amendment of section 17.-In the said bill, sub-section (2) of section 17 shall be *omitted*.⁵

12. Amendment of section 20.-In the said bill, in section 20,

(a) clause (b) of sub-section (1) for the words, "any source," the words "*any recognised source*" shall be *substituted*.⁶

(b) in sub-section (5), for the words "The Government", the words "*The Commission*" shall be *substituted*.⁷

13. Amendment of section 23. -In the said bill, in section 23, the words "under the authority of the government" shall be *omitted*.

14. Amendment of the section 25.-In the said bill, sub- section (1) of section 25, for the words "Government may", the words "*The Commission shall*" shall be *substituted*⁸ and the words "by notification" shall be *omitted*.



³It is recommended that this provision should be omitted, since reporting to the international bodies is the responsibility of the Government under international treaty obligation and the Commission is also required to submit its own report to the Parliament. So, there is no further necessity of contribution by the Commission to the reporting process under the treaty obligations of the Government.

⁴ Regarding the independence of the Commission, it may be argued that explicit provisions of this kind does not necessarily mean that it will guarantee impartiality in its functioning. Rather, the independent working of any institutional arrangement will be secured through self-sustaining and self-maximising process. Adequate provisions of independence in the internal mechanism will generate its own support for impartial working.

⁵ Since the jurisdiction of the High Court Division of the Supreme Court can be invoked only to resolve an existing dispute, the above provision may be contradictory to the Constitution. Moreover, such provision may give rise conflict of jurisdiction between the High Court Division and the Commission which is not desirable.

⁶ The expression "any source" should be omitted from the provision. There is no denying the fact that the financial independence is vital for the effective functioning of the Commission. The crucial test of the financial independence is, what is the source of finance. Undoubtedly, the fund must be secured from recognised and impartial source so that the credibility of the Commission may not be questioned. Therefore, in order to maintain the credibility and independence of the Commission, the above provision may be amended for the words "any recognised" or "other source".

⁷ It is recommended that vesting of the above function to the government may jeopardise the independence of the Commission and these functions should be performed by the person appointed by the Commission itself to avoid political influence in its functioning.

⁸Through the rule making power, the Government may interfere with the work of the commission. Therefore, this rule-making power should be exclusively vested in the Commission for maintaining its independent functioning and carrying out the provisions of this Act.

LEGISLATIVE ADVOCACY AND PARTICIPATION OF THE CIVIL SOCIETY PROJECT

Legislative Advocacy and Participation of the Civil Society (LAPCS) is a joint project of *Bangladesh Legal Aid and Services Trust (BLAST)*, *Ain O Shalish Kendra (ASK)* and *Madaripur Legal Aid Association (MLAA)*. It started its operation from May 15, 1997. The project is administered by BLAST.

Laws in Bangladesh do not very often reflect people's expectations and aspirations. One of the reasons may be that the opinion of the civil society is hardly reflected in the law making process. But the participation of the civil society in the law making process is an essential prerequisite of the democratic process. The rule of law and democratic participation in the decision making process are surely not confined to awareness of laws and rights alone, but presupposes active and meaningful involvement in the law making process itself.

The participation of the society in the law making process is an essential pre-requisite of the process of democratisation of the society. Such participation:

- reflects popular expectation;
- enhances acceptability of the law when it is enacted;
- facilitates awareness of and about law as well as rights and obligations enshrined in the laws; and
- strengthens and empowers civil society.

OBJECTS OF THE PROJECT

- To implement an advocacy and awareness programme focusing on the law making process;
- To scrutinise, garner support and undertake awareness campaign to reflect opinions of the society into the proposed bills before these are enacted into laws;
- To find out lacunae and demerits of existing laws, conduct study and research and formulate recommendations and suggestions for amendments of existing laws; and
- To advocate for enactment of new laws.

The Project engages itself in scrutiny of laws, arranges seminars and workshops and submits memorandum to the concerned authorities for legal reform. The Project welcomes suggestions concerning law reform from all quarters.

