

এই প্রকল্পের অন্যান্য প্রকাশনা

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আইন প্রণয়নে জনগণের অংশগ্রহণ

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Towards a Human Rights Commission for Bangladesh

LAPCS

I have a say
Everyone has it!

Legislative Advocacy and Participation of the Civil Society Project
Bangladesh Legal Aid and Services Trust

This booklet, prepared by the Research Lawyers of the Project, under the supervision of the Project Co-ordinator, is a part of a series of publications produced by the **Legislative Advocacy and Participation of the Civil Society Project (LAPCS)**.

LEGISLATIVE ADVOCACY AND PARTICIPATION OF THE CIVIL SOCIETY PROJECT (LAPCS)

A Project of:

*Bangladesh Legal Aid and Services Trust
Ain-O-Salish Kendra and
Madaripur Legal Aid Association*

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INTRODUCTION

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 issues in its broader perspective.

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 a national institution has been concretised by international declarations and subsequent establishment of such national institutions by many countries. This has been done by Acts of Parliament, amendments of the Constitutions, and executive orders with the aim of both protection and promotion of human rights. The establishment of a national human rights commission is a concrete example of a mechanism for promotion and protection 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.

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 consideration and resolutions of complaints submitted

by individuals and groups. It has also been stressed that this special national human rights machinery is not intended to replace government, judiciary and legislature, the United Nations or human rights non-governmental organisations; the role of national institutions should be seen as complementary to those of other agencies.

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 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 humane living conditions and multidimensional development 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 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 representatives of diverse social groups may be easily accessible to those whose voice is not likely to be heard.

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

The Commission may 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. The Commission may 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 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.

The Commission may 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 skills of their members and staff. 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.

Realisation of economic, social and cultural rights is essential for effective enjoyment of civil and political rights. Part II of our 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 may 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.

CONCLUSION

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.

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.



PROJECT ACTIVITIES

Following the announcement by the Government in 1997 that it was undertaking steps to establish a national human rights commission, we, at LAPCS and BLAST, initiated a process to facilitate as far as possible, enactment of an appropriate Act for the proposed Commission.

We felt that for the proposed Commission to be meaningful, independent and effective a number of guidelines and principles ought to be incorporated in the Act establishing the Commission. Towards this end, we initiated a number of activities which are summarised below.

CHARTER OF DEMANDS

We prepared a Charter of Demands for the proposed HRC in Bangladesh and organised a workshop on this Charter of Demands on 4th December, 1997. Mr. Abdul Matin Khashru, the Honourable Minister for Law, Justice and Parliamentary Affairs, was the Chief Guest while Mr. Justice Naimuddin Ahmed, Member of the Law Commission presided over the workshop. Dr. Kamal Hossain, Barrister Lutfur Rahman Shahjahan, human rights activist Sultana Kamal and journalist Md. Jahangir participated in the deliberations of the workshop.

The discussants dwelt on the structures of Human Rights Commissions of other countries and shared the experience of HRCs of the neighboring countries. They emphasised on national consensus on certain fundamental issues of Human Rights Commission including an independent machinery of its own. They focused on the formulation of underlying principles of a meaningful HRC for Bangladesh. They identified poverty as the main impediments to the implementation of the human rights and he emphasised that media has crucial role to play in this regard. They focused on plight of the vulnerable groups, especially women and children, and suggested that the proposed Commission should act as a safeguard for their rights.

The Honourable Law Minister suggested that the establishment of the proposed human rights commission

needs concerted efforts of all the segments of the society. Such commission may provide an institutional security to the common people by promoting and protecting human rights. The proposed Commission should conform with the international norms and standards developed over the years. According to him, the composition and function of the commission should be defined in such a way that it can act independently from the executive authority and to implement mandate of the Commission. A sense of urgency prevails among all to establish such a Commission but he also cautioned that such an institution should not be used as a weapon in the hands of the government to cover violations of human rights committed by it.

ROUND TABLE DISCUSSION

Round table discussions among the representatives of the different segments of the civil society, can play an important role in the legislative advocacy programme and to formulate a comprehensive Charter of Demands a round table discussion was held on 30th November, 1997 with the NGOs representatives. Barrister Salma Sobhan, Executive Director of Ain-O-Salish Kendra, among others, was present to exchange views on the Charter of Demands.

PUBLICATION

An occasional paper was subsequently published, containing analysis of our research on Human Rights Commission. A workshop was held on 2 July 1998 to disseminate our research. The research, published as **OCCASIONAL PAPER I**, was distributed amongst the members of the Parliament, Law Commission, Law Ministry, teachers of the university, NGO activists, policy makers and distinguished personalities.

Establishment of an independent human rights commission was emphasised for providing institutional security for the protection of human rights. The discussants observed that human rights violation is a grave concern for all the sections of society and traditional mechanism can hardly provide proper remedy to the victims. Considering the dimensions of the human rights violation, a national institution like human rights commission may play significant role in the

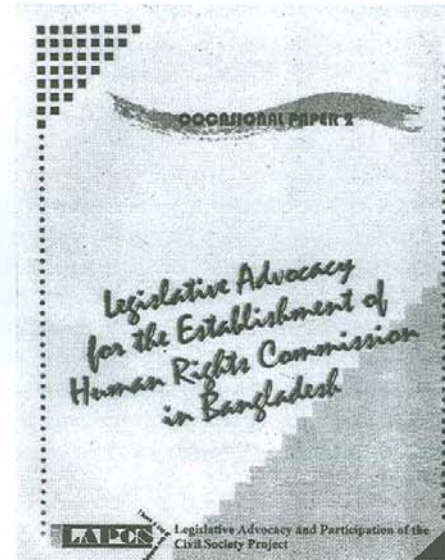
promotion and protection of human rights. The proposed human rights commission should be independent of the government control and in a position to assist all the persons in safeguarding and enforcing their human rights and upholding human dignity. The commission should have pluralist representation of all social groups. It should have independent power of investigation into human rights violation. To ensure independent working, the commission should be provided with adequate resources and independent budget.

Contents of the Publication: The Publication enumerating our research outcome on the Human Rights Commission for Bangladesh had the following sections:

1. Towards a Human Rights Commission for Bangladesh:

This write up explained the national and international legal basis, conceptual basis and utility of national human rights institutions for the promotion and protection of human rights. It focused on structural, organisational, functional issues of the HRC. It also dealt with the powers, staff and finance of the Commission;

2. Charter of Demands for the proposed Human Rights Commission of Bangladesh (see Appendix);
3. Draft Bill on the Human Rights Commission of Bangladesh prepared by the LAPCS Project;
4. Draft (First Draft) Bill on the Human Rights Commission prepared and circulated by the Ministry of Law, Justice and Parliamentary Affairs;



5. Amendments suggested by the LAPCS Project to the Bill on the Human Rights Commission prepared by the Ministry of Law, Justice and Parliamentary Affairs

WORKSHOPS OUTSIDE DHAKA

A total of five workshops were organised outside Dhaka. Initially, one workshop was held at the District Bar Association of Sylhet and the other at premises of Madaripur Legal Aid Association, Madaripur to disseminate the proposal about the HRC for Bangladesh on 9 March and respectively. Copies of Charter of Demands, government's bill on the HRC and amendments suggested to the government bill prepared by the Project were distributed among the guests and the participants. The participants of the workshops exhibited keen interest in the idea of the HRC and some of them actively participated and opined in favour of the establishment of the HRC.

On 25 January 1999 a workshop on Human Rights & Human Rights Commission for Bangladesh was held in the Khulna Bar Association Auditorium. Local journalists, lawyers, human rights activists, teachers, politicians and coordinator of LAPCS, BLAST Dr. Borhan Uddin Khan was present in the workshop, President of Khulna Branch of BLAST Advocate Manzurul Imam, Advocate Gazi Abdul Bari, Advocate S.M. Amzad Hossain, Advocate Kazi Abdus Salam, Advocate Abdul Malik and Dr. Borhan Uddin Khan participated in the discussion and enumerated their views about the proposed human rights commission. The discussants also said that human rights violation in a grave concern for all sections of society.

On 17 February 1999 a workshop was held in the Bogra District Parishad Auditorium. Prominent lawyers, doctors, local journalists, human rights activists and teachers took part in the discussion.

Majority of the participants suggested that the proposed human rights commission should be independent of the government control and be in a position to assist all to safeguard and enforce their human rights and uphold human dignity.

On 31 March 1999 a workshop on Human Rights and Proposed Human Rights Commission for Bangladesh was held in Jessore District Bar Association. Lawyers, journalists, doctors and teachers were present in the workshop. Discussants opined that the proposed human rights commission Bill must be modified for ensuring its implementation.

We undertook regular consultations to build up a communication network with the members of the House of Nation. We have sent letters to them describing our goals and recommendations about implementability of Human Rights Commission Bill, 1999.

It should be mentioned here that the first Bill on Human Rights Commission prepared by Institutional Development of Human Rights in Bangladesh (IDHRB) Project, Ministry of Law, Justice and Parliamentary Affairs was amended according to our proposals as raised in our Charter of Demands and in the Draft Bill prepared by the Project. The present Bill is a good one and it is our sole hope and aspiration that the Bill will be passed in its present form and be implemented.



The Bangladesh National Human Rights Commission Act, 1999

Act No ... of 1999

An Act to provide for the establishment of a National Human rights Commission for Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of the human rights and for matters connected therewith or incidental thereto.

Whereas it is expedient to establish a National Human Rights Commission of Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of the human rights, and

Whereas the Constitution of the People's Republic of Bangladesh enshrines human rights as one of the Fundamental Principle 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, promotion and creation of the conditions for the enjoyment of the human right should be evolved to implement the constitutional commitment, and

Whereas 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,

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 on 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, 1999.

- (2) 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) "Constitution" means the Constitution of the People's Republic of Bangladesh;
 - (d) "Human Rights" includes the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of the People's Republic of Bangladesh and such rights embodied in the International Human Rights Instruments adopted by the General Assembly of the United Nations which have been acceded to and ratified by the People's Republic of Bangladesh;
 - (e) "Member" means a Member of the Commission and includes the Chairperson;
 - (f) "Notification" means a notification published in the official Gazette;
 - (g) "Prescribed" means prescribed by rules made under this Act;
 - (h) "Public servant" shall have the meaning assigned to it in section 21 of the Penal Code;

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) Prime Minister
 - (b) Speaker of Parliament
 - (c) Chief Justice of Bangladesh
 - (d) Leader of the Opposition in the Parliament
- shall constitute a body to be known as the National Human Rights Commission for Bangladesh 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 and four members from among persons having knowledge of, or practical experience in, matters relating to human rights.

Provided that in making the selection 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 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 Judicial Council, consisting of the Chief Justice of Bangladesh and two next senior judges of 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 Judicial Council, reported that

the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

- (2) Notwithstanding any thing 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 by a competent; or
 - (b) engages during his term of office in any gainful 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
- is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.
- (3) the office of member shall be become vacant:
- (a) upon the death of such member; or
 - (b) upon such member resigning such office by writing addressed to the President; or
 - (c) upon such member being removed from Office on any ground and manner specified in sub-section (1) or (2) above
 - (d) on the expiration of his term of office.

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.
- (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 or until he attains the age of seventy years, whichever is earlier.

Provided that no member shall be eligible for reappointment.

(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 to 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 in 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 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 it in the discharge of its 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 by 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 it for the purpose of discharging its functions.

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 abatement thereof, or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) 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 any other institution under the control of the Government, where persons are detained or lodged for purposes of treatment, reformation, protection or welfare 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 organizations 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.

11. Powers relating to inquiries

- (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 witnesses 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 witness 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 purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

12. Action in aid of the Commission

All authorities, executive and judicial, in the Peoples Republic of Bangladesh shall act in aid of the Commission.

13. Investigation

- (1) The Commission shall have its own investigation agency for the purpose of conducting any investigation and may 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) shall 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.

14. 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.

15. 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 person; 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

16. 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 interest 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 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 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 non-disclosure is discovered, be reviewed and be 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 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 person except in the course of the performance of his functions as such a member of the Commission.

Chapter – V PROCEDURE

17. Inquiry into complaints

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

- (1) call for information or report from the Government or any other authority or organisation 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;
- (2) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. 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 Commission 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.

19. Annual and special reports of the Commission

- (1) The Commission shall submit an annual report to the President 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 President shall cause the annual and special reports of the Commission to be laid before the Parliament for discussion and consideration, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commissions 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

20. Grants by the Government

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

21. 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 from any source, subject to the satisfaction of the Commission.
- (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 this Act, shall be performed by officers in the Public Service designated by the Government.
 - (5) The Government shall appoint an office designated under subsection (5) as accounting officer in respect of the Fund.

22. Accounts and audit

- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form 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 audit 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

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 the Commission to make rules

- (1) The Commission may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generally 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 Commission 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 shall, as soon as may be after it is made, be laid before the Parliament.

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Appendix

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.