

BANGLADESH

Proposed standards for a national human rights commission

In recent months, the Government of Bangladesh has taken steps towards establishing a national human rights commission. Amnesty International welcomes this initiative, and is taking this opportunity to put forward a series of recommendations aimed at ensuring that the body will be fully independent, empowered and effective in the promotion and protection of human rights in Bangladesh and providing redress to victims. Amnesty International hopes that these will inform discussions and any future parliamentary debates on the establishment of such a body.

1. Background

The idea of a national human rights commission in Bangladesh has been around for several years. In April 1995, the Government of Bangladesh approved a project to assess the need for such a body and make recommendations on establishment. This project¹ was to start in July 1995, but it was reportedly delayed due to the political crisis in the country. It was revived in March 1996 when an agreement was signed between the government and the United Nations Development Program (UNDP). Under the agreement, the Ministry of Law, Justice and Parliamentary Affairs is to supervise, monitor and evaluate the IDHRB project which formally began in July 1996. The project is supported by the UNDP, which has been assisting the establishment of such national institutions in a number of countries in the region.

The main objective of the project was to prepare the grounds for the eventual formation of a viable institutional mechanism to promote and protect human rights.

“The project will seek to find out ways and means to build a mechanism for protecting and safeguarding human rights as guaranteed under the Constitution of Bangladesh at the grassroots level and to see the effective implementation of the existing legislation and enactments mentioned above [ie, legislation and ordinances such as the Dowry Provision Act of 1980, the Children Act of 1974, the Cruelty to Women Ordinance 1983 (Deterrent Punishment) and the Women and Children Oppression Act of 1955].”²

¹ It is entitled: *Action research study on the institutional development of human rights in Bangladesh -IDHRB*.

²*Inception report, ‘Action research study on the institutional development of human rights in Bangladesh under UNDP project No BGD/95/005.A/01/99’ (March 1996, Ministry of Law Justice and Parliamentary Affairs, Government of Bangladesh).*

A National Consultative Committee (NCC) comprising members from “government agencies, NGOs and eminent personalities” was set up to advise on the project. It began its meetings in November 1996. Both IDHRB and NCC are chaired by the Minister of Law, Justice and Parliamentary Affairs, Abdul Matin Khasru.

In September 1996, the Law Minister and UNDP representatives decided that an expert consultant should be invited to contribute to the project. Subsequently, Brian Burdekin, special adviser to the United Nations High Commissioner for Human Rights, visited Bangladesh in December 1996 and met with members of IDHRB and the National Consultative Committee. IDHRB also organized study tours visiting national human rights commissions in a number of Asian countries.

The IDHRB convened a symposium in Dhaka on 28 May 1997, and its *Study Report on the Human Rights Situation* to the symposium identified a number of areas which it said would “assist the [symposium] participants in their deliberations on the composition, powers and functions of the ‘National Human Rights Commission’”. These were:

“1. Demand for dowry: .. 2. Domestic violence by husband: .. 3. People do not have access to state owned health services: .. 4. Teasing of school girls: .. 5. Polygamy: .. 6. Discrimination against girls and women: .. 8. Human rights abuses by police: .. 9. Non-registration of marriage: .. 10. Other abuses: .. (theft, house burning, high interest on lending money).”

The report did not specify if these would be the only issues intended to be addressed by a future NHRC.

2. Amnesty International’s comments on the IDHRB report

The official status of the report is not clear, nor is the degree to which the issues it raises will form the basis of a draft NHRC bill. Amnesty International is concerned, however, that some of the assumptions in the IDHRB report are flawed and, if translated into legislation, could weaken any future NHRC.

The IDHRB report identifies human rights violations by police as issues to be addressed by an NHRC. While human rights violations by police are a cause of serious concern in Bangladesh, members of other security and law enforcement agencies including army personnel have at times been involved in acts of torture and extrajudicial executions and should be equally accountable before law. Amnesty International believes that a future NHRC should address as a matter of priority human rights violations by all state agents. The NHRC’s mandate should not be circumscribed to exclude investigations into violations by the armed forces as has been the case in other countries, such as India.

The IDHRB report has identified five bodies whom people usually approach to obtain redress for their grievances:

1. Village elders through village *Salish* [binding arbitration by the village elders];
2. Union Parishad [UP - local council] Chairman;
3. Court; 4. Local Member of Parliament; 5. Police

The report gives further details of its findings on people's attitudes towards these bodies:

“No money is required for *Salish* by village elders who are easily available for quick and effective dispensation of justice. UP Chairman is less expensive and justice by him is prompt and also effective. Justice through court is [very] costly, time consuming and not available at the door step. So, common people are reluctant to go to law courts for redressal of their grievances, unless they are forced to do [so]. Local MP is not easily available and very often he takes a partisan view on political consideration in resolving a dispute resulting in denial of proper justice. People are [very] reluctant to go to police for redress .. have no confidence in them because police, according to them are guided by monetary consideration and political pressure.”

The report fails to clarify the functions and duties of a future NHRC with regard to such institutions of quick justice. It appears to promote the role of *Salish* (village courts) and UP chairman in providing quick justice. Amnesty International is concerned that in the past, *Salish* arbitration has at times resulted in the imposition of cruel, inhuman or degrading punishments such as whipping and stoning to death.³ These punishments are not only themselves grave human rights violations which should be terminated - and not, in effect, institutionalised by the government. They are usually imposed by people open to bribery and influence through the local clergy or landlords. There is no provision in the Constitution of Bangladesh or the Code of Criminal Procedure (1898) to delegate judicial authority on criminal cases to local bodies with no appropriate legal background and training. The Government of Bangladesh has a duty to supervise such bodies and to ensure that they do not take the law into their own hands.

Amnesty International fears that if proper safeguards are not put in place to prevent and deter the imposition of cruel, inhuman or degrading punishments by the local bodies they might themselves become instruments of human rights violations.

3. Areas not clarified

³ See: *Bangladesh: Taking the law in their own hands; the village Salish* (AI Index: ASA 13/12/93)

Amnesty International believes that clarity of the issues and transparency of the procedures is key to the development of a national human rights institution. It urges the government of Bangladesh to provide information on the following areas.

- C The terms of reference of the Consultative Committee which is set up in preparation for the establishment of the commission.
- C The contribution, so far, of Bangladesh legal bodies including the Bar Association and the Bar Council to this Consultative Committee..
- C The names of NGOs represented at various discussion fora on the proposed NHRC.
- C The legislation that it is proposed the NHRC study in order to make recommendations for review and reform. Whether this will include the Special Powers Act, the Army Act, the Prison Act, the Penal Code and Criminal Procedure Code.
- C The extent to which the NHRC will be involved in facilitating the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments to which Bangladesh is or may become a party, such as the International Covenant on Civil and Political Rights (ICCPR).
- C Whether the NHRC's definition of groups at risk will include minorities and indigenous people.
- C Whether the NHRC will have the remit to study and make recommendations on human rights violations arising from the imposition, by the village courts, of Islamic punishments such as stoning to death.

4. Amnesty International's general recommendations for the establishment of a national human rights commission in Bangladesh

Amnesty International representatives attended a number of meetings in Dhaka in December 1996 in which the NHRC was discussed. They noted at that time a strong emphasis by the participants on the need to research the human rights situation at the local level, to identify persons or groups, including women and children, particularly at risk of human rights violations, as well as the need for transparency of the investigation and monitoring process. The government stated during these meetings that it would be working with non-governmental human rights organizations (NGOs) at home and abroad to ensure that the NHRC would carry out an effective program of monitoring and defending human rights.

In May 1997, Amnesty International proposed to the Government of Bangladesh a set of standards for the establishment of national human rights institutions (see Appendix). It recommended that these standards, in addition to the Principles adopted by the United Nations (UN) as an annex to General Assembly resolution 48/134 of 20 December 1993 (the “Paris Principles”), should inform discussions and decisions throughout the process of establishing the proposed NHRC.

5. The Paris Principles

The Paris Principles constitute, in Amnesty International’s view, the basic minimum guidelines for the establishment of a national human rights commission and identify the following responsibilities for such institutions:

- C to submit recommendations, proposals and reports on any matter relating to human rights to the government, parliament and any other competent body;
- C to promote conformity of national law and practice with international human rights standards;
- C to encourage ratification and implementation of international human rights standards;
- C to contribute to the reporting procedure under international instruments;
- C to assist in formulating and executing human rights teaching and research programs and to increase public awareness of human rights through information and education;
- C to cooperate with the UN, regional institutions and national institutions of other countries.

6. The need for an independent, impartial, adequately resourced and accessible judiciary

Amnesty International believes that while the creation of a national human rights commission can be an important mechanism for strengthening 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, adequately resourced and accessible judiciary. Amnesty International wishes to recommend to the Government of Bangladesh that:

- C the creation of a national human rights commission should go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection;

- C these initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

7. Avoiding the shortcomings of other NHRCs

In view of the close interest the government of Bangladesh has shown in the functioning of other national human rights commissions in the region including in Nepal, Sri Lanka and India, Amnesty International urges the government of Bangladesh to assess the mandate and the working methods of these commissions carefully; to ensure that such an assessment is based on impartial and independent studies of these commissions; and to ensure that the proposed NHRC of Bangladesh does not allow similar shortcomings to limit its work in promoting and protecting human rights.⁴

The NHRC in India has been active in monitoring human rights violations, in raising concern on a broad range of human rights issues, in furthering human rights education, and in addressing a number of key concerns. However, the Protection of Human Rights Act, 1993, under which the NHRC was set up in India, limits its mandate. For example, the act specifies that the NHRC is not empowered to investigate reports of human rights violations by the armed forces. When such violations occur, the act specifies that the commission can only seek reports from the concerned authorities and make recommendations on the basis of such reports.⁵

Amnesty International believes that human rights commissions can play a key role in promoting and protecting human rights in areas where armed forces are deployed, and particularly notes that the Chairman of the State Human Rights Commission in Assam has recommended that the commission be allowed to investigate human rights violations by armed and paramilitary forces deployed there.

Appendix

⁴ Please consult the following Amnesty International publications: *Sri Lanka: The human rights commission bill* (AI Index ASA 37/25/95); and *Nepal: Appeal to government and parliament to strengthen provisions in a bill to establish human rights commission* (AI Index: ASA 31/03/95).

⁵ See also: *The Human Rights Commission Bill: Amnesty International's observations*, August 1993 (AI Index: ASA 20/33/93).

Amnesty International would like to recommend the following standards, as essential elements for consideration in the establishment and functioning of national human rights commissions.⁶

Mandate and composition of the Commission

- ! The Commission should be independent from government and its Charter should reflect this. The Commission should be established by law or, preferably, by Constitutional amendment.
- ! The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- ! The method of selection of its members should be fair and transparent and should afford all necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and should be able to serve the Commission effectively. The terms of their appointment, tenure and removal should be clearly specified, laid down in the Charter and should afford the strongest possible guarantees of competence, impartiality and independence.
- ! The Commission should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations (UN) Declaration and Convention against Torture, as well as the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions.
- ! The Commission should be mandated to review the effectiveness of existing legislation and or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary. The Commission should also examine bills and proposals for new legislation put forward by the government or parliament to verify its conformity with international human

⁶ See: *Amnesty International: Proposed Standards for National Human Rights Commissions* (AI Index: IOR 40/01/93).

rights standards and to ensure the state's compliance with the above international human rights instruments.

- ! The scope of the Commission's concerns should be principally and clearly defined in terms of state obligations under international human rights law. Its time and resources should not be deflected by the examination of cases which should be dealt with under the ordinary criminal justice system or by other state institutions.
- ! The Commission should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations and set clear priorities for its work in accordance with the seriousness of the violations reported to it. Priority should be given to alleged violations of the right to life and security of the person, and the right not to be tortured (rights from which no derogation can be made by any government under any circumstances); as well as to the right not to be arbitrarily arrested or detained.
- ! The Commission should be directed to establish effective cooperation with non-governmental organizations with first-hand information about reports of human rights violations.
- ! The Commission should also have the powers to conduct wide-ranging national inquiries on human rights concerns of fundamental importance to the nation.
- ! It is recommended that initially the Commission conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory, including the failure of existing institutions and legal mechanisms to provide adequate human rights protection. Recommendations for legal and institutional reform to halt violations may be proposed on the basis of the findings of the study.
- ! The Commission should be authorized to investigate the conduct of the security forces throughout the national territory. To do this effectively, the Commission should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess.

Facilities and methodology of the Commission

- ! The Commission should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.
- ! The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations. The Commission should have immediate and

unhindered access to all places where detained persons are held or are suspected to be held. Officials should be obliged to cooperate with the Commission's investigations.

- ! The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.
- ! The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.
- ! The Commission should have full and effective powers to protect witnesses, complainants, or others providing evidence to the Commission, including bringing about the suspension or transfer of officials allegedly involved - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants. Victims or relatives should have access to all relevant information and documents relating to the investigation and be granted all necessary facilities to present evidence. The Commission should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the Commission.
- ! The Commission should work in an open way with its hearings generally open to the public. Private hearings should be an exceptional measure and be resorted to only in specific pre-established circumstances. The Commission's methodology and the results of its investigations, together with official reports, including *post mortem* and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensible form.
- ! The Commission should also prepare regular reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of all its other activities for the promotion and protection of human rights. The Commission's reports should be presented periodically to representative national and regional bodies.
- ! The result of the Commission's investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice. The government should ensure that any prosecutions for human rights-related offences are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in the human rights violations.

- ! The Commission should have powers to ensure that superior officers are held accountable for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.
- ! The Commission should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt compensation is paid and other measures of redress and rehabilitation are taken in all cases it has taken up in which members of the security forces are found to have perpetrated human rights violations.
- ! The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the Commission. The government's response should be made public.