



BANGLADESH: The Government must amend the National Human Rights Commission Act 2009, with a view to broadening its mandate to protect and promote human rights

(Bangkok/Kathmandu, 25 March 2022) – The Asian NGO Network on National Human Rights Institutions (ANNI) urges the Government of Bangladesh to take immediate measures to amend the National Human Rights Commission Act 2009 (NHRC Act 2009) in compliance with relevant international human rights standards and Paris Principles. The National Human Rights Commission of Bangladesh (NHRCB) was established under the NHRC Act 2009. However, the rules for the formation of the Commission under the NHRC Act 2009, are not satisfactory for the constitution of an independent NHRI. As a result, the current government has taken the opportunity to appoint the NHRCB commissioners who are loyal to the regime regardless of their qualification.

LACK OF TRANSPARENCY IN APPOINTMENTS

One of the biggest shortcomings of the NHRC Act 2009 is the lack of transparency and independence in the **selection and appointment process** under Section 7 of the NHRC Act 2009. The NHRC is, by law, considered a “statutory independent body”; however, the President has appointed the NHRC Chairperson based on the recommendation of a Selection Committee that consists of seven members including the Speaker of the Parliament, the Law Minister, the Home Minister, the Chairman of the Law Commission, the Cabinet Secretary and two members of Parliament- one from the Treasury and the other from the Opposition. All these persons are, for the majority, government officers. There is no space for members from civil society or human rights groups to be considered as part of the selection committee under this law.

Unfortunately, because of the way the law has been written and the manner in which its members are appointed under it, the Commission was destined to become a dysfunctional institution controlled by the government, and it has not been able to ensure any remedy for the victims of human rights violations. No step has been taken by the State to revise the shortcomings of the NHRC Act 2009 to date. For example, currently as per the law, the NHRCB has to make recommendations to the government to initiate legal proceedings against the perpetrator after an inquiry into a complaint. However, the NHRCB has not been given the power to take direct legal action if it finds the complaint is true, after concluding the inquiry.

Since the establishment of the Commission, the government continued to appoint the commissioners ignoring the calls of civil society organisations for a transparent and participatory selection process. In September 2019, the government appointed the current Commission members without either the participation from any independent civil society or a merit-based approach, which is against the Paris Principles. It is also against the [Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation’s \(GANRHI SCA\) Recommendations](#) to the NHRCB when it was accredited with B status in 2015. The lack of transparency in the selection and appointment process weakens the independence and effectiveness of the Commission severely.

HUMAN RIGHTS REPRESSED AND THE INACTION OF NHRCB

Bangladesh’s human rights situation is in dire need of attention. The government has taken repressive measures against human rights defenders, dissenting voices and activists. Victims of human rights

abuses and their families face persecution. Despite widespread incidents of human rights violations, including extrajudicial killings, enforced disappearances, torture, and violations of freedoms of expression, assembly and of association, the NHRCB has opted to remain silent.

The freedom of expression of citizens is curtailed by preventing the free flow of information and through the implementation of repressive laws, including the Special Powers Act 1974, Information and Communication Technology Act 2006, Anti-Terrorism Act 2009 and Digital Security Act 2018. The Commission has remained inactive and silent during the government crackdowns on rights defenders who have spoken out against human rights abuses, thus failing to carry out their functions under the NHRC Act 2009 (Section 12).

There are some other discrepancies between some sections of the NHRC Act 2009 and their actual implementation by the Commission. Section 12 of the Act, grants the Commission a comprehensive mandate to protect and promote rights in the country through functions that includes: conducting investigations or inquiry by receiving petitions or exercising suo moto power; inspection of prisons, correctional centres, and other places of confinement; making recommendations, reviewing laws, and examining new legislation to assess their compliance with international standards and norms. According to Section 17(2) of the NHRC Act, the Commission has the right to investigate any matter at any time when the government fails to respond to its request for a report.

However, the Commission continues to disregard exercising its existing mandate to the fullest extent. The Commission has repeatedly claimed since its establishment that due to Section 18,¹ the Commission is unable to take a stand against human rights violations by state actors, particularly security forces and law enforcement agencies. The Commission has time and again failed to interpret their legal mandate in a broader and holistic way and demonstrate any significant actions on the allegations of serious human rights violation by the security forces.

The Commission can only ask for reports from the government on the allegation of human rights violations by the disciplined force or any of its members. However, the Act of 2009 does not stipulate what the Commission can/should do if these forces do not submit such reports to it. It just mentions that if it deems necessary, the Commission may make recommendations to the government for actions to be taken into the matter (Section 18(3) (b)).

The Commission also faces a scarcity of resources. The small allocation from the State and the restrictions on direct funding from donors as per the NHRC Act 2009 are a hindrance. Section 25 of the NHRC Act requires the government to allocate a specific amount of money for the NHRC each fiscal year. However, the budget of the Commission is not provided through a separate budget line item under the National Budget, which is a serious flaw and in direct defiance of GANHRI SCA's General Observation 1.10, which specifies that funding should be set out in a separate line item in the national budget.

The UN Special Procedures and Treaty Bodies, national and international organisations, Global Alliance on National Human Rights Institutions (GANHRI), Universal Periodic Review have expressed their concerns about the lack of independence of the NHRCB and provided recommendations at various forums to broaden the mandate of the Commission and ensure transparency and participation in the selection and appointment process by amending the Act, but to no avail.

In 2021, the Commission itself submitted a proposal to amend the Act to the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) to clear the discrepancies. It is high-time the Government

¹ Section 18: *'Notwithstanding any other provision of this Act, the Commission suo-moto or on the basis of any application may call for a report from the Government on the allegation of violation of human rights by the disciplined force or any of its members.'* National Human Rights Commission Act, 2009

facilitates wider consultation with relevant stakeholders and brings the required changes in the NHRC Act 2009.

In such a context, it is urgently needed to review and broaden the mandate of the Commission to investigate such violations and make it clear. Otherwise, critical human rights issues of the country will continue to be unaddressed by the Commission and eventually the necessity of such an institution will be questioned.

Recommendations

In light of the current situation, efforts need to be made to restore democracy in the country and reform the NHRCB. ANNI urges the government of Bangladesh to:

- take immediate measures to amend the National Human Rights Commission Act of 2009, in consultation with civil society organisations and relevant stakeholders, with a view to broadening its mandate so that the NHRC can directly investigate all alleged human rights violations, including those committed by state security forces and law enforcement agencies and take legal action;
- take immediate steps to establish democracy through free, fair and participatory elections to ensure the formation of an accountable government that can ensure transparency and the independent functioning of its institution, including the NHRCB;
- ensure that the Commission is able to exercise its existing mandate to the fullest extent and has access to all places of detention where persons are deprived of their liberty in the absence of a National Preventive Mechanism;
- establish a clear, transparent, participatory and merit-based selection and appointment process, in compliance with the Paris Principles by ensuring representation of civil society organisations in the process;
- broaden the mandate of the Commission and clearly establish the Commission's mandate to investigate all alleged human rights violations, including those committed by State military and security actors and take legal action;
- specify the actions that the Commission can take if they do not receive adequate responses or their recommendations are not implemented properly by relevant stakeholders within the stipulated time frame.

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List of signatories:

1. Ain o Salish Kendra (ASK) - Bangladesh;
2. Asian Forum for Human Rights and Development (FORUM-ASIA);
3. Bytes for All - Pakistan;
4. Covenants Watch - Taiwan;
5. Informal Sector Service Center (INSEC) - Nepal;
6. Joint Action for National Human Rights Institution and Optional Protocols in Japan - Japan;
7. Korean House for International Solidarity (KHIS) - Korea;
8. Law and Society Trust - Sri Lanka;
9. Odhikar - Bangladesh;

10. People's Empowerment Foundation - Thailand;
11. Progressive Voice - Myanmar;
12. Suara Rakyat Malaysia (SUARAM) - Malaysia;
13. Taiwan Association for Human Rights - Taiwan;
14. The All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) - India.

About the Asian NGOs Network on National Human Rights Institutions (ANNI):

The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006. It is a network of Asian non-governmental organisations and human rights defenders working on issues related to National Human Rights Institutions (NHRIs). ANNI has members that are national organisations from all over Asia. ANNI currently has 33 member organisations from 21 countries or territories. The work of ANNI members focuses on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI). The Asian Forum for Human Rights and Development (FORUM-ASIA) has served as the Secretariat of ANNI since its establishment in 2006. <http://l.forum-asia.org/ANNI>

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