

## **A Human Rights Commission must have effective Powers**

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To the surprise of human rights defenders an Ordinance on an Human Rights Commission was promulgated on 23 December 2007. Although the need for such an institution had been pressed by human rights defenders for over 15 years, and Bangladesh had made international commitments to this effect, elected governments had failed to enact the legislation. The Government may be commended as this was not a commitment of the Caretaker Government. The Ordinance would have benefited from consultations with the human rights constituency and it is a pity that the bureaucrats' committee tasked with this did not in fact hold any consultations in preparing the draft. While the announcement of the Government's intention may help to prove Bangladesh' credentials in the Human Rights Council in 2009, the design of the Human Rights Commission must show serious capacity to promote, protect human rights, prevent violations and take action against the violators.

Bangladesh has never hesitated to signal a formal commitment to human rights. Chapter III of the Constitution expressly guarantees a citizen's fundamental rights and civil liberties. Between 1998 and 2000, Bangladesh ratified three of the basic human rights treaties: the International Covenants for Civil and Political Rights (ICCPR), and for Economic, Social and Cultural Rights (ICESCR), as well as the Convention on Torture (CAT). It had also ratified the Conventions on Elimination of Racial Discrimination (CERD), Elimination of All Forms of Discrimination against Women (CEDAW) and on Child Rights (CRC). There were a score of other international obligations Bangladesh had inherited as a successor state to Pakistan.

Ratification imposes specific obligations on a state to incorporate human rights into national laws, to amend legislation, to promote, protect and fulfill human rights and prevent violations of human rights through its policies and practices. It also agreed to submit periodical reports on measures taken in fulfillment of its commitments, and to set up machineries to monitor and check violations.

Most states find escape clauses to dilute their commitments. Bangladesh is no exception. To start off it tempered its obligations by placing reservations on specific articles, particularly those that were instrumental in promoting equality, non-discrimination, etc. For example, Article 2 of CEDAW, which is fundamental to elimination of discrimination remains under reservation, notwithstanding promises by successive governments to consider its withdrawal. Few steps have been taken to incorporate human rights standards into domestic laws. This may be attributed in part to a lack of enlightenment and weakness of the bureaucratic machinery. As a result domestic jurisdiction has not been sensitive to human rights. A more serious lapse has been the State's failure to submit periodical reports on measures taken to implement human rights. The initial report to the UN Committee on Torture was due in 1999 and to the Committees on ICESCR and ICCPR in 2000 and 2001. It may have embarrassed the Ministries concerned to deny the violations of the right to life (Article 6 of the ICCPR

and Articles 32, 33 of the Constitution of Bangladesh) by state agencies (including all law enforcement and security agencies), but reviews by an international body may have injected an element of accountability into methods of law enforcement. Bangladesh has reported faithfully to two committees, CEDAW and CRC, but governments have defaulted on taking note of the Committees' Concluding Observations and implementing their recommendations, so that we could have benefited from policy initiatives.

It was left to human rights defenders to inform the UN Committees on the situation of human rights by submitting shadow reports, to investigate violations, and to campaign for an end to impunity for lawless law enforcement by state agencies, by challenging laws and institutions that violate human rights standards. Often human rights defenders have been accused of "spoiling the image of Bangladesh", of "conspiracy" and even sedition. Their reports, however, have led the UN Special Rapporteurs to initiate enquiries with the government.

National human rights defenders have campaigned for an Human Rights Commission with independent powers of investigating abuses, taking deterrent or punitive action against violators and providing protection for victims. The Paris Principles endorsed by the General Assembly in 1993 set guidelines for the establishment of effective national machineries that emphasized the importance of their having a broad constitutional mandate, of having financial and administrative independence, with adequate resources to perform their functions. Human rights defenders within the country too pressed for an institution that would recommend amendments to bring laws in conformity with human rights standards, publish reports on the situation of human rights, monitor, investigate and document violations, take deterrent action against violators and create awareness of rights. Implementing this mandate would depend upon the institution's financial and administrative independence, a neutral and credible selection process, accountability and transparency.

Past attempts at setting an human rights commission had not, however, been very encouraging. In 1996, under a UNDP funded human rights project, an office was set up under the Ministry of Law, and discussions held to identify common forms of violations; consultations were held with leading human rights defenders to formulate a draft legislaion. But when it came to the final stage the Human Rights Bill was never submitted to Parliament, neither by the Awami League government between 1996 and 2001 nor by the BNP government after 2001. The elected governments failed to realize the importance of such an institution for a democratic system. Nor were the bureaucrats tasked with drafting the legislation keen to expose themselves to a human rights scrutiny.

The 2007 Ordinance itself may not inspire confidence in the efficacy, independence or transparency of the institution. The reasons are to be found in formation of the selection committee, the size of the Commission, in restraints on its investigative powers, and limited mandate to try perpetrators. First, the selection committee includes a judge, but the majority is constituted by bureaucrats from the Ministry of Home and Law, the Attorney General's office, the Auditor General's office; it includes no representation from political parties in Parliament, professional organisations such as the Bar

Associations, or from recognized human rights organizations. Second, the Commission is to comprise of only three members, which will preclude a fair representation of the most discriminated groups, such as the socially excluded, the ethnic and religious minorities and women. The Commission is mandated to review conformity of legislation with international standards, undertake education on human rights, visit jails or other custodial institutions and to investigate human rights abuses. Its activities include *suo motu* investigation into complaints of violation, or abetment of violation by a public servant, or failure to prevent such a violation. After investigation the Commission can only refer such cases to relevant authorities, which implies that it will not have independent power of action. If the Commission can only recommend legal proceedings to the government, it will not have the power to start independent proceedings against cases of communal violence as the Indian Human Rights Commission was able to do following the attacks on Muslims in Gujarat.

The Ordinance prescribes the settling of disputes through mediation or conciliation or by reference to relevant authorities. But violations of the right to life, of freedom from torture, freedom of expression, or by the corporate sector in failing to comply with social and economic rights of workers cannot be resolved through mediation. Particularly when law enforcement agencies or security forces acquire impunity. In 2003, Parliament even went so far as to grant indemnity for the “clean heart deaths”. Even “cross fire deaths” have evaded due process. How will the Commission deal with such situations? Section 11(2)(ga) of the Ordinance excludes consideration by the Commission of “persons involved in activities of the republic and any person employed in a statutory body”. The Commission has no power over military personnel and can only submit a complaint “under the relevant law under which the relevant battalion has been established”. In the past we have seen no transparency in proceedings which has led to doubts of an internal disciplinary process.

The requirement for submission of an annual report to the President ignores the need for transparency. Not only should it submit its report to Parliament (following elections within the year), but it must be made public through the media in the interest of transparency. In fact as far as possible, the Commission should make its reports public so that there is no doubt that the State will not tolerate violations. If enquiry reports on the death of Cholith Richil had been published, if deterrent action had been taken against those who tortured journalists Tahsin Khalil or Akash, it would have shown that the organization itself was strong on observing human rights. The Human Rights Commission must be able to demonstrate zero tolerance for abuses by state agencies, and to ensure that the State will not default in its responsibility of reining in violators.

The rules for the Commission which have yet to be formulated, need to underwrite financial viability, an independent staffing structure, etc. Concerns of the human rights community need to be addressed, by looking afresh at the Ordinance and making necessary amendments. To be effective, the Human Rights Commission has to provide a powerful check against egregious violations such as extra judicial deaths or custodial torture by state agencies; to raise alarms in cases of communal violence or land grabbing under the Vested Property Act. The Commission must be able to hold perpetrators to

account; to provide victim and witness protection particularly in the case of violence against women. It must be able to make its reports public, so that the public is aware of how rights can be secured.. Freedom of information and expression are vital to a human rights culture, and the Commission must not only take forward the proposed Bill on the Right to Information but must call a halt to the encroachments on civil liberties and on a free press.