

**CAPACITY ASSESSMENT (MID-TERM) OF  
THE NATIONAL HUMAN RIGHTS COMMISSION,  
BANGLADESH**

**REPORT**

**Chris Sidoti**

**29 May 2019**

## **Executive summary**

This is the report of a review of the capacity of the National Human Rights Commission (NHRC) of Bangladesh. It focuses on the progress of implementation of the recommendations in two NHRC capacity assessment reports, the Capacity Assessment (CA) conducted in 2013-14 and the Capacity Assessment Review (CAR) of 2017.

The NHRC still has work to do in implementing the recommendations of the CA and the CAR. The 18 recommendations of the CAR, as the more recent set of recommendations, continue to respond to the NHRC's needs in April 2019 for institutionalisation and strengthening. This report does not propose new recommendations, therefore. Instead, it discusses the allocation of priorities for implementation among these CAR recommendations. It identifies 25 very specific priorities for action over the coming 18 months, to the end of 2020. The identified priorities for action are

### ***Priorities relating to the NHRC's work***

1. Advocate more strongly for law reform, including a sexual harassment law, an anti-discrimination law and a minority rights law, and continue discussions on the establishment of a children's rights commission
2. Approve and implement the guidelines on human rights defenders
3. Undertake one thematic systemic inquiry
4. Build internal research and legal analysis capacity
5. Increase and institutionalise NHRC field work, especially a program for regularly monitoring prisons and other places of confinement

### ***Priorities relating to the NHRC's regulatory framework***

6. Revise the NHRC Act 2009 and have the revisions enacted so that the NHRC can seek A status accreditation
7. Finalise and implement the recruitment rules
8. Finalise, approve and implement SOPs, giving priority to a single SOP dealing comprehensively, in an integrated way, with complaints, investigations, monitoring, inspections and reporting, and a SOP on governance, and upgrade them to rules

### ***Priorities relating to the NHRC's personnel***

9. Induct new Members following appointments, possibly with a High Level Dialogue organised by the Asia Pacific Forum through the Human Rights Programme (HRP)
10. Recruit, induct and train new staff
11. Ensure that staff located in regional offices receive orientation on the political, multi-cultural and multi-ethnic context of the particular region
12. Develop an NHRC wide training strategy and plan and individual career development plans for each officer or employee, in conjunction with annual Performance Appraisal
13. Give priority to training in casework, including investigations and effective complaint resolution
14. Ensure that staff who participate in training provide a written report and lead an in-house seminar for other staff, that all staff have access to the report and the seminar and that the expertise acquired through training is incorporated into the work of the NHRC

15. Regularise staff salaries, allowances, terms and conditions at least on the basis of equality with comparable public service provisions
16. Staff and resource existing regional offices adequately and then open new regional offices but only as the provision of adequate staff and resources becomes possible

*Priorities relating to the NHRC's processes*

17. Review the number and mandates of the thematic committees to ensure that they can all be fully operational, if necessary merging some of them
18. Support thematic committees so that they all become operational, meeting regularly, with a work program that is implemented
19. Develop and implement detailed NHRC-wide and section specific annual activity plans
20. Digitalise the NHRC's complaint handling system, including by completing the development and operationalisation of the NHRC complaint management database
21. Introduce a complainant satisfaction survey at the conclusion of the handling of each complaint to enable the NHRC, first, to understand complainants' experience of the complaints system and, second, on the basis of those experiences, to develop the system further to be more effective
22. Revive and fully implement the system of senior focal points in all government ministries and agencies
23. Develop and implement a general system of advocacy in support of NHRC recommendations and for follow up, monitoring and reporting on progress in their implementation
24. Further NHRC's international engagement through interaction with all treaty monitoring bodies and other international mechanisms, focal points within ministries and agencies, and follow up, monitoring and reporting on implementation of recommendations from international mechanisms, supported by the establishment of an international engagement team within the NHRC
25. Strengthen the NHRC's collaboration human rights defenders and with Civil Society Organisations (CSOs) generally through Memorandums of Understanding with them, joint advocacy, investigations, monitoring and inspections, and international engagement, in addition to operationalising all thematic committees

The HRP should consider what support it can give the NHRC during these coming 18 months, until the HRC finishes, to undertake these priority actions. The NHRC may also consider seeking further support from the APF where appropriate.

## Introduction

This is the report of a review of the capacity of the National Human Rights Commission (NHRC) of Bangladesh. It focuses on the progress of implementation of the recommendations in two NHRC capacity assessment reports, the Capacity Assessment (CA) conducted in 2013-14 and the Capacity Assessment Review (CAR) of 2017. The CA and CAR were sponsored by the Asia Pacific Forum of National Human Rights Institutions (APF), the United Nations Development Programme (UNDP) Bangkok Regional Hub (BRH) and the Office of the High Commissioner for Human Rights (OHCHR). APF and UNDP BRH undertook the CAR.

I undertook this review on behalf of the UNDP Bangladesh Human Rights Programme (HRP). As APF Senior Consultant I led the teams on both the CA in 2013-14 and the CAR in 2017. The Terms of Reference (TOR) for this review are set out in Appendix 1. They have three components:

1. A review of the draft amendment of the NHRC Act 2009 and its alignment with the 'Paris Principles' which set out six main criteria that NHRIs require to meet:
  - a. Mandate and competence: a broad mandate, based on universal human rights norms and standards;
  - b. Autonomy from Government & independence guaranteed by statute or Constitution;
  - c. Pluralism;
  - d. Adequate resources; and
  - e. Adequate powers of investigation.
2. Conduct a follow-up of the two-capacity assessments of the Commission (concluded in 2014 and 2017) with the objective of identifying realistic, feasible and time bound follow up actions which can support the Commission to continue implementing recommendations of the two assessments.
3. Conduct a workshop to highlight best practices on monitoring, investigation and reporting of human rights violations to officers of the inquiries and investigation unit of the Commission.

For this review I spent a week in Dhaka, from 28 April to 2 May 2019. The program of the visit is Appendix 2.

For the first component in the TOR, on revision of the NHRC Act, I participated in two workshops, the first with senior NHRC and HRP staff and the second with the Chairman, the Full Time Member and one honorary Member of the NHRC. Those workshops resulted in a table of proposed amendments, at Appendix 4. The proposed amendments are agreed by the three NHRC Members who participated in the workshop or, where there was no agreement, they are proposed as policy options for discussion and determination by the Commission as a whole.

For the third component of the TOR, training on human rights investigations, I led a seminar for NHRC staff and representatives of Civil Society Organisations (CSOs) on investigations of human rights complaints. The workshop included NHRC complaints staff and one CSO representative for the morning session. That session focused on a complaint investigation

case study presented by one staff member, with intensive discussion among all the participants of the process and methodology used by the NHRC in the case study. The afternoon session of the workshop included a larger number of CSO representatives. Though it too began with a case study, it developed into a more general discussion of investigations methodology.

This report deals with the second component of the TOR, progress in implementation of the recommendations of the CA and the CAR and recommendation of priorities for the coming 18 to 24 months. For this purpose I met with the NHRC's leadership and staff, HRP staff and representatives of civil society organisations (CSOs) to discuss the NHRC's capacity development needs and priorities.

At the end of the visit I provided a briefing for the NHRC's external stakeholders, including representatives of Bangladesh Government ministries, UN agencies and diplomatic missions that are actual or potential donors to the HRP or the NHRC. I also provided a debriefing for NHRC leaders and staff.

## **Context**

The context of the review has three important elements:

1. The terms of the current Members of the NHRC expire in August 2019 or, in the case of the Chairman, at the end of June 2019 when he reaches the age of 70 years. The current Members will want to ensure, before their terms end, that their significant achievements are cemented as their legacy in the NHRC. As the next section of this report indicates, they have achieved a great deal but there are important recommendations of the CA and the CAR whose implementation remains incomplete.
2. The HRP is in its final 18 months, finishing at the end of 2020. It has major priorities for the remainder of its time so that its objectives can be attained. It is identifying the support it can provide to the NHRC to complete implementation of the CA and CAR recommendations.
3. Bangladesh conducted national elections in December 2018 and the Government was returned to office. There are opportunities for significant advances for the institutional development of the NHRC, both legislatively and organisationally, now that the elections have been completed and the Government has a clear period in office ahead of it.

This review is important and timely, therefore. There are both imperatives and opportunities that may make it possible to strengthen the NHRC further during the remainder of 2019 and 2020.

## **Achievements and challenges**

In describing to me the NHRC's work in implementing the CA and CAR recommendations, the NHRC Members and staff identified a number of significant achievements over the past two years. The document provided to me listed:

- relocation of the office in Dhaka to a more central and suitable location in the capital

- three regional offices established and three more regional offices to be established shortly
- prompt complaint disposal process, with 735 complaints received in 2018 and 559 complaints disposed of
- now only two officers on deputation in the NHRC, to be replaced gradually by permanent employees
- advocacy to implement human rights related to the Sustainable Development Goals (SDGs), including one international conference organised and another to be held very soon with the presence of the Prime Minister of Bangladesh
- the total budget doubled
- recruitment underway for 40 new staff positions
- inclusion of people from vulnerable communities in the NHRC staff: one person with visual impairment, three transgender persons, two persons using wheelchairs and one Dalit person
- NHRC guidelines for law enforcement agencies during the anti-drug drive
- prompt and effective action after incidents of gross human rights violation, for example, Jahalam, an innocent man wrongly imprisoned, was released from jail due to the NHRC's strong advocacy
- regular inspection of jails, correction centres and hospitals
- inquiries into human rights violation cases, for example the attack on the Santal community and the murder of Romel Chakma
- advocacy with the Government to accept most of the recommendations to Bangladesh in the 3<sup>rd</sup> cycle of the UN Human Rights Council's Universal Periodic Review (UPR)
- a national action plan on persons with disabilities, developed and sent to the Ministry for adoption and implementation
- draft anti-discrimination law developed and sent to the Ministry, with continuing advocacy on its enactment
- drafting a sexual harassment prevention law underway
- panel lawyers appointed in 64 districts
- the Inter-generation Link Centre established in the NHRC office
- the Sheikh Russel Art Gallery established to promote the talents of children with autism
- twelve NHRC thematic committees formed, including on women's rights and empowerment; child rights; economic, social and cultural rights; civil and political rights, and freedom of expression
- continuing advocacy to end crimes against humanity against Rohingya people in Myanmar, with the NHRC collecting testimonies of Rohingya women facing sexual violence in Myanmar and establishing a regional office in Cox's Bazar.

A number of other significant achievements were raised in meetings with me, including:

- the increased profile and presence of the NHRC in Bangladesh, especially through the public media
- enactment of a child marriage law following NHRC submission of and advocacy for a draft law
- advocacy for a children's commission
- successful advocacy on legal gender recognition for third gender people
- strong international engagement, including preparation of parallel reports to the UPR and treaty monitoring bodies, participation in meetings and conferences of the Global

Alliance of National Human Rights Institutions (GANHRI) and the APF and contribution to the drafting of new international declarations and statements

- swift response to the new areas of business and human rights, of human rights, the environment and climate change, and of the rights of elderly persons.

Clearly the NHRC also has challenges, areas where its work has not met expectations. Some of the challenges raised with me by NHRC staff and CSOs related directly to its human rights work, including

- insufficient attention to and priority for civil and political rights issues, especially extra-judicial executions, abductions and disappearances, torture, restrictions on freedom of speech, shrinking civil society space, risks to and reprisals against human rights defenders, taking the lands of minority people and communities, and issues related to indigenous peoples
- extending from transgender work to work on human rights issues affecting lesbians and gay men
- dealing with security issues and handling complaints against and inquiries into the conduct of the disciplined services – the various arms of the military and the police
- dealing with human rights violations when a matter relates to a case pending before a court
- influencing the parliament
- establishing continuity of contact and responsiveness towards NHRC recommendations among ministries
- monitoring and reporting on implementation of NHRC recommendations by ministries and other government agencies.

Other identified challenges related to internal organisational performance, including

- utilising more effectively the expertise, experience and skills of all NHRC Members in the NHRC's work, especially in relation to governance and research
- fully implementing the Standard Operating Procedures (SOPs) on governance and decision making in the NHRC, including an annual cycle of regular, scheduled meetings of the full Commission with clear agendas and prior circulation of business papers
- adopting and fully implementing SOPs in core functional areas of NHRC work, especially complaint handling, investigations, monitoring and inspections
- internalising in the NHRC as a whole the benefits of staff training and of exposure to the international human rights system
- extending to all staff standard public service terms and conditions
- setting priorities, especially in deciding which issues and cases not to pursue, when the NHRC is always under pressure to 'do something'
- doing more and better research internally – quantitative and qualitative problems
- ensuring that statutory obligations are met on time, such as submission of the annual report
- providing proper delegations within the NHRC through formal instruments of delegation approved by the Commission under the NHRC Act.

## Progress with implementation

Many of the challenges and deficiencies raised in meetings and discussions have in fact already been the subject of comment and recommendation in the CA report or the CAR report. In April 2014 the report of the CA said

The NHRC's first three years were years of building. They were dynamic, highly effective years but they are now at an end. The NHRC has moved into its second stage, a time of strengthening. In this stage the functions and work of the NHRC need to be strengthened and institutionalised. The capacity development (CD) context for the NHRC at this point is the challenge to strengthen and institutionalise.<sup>1</sup>

In February 2017 the CAR report said

The challenge for the next three years is to continue, and indeed increase, the process of institutionalisation and strengthening while maintaining that high profile and responsiveness to human rights situations as they arise.<sup>2</sup>

It also said that it was

time to move from an individual model of operation, focusing on the Chairman, to a more formal institutional model of operation<sup>3</sup>

and that

The new Chairman and Commissioners are committed to continuing the work of strengthening and institutionalising.<sup>4</sup>

Nonetheless in one meeting during this review one participant said that the NHRC was 'not yet institutionally developed'. This reflects the fact that, although the NHRC has made good progress with the implementation of recommendations in the CA report and the CAR report, much remains to be done. Most others participating in this review echoed these comments.

The CAR report recommended six priority areas for action between 2017 and 2020.

- improving the statutory and regulatory framework
- managing the Commission's operations
- strengthening communications and profile
- strengthening NHRC functions
- enhancing government and parliamentary relations
- increasing resources.

---

<sup>1</sup> Capacity Assessment of the National Human Rights Commission of Bangladesh Report 2 April 2014 p 5.

<sup>2</sup> Review of implementation of strategies and actions in the 2014 report of the Capacity Assessment of the National Human Rights Commission of Bangladesh 12 February 2017 p 3.

<sup>3</sup> Review of implementation of strategies and actions in the 2014 report of the Capacity Assessment of the National Human Rights Commission of Bangladesh 12 February 2017 p 4.

<sup>4</sup> Review of implementation of strategies and actions in the 2014 report of the Capacity Assessment of the National Human Rights Commission of Bangladesh 12 February 2017 p 5.



In the last two years the NHRC has maintained its high media profile and it has succeeded in doubling its budget and obtaining approval to add an additional 40 staff positions to the existing 44 positions. These results indicate achievement in relation to the third and sixth of these priority areas. However, substantial work remains to be done in relation to the other four. Regrettably there has been no improvement in the NHRC’s statutory and regulatory framework. The NHRC’s management remains ad hoc and largely focused on the person of the Chairman. The NHRC’s relations with government ministries and parliament continue to be weak. In these four areas in particular, further progress in implementation is essential if the objective of ‘a more formal institutional mode of operation’ is to be achieved through ‘the process of institutionalisation and strengthening’.

The CA made 24 recommendations and the CAR made 18 recommendations. Of these 42 recommendations in total, it appears from information collected during this review that to date

- 3 recommendations have been implemented fully
- 23 recommendations have been implemented in part or are continuing challenges
- 16 recommendations have not been implemented at all.

**Table 1: summary of implementation status**

	<b>implemented fully</b>	<b>implemented partly or continuing</b>	<b>not implemented at all</b>	<b>TOTAL</b>
<b>CA</b>	2	13	9	24
<b>CAR</b>	1	10	7	18
<b>TOTAL</b>	3	23	16	42

The NHRC still has work to do, therefore, in implementing past recommendations. The 18 recommendations of the CAR, as the more recent set of recommendations, continue to respond to the NHRC’s needs today for institutionalisation and strengthening. Those recommendations are set out again in Appendix 3. In undertaking the CAR in 2017, the team brought into the CAR report those CA recommendations that had continuing relevance. The NHRC now should continue to focus on the CAR recommendations and need not pursue the CA recommendations further.

This report discusses allocation of priorities for implementation among these CAR recommendations more than providing a new set of recommendations for the NHRC. It identifies 25 very specific priorities for action over the coming 18 months, to the end of 2020.

**Priorities for NHRC action until end 2020**

***The NHRC’s work***

The NHRC’s vision is ‘[a] human rights culture throughout Bangladesh’.<sup>5</sup> Its mission is ‘[t]o ensure the rule of law, social justice, freedom and human dignity through promoting and protecting human rights’.<sup>6</sup> All else – its work, its regulatory framework, its staff and its

---

<sup>5</sup> Strategic Plan 2016-20 p 6.  
<sup>6</sup> Strategic Plan 2016-20 p 6.

processes – are directed towards achieving this vision and implementing this mission. All else is the means to the end of ‘a human rights culture throughout Bangladesh’, not an end in itself. The NHRC does this work through its various functional areas: advocacy, investigations, monitoring and international engagement.

The NHRC undertakes **human right advocacy**. It advocates for reform of laws, policies and practices to ensure greater compliance with Bangladesh’s human rights obligations. It has successfully advocated for better child marriage and for legal gender recognition. It has proposed an anti-discrimination law, a minority rights law, a children’s commission and a national action plan on the rights of people with disability. It is preparing a law on sexual harassment. The NHRC should increase its efforts in these advocacy areas. It should also encourage further discussions on the establishment of a children’s rights commission, considering whether it is better to have a separate commission for children’s rights or a specialist, well resourced unit within the NHRC itself to handle issues relating to children’s rights. It should also complete, adopt and implement its **guidelines in human rights defenders** and advocate for their acceptance and implementation by all social actors, including the Government, the police and the military.

The NHRC should finally move to conduct one **thematic national inquiry** into a systemic pattern of human rights violations. It has considered this for many years and has had a training program for Commission Members and staff but it has not yet decided to undertake a national inquiry. The time is right to do this. The NHRC should quickly canvass possible themes for investigation, decide the theme and move to the conduct of an inquiry. These kinds of NHTI projects generally take 18 months and so one in Bangladesh could be completed before the end of the HRP, enabling HRP support for the conduct of the inquiry.

The quantity and quality of **research** undertaken by MNHRC Members and staff themselves is a continuing concern internally and externally. The CA and CAR both drew attention to this. However, the NHRC continues to have a low capacity for research. Increasing research capacity continues to be a high priority. The coming significant increase in the number of NHRC staff provides an opportunity to address this issue at last. The recruitment of good researchers, both newly qualified researchers at entry level and experienced researchers at more senior levels, should be a priority in the recruitment program.

The final area of work to be prioritised should be the NHRC’s **fieldwork, especially inspecting and monitoring** prisons and other places of detention or confinement. This too has been highlighted in the CA and CAR. There has been increased inspection and monitoring but it is still to be developed into a formal program of activity within a broader fieldwork program. It needs to be regularised and scheduled on a year to year basis and not remain ad hoc, as it has been to date.

#### **Priorities relating to the NHRC’s work**

1. Advocate more strongly for law reform, including a sexual harassment law, an anti-discrimination law and a minority rights law, and continue discussions on the establishment of a children’s rights commission
2. Approve and implement the guidelines on human rights defenders
3. Undertake one thematic systemic inquiry
4. Build internal research and legal analysis capacity

- |   |
|---|
| 5. Increase and institutionalise NHRC field work, especially a program for regularly monitoring prisons and other places of confinement |
|---|

### *The NHRC's regulatory framework*

The NHRC's regulatory framework includes its law and the rules and regulations under the law and its internal standard operating procedures. These issues have been raised in both the CA and CAR as requiring attention. They are now critical to the strengthening and effectiveness of the NHRC.

The NHRC will not acquire international accreditation at A status unless and until its law, the **NHRC Act**, changes. The GANHRI Sub-Committee on Accreditation (SCA) has considered NHRC accreditation applications twice and on both occasions has pointed to deficiencies in the law that make it impossible for the NHRC to be accredited with A status. The NHRC will not receive that full accreditation without law change. I have worked with the NHRC during this assignment to prepare a table of amendments to the NHRC Act that enable the law to comply fully with the Paris Principles. The table is in Appendix 4.

The NHRC has been attempting for many years to have new **recruitment rules** adopted. I was told that this process is now at the penultimate stage, awaiting final approval from a government committee before being submitted for the President's signature. The whole process has been a nightmare for the NHRC and demonstrates an urgent need for the NHRC to be able to make its own rules under the Act without governmental intervention, political or bureaucratic. One of the proposed amendments to the Act is to enable this to occur by removing the requirement for presidential approval of the NHRC's rules.

The NHRC will need an active and determined advocacy strategy to secure passage of the legislative changes necessary for its effectiveness. Once it has agreed on the amendments it wants and needs, it must persuade the Government to endorse those changes and then to give priority to amending the Act in its legislative program. Its closest partners – CSOs, UN agencies and international diplomatic missions and donors – should be mobilised in support of the legislative revision. These amendments reflect one of the recommendations to Bangladesh in the UPR and so they should be strongly supported by the international community.

Part of the NHRC's regulatory framework is fully within its control and yet it has not been completed. The CA and the CAR both referred to the NHRC's need for proper **SOPs**. Several have been drafted over the years, with the support of the UNDP program, but only one, that on governance, has been adopted and its implementation is partial at best. Commission Members and staff have stated repeatedly again that the NHRC's practices are ad hoc, unplanned and unstrategic, often inconsistent and as a result generally ineffective or at least not as effective as they could and should be. The finalisation, adoption and implementation of SOPs are now urgent. An SOP on complaint handling, investigations, monitoring and inspecting places of confinement is especially urgent.

### **Priorities relating to the NHRC's regulatory framework**

6. Revise the NHRC Act 2009 and have the revisions enacted so that the NHRC can seek A status accreditation
7. Finalise and implement the recruitment rules
8. Finalise, approve and implement SOPs, giving priority to a single SOP dealing comprehensively, in an integrated way, with complaints, investigations, monitoring, inspections and reporting, and a SOP on governance, and upgrade them to rules

### ***The NHRC's personnel***

The NHRC is about to encounter major demands relating to the **selection and induction of new personnel**. It has eight vacancies among its current positions. The vacancies have been advertised and over 2000 applications received. Another 44 positions have been approved and funded and are now to be recruited. The NHRC will again receive thousands of applications. All these applications have to be assessed and applicants shortlisted and interviewed and selections made. Then 52 new staff will have to be inducted – that means, briefing, training and close supervision during the initial period of employment.

In addition the terms of the Chairman and the other Members of the Commission will shortly expire. A number of new Members may be appointed to the Commission. It is possible that all the appointees could be new to the NHRC. The NHRC will need to prepare for the appointment of new Members by developing briefing materials and a program for their induction. It may be possible to invite the APF to arrange and conduct a High Level Dialogue for them shortly after their appointments.<sup>7</sup>

These demands should not be under-estimated. The NHRC will be placed under great pressure while new personnel are added to its existing team. I know that Members and staff look forward to having more people to be able to do more work and to lessen the workload of the existing personnel. However, the demands of recruitment and induction are so great that the existing personnel's workload will increase and the pressure on them will be greater before the positive effects of additional personnel are felt.

In addition, making the most of existing personnel remains a challenge for the NHRC. The CA and the CAR both identified the need for proper planning and delivery of **training and for career development** more generally for staff. They recommended an NHRC wide planning and development strategy and plan and individual training and development plans for each staff member, prepared as part of the performance appraisal process. These recommendations were accepted by the NHRC but have not yet been implemented. They remain relevant, indeed even more relevant than before.

The area where training is most urgently required is in relation to casework, including investigations and complaint resolution. The NHRC staff at present undertake on the ground investigations infrequently, generally where a case has attracted widespread media attention.

---

<sup>7</sup> APF High Level Dialogues generally occur over two days and enable those newly appointed to an NHRI to exchange expertise and experience with present or former senior members of other NHRIs in the Asia Pacific region. See <https://m.youtube.com/watch?v=0NQTgBJRWpQ&t=11s>.

They seem to be doing the job well in many cases but there has been no systematic training in investigations and other casework processes. These kinds of investigations are essential, basic NHRI work. There is also need for training in follow up so that, after the investigations, cases are able to be resolved satisfactorily. There is general community expectation that the NHRC's casework will be done professionally and effectively.

Staff reported that those who are given training opportunities, especially international training opportunities, struggle to incorporate what they learn into their work and to share the learning with other members of the staff. They are expected to lead a staff seminar to report back on the training but rarely have an opportunity to do so. They are also expected to prepare a written report on it but again rarely do so and, when a report is prepared, it is not used generally without the NHRC. The NHRC and staff would benefit greatly from much better follow up of training opportunities. The NHRC should ensure that staff who receive this training make a written report and lead a seminar as required, that all other staff can have access to the report and the seminar, and that staff identify opportunities to make use of their additional expertise from the training in their work for the NHRC.

The NHRC will not achieve the level of performance expected of it unless staff expertise is maximised and the potential of each individual staff member is fully realised.

I was told of widespread concerns about staff turnover rates as a result of NHRC staff having poorer **terms and conditions of employment** compared with other civil servants. I am not in a position to confirm whether these concerns are justified. However, I note that the NHRC does not have a pension or retirement scheme for its staff and that staff are especially concerned about this aspect of their terms and conditions. These issues may be resolved by the approval of the NHRC's proposed recruitment rules. The NHRC needs to ensure that, if its staff are civil servants, they enjoy salaries, terms and conditions as least equal to those in comparable positions elsewhere in the civil service.

Finally the staffing, and resourcing generally, of **regional offices** was raised with me. In a country with Bangladesh's population, level of poverty and shortage of affordable rapid transport, the NHRC's head office is effectively inaccessible to large numbers of people. If the people cannot go to the NHRC, the NHRC must go to them. This has been a driving commitment and a key strategy of the NHRC for many years. It is a good commitment and a necessary strategy. The NHRC has already established three regional offices and has announced the pending establishment of two more this year. Others will follow.

However, the establishment of a physical office has little impact on the NHRC's accessibility unless the office is adequately staffed and resourced. That has not happened in relation to the three regional offices already established. They have one or two staff only and those staff are often sent to the regional office from head office for a short period of time. The current head of the office in Cox's Bazar is alone there and he is concurrently head of the regional office in Rangamati. None of the regional offices has an official vehicle and yet the work of the Cox's Bazar office is principally concerned with Rohingya refugees from Myanmar in camps about an hour's drive from Cox's Bazar town. The Rangamati office seeks to service the Chittagong Hill Tracts where people are widely scattered, many in rugged country, and public transport is slow and unreliable, where it exists. I was told that staff in the regional offices are generally transferred from Dhaka on short placements and often lack understanding of the political, multi-cultural and multi-ethnic context of the particular region.

The NHRC's credibility is at risk if it opens an office and then cannot provide the services it should provide to the local people. It would be better not to open the office at all than to raise and not meet people's reasonable expectations. Offices should only be opened when they can be properly staffed and resourced. That means an adequate number of staff who are permanently appointed to the office or appointed for at least three years. It also means adequate logistical support and equipment, including a motor vehicle, mobile telephones, computers and internet access in the office. Rather than opening more offices the NHRC's priority should be building the resources of existing offices to an adequate level. This point was also made in the CAR report.

#### **Priorities relating to the NHRC's personnel**

9. Induct new Members following appointments, possibly with a High Level Dialogue organised by the APF through the HRP
10. Recruit, induct and train new staff
11. Ensure that staff located in regional offices receive orientation on the political, multi-cultural and multi-ethnic context of the particular region
12. Develop an NHRC wide training strategy and plan and individual career development plans for each officer or employee, in conjunction with annual Performance Appraisal
13. Give priority to training in casework, including investigations and effective complaint resolution
14. Ensure that staff who participate in training provide a written report and lead an in-house seminar for other staff, that all staff have access to the report and the seminar and that the expertise acquired through training is incorporated into the work of the NHRC
15. Regularise staff salaries, allowances, terms and conditions at least on the basis of equality with comparable public service provisions
16. Staff and resource existing regional offices adequately and then open new regional offices but only as the provision of adequate staff and resources becomes possible

#### ***The NHRC's processes***

I referred to the need for further development of the NHRC's processes in the context of the regulatory framework. The NHRC needs SOPs to govern its work. It also needs to consolidate the processes initiatives it has begun but not yet brought to completion.

The pre-eminent example of this commencement without completion is the operations of the thematic committees. The NHRC has established 12 **thematic committees**, directed towards areas of human rights concern. Each committee is chaired by one of the NHRC Members and has its members drawn not only from the NHRC itself but also from CSOs and government ministries. The committees are very good means to increase collaboration with CSOs and draw them into the NHRC's work. They also strengthen links between the NHRC and government ministries and enable the NHRC to draw on the knowledge and expertise of ministries.

Some of the thematic committees are working well. They are meeting monthly, as envisaged when they were established, and have developed their own workplans for their operations. Other committees meet very rarely or not at all. Their members expressed frustration they the

contributions they expected to make when the committees were established have not been possible. The NHRC needs to regularise the operations of the thematic committees, ensuring each meets regularly and has developed and adopted a workplan for its operations over the coming 18 months. It should also empower the committees to function more effectively and engage with systemic advocacy, including by conducting and publishing research and studies on thematic human rights issues.

The Commission may need to re-consider the number of thematic committees to take account of the resourcing it can provide to them. It may need to merge some of the existing committees to make the number more operationally manageable. At the very least, it should not establish any new committee until the existing committees are adequately resourced and until the necessary resources are available to support the work of the new committee. As a guide to the thematic committees that should be given priority, the HRP has indicated that it will focus its support on the committees on

- women rights
- Dalit, Hijras and other excluded minorities
- business and human rights and corporate social responsibility
- persons with disability and autism
- children's rights
- trafficking, and migration.

More generally, the NHRC should ensure that it has a well developed **annual workplans** both at the NHRC-wide level and at the level of each section or regional office. The NHRC has done well in developing its strategic plan but that plan needs to be supplemented by detailed workplans at section level. The workplans should identify the projects each section will undertake, along with timetables for implementation and performance indicators for and evaluation. The workplans should incorporate some flexibility to enable the staff to respond to new issues and cases that will arise during the course of the year but they should ensure that all sections are very clear about the specific projects they will undertake during the period, the tasks expected of them and the measures of success by which their performance will be assessed. The absence of detailed workplans contributes to a sense of directionless in the NHRC and builds frustration among staff that they jump on an ad hoc basis from activity to activity without any planned strategic approach.

In the area of casework, along with the SIOPs and training already discussed, the NHRC needs a proper functioning **digitalised complaint management system**. Some work has already been done towards this. A system, it seems, has been designed but has not yet been put into operation. Many NHRIs already have functional complaint management system and so the NHRC could draw on these before completing the development of an appropriate one of its own.

The NHRC needs urgently to strengthen **follow up on its recommendations**, including both advocacy for full implementation and monitoring and evaluation. Before the CAR the NHRC has introduced a system of NHRC **focal points** at senior levels within all government ministries and agencies. This system did not reach full functionality but, where it was implemented, it proved effective in ensuring close liaison between the NHRC and the particular ministry or agency. The NHRC had a ready reference point with which to deal in seeking responses to requests for information and in urging implementation of recommendations. Even where implemented, the system has been breaking down due to the

transfer or retirement of persons occupying the senior focal point positions without them being replacement.

The focal point system was effective where implemented. It now needs to be revived and efforts made to have focal points appointed where none presently exists and to ensure that all ministries and agencies replace their focal points promptly when those in the position are transferred or retire.

The **follow-up to NHRC recommendations** also requires more general activity and advocacy on the NHRC's part. The NHRC needs to advocate strongly for the implementation of recommendations, going where required to the most senior levels in government to do that. It should ask those to whom recommendations are made to report at regular intervals on progress of implementation. The NHRC itself should collect data on implementation so that it can monitor and report, at least annually, on progress in implementation.

The NHRC's **international engagement** is one of its core functions. It has been performed well on many occasions, including in relation to Bangladesh's participation in the UPR and its reporting to treaty monitoring bodies. It should continue this engagement and extend it to international advocacy for improvement in Bangladesh's human rights performance and to interaction with all treaty monitoring bodies to which Bangladesh reports. This will involve both greater expertise within the NHTRC, including the formation of a specialist international section, and the extension of other NHRC functions, such as follow up on recommendations and monitoring and reporting, to include its international work. In particular it should give priority to monitoring Bangladesh's implementation of the recommendations of the UPR and the treaty monitoring bodies and reporting annually on progress with implementation. It can employ the same strategies for this as for its national work, including senior focal points in ministries and a database for monitoring and reporting on implementation of recommendations from the UPR and treaty monitoring bodies.

The final priority for the next 18 months lies in strengthening the NHRC's **collaboration with CSOs**. This is being addressed in part through the operationalising of all the thematic committees but broader CSO engagement is also required. The CSOs should be a means by which the NHRC can extend its work. CSOs will add to the NHRC's own expertise through their long experience in promoting and protecting human rights in Bangladesh. They will also contribute to the NHRC's work, for example, through participating jointly, where appropriate, in its investigations and inspections. To facilitate this collaboration the NHRC should provide joint training opportunities for both its own staff and CSO staff.

#### **Priorities relating to the NHRC's processes**

17. Review the number and mandates of the thematic committees to ensure that they can all be fully operational, if necessary merging some of them
18. Support thematic committees so that they all become operational, meeting regularly, with a work program that is implemented
19. Develop and implement detailed NHRC-wide and section specific annual activity plans
20. Digitalise the NHRC's complaint handling system, including by completing the development and operationalisation of the NHRC complaint management database



21. Introduce a complainant satisfaction survey at the conclusion of the handling of each complaint to enable the NHRC, first, to understand complainants' experience of the complaints system and, second, on the basis of those experiences, to develop the system further to be more effective
22. Revive and fully implement the system of senior focal points in all government ministries and agencies
23. Develop and implement a general system of advocacy in support of its recommendations and for follow up, monitoring and reporting on progress in their implementation
24. Further NHRC's international engagement through interaction with all treaty monitoring bodies and other international mechanisms, focal points within ministries and agencies, and follow up, monitoring and reporting on implementation of recommendations from international mechanisms, supported by the establishment of an international engagement team within the NHRC
25. Strengthen the NHRC's collaboration with human rights defenders and with CSOs generally through Memorandums of Understanding with them, joint advocacy, investigations, monitoring and inspections, and international engagement, in addition to operationalising all thematic committees

## Appendix 1 Terms of Reference

### Terms of Reference (ToR) for Individual Consultants



<b>POST TITLE:</b>	<b>International Consultant</b>
	<b>Capacity Assessment (mid-term) of the National Human Rights Commission, Bangladesh</b>
<b>DURATION:</b>	<b>7 working days</b>
<b>LOCATION:</b>	<b>Dhaka, Bangladesh</b>

#### 1. TERMS OF REFERENCE

---

##### (a) Project Title: Human Rights Programme

##### (b) Background:

The Human Rights Programme (HRP) April 2016 - December 2020, is a new initiative undertaken by UNDP, Bangladesh supported by a consortium of donors. The Human Rights Programme is designed to contribute to build the capacity of existing human rights architecture in Bangladesh. This Programme supports State institutions, with a special focus on the National Human Rights Commission (NHRC), as well as key civil society interventions to improve human rights coalitions across the country. The Programme has a particular focus on working with vulnerable and marginalised groups, including women and girls, children and young people, ethnic and religious minorities, people with disabilities, Dalit and other minorities.

HRP is designed based on the situation analysis and the lessons learned from its predecessor project titled Bangladesh National Human Rights Commission Capacity Development Project (BNHRC-CDP) was a five-year project jointly implemented by the National Human Rights Commission (NHRC) of Bangladesh and the United Nations Development Programme (UNDP) in Bangladesh. HRP includes 5 outputs:

1. Strengthened capacity of the National Human Rights Commission to deliver on its mandate
2. Enhanced capacity of civil society and community-based organisations to engage in human rights advocacy and awareness raising
3. Enhanced capacity of law enforcement agencies, in particular police, on human rights issues
4. Strengthened capacity of national stakeholders to better protect and promote women's rights
5. Strengthened capacity of national stakeholders to better protect and promote the rights of ethnic minorities.

Output 1 of HRP is dedicated to build capacity of National Human Rights Commission, Bangladesh which was reconstituted in 2010 by the enactment of the National Human Rights Commission Act (NHRC) 2009 aiming to promote and protect human rights and provides in Bangladesh. As per Section 12 of the Act, key functions of the NHRC is to raise awareness and to

provide human rights education, training, human rights research, policy advocacy, monitoring, inquire *Suo-moto* or on complaints of violation of human rights.

National Human Rights Commission, Bangladesh was accredited by the Sub-Committee of Accreditation of Global Alliance of the National Human Rights Institutions with a 'B' status in May 2013 and again in March 2015. This indicates that it is largely, but not fully, in compliance with the Principles relating to the status and functioning of national institutions for the promotion and protection of human rights. The Commission to date has undergone 2 assessments, one in 2014 and another in 2017. These assessments were conducted by the Asia Pacific Forum of National Human Rights Institutions (APF), the United Nations Development Programme (UNDP) Asia Pacific Regional Centre (APRC) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) facilitated by the BNHRC-CDP Project. The capacity assessment recommended 4 strategies as follows:

1. Develop the legal and procedural framework, both external and internal, to support the NHRC's effective operation;
2. Maximise and utilise the expertise, experience and skills of each member of the Commission and the staff;
3. Extend the NHRC's work to reflect fully its statutory responsibilities, within the framework of the Strategic Plan and annual work plans;
4. Increase the financial and human resources available to the NHRC.

In 2017 a capacity assessment was done for the second time which has made 18 recommendations based on the strategies made in 2014. The CA review team identified six priority areas for action over the next three years which includes the following:

1. improving the statutory and regulatory framework
2. managing the Commission's operations
3. strengthening communications and profile
4. strengthening NHRC functions
5. enhancing government and parliamentary relations
6. increasing resources.

In the premise, HRP seeks to conduct a follow-up to the Capacity Assessment of the Commission with the objective of supporting the Commission to further strengthen its capacity and catalyse priority areas and strategies identified in 2014 and 2017 assessments.

### **(c) The scope and objective of the assignment**

The assignment includes;

- ✓ A review of the draft amendment of the NHRC Act 2009 and its alignment with the 'Paris Principles' which set out six main criteria that NHRIs require to meet:
  - Mandate and competence: a broad mandate, based on universal human rights norms and standards;
  - Autonomy from Government & independence guaranteed by statute or Constitution;
  - Pluralism;
  - Adequate resources; and
  - Adequate powers of investigation.
- ✓ Conduct a follow-up of the two-capacity assessment of the Commission (concluded in 2014 and 2017 – mentioned above) with the objective of identifying realistic, feasible and time bound follow up actions which can support the Commission to continue implementing recommendations of the two assessments.

- ✓ Conduct a workshop to high light best practices on monitoring, investigation and reporting of human rights violations to officers of the inquires and investigation unit of the Commission.

**(d) Supervision and Performance Evaluation:**

The International Consultant will be closely working with the Chief Technical Advisor of the Human Rights Programme (HRP) of UNDP, Bangladesh. HRP will also provide necessary logistic support if required. HRP official will also provide all available materials and necessary information and will facilitate the meetings, as needed.

**(e) Timeframe and deadlines and Duty station:**

The assignment will be for 7 working days over the period of one week.

**(f) Travel & DSA:**

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class he/she should do so using their own resources. In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit Human Rights Programme (HRP), UNDP Bangladesh and Individual Consultant, prior to travel and will be reimbursed.

**Deliverables linked with payment:**

<b>Deliverables</b>	<b>Days required</b>	<b>Payment Schedule</b>
Follow-up assessment of the Capacity Assessment of the National Human Rights Commission, Bangladesh that was done in 2017 & 2014.	<b>1 working day</b>	<b>Final Payment</b>
Review of the National Human Rights Commission, Act 2009 (NHRC Act): gap analysis between the ‘Paris Principles’ & make rrecommendations for alignment of the NHRC Act 2009 with the ‘Paris Principles’.	<b>1 working day</b>	
Capacity building training for the staff of the National Human Rights Commission, Bangladesh on monitoring, investigation and reporting on human rights best practices.	<b>1 working day</b>	
Meeting with the stakeholders on discussion of the capacity of the National Human Rights Commission, Bangladesh & review of the NHRC Act 2009	<b>2 working days</b>	
Final Report	<b>2 days (home-based)</b>	

**g. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS**

**I. Academic Qualifications:**

- Minimum Bachelor's Degree in law/human rights/international relation or any other related field in social science or equivalent or a base degree.

## **II. Experience:**

-Minimum 15 years of experience in international human rights law and mechanism and National Human Rights Institutions.

- Working experience with UN agencies/donor agencies/ Human Rights Institutions.

## **III. Language:**

-Fluency in written and spoken English language and ability to writing report as required.

## **IV. Professional & Behavioural Competencies:**

- Excellent writing, IT and communication skills;
- Positive, constructive attitude to work, effective problem solving, self-improvement, analysis and synthesis;
- Openness to change and ability to responds positively to feedback and differing points of view and integrates & updates accordingly; adaptability, creativity;
- Demonstrates integrity, ethical standards and maintains confidentiality;
- Displays cultural, gender, religion, race, nationality, age sensitivity and adaptability.

## **h. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS**

---

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

- **Personal P-11 form** (including past experience in similar projects and at least 3 references)

## **i. FINANCIAL PROPOSAL**

---

### **Lump sum contracts**

The financial proposal shall specify a total lump sum amount, and payment terms around specific and measurable (qualitative and quantitative) deliverables (i.e. whether payments fall in instalments or upon completion of the entire contract). Payments are based upon output, i.e. upon delivery of the services specified in the TOR. In order to assist the requesting unit in the comparison of financial proposals. In case of travel, the consultant will receive Daily Subsistence Allowance as per UNDP's rules.

### **Payment of the consultant as per deliverables: completion of the assignment**

### **j. Travel**

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel to a higher class, he/she should do so using their own resources.

In the case of unforeseeable travel, payment of travel costs, including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

**k. EVALUATION**

---

Cumulative analysis:

*When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:*

- a) responsive/compliant/acceptable, and*
- b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.*

*\* Technical Criteria weight; [70]*

*\* Financial Criteria weight; [30]*

*Only candidates obtaining a minimum of (80 points) would be considered for the Financial Evaluation*

<b>Criteria</b>	<b>Max. Point</b>
<b><u>Technical</u></b>	
Educational Qualification in law/human rights/international relation or any other related field in social science or equivalent or a base degree.	20
Years of experience in international human rights law and mechanism and National Human Rights Institutions.	25
Working experience with UN agencies/donor agencies/ National Human Rights Institutions.	25
<b><u>Financial</u></b>	30
<b><u>Total</u></b>	100

## Appendix 2 Program of visit 28 April – 2 May 2019

Date	Time	Agenda	Person
28 April 2019	09:00 – 10:00	Discussion on the interim capacity assessment	Sharmeela and Lubna
	10:00 – 11:00		NHRC Chairman
	11:00 – 13:00		Full Commission and senior staff
	14:30 – 17:00		Secretary and senior staff
29 April 2019	10:00 – 13:30	Discussion of amendments to NHRC Act	Secretary and senior staff
	14:00 – 15:00	Discussion on the interim capacity assessment	HRDs at workshop
	15:00 – 17:00	Discussion on the interim capacity assessment	Major CSOs
30 April 2019	09:30 – 13:15	Training on fact-findings and investigation of human rights violations: session 1	Secretary and senior staff + 1 CSO participant
	14:15 – 16:00	Training on fact-findings and investigation of human rights violations: session 2	Secretary and senior staff + 6 CSO participants
	16:00 – 17:30	Discussion on assignment	HRP staff
01 May 2019		Drafting proposed amendments to NHRC Act and capacity recommendations	
	16:00 – 17:00	Discussion on assignment	Kyoko Yokosuka, Deputy Resident, with Sharmeela and Lubna
2 May 2019	10:00 – 11:30	Debriefing: findings and next steps	Secretary and senior staff
	11:30 – 13:30		Full Commission
	14:30 – 17:00		Full Commission, senior staff, ministries, CSOs and donors
	17:00 – 18:00		Chairman
	18:00 – 19:00		HRP

## **Appendix 3 Recommendations of the Capacity Assessment Review February 2017**

### **Recommendation 1**

The NHRC should continue to work on implementation of those recommendations of the 2014 CA report that have not yet been implemented in full.

### **Recommendation 2**

The NHRC should complete its review of the operation of the NHRC Act and recommend amendments to the Act to the Government and Parliament. The proposed amendments should address issues of Paris Principles compliance as a first priority but also other matters that could improve the operational effectiveness of the NHRC.

### **Recommendation 3**

Consistently with international legal principles concerning the interpretation of rights and provisions protecting rights, the NHRC should interpret and implement the NHRC Act in a way that gives broad interpretation to rights and to the NHRC's powers and functions and narrow interpretation to restrictions on rights and on its powers and functions. In particular it should implement section 18 as an additional power in relation to allegations concerning the discipline force and not as an exclusive methodology for dealing with those allegations.

### **Recommendation 4**

Each thematic committee should meet regularly, preferably monthly. It should ensure that it has a current workplan to guide its work on an annual basis. It should report to the Commission at least quarterly on implementation of the workplan.

The UN Programme's workplan should be strongly aligned to the workplans of the thematic committees and support these not only as the focal points for the NHRC's substantive work but also as key forums for the Programme's engagement with CSOs and government and for implementing the Programme's specific thematic outputs on gender and indigenous people.

### **Recommendation 5**

The NHRC Chairman should progressively delegate the conduct and oversight of day-to-day matters to appropriate senior staff as their numbers and capacities grow, freeing his time and energies to focus on the overall strategic guidance and direction of an increasingly complex and active institution.

The Commission itself should delegate certain functions to the thematic committees for implementation.

### **Recommendation 6**

The NHRC should prioritise strengthening its strategic communications function, including maintaining the high visibility and good media relations established by the previous Chairman but better integrated with growing institutionalization of the NHRC's work. This



should include strategic engagement with other partners – in particular media, CSOs and Parliament – who are the NHRC’s natural allies in focusing the public’s attention on human rights violations and ensuring the Government’s accountability for them. The strategy needs to keep all stakeholders informed not only of the Commission’s proactive and timely response to major human rights issues but also of its follow-up recommendations and the responses – or failures to respond – to them, as well as its advocacy on legislative reforms.

### **Recommendation 7**

The NHRC should prioritise strengthening the following functions in the next three years:

- research and legislative analysis
- complaints handling and investigations, especially in regional offices
- monitoring of detention facilities and
- establishing a focal point for human rights defenders.

### **Recommendation 8**

The two new positions of Director for Law and Research and Deputy Director for Law and Research should be prioritised in any future recruitment following approval of an increased staff component. The UNDP Programme should also prioritise support to capacity-building of research and legislative analysis functions among NHRC staff generally.

### **Recommendation 9**

The NHRC should give high priority to implementing its plans to establish four new regional offices in 2017 and two more in 2018. In establishing regional offices, however, it should ensure that each is fully staffed in accordance with the new organigram. A new office should be opened only when all existing offices are fully staff and the new office is able to be fully staffed.

### **Recommendation 10**

The NHRC should continue with implementation of its initiative to establish a network of lawyers in all 64 districts to take cases on its behalf in relation to human rights violations at the district level.

### **Recommendation 11**

The NHRC should develop and implement a program and calendar for visits to prisons and detention centres to inspect the facilities, meet with prisoners and detainees, and monitor conditions and treatment. The NHRC should aim to visit all prisons and detention centres in Bangladesh over each three-year period.

### **Recommendation 12**

The NHRC should appoint a Commissioner or senior officer as the NHRC focal point on human rights defenders. The focal point would be accessible at all times to defenders at risk and monitor threats, speak out against attacks and publicly affirm solidarity and support.

### **Recommendation 13**

As part of its review of the NHRC Act, the NHRC should develop proposals for new or amended provisions that will require better responsiveness and cooperation from Ministries with the NHRI's work and recommendations.

### **Recommendation 14**

The NHRC should give priority to renewing its network of senior focal points in Ministries and increasing the effectiveness of the focal points. It could, for example, develop clearer and more specific procedures, agreed with Ministries, for their responses to NHRC requests, reports and recommendations. It could also convene regular meetings of the focal points to discuss and resolve issues concerning responsiveness.

### **Recommendation 15**

The NHRC should build further on its relationships with members of Parliament. It should work with members of Parliament to advocate for

- laws to provide better promotion and protection of human rights
- parliamentary debates on the NHRC's reports and recommendations, including the NHRC's annual reports, investigations reports and advice on laws and Government policies and practices
- better responsiveness and cooperation from Ministries in relation to NHRC inquiries, investigations and recommendations.

### **Recommendation 16**

As soon as possible after the NHRC's new staff number is approved, the NHRC should commence implementation of a staged program of recruitment that gives priority to

- staff with expertise in law, research and monitoring places of detention
- fully staffing the two existing regional offices and establishing and fully staffing six new regional offices
- providing adequate administrative and support staff for these new positions.

In establishing new positions and recruiting new staff, the NHRC should ensure that the proportion of administrative and support staff to professional staff is appropriate and that the number of administrative and support positions is no more than absolutely necessary for the adequate functioning of the NHRC.

### **Recommendation 17**

In undertaking its recruitment of new staff and subsequently in considering the internal promotion of staff, the NHRC should ensure the presence of qualified persons from marginalised and vulnerable groups in all areas of NHRC activity and at all levels. It should have a strategy for the recruitment of qualified persons from these groups.

**Recommendation 18**

The NHRC should pursue urgently governmental approval of the new staffing procedures and terms and conditions. The NHRC should ensure that the new procedures are operative before commencing the recruitment of persons to additional positions. Positions of director and deputy director should be given priority for filling under the new procedures.

**Appendix 4 Table of proposed amendments to the National Human Rights Commission Act 2009**

<b>Present provision</b>	<b>Proposed provision</b>	<b>Basis of proposal</b>
Preamble	<p>add additional paragraph after first preambular paragraph:</p> <p>Whereas the People’s Republic of Bangladesh is committed to the development of international human rights law and the international human rights system and has become a State Party to international human rights treaties</p>	Complements the existing preambular paragraphs with a new one relating specifically to international human rights law and mechanisms.
s 2(b) and other references “Chairman”	s 2(b) and other references “Chairperson”	Change all references in the Act to “Chairman” to the non-gendered “Chairperson”, in accordance with predominant international practice.
s 2(f) “human rights” means right to life, right to liberty, right to equality and right to dignity of a person guaranteed by the constitution of the People’s Republic of Bangladesh and such other human rights that are declared in different international human rights instruments ratified by the People’s Republic of Bangladesh and are enforceable by the existing courts of Bangladesh.	s 2(f) “human rights” means any rights and freedoms guaranteed by the constitution and laws of the People’s Republic of Bangladesh or subject to a directive of the Supreme Court of the People’s Republic of Bangladesh or recognised by international human rights treaties or protected under international customary law	Broader definition of human rights to cover the breadth of sources of human rights; similar to the definition in the Korean NHRC Act.
s 5(2) The Chairman and one Member of the Commission shall be full time and other Members shall be honorary.	s 5(2) The Chairman and all other Members of the Commission shall be full time.	The Commission should review the structure of the Commission and make a policy decision on the nature of Commissioner positions and the number of Commissioners. The current system of having honorary Members leaves their role unclear, their ability to contribute significant time to

		<p>NHRC work uncertain and so expectations of them undefined.</p> <p><b>One option</b> is for all Members of the Commission to be full time. Bangladesh has 200 million people and the demands on a Bangladeshi NHRI are inevitably great. The NHRC would be justified in having more than two full time Members, provided that additional resources were made available. The more common practice among NHRIs is for all members to be full time. This is the preferred option of the Chairman, the Full Time Member and the Honorary Member I met.</p> <p><b>A second option</b> is for honorary Members to be part time rather than honorary. They have important responsibilities to fulfil in the Commission and they cannot perform those responsibilities on an honorary basis. Indeed it would be difficult for them to do so on a part time basis. They could be part time and remunerated proportionally to the time they spend on NHRC work, for example, half time or quarter time.</p> <p>It is essential, if the NHRC is to allocate more funds for payment of Members on either a full time or a part time basis, that it receive the additional funds required for that purpose. The NHRC cannot be expected to</p>
--	--	---

		<p>meet the additional costs out of its existing budget.</p> <p>Consequential amendment to s 10(3) would be required.</p> <p>Associated with the consideration of whether honorary Members should become full time or part time is the number of Members. The NHRC Act at present that there be up to five honorary Members, for a total of seven Members, including the Chairperson. With the exception of the Australian Human Rights Commission, no Asia Pacific NHRI has more than five full time members. The Chairman, the Full Time Member and the Honorary Member I met preferred not to change the current number of Members, that is, seven including the Chairman.</p>
s 5(3) Among the Members at least one shall be a woman and one shall be from the ethnic groups.	s 5(3) The composition of the Commission should be diverse and pluralistic. At least three Members of the Commission shall be women and at least one Member shall be from a tribe, minor race, ethnic sect and community. There should also be members appointed from other minority communities.	The Paris Principles require diversity and pluralism among NHRI members. Members should be drawn from all the sectors of society. The composition of the Commission should be such that around half are male and half are female. Members should also come from among ethnic and other minorities. The proposed amendment spells all this out in greater detail.
s 6(1) provided that no person shall be qualified for appointment to the post of the Chairman or Member of the Commission or shall hold office if he is less than 35 years of		The provision is discriminatory on the basis of age. Many NHRC laws have minimum ages and some have maximum ages. In both cases the provision is discriminatory.

<p>age and over 70 years of age</p>		<p><b>One option</b> is to remove the provision in its entirety. Any concerns that a person is immature or adversely affected by age can be met through the selection process.</p> <p>Removing ages has two consequences.</p> <p>The first consequence is the need to address the question of term limits. If there is no age limit, a person could effectively be appointed for life. It is not in the interests of an NHRI for its leadership to effectively occupy their positions indefinitely. This is discussed further below in relation to s 6(3).</p> <p>The second consequence is the need for an effective provision that permits removal from office on the ground of proven incapacity. Removal should not be an easy procedure but one that is subject to strict definitions and independent, objective review. The current provision in s 8(1) appears to be appropriate and adequate. I understand that incapacity is a ground for the removal of a Supreme Court judge.</p> <p><b>The second option</b> is to make no change in the provision.</p> <p>There was no consensus on this question when I met the Chairman, the Full Time</p>
-------------------------------------	--	---

		Member and an Honorary Member. I have therefore not proposed an alternative provision.
s 6(2) The Chairman and the Members of the Commission shall, subject to the provisions of this section, be appointed from amongst the persons who have remarkable contribution in the field of legal or judicial activities, human rights, education, social service or human welfare.	<p>s 6(2) Every Member of the Commission shall, subject to the provisions of this section, be a person who</p> <ul style="list-style-type: none"> <li>(a) is recognised as a person of integrity and good character</li> <li>(b) has made a remarkable contribution in a field related to human rights</li> <li>(c) is capable of fulfilling the responsibilities of a Member of the Commission with independence and impartiality, without direction from or influence of any external authority, person or organisation, free from any actual or perceived conflict of interest</li> <li>(d) has knowledge of and experience in at least one of the following areas: <ul style="list-style-type: none"> <li>(i) principles of human rights and relevant domestic and international human rights law</li> <li>(ii) promotion and protection of human rights</li> <li>(iii) human rights education</li> <li>(iv) good governance and public administration</li> <li>(v) the situations and experiences of different ethnic, religious, cultural and socio-economic groups in Bangladesh</li> </ul> </li> <li>(e) is committed to the achievement of the functions of the Commission under this Act.</li> </ul>	<p>The GANHRI Sub-committee on Accreditation has indicated repeatedly that fuller eligibility criteria should be provided in the Act. These proposed criteria are drawn from the NHRI laws of Indonesia, Malaysia, Myanmar, New Zealand and Timor Leste. The GANHRI SCA commented on the need for Commission members to serve in their personal capacity to ensure independence. An additional provision to this effect is proposed.</p>



	<p>Members of the Commission serve as independent individuals and not as representatives of any organisation to which they formerly or currently belong.</p>	
<p>s 6(3) The Chairman and Members of the Commission shall hold office for a term of three years from the date on which they enter upon their office; provided that a person shall not be appointed for more than two terms as a Chairman or a Member of the Commission.</p>	<p>s 6(3) The Chairperson and Members of the Commission shall hold office for a term of three years from the date on which they enter upon their office;  <b>option 1:</b> provided that a person shall not be appointed to the same position within the Commission for more than two terms  <b>option 2:</b> provided that a person shall not be appointed to the Commission for more than two terms  <b>option 3:</b> and a person shall not be re-appointed to the Commission.</p>	<p>There are two issues here: the length of term and the limit on number of terms.</p> <p>To promote the independence of NHRI members, the GANHRI SCA considers three years the absolute minimum term for members of an NHRI. It recommends a term of five years, which is increasingly the standard in NHRIs. This is not currently enforced by the SCA as a condition for A status but I expect that the SCA will gradually increase the minimum term to four years and then five years. The Philippines NHRI provides an alternative, a single non-renewable term of seven years.</p> <p>I recommend that Bangladesh anticipate the extension of the SCA minimum term requirement by moving now to have the term extended to four or, preferrably, five years. The Chairman, the Full Time Member and the Honorary Member I met were of the view that the term should remain three years. This is reflected in the retention of this length of term in the proposed provision.</p> <p>Whatever the length of term, the current provision for re-appointment is ambiguous as</p>

		<p>to whether it limits the total time in the Commission to six years or the total time in any specific position in the Commission to six years. This ambiguity needs to be clarified.</p> <p><b>One option</b> is to limit time in a specific position to two terms.</p> <p><b>A second option</b> is to limit time to a total of six years regardless of what positions are held.</p> <p><b>A third option</b> is to remove any possibility of re-appointment, limiting Members to one term. This certainly increases the Members' independence.</p> <p>There was no consensus on this question when I met the Chairman, the Full Time Member and an Honorary Member. I have therefore not proposed a single alternative provision but have included all three options in the proposed provision.</p>
<p>s 7(1) To make recommendation on the appointment of the Chairman and Members, a selection committee shall consist of the following seven Members, namely:</p> <p>(a) Speaker of the House of the Nation who shall also be its President</p> <p>(b) Minister, Ministry of Law, Justice and</p>	<p>s 7(1) To make recommendation on the appointment of the Chairman and Members, a selection committee shall consist of the following eleven Members, namely:</p> <p>(a) the Speaker of the House of the Nation, who shall be its chairperson</p> <p>(b) the Minister of Law, Justice and</p>	<p>The GANHRI SCA has made comments on the composition of the selection committee on the basis that it can be dominated by the Government and is too narrowly based. The addition of three representatives of civil society widens the base of the committee. Together with the addition of a judge of the Supreme Court, it ensures that the</p>

<p>Parliamentary Affairs  (c) Minister, Ministry of Home Affairs  (d) Chairman, Law Commission  (e) Cabinet Secretary, Cabinet Division  (f) Two Members of the Parliament, nominated by the Speaker of the House of the Nation, out of whom one shall belong to Ruling Party and the other from the Opposition Party.</p>	<p>Parliamentary Affairs  (c) the Minister of Home Affairs  (d) the Chairman, Law Commission  (e) the Cabinet Secretary, Cabinet Division  (f) one Member of the Parliament, nominated by the Speaker of the House of the Nation  (g) one Member of the Parliament, nominated by the Leader of the Opposition  (h) one Judge of the Supreme Court appointed by the Chief Justice  (i) three representatives from civil society organisations, such as professional associations and human rights organisations for women’s rights, child rights, religious minorities, ethnic communities and marginalized populations, nominated jointly by the Speaker of the House of the Nation and the Leader of the Opposition..</p>	<p>Government members of the committee constitute only five of the eleven members, provided that the Chairman of the Law Commission is an independent official. Of the two members of the Parliament, one should be nominated by the Speaker and the other by the Leader of the Opposition. The appropriate process for the selection of the civil society members is a difficult question. Appointment jointly by the Speaker and the Leader of the Opposition after consultation with human rights civil society organisations seems the most practicable and least inappropriate process. The judge of the Supreme Court should be appointed by the Chief Justice.</p>
<p>s 7(3) To constitute a quorum at a meeting of the selection committee, at least four (4) Members shall be present.</p>	<p>s 7(3) To constitute a quorum at a meeting of the selection committee, at least six (6) Members shall be present.</p>	<p>As usual, the quorum should be the next whole number above one half of the total membership.</p>
	<p>Add a new subsection as follows after the current sub-section 7(3):</p> <p>s 7(4) The Selection Committee shall advertise actual or coming vacancies in the membership of the Commission, along with the eligibility criteria as the basis for selection, broadly in national and regional public media in Bangladesh and on the Commission’s own website. It shall invite applications for consideration for appointment, allowing at least four (4) weeks for applications</p>	<p>The GANHRI SCA has made comments on the need for public advertisement of vacancies and invitation of applications for appointment as members of the Commission, as broadly as possible.</p>

	<p>between advertisement and the commencement of the selection process. It shall indicate the procedure for application. It shall encourage applications from women and members of tribes, minor races, ethnic sects and communities and from members of other minority communities, including indigenous communities.</p> <p>Renumber current sub-sections (4) and (5) accordingly</p>	
<p>s 10(3) The Honorary Members shall be entitled to such honorarium and allowances for discharging other duties including for attending the meeting of the Commission at the rates as may be determined by the Commission.</p>	<p>s 10(3) The part time Members shall be entitled to one half of such salaries, allowances and other privileges as are admissible to a Judge of the High Court Division of the Supreme Court.</p>	<p>If some Members are to be part time, an amendment along these lines would be necessary. If all are to be full time, s 10(3) can be deleted. See comments above in relation to s 5(2).</p>
<p>s 12 Functions of the Commission</p>	<p>Add two additional functions under s 12.</p> <p>After s 12(1)(c), as follows:</p> <p>to conduct thematic inquiries suo moto into systemic patterns of human rights violation</p> <p>Replace s 12(1)(h), as follows:</p> <p>to cooperate and engage effectively with the international human rights system and mechanisms, including by:</p> <p>(i) reviewing and making recommendations to the State on ratification of or accession to human rights treaties</p> <p>(ii) contributing to State reports to treaty</p>	<p>The first proposed additional function is implied in the NHRC's current functions collectively but it usefully made explicit as an additional function.</p> <p>The second proposed additional function reflects the NHRC's current practice. S 12(1)(h) deals with one aspect of international engagement, the ratification of treaties. That provision should be broadened to include all relevant aspects of international engagement. It should be included specifically as the Paris Principles requires international engagement as a NHRI function.</p>

	<p>monitoring bodies and submitting its own parallel reports to those bodies</p> <p>(iii) contributing to State reports to the Universal Periodic Review and submitting its own information to that mechanism</p> <p>(iv) cooperating generally with international human rights mechanisms and the High Commissioner for Human Rights</p> <p>(iv) cooperating generally with other national human rights institutions and with regional and international associations of national human rights institutions.</p>	
	<p>Add a new section as follows after s 13:</p> <p>s 13A Submissions to the courts</p> <p>The Commission may, with the leave of the relevant court, intervene in judicial proceedings to raise or deal with by way of submissions significant issues of human rights law or fact</p>	<p>This is an <i>amicus</i> (friend) function whereby the Commission intervenes in judicial proceedings not as a party nor on behalf of a party nor as a petitioner after an inquiry into a complaint, under s 19(1)(b), but as a friend of the Court. This is distinct from intervention in proceedings as a party. An <i>amicus</i> advises and assists the Court with submissions on a matter of human rights arising in the proceedings. A general function to intervene is desirable as an additional function. This is common in other NHRI laws. The intervention should be subject to the approval of the Court and any directions the Court may make, in recognition of the power of the Court to manage the conduct of proceedings before the Court. The most appropriate location in the Act for this provision is immediately after the existing provision on references</p>

<p>s 18(1) Notwithstanding anything contained in any other provision of this Act, the Commission may, suo-moto or on any application, require the Government to submit a report in respect of the allegation of violation of human rights against the disciplined force or any member thereof.</p>	<p>delete s 18</p>	<p>from the Supreme Court.</p> <p>This provision has been problematic for the NHRC not because of what it says but because of how it has been interpreted. This is not a legal issue. I do recommend not that it be repealed or amended, but that in future it be interpreted and implemented correctly. It provides the NHRC with an additional discretionary function to seek a report in these matters. Seeking a report is entirely at the discretion of the NHRC ('may'). It does not remove or restrict any of the other functions of the NHRC.</p> <p>However, if the Commission is concerned to clarify the law, it could  <b>option 1:</b> remove the section  <b>option 2:</b> amend the section by adding, after the words 'Notwithstanding contained in any other provision of this Act' the words 'and without derogating in any way from the Commission's functions under s 12 and powers under s 16 of this Act.'</p> <p>The Chairman, the Full Time Member and the Honorary Member I met were of the view that s 18 should be deleted in its entirety.</p>
<p>s 22(1) The Commission shall submit an annual report on its affairs of the previous year to the President on or before 30<sup>th</sup> March of each year.</p>	<p>s 22(1) The Commission shall submit an annual report on its affairs of the previous year to the President on or before 30<sup>th</sup> March of each year. Within fifteen (15) days of receiving the annual report, the President shall arrange for it to be laid</p>	<p>International good practice for NHRIs requires that annual reports be presented promptly to parliament to ensure parliamentary consideration and debate.</p>

	before the House of the Nation for the House's consideration and debate on the first available sitting day.	
s 23(2) The Commission may, under this Act, appoint such officers and employees as it considers necessary for the efficient performance of its functions.	s 23(2) The Commission may, under this Act, appoint such officers and employees as it considers necessary for the efficient performance of its functions. In making appointments the Commission should ensure that its staff is diverse and pluralistic, reflecting Bangladeshi society, including women and members of tribes, minor races, ethnic sects and communities and members of other minority communities, including indigenous communities.	The Paris Principles require that the personnel of NHRIs be pluralistic, reflecting all sectors of society. This should be provided in the Act.
s 23(3) Salary, allowances and other terms and conditions of the services of the Secretary and other officers and employees of the Commission shall be determined by rules; provided that the salary, allowances and other terms and conditions of the service of the Secretary and other officers and employees shall be determined by the Government until such rules are made.	s 23(3) Salary, allowances and other terms and conditions of the services of the Secretary and other officers and employees of the Commission shall be determined by rules and shall be comparable with those of public servants with similar responsibilities and qualifications and experience.	The NHRC staff are public servants under s 27 of the Act. The proposed provision requires comparability with similar public servants. The additional clause for the Government to determine salary, allowances and other terms and conditions is removed as it should now be unnecessary. The Commission should determine all matters concerning staff salaries, allowances and terms and conditions.
s 25(1) The Government shall allocate a specific amount of money for the Commission in each financial year; and it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specified heads.	s 25(1) The Government shall allocate a specific amount of money for the Commission in each financial year by way of a specific line item for the Commission alone in the annual state budget. The allocation should be sufficient to enable the Commission to undertake its core functions under this Act. The Commission should not be required to seek prior approval from the Government to spend such allocated money for the approved and	The allocation to the Commission must be explicit and transparent in the annual state budget so that the allocation is a specific appropriation by the parliament and not merely a discretionary grant from the Government or a government ministry. The allocation should be adequate for the Commission to perform its statutory functions. These are requirements in the

	specified heads.	Paris Principles for financial independence and have been the subject of SCA comments in relation to the NHRC.
s 28 The Commission may, subject to the terms and conditions determined by it, delegate any of its powers to the Chairman, any Member or the Secretary.	28 The Commission may, subject to the terms and conditions determined by it, delegate any of its powers to the Chairman, any Member, the Secretary or any officer or employee of the Commission.	The proposed amendment clarifies the delegation power of the Commission and reflects current practice.
s 30 The Commission may, with prior approval of the President and by notification in the <i>Official Gazette</i> , make rules for carrying out the purposes of this Act	s 30 The Commission may, by notification in the <i>Official Gazette</i> , make rules for carrying out the purposes of this Act.	the requirement that the President approve the Commission's rules is an unnecessary and undesirable limitation on the Commission's independence and is clearly inhibiting the Commission's efficient and effective performance, for example, in relation to the employment of staff; the Commission should be empowered to make such rules as it considers appropriate without governmental approval