



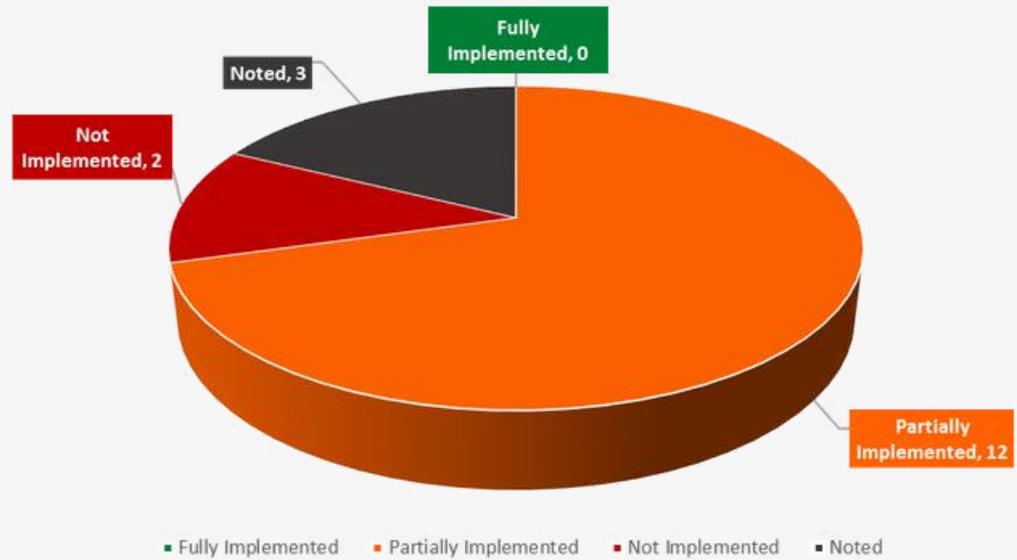
# HUMAN RIGHTS FORUM BANGLADESH (HRFB)

SEPTEMBER 2018 - SEPTEMBER 2021

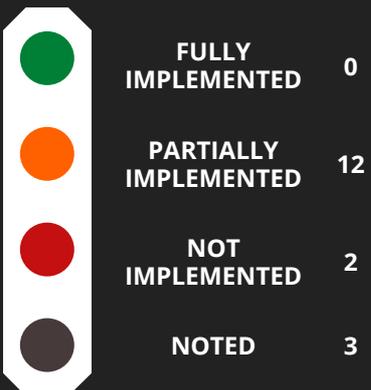
## THREE YEARS AFTER UPR 2018: WHERE ARE WE?

ASSESSMENT REPORT ON THE IMPLEMENTATION OF UPR RECOMMENDATIONS

### INDEPENDENCE AND EFFECTIVENESS OF NATIONAL INSTITUTIONS



#### IMPLEMENTATION STATUS OF UPR RECOMMENDATIONS



#### PREPARED BY

HUMAN RIGHTS FORUM BANGLADESH (HRFB)

Email: [hafb.20@gmail.com](mailto:hafb.20@gmail.com)

Website: <https://hrf-bd.org/>

# RECOMMENDATIONS RECEIVED IN UPR 2018

## NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH

147.3 CONTINUE TO STRENGTHEN NATIONAL MECHANISMS THAT STRENGTHEN THE HUMAN RIGHTS SITUATION (SUDAN);

147.15 CONTINUE TO STRENGTHEN HUMAN AND FINANCIAL RESOURCES OF THE NATIONAL HUMAN RIGHTS COMMISSION (TURKEY)

147.16 CONTINUE TO IMPLEMENT MEASURES AIMED AT STRENGTHENING THE NATIONAL HUMAN RIGHTS COMMISSION (ZIMBABWE)

147.17 PROVIDE THE NATIONAL HUMAN RIGHTS COMMISSION WITH THE RESOURCES TO FULLY IMPLEMENT ITS MISSION (FRANCE)

147.18 PROVIDE ADEQUATE FINANCIAL AND TECHNICAL RESOURCES TO THE NATIONAL HUMAN RIGHTS COMMISSION TO ENABLE IT FULFILL ITS MANDATE (GHANA)

147.19 CONTINUE TO STRENGTHEN THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION (SYRIAN ARAB REPUBLIC)

147.20 PROVIDE FURTHER SUPPORT TO THE NATIONAL HUMAN RIGHTS COMMISSION TO ENABLE IT TO FULFILL ITS MANDATE IN THE BEST MANNER AND IN LINE WITH THE PARIS PRINCIPLES (QATAR)

148.5 FULLY COMPLY WITH THE PARIS PRINCIPLES AND INCREASE THE INSTITUTIONAL CAPACITY AND FINANCIAL AND HUMAN RESOURCES OF THE NATIONAL HUMAN RIGHTS COMMISSION (CHILE)

148.6 CONTINUE ITS EFFORTS IN STRENGTHENING THE CAPACITY OF ITS NHRI, NAMELY THE NATIONAL HUMAN RIGHTS COMMISSION OF BANGLADESH AND THE NEWLY ESTABLISHED OMBUDSMAN (INDONESIA)

149.22 PROVIDING HUMAN, TECHNICAL, AND FINANCIAL RESOURCES TO THE NATIONAL HUMAN RIGHTS COMMISSION, SO IT CAN FULFIL ITS MANDATE AND GRANT IT A NEW MANDATE TO INVESTIGATE HUMAN RIGHTS VIOLATIONS (HONDURAS)

149.23 EXPAND THE MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION TO INVESTIGATE ALL HUMAN RIGHTS VIOLATIONS INCLUDING THOSE INVOLVING STATE SECURITY ACTORS AND TO PROVIDE IT ADEQUATE RESOURCES, TO FULFILL ITS MANDATE (NAMIBIA)

The National Human Rights Commission, Bangladesh (NHRC,B) started its journey on 1 December 2008 with the appointment of a Chairperson and two members under the National Human Rights Commission Ordinance, 2007 issued by the then care-taker government. One year later, when the Government was elected, it enacted the National Human Rights Commission Act, 2009 (NHRC Act) which was passed in Parliament on 14 July 2009. The Commission was re-constituted on 22 June 2010 consisting of a Chairperson, a full-time member, and five honorary members.

The NHRC Act contains several provisions related to the independence of the Commission, including security provision to its members so that they can take action without any fear of removal or intimidation from the executive [Section 8(1)], and the power of formulating its own rules [Section 30].

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On the other hand, certain provisions are considered to prevent the Commission from acting fully independently and the purpose of creating this important institution remains far from achieved.

Over the last eleven years, the Commission has only adopted one set of rules- the 'National Human Rights Commission (Officers and Employees) Recruitment Rules 2019,' in 2020.

The Rules on establishing a National Human Rights Commission Fund, appointment of mediators and conciliators, Complaints and Investigation and Investigation which are necessary to fulfil its' mandate and institutional strength are **still not finalised** [ASK, 2020].

Regarding the financial resources, the Government has, however, increased the allocated budget of the Commission.

In 2015-16, the budget allocated to the Commission by the government was **BDT 4,30,96,000**. In 2018-19, the budget allocation was **BDT 6,07,60,000**, around a **41% increase**. [ANNI Report 2019]  
In 2019-20 the total allocation was **over 7 cores**. [NHRC Annual Report, 2020]

Pursuant to Section 24 of NHRC Act, the Commission receives a budgetary allocation through the Human Rights Commission Fund. This covers its salaries, allowances and other monetary facilities and necessary expenses. The Commission independently uses the fund without any requirement of seeking prior approval from the Government, as per Section 25(1) of the NHRC Act. Annual audit takes place to ensure transparency in using the fund.

However, the budget of the Commission is not provided through a separate line item under the National Budget. This contradicts the Global Alliance on National Human Rights Institutions (GANHRI) SCA's General Observation 1.10, which specifies that funding should be set out in a separate line item in the national budget.

Since its inception, there has been an absence of adequate human resources in the Commission partly due to its lengthy appointment process. Although in 2018, the Ministry of Public Administration approved appointment of 40 persons, including 19 officers to the Commission, their recruitment is still ongoing. It is expected that these appointments may reduce the current human resource challenge.

The Commission also appears to have reduced dependency on the employees appointed to the Commission on deputation from the Government, from two officers in the past to only one such officer in 2021. The Commission has no civil society representation at any level and continues to be headed by retired Government officials which could be considered as a restraining factor in terms of keeping its operations independent of Government influence.

In 2013, the Commission reviewed the NHRC Act to propose an amendment to Section 7 of the Act, which addresses the composition and role of the Selection Committee that recommends appointment of the Chairperson and Members, and sent it to the Ministry of Law Justice and Parliamentary Affairs on 11 February 2015.

The GANHRI has not accorded the Commission with 'A status' in any of its accreditation due to its non-compliance with Paris Principles which emphasised for an open, transparent, and participatory selection process. Despite repeated calls by the relevant stakeholders and GANHRI, neither any CSO consultation, nor the publicising of the method of selection for any of the selections took place till date, including the latest selection and appointment made in 2019.

In early February 2021, the NHRC submitted another proposal for bringing amendments on membership tenure, increasing the number of full-time members and regarding their salaries and allowances.

Besides, the Commission continues to claim that due to Section 18, the Commission is unable to initiate an investigation and stand against human rights violations by state actors, particularly security forces and law enforcement agencies. In this context, it further proposed amendments to the law to exclude 'police' from the purview of 'disciplinary forces' under Section 18 [[The Business Standard, 13 March 2021](#)]. Unfortunately, till date, the Government has taken no concrete initiatives to reform these provisions based on the Commission's proposals.

The High Court Division of Bangladesh in its judgment in Children's Charity Bangladesh Foundation vs NHRC (pending judgment publication), concerning Khadija Begum, a child domestic worker, stated that the Commission neglected to carry out its mandate of addressing the human rights violations and its duty to ensure justice for victims of human rights abuses [[The Daily Star, 29 June 2019](#)]. In September 2020, for the first time ever, the commission made a recommendation and asked the Public Security Division under the Ministry of Home Affairs to pay Khadija an initial compensation of Tk 50,000 through the Upazila Nirbahi Officer (UNO) of Bhandaria in Pirojpur district.

During this reporting period, citizens, journalists, activists, free-thinkers, etc., have been continuously threatened and harassed under the Digital Security Act 2018 for expressing their opinions. However, the NHRC has not been seen to take any strong stand in protecting these citizens' right to express their opinion freely.

## ANTI-CORRUPTION COMMISSION (ACC)

**147.88 CONTINUE ITS POLICY TO IMPROVE THE JUDICIAL SYSTEM, THE LAW ENFORCEMENT BODIES AND TO REDUCE LEVELS OF CORRUPTION AND POVERTY (RUSSIAN FEDERATION)**

Bangladesh ranked  
**147<sup>th</sup>**  
among 180 Countries as per  
Transparency International's  
Corruption Perceptions Index 2021

It has been assessed that the Anti-Corruption Commission (ACC) has a low prosecution rates poor compared to the number of complaints lodged. It is also perceived that ACC is not politically neutral as it has not been able to show impartiality in handling corruption allegations, especially in case of politically and governmentally linked persons.

According to the Public Services Act, 2018, the ACC requires the permission of the concerned authorities before arresting any public servant prior to a court framing charges. This provision severely curtails the ACC's autonomy and power in so far as it relates to institutional independence [[The Daily Star, 21 August 2018](#)]. It also contributes to giving a certain level of impunity to the public officials which makes it discriminatory in terms of its treatment of public officials and private citizens.

Besides, the ACC has no authority to freeze anyone's property and requires rules to get the authority to freeze assets [[The Daily Star, 27 August 2021](#)]. Notwithstanding such predicaments, the ACC has visibly failed to fully use its legal and institutional mandate to effectively address corruption in the country.

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## ACCESS TO JUDICIARY

**147.87 STRENGTHEN THE NATIONAL LEGAL AID SERVICES WITH THE NECESSARY FINANCIAL, HUMAN, AND TECHNICAL RESOURCES TO ENABLE EFFECTIVE REPRESENTATION OF THOSE IN NEED (GUYANA)**

**147.88 CONTINUE ITS POLICY TO IMPROVE THE JUDICIAL SYSTEM, THE LAW ENFORCEMENT BODIES AND TO REDUCE LEVELS OF CORRUPTION AND POVERTY (RUSSIAN FEDERATION)**

**147.82 CONTINUE TAKING FURTHER STEPS FOR THE STRENGTHENING OF THE JUDICIAL SYSTEM (TAJIKISTAN)**

In 1999, the Supreme Court (SC) of Bangladesh declared the official separation of the judiciary from the executive in **Masdar Hossain vs. Bangladesh [1999] 52 DLR (AD) 82**.

However, neither the directives issued by the SC nor the Judiciary's absolute independence have yet been successfully implemented. The Executive and the Judiciary branches of the government continue to exercise dual authority, primarily over the subordinate courts and judicial appointments [Subordinate Court System of Bangladesh: Governance Challenges and Way Forward, TIB, 30 November 2017].

Judicial proceedings are reported to be routinely affected by a prevailing culture of impunity, corruption, and lack of implementation of laws. Experts also pointed out that the successive governments were reluctant to enact a law to appoint SC Judges as they preferred to appoint judges of their choice. The government appointed SC lawyers as SC judges, without framing a law to appoint SC judges. [New Age Bangladesh, 31 October 2021].

The 16th Constitutional Amendment, which gave Parliament the power to remove SC Justices by impeachment, was indicative of the inter-branch tension that existed within the Government. Although the Amendment was declared illegal in 2016, it had posed a recurring threat upon the independence of the judiciary.

**147.84 CONSIDER MEASURES TO ACCELERATE TRIAL PROCESS WITH A VIEW TO REDUCING PENDING CASES AND THE NUMBER OF PRE-TRIAL DETAINEES AS WELL AS SAFEGUARDING THEIR BASIC RIGHTS**

**147.85 CONTINUE EFFORTS TO IMPROVE AND SPEED UP THE PROCESSING OF CASES IN THE COURTS (BENIN)**

Severe backlog of cases in the courts poses serious obstacles that result in slowing down the judicial process. A total of 1467 cases involving appeals of petitioners sentenced to death in the Sessions Courts were pending in the HCD and 237 cases were pending in the Appellate Division (AD) of the SC of Bangladesh for final appeal [Prothom Alo, 12 July 2019].

However, as of 31 December 2021, a total of 39,33,186 cases of which 34,64,998 cases with the subordinate courts and 4,52,963 cases with the HCD and 15,225 cases with the AD were pending. [NewAge Bangladesh, 31 October 2021].

In 2021, these obstacles were further compounded by the COVID-19 pandemic, during which the courts in Bangladesh were closed initially to prevent the spread of the virus. The trial courts operated in a limited capacity, creating further bottlenecks within the existing slow or delayed judicial process.

Bangladesh launched its virtual court system after a few months. Initially these were limited to hearing bail cases to reduce prison overcrowding in the pandemic. During this time, the courts were not open to hearing other issues including cases of domestic violence, or labour issues. [Centre for Policy Dialogue, 8 May 2021]. Thus, workers and victims of domestic violence lacked access to legal protection.

## 147.83 ENSURE PROCEDURES OF THE INTERNATIONAL CRIMES TRIBUNAL MEET FAIR TRIAL STANDARDS IN ACCORDANCE WITH ARTICLE 14 OF THE ICCPR (GREECE)

Getting bail under existing law is a lengthy process in Bangladesh. The denial of bail further delays the entire trial procedure.

### **Case Story: Shamsunnahar Smrity**

*The recent incident of placing actress Shamsunnahar Smrity, known as Porimoni, into multiple remands, in a case filed under the Narcotics Control Act 2018, violated the existing laws in the country as well as the High Court's Guidelines on Arrest without Warrant (55 DLR (HCD) 2003 363). It was reported that she was taken in remand three times; first time for 4 days, second time for 2 days and for the final time for 1 day, totaling to up to 7 days in remand. This case showed the lack of awareness that the subordinate courts have regarding the laws and policies of remand and arrest. ASK filed a petition challenging the repeated grant of remand orders that allowed the police to interrogate Porimoni in custody. [New Age Bangladesh, 2 September 2021].*

### **Case Story: Jhuman Das Apon**

*Jhuman Das Apon has been in jail for over five months after being arrested under the DSA 2018 for criticising Hefajat-e-Islam leader Mamunul Haque on Facebook in March 2021. Those who attacked Jhumon Das and his community were not brought to justice, but rather arrested and denied bail seven times. [The Daily Star, 11 September 2021]*

In addition, instead of ensuring speedy trial, the investigating officers do not even seek any permission from the higher authority or from the tribunal for the extra time they take for investigation.

Furthermore, police exercise an unlimited power to arrest and detain a citizen for more than 24 hours. The common notion is that taking a person in remand result in inhuman torture which is not only outside the purview of legislation in the country, but also violation of Supreme Court directives issued in cases filed by BLAST, Ain o Salish Kendra (ASK) and others regarding detention and remand in Bangladesh vs BLAST, 15 ADC (2018) 255 and BLAST vs Bangladesh, 55 DLR (2003) 363.

# HRFB RECOMMENDATIONS

- Strengthen NHRC's mandate regarding investigation and fact-finding to respond and address human rights violations by law enforcement agencies and other security forces;
- Take immediate steps to amend the NHRC Act 2009 in consultation with relevant stakeholders and make the Act compatible with International Human Rights Standards and the Paris Principles;
- Ensure an open, transparent, pluralistic and participatory selection process; adopt a guideline to lay out clearly the ways candidates may express their interest in becoming a member, their process of selection based on their competencies, and ensuring that the Selection Committee can work independently;
- Instruct ministries and government agencies to attach due importance to the Commission's letters and thereby submit its report against the complaints within reasonable time;
- Repeal the provisions of the Public Services Act 2018 related to seeking prior government permission to arrest government officials & employees accused in criminal or corruption cases;
- Strengthen the capacity of the ACC to fully implement its legal and institutional mandate to effectively control corruption without fear or favour;
- Strengthen the independence of the Judiciary from the Ministry of Law, Justice and Parliamentary Affairs;
- Protect judicial officials from intimidation, harassment and improper interference, including from high-level government officials.

## ABOUT HRFB

Human Rights Forum Bangladesh (HRFB) is a coalition of 20 human rights and development organisations working for the promotion and protection of human rights in the country.

## HRFB MEMBERS



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*Secretariat Details*

**Ain o Salish Kendra (ASK)**

**Address:** 2/16, Block-B, Lalmatia, Dhaka - 1207, Bangladesh

**Phone:** +88-02-810 0192, 810 0195, 810 0197

**Fax:** +88-02-810 0187

**Email:** info@askbd.org

**Website:** www.askbd.org