

Role of National Human Rights Institution: The Case of National Human Commission in Bangladesh and Komnas HAM in Indonesia

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Abstract

A National Human Rights Institution (NHRI, hereafter) is an official State institution established by law to protect, promote, monitor, and fulfil the human rights of the people. Contrary to other national institutions, NHRIs are accredited with an internationally accepted quality label, on the basis of their compliance with the Paris Principles. The purpose of this study is to examine how did it work in Bangladesh and Indonesia, and to what extent did it face difficulties in compliance with international standard. In this study, the researcher adopted a qualitative form of research due to the nature of the study. Data were collected mainly through various secondary documents, and interviews with different stakeholders. This study found that government supporters or like-minded people became commission members. In addition, NHRI failed to respond

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to the human rights violation, and lack of institutional infrastructure. After many years, the national institution failed to establish guidelines in accordance with the Paris Principles.

Keywords: Paris Principles, National Human Rights Commission in Bangladesh, Komnas HAM in Indonesia.

Introduction

Human rights have been a core concern of the United Nations since its inception. The responsibility to respect, protect and fulfil human rights lies with the States. Article 1 of the Charter of the United Nations proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction based on race, sex, language or religion (United Nations, 1945). The States have the legal obligation to protect and promote human rights, and ensure that people can realize their rights without any discrimination. In recent years, the theoretical and practical recognition of the universality of human rights has progressed in Asia. In many countries, even tyrannical regimes officially accepted the international human rights standard and mechanism. However, its practice at domestic level still has a long way to go. Scholars argues that Asian countries' governments are not willing to implement the standard of human rights (Ahdanisa & Rothman, 2021). In this situation, it is important to ask how the NHRI as independent institution at national level does, can play vital role to address the rights-oriented issue.

The NHRI is an independent institution, by principles, it should stand for those who need protection. It should also work to obligate the government to protect fundamental rights, while simultaneously ensuring the accountability of the national government. Many countries throughout the world establish national human rights institutions to provide necessary advice and guidelines to their respective governments. Despite their formation by the government, these institutions should operate

independently. This article explored the national human rights institutions in the context of Bangladesh and Indonesia. This paper also examines the expectation of the rights practitioners and other relevant stakeholders who have been closely monitoring human rights situation at domestic level in relevant to NHRIs role in their respective countries.

Methodology

This research aims to understand of the role of national human rights institution, and how it functions in accordance with the Paris Principles. Most of Asian countries' ruling elites abuse their power and disregard various human rights issues. In fact, democratic values and political institution could not flourish in many Asian countries. Due to international obligation, government forms the NHRI, however, the NHRI formed by the government does not comply with global standard. In this study, the researcher adopted the qualitative form of research due to the nature of the study. As the study is socio-political in nature, several events in which the data were drawn cannot be measured in numbers. However, those events can be observed through the lens of the witnesses, experts, or those who are relevant to the events. This research is a case study, and the researchers chose the countries from the Southeast and South Asia. Please note that this research is not meant to be a comparative study between the two chosen countries. Through the case study research approach, researchers can generate an in-depth, multi-faceted understanding of a complex issue in its real-life context. Cousin (2005) stated that the case study method also is a good way to define cases for an easier understanding. Thomas (2011)

argued that a case study is an analysis of systems studied with a wide-ranging view where either one or several methods are used.

For this study, data were collected mainly through various secondary documents. Interviews were also conducted with specific groups of respondents including rights practitioners, academics, and former commissioners of the NHRI. At the beginning of the research, related literature on the role of NHRIs especially in the Asian context are reviewed. At this phase, the gaps between national level human rights institution and the United Nation (UN) which represent international institution, are identified. Lack of first-hand data from government officials is one of the limitations of this study.

Background and Formation of the NHRI

The emergence of NHRI is a significant part of international human rights mechanism. In some countries, NHRI is referred to as National Human Rights Commission, Ombudsman, Committee or Commission of Human Rights. The NHRIs have been recognized at the international level as actors for the promotion and protection of human rights since 1946 (GANHRI, 2023). The idea to establish NHRIs dates back to a UN decision in 1946 (ECOSOC resolution 2/9, 21 June 1946, sect. 5), followed by additional resolutions in 1960 (ECOSOC resolution 772B, 25 July 1960) and 1978 (Asia Pacific Forum of National Human Rights Institutions, 2005). However, it was not officially formed until 1970, and not getting much attention then due to the Cold War. The first National Human Rights Institution (NHRI) were established in 1970, followed by other NHRIs in early 1980 mainly in Commonwealth countries such as Canada, Australia, and New Zealand (Lindsnaes & Lindholt, 2001).

National Human Rights Institutions (NHRIs) were established after a long process of consideration at the United Nations (UN). The Paris Principles were adopted at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights which was held in Paris from 7 to 9 October 1991 (Beco & Murray, 2014). Participants of the workshop drafted the principles relating to the status and function of the national institutions for the protection and promotion of human rights. The draft is now referred to as the “Paris Principles”, named after the city where it was drafted. To implement the draft, the UN members was urged to set up a national human rights institution to protect, promote, monitor, and fulfil the human rights of the people. The UN Commission on Human Rights and the UN General Assembly later approved this draft, and it became the obligation for all of its members to establish national institutions. That meeting also recognizes that it is the right of each country to choose the framework that is best suited its needs at the national level (OHCHR, 1993a).

Before discussing the national human rights institution in Bangladesh and Indonesia, it is necessary to briefly explore the core components of Paris Principles. The National Human Rights Commission is a not a typical government organization. By the nature of its formation, NHRC is semi-autonomous and functionally independent organization with its main accountability towards the people of the country in which it was established. It set the minimum standards that NHRIs must meet in order to be considered credible, and to operate effectively. The key pillars of the Paris Principles are pluralist composition, independence and effectiveness. The major tasks for NHRIs are to promote and protect

all human rights. It should be independent from the government. Appointment of its members should be transparent and just. All members are elected in accordance with a procedure that ensure a pluralist representation of the social forces. NHRIs have adequate powers to investigate and inquire about issues related to human rights violation (OHCHR, 1993a).

To run the NHRI smoothly, it should get adequate funding in order to function properly. NHRI will collaborate with other local institutions, NGOs, and civil society groups to address human rights issues. At international level, NHRI can contribute their knowledge and expertise to enhance international mechanisms. It also introduces international human rights norms at domestic level. At national level, NHRI closely works with NGOs to protect the rights of vulnerable groups such as non-citizens and combating against the ethno-religious minorities. In addition, it promotes human rights education, and support marginalized people in a country. NHRI also forms the several sub-groups to work for the marginalized people issue. In this case, if existing legal protection is inadequate, then it will put forward its suggestion to the government to reform the relevant law.

By principle, NHRI should not be interfered by the government. This is to ensure that NHRI select and appoint its commission members without government's influence. NHRI also works as a mediator between the government and civil society organizations to ensures citizens' rights protection and overseeing government's approach when treating its people. Another important function of NHRI is to systematically review the government's human rights policy. This is to observe and detect shortcomings in

the policy, and to provide suggestion to improve it. As previously illustrated, NHRI at the domestic level is working with strictly legal issues as well as fulfilling their obligation to promote human rights in general.

National Human Rights Commission in Bangladesh and KOMNAS HAM Indonesia.

This section is to elaborate the NHRIs in Bangladesh and Indonesia from the Paris Principles context; competence and responsibilities, composition and guarantees of independence especially budget and expenditures.

National Human Rights Commission in Bangladesh

After the restoring parliamentary democracy in 1991, local groups advocate for rights and international community urge the government to establish national institution. It was expected that national institution plays major role for guaranteeing human rights. Due to CSO's strong advocacy, the government launch a project in 1996 to assess the probabilities of establishing a national human rights institution. As a part of this process, a draft was formulated based on suggestions and recommendations from various stakeholders (ASK, 2018). It took more than a decade to get legal structure for a national human rights commission and finally promulgated Ordinance 2007 by the Honourable President of Bangladesh with effect from 1 September 2008. The National Human Rights Commission of Bangladesh has its basic principles derived from the UN Paris Principles and International Coordinating Committee (ICC) of National Human Rights Institutions (NHRIs). It is

ought to be a neutral, people oriented, independent organization. The National Human Rights Commission is not a typical government organization. By the nature of its formation, NHRC is semi-autonomous and functionally independent organization whose main accountability is towards the people of the country (Haque & Monami, 2017).

The National Human Rights Commission is committed to the accomplishment of human rights in a broader sense, including dignity, worth and freedom of every human being, as enshrined in the Constitution of the People’s Republic of Bangladesh, and in different international human rights conventions and treaties to which Bangladesh is a signatory (National Human Rights Commission in Bangladesh, 2020). This institution also aims to safeguard the democratic order in Bangladesh and ensure the protection of the fundamental human rights of its citizens. The composition of the human rights commission is considered basic for its credulity and effective function. The Bangladesh NHRC is consisted of a chairman and 6 other experts in human rights from various backgrounds. Such method in which members are selected is in accordance with the ‘Paris Principles 1991’. In the current Commission, there is only one female representative and only one representative from ethnic minority group (National Human Rights Commission in Bangladesh, 2024). The Chairman and one commission member serve full time, while the others are honorary members. Among the members, one shall be appointed from an ethic minority groups and one shall be woman. The Chairman takes the chief executive role to ensure that the Commission functions properly. The President shall, upon the

recommendation of the selection committee, appoint the Chairman and the members of the Commission.

Globally, national human rights bodies are categorised in A, B and C based on their structure and activities. Previously, the International Coordinating Committee of National Human Rights Institutions (ICC) of the United Nations did the categorisation, now the Global Alliance of National Human Rights Institutions (GANHRI) takes the responsibility. The overall performance of the commission is not much satisfactory, so why it is not upgraded to category 'A'. It is noted that in other South Asian countries such as Nepal and Afghanistan, their NHRIs have received category 'A' recognition until Taliban took power (in Afghanistan) (Saha, 2023). Rights experts and activists stated their dissatisfaction on NHRIs which will be discussed in detail in the next section.

National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* hereafter KOMNAS HAM)

Indonesia is the largest country in Southeast Asia and it achieved progress in governance standards and institutional development. Indonesian government legally recognised human rights in the Constitution and established several bodies aimed to promote its advancement. In 1993, the Indonesian government announced the establishment of the National Human Rights Commission; shortly call KOMNAS HAM. At the time, during New Order Period – Soeharto Regime, there were very few expectations of the Commission due to its mandate was weak, Indonesia was an authoritarian state, and human rights violations were rampant. KOMNAS HAM was established by Presidential Decree (Keputusan

Presiden, abbreviated to Keppres) no. 50/1993. The Decree gave the Commission three main tasks; 1) to promote human rights 2) to study international human rights instruments, and 3) to investigate alleged abuses of human rights (Setiawan, 2012). This included providing recommendations to the government regarding ratification and human rights implementation. KOMNAS HAM should have no more than 25 members, including one chairperson and two vice-chairpersons (The Indonesian National Human Rights Commission, 2013). Commissioners were appointed fulltime for a period of five years, and could be reappointed for one subsequent term. The Commission's funding was to be provided by the State Secretariat.

The formation of Komnas HAM began in 1993, and the promulgation of Law number 39 of 1999 concerning Human Rights (UU HAM), as well as the issuance of MPR Decree Number XVII/MPR-RI/1999 concerning Human Rights, and also Law number 26 of 2000 regarding the Human Rights Court. As befits a country experiencing a transition period, Indonesia is also experiencing one of the important phases during this period. One of them is the presence of independent supporting state institutions (state auxiliary bodies), which are useful as they support and help in the transition process. Apart from helping with the transition process, these supporting institutions are also idealized to supersede or improve existing institutions but whose performance is unsatisfactory, involved in corruption, collusion and nepotism, as well as the inability to be independent from the influence of other powers (Arliman, 2017).

Suparman Marzuki (in Arliman 2017) stated there were two reasons for doubt namely 1) a stance based more on Indonesia's image in the international world which would take part in the 1993

Vienna Conference, and 2) The formal mechanism for establishing Komnang HAM was fully carried out by the government through the Ministry of Foreign Affairs, which at that time was always the main bulwark when facing international pressure, including issues regarding human rights violations committed by the Soeharto Regime.

Competence and Responsibilities

According to the Paris Principles, a national institution shall be given a mandate as broad as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence (OHCHR, 1993a). Through various digital documents and interview with rights activities and academics, it is safe to assume that both countries' NHRIs are still away from the competence and responsibilities according to Paris Principles.

After more than a decade, national institution has no significant role to promote and protect the human rights in Bangladesh. There are a few progresses from the NHRI to address the human rights situation in Bangladesh. In May 2017 the Commission appointed 100 panel lawyers in forty districts to provide free legal counselling and help victims of rights violation (ASK, 2018). Currently, the Commission has been closely working with CSO to prepare the Universal Periodic Review (UPR).

There are various reports that mention NHRI's failure to take effective measures against massive human rights violation due to government influence. In the past decade, several reports from global human rights organizations alleged that the police, army, the elite paramilitary Rapid Action Battalion and other security agencies

in Bangladesh were involved in extrajudicial killings and enforced disappearances. According to Asian Human Rights Commission, “between 2009 and June 2022, at least 2,658 people were killed extrajudicially and at least 619 became victims of enforced disappearances” (Rahman, 2022). Amnesty International also stated that instead of launching proper investigations on these killings, the authorities allegedly sought to fabricate evidence to support their “gunfights” or “crossfire” claims (Amnesty International, 2019). Given the excessive numbers of extra-judicial killings and enforced disappearances, it is imperative that the Commission plays an instrumental role in this connection. Interviewees of this study argues that commission did not make any comments against the law enforce agencies hideous crime in Bangladesh (interview with Tawfique M. Haque, Professor, North South University, Dhaka and Advocate Z.I Khan, former member of the Bangladesh Bar Council, April 2024). There are many examples shown that Commission failed to take effective measure against the massive violation of human rights under the present regime. The whole commission turned to be a ruling party friendly organization.

According to Atnike Nova Sigiros, Chairman of KOMNAS HAM, the major challenge of the Indonesian National Human Rights Commission is to continue the process of resolving serious human rights violations so that they do not recur. The increasingly narrowing space for democracy and civil liberties as a result of today’s erosion of democracy, as well as the widespread ecological crisis as a result of climate change and exploitative development which has the impact of increasingly narrowing living space (economic and social rights) (KOMNAS HAM, 2023).

The Human Rights Court in Indonesia, which has heard cases of serious human rights violations several times, shows the lack of clarity in legal methodology in the judicial process. Politics and other factors that influence the process of law enforcement and human rights in Indonesia also play a role in these cases. The former commissioner of Komnas HAM 2012–2017, Maneger Nasution (interview on 3 June 2024), said there were three problems with Komnas HAM from the Competence and Responsibilities perspectives. Firstly, the legal product, the Law on KOMNAS HAM, is indeed weak. Its authority is limited. In cases of serious human rights violations, KOMNAS HAM only has the authority to investigate, and even then, it is restricted. The product is a recommendation only. As an investigator, the Attorney General's Office may or may not follow up. Komnas HAM does not have coercive authority. Secondly, the legal structure. Law enforcement still holds conservative views. Some still view serious human rights violations by the state as justified because they are in the context of maintaining national stability and security. Thirdly, the existence of a political and societal culture that still needs to support the resolution of cases of serious human rights violations in the past using the National Human Rights Commission mechanism. Not many people, including law enforcers and politicians, supported the resolution of the 1965 case because they thought conservatively that it was appropriate for followers of the Indonesian communist party to be persecuted. Moreover, politics at the state level also hinders the disclosure of serious human rights violations because there are elements in the authorities who do not want past cases to be reopened.

Meanwhile, Deputy Chairperson of Komnas HAM 2022 – now, Abdul Haris Semendawai (interview on 3 June 2024), revealed that apart from the problem of the political superstructure, what makes disclosing past human rights cases difficult is the lack of clarity on more technical procedural law in the investigation of cases of serious human rights violations. There are no legislative changes have been related to the Human Rights Courts Law-2000, which limits Komnas HAM’s authority. There is also a lack of synchronization between human rights court procedural law and criminal procedural law in the Criminal Procedure Code.

Composition and Guarantees of Independence (budget and expenditures).

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (OHCHR, 2013). The whole selection process of the Chairman and Members in National Human Rights Commission in Bangladesh is not participatory. The selection committee of the NHRC is comprised of government officials including law minister, the home minister, the chairman of the law commission, the cabinet secretary, and two members of the parliament (MP). One of the two MPs has to be a member of the opposition, but that member too has to be nominated by the speaker (Khan, 2019). The so-called political nomination raised debates and threat for independence of the commission. The Human Rights Affairs Secretary and senior Lawyer, Asaduzzaman

from the opposition Bangladesh Nationalist Party (hereafter BNP), mentioned that appointment procedures in the National Human Rights Commission in a mechanical manner demonstrates that all the politically motivated individuals are appointed in the commission in order to serve the regime (online interview, April 13, 2024). The leading rights activist Sultana Kalam also mentioned that NHRI in Bangladesh not following the core of Paris Principals. “So far, we have never seen this procedure being followed. Rather, we have witnessed former bureaucrats in the leading position at the NHRC, with rare exceptions (Kamal, 2023).

Other political parties are also frustrated with NHRI and stated that it became government partner organization (online conversation with Coordinator of the Left Political Alliance, September, 2022). There is a strong loophole in the appointment procedure of the Chairman and members of the NHRC of Bangladesh. Since the 2009, most of the Commission members either from retired government officials or ruling party’s like-minded people.

Budget allocation and expenditure

The Paris Principles specifically state that the NHRIs must have mechanisms for institutional infrastructure and budget independence, so that they can enjoy financial independence. National Human Rights Commission in Bangladesh is a statutory independent institution which is committed to provide independent views on issues within the boundaries of the Constitution or prevailing law, being in force for the protection of human rights. As per the act, the commission works independently and does not

require prior approval to spend its budgetary allocation. It should be noted that the commission's budget is funded by annual grants from the Government of Bangladesh or local authorities. Its account is to be audited by the Comptroller and Auditor General (CAG) of Bangladesh. The budget has gradually increased but not sufficient to work in big scale (Haque & Monami, 2017).

In case of NHRI in Indonesia, as mentioned by Patra (2012) and Arliman (2017), Komnas HAM's independence at the start of its establishment had doubts because it was considered vulnerable to government intervention. Human rights were considered only as a political tool for the interests of the New Order authorities to restore Indonesia's negative image in upholding human rights. Some evidence of this assumption is the helplessness of KOMNAS HAM in resolving past cases of human rights violations such as the Tanjung Priok case (1984), Timor Leste (1999), Abepura (2000), Semanggi I and II (1998 – 1999), to the case that happened in December 2020 namely the massacre of six members of the Islamic Defenders Front by police officers from the Greater Jakarta Police at kilometer 50 of the Cikampek toll road. The KOMNAS HAM still contains a number of weaknesses such as its dependency on the local authority, insufficient budget, unclear position of KOMNAS HAM in the constitutional system and so on.

Conclusions

The purposes of this study are to examine how the NHRIs working in South and Southeast Asian countries, and to what extent that they face difficulties to comply with Paris Principles. The outcome of this study shows that in Bangladesh and Indonesia,

NHRIs are controlled by the government. The NHRI basically is a 'statutory independent institution.' While people have a lot of expectations from these institutions, but the ground reality is disappointing and have frustrating scenario in both country context. All interviewees for this study stated that NHRIs have various limitations which prevent them from complying with the Paris Principles. Formation and nominations criteria are not transparent. Certain NHRIs centre has become a rehabilitation centre for former government officials and retired judges. NHRIs failed to criticize human rights abuses especially if those abuses are committed by security forces against political oppositions and ethno-religious minorities. NHRIs mandate shrunken by the ruling government. Members of civil society who have worked for this institution for long never want the status of this platform to be questionable. Regarding the financial independence, NHRI will be funded by the State but not controlled by the national government. There is no doubt that NHRIs have the potential to be a significant institution, but without competent people, it will turn to be another government agency.

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