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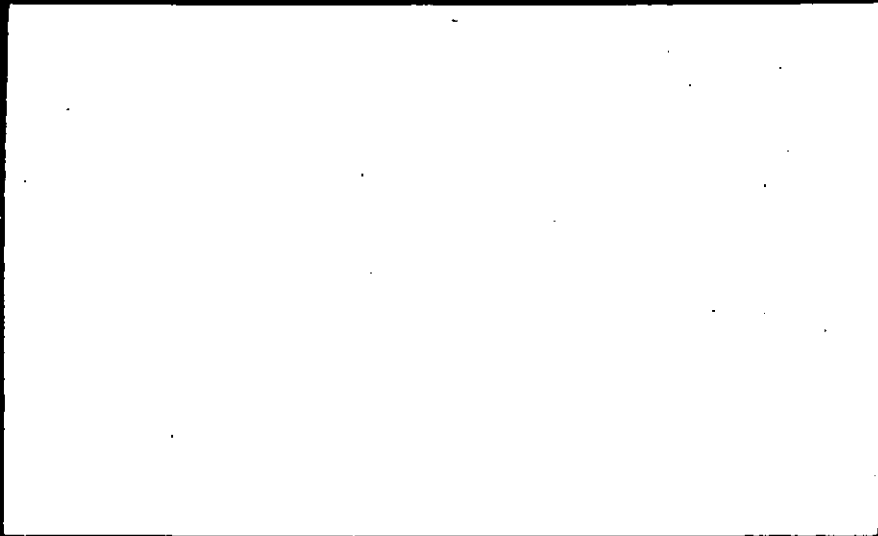
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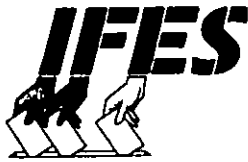
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International Foundation for Election Systems

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**PRE-ELECTION
TECHNICAL ASSESSMENT:
REPUBLIC OF BANGLADESH**

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September 2000

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GLOSSARY OF TERMS AND ABBREVIATIONS

AL	Awami League
APO	Assistant Presiding Officer
ARO	Assistant Returning Officer
BAMNA	Bangladesh Mukto Birbachan Andolon (The Bangladesh Movement for Free Elections)
BLAST	Bangladesh Legal Aid and Services Trust
BCL	Bangladesh Chhatra League
BNP	Bangladesh Nationalist Party
BSS	Bangladesh Sangbad Sangstha (Bangladesh News Organization)
BTACC	Bangladesh Teachers Action Coordination Committee
CCHRB	The Coordinating Council for Human Rights in Bangladesh
CSO	Civil Society Organization
DC	Deputy Commissioner
DU	Dhaka University
EC	Election Commission
FBCC	Federation of Bangladesh Chambers of Commerce
FEMA	Fair Election Monitoring Alliance
Hartal	General strike
ICS	Iami Chhatra Shirbir (Student wing of Jamaat-e-Islami Party)
IFES	International Foundation for Election Systems
IU	Islamic University
JCD	Jatiyatabadi Chhatra Dal (Student wing of the BNP)
JP	Jatiya (Freedom) Party
JU	Jahangirnagar University
Jamaat-e-Islami	One of the main political parties
Jatiya Sangsad	Bangladesh Parliament
LTO	Long-term Observation
MP	Member of Parliament
MSS/SRG	Study & Research Group of Manabik Shahajya Sangstha
NGO	Non-Governmental Organization
OSCE	Organization for Security and Cooperation in Europe
PO	Presiding Officer
PM	Prime Minister
PSA	Public Safety Act
RO	Returning Officer
RPO	<i>Representation of the People Order</i>
RU	Rajshahi University
SAARC	South Asian Association for Regional Cooperation
SMM	Single-Member Majority system
TIB	Transparency International Bangladesh
Tk.	Taka, a unit of currency in Bangladesh
Thana	Lowest level of central government administration
UNDP	United Nations Development Programme
USAID	US Agency for International Development
VC	Vice Chancellor

PART I. GENERAL ASSESSMENT

EXECUTIVE SUMMARY

The International Foundation for Election Systems (IFES) conducted a Pre-election Technical Assessment for the next parliamentary elections in Bangladesh, which must be held by October 2001.¹ The IFES team was comprised of Election Administration Specialist Linda Edgeworth, Legal Specialist Daniel Finn, and IFES Facilitator Valeria Laitinen. The team was deployed to Bangladesh for a two-week visit in August 2000.

The IFES consultants were asked to focus primarily on action-oriented proposals for modifications in election administration and law, which could potentially be implemented prior to the upcoming elections, possibly with donor support. The purpose was to identify interventions that could build confidence in the election process and, if possible, create inducements for the opposition to reengage in the process. At the time of the team's visit the opposition was continuing to maintain its then nine-month-old boycott of Parliament and by-elections, and to organize strikes and street protests.

During their visit the consultants met with a wide range of knowledgeable persons in Bangladeshi society, including the chairman and members of the Election Commission, and representatives of the government, political parties, civil society, the academic community, the media, and the donor community. The team also visited Mymensingh where they met regional government officials and election officers, as well as representatives of domestic election monitoring groups, in an effort to evaluate the election process and political environment from a regional perspective. In addition to these consultations, the team evaluated the constitutional and statutory framework for elections and assessed the status of advance preparations.

With the above objectives in mind, the team developed a number of proposals centered on building public confidence, and promoting transparency and inclusiveness in the administration of the election process. In view of the volatile and obstructive political environment and the fact that Parliament remains constrained by the absence of the opposition, the IFES consultants divided its proposals into three levels of priority.

Top priority was given to the development of proposals that the consultants believed could be addressed through technical and procedural means and that, by and large, would not require legislative action. This approach was adopted in acknowledgement of the fact any action taken by the majority coalition in Parliament on election-related issues was likely to fuel new protests from the boycotting opposition. The consultants identified several areas where procedural

¹ This assessment was funded through the Consortium for Elections and Political Process Strengthening (CEPPS), a grant agreement of IFES, National Democratic Institute, and International Republican Institute with the Democracy and Governance Center at USAID/Washington. USAID requested (1) an analysis of issues related to election administration in Bangladesh; (2) information that would be useful to foreign donors in deciding how best to support free and fair elections; and (3) information that would help international and domestic election monitoring groups to determine where in the electoral process it will be most important to focus monitoring efforts.

reform, supported by international technical assistance, could be productive in promoting public confidence and inclusiveness. These proposals focus on:

- introducing a coordinated methodology for long-term observation by the international community and civil society organizations within Bangladesh;
- increasing openness and transparency of the Election Commission and introducing a mechanism for input from political parties;
- promoting public confidence in the neutrality and independence of the Election Commission and subordinate structures;
- easing rules regarding domestic monitoring on election day; and
- reinstating codes of conduct for political parties and election officials and developing a related public awareness campaign to raise public expectations.

The consultants also developed proposals that require legislative amendments in the hope that the issues involved would be of sufficient interest to all parties that they could be acted upon without incurring the opposition's dissent. Such hopes were based on the fact that despite their boycott of the plenary sessions of the Parliament, opposition members are participating in the work of parliamentary committees, demonstrating that at least one forum exists in which the parties engage in constructive dialogue. Interim legislative proposals have been developed to address two key issues:

- the election of women to Parliament; and
- reducing the number of by-elections that overburden the system and exacerbate political tensions.

Finally, some long-term recommendations were also included. They define legislative amendments and practical measures to overcome unresolved issues that have contributed to the confrontational and obstructive nature of political interaction. They are also designed to provide inducements for the future opposition to continue to participate in the work of governance after the elections. These recommendations would address issues related to:

- strengthening of the independence of the Election Commission;
- reform of parliamentary operations;
- registration of political parties;
- reporting, disclosure, and limitations on party financing; and,
- improvement of dispute resolution and adjudication procedures.

I. BACKGROUND

When the British partitioned India in 1947, a part of their strategy was to bring together the Muslim majority under the State of Pakistan. The horseshoe shaped country with the mass of India separating its eastern and western wings was destined to split apart. The premise that a national identity would evolve on the basis of religion proved to be a false one; rather, it was its unique language and culture that caused East Pakistan to resist the influences and control of its western half. It was Mohammed Ali Jinnah's proposal to declare Urdu the national language that served as the catalyst from which a separatist movement emerged in the territory that would become independent Bangladesh.

Mobilized by the Awami League (AL) led by Sheikh Mujibur Rahman, dissenters from the Pakistan army, police and paramilitary forces, militant students and party radicals formed an armed resistance force. With the intervention of India, Bangladesh won its "liberation war" for independence in 1971.

But the journey to building a democratic state has been scarred by assassinations, civil unrest, violence and bloodshed, imposition of martial law, protests, boycotts, and strikes. It is impossible to separate today's politics from the painful string of events that have punctuated Bangladesh's short but contentious history.

A. Brief Perspective on a Dramatic History

Sheikh Mujibur Rahman, the Father of Independence, and his Awami League held onto power over the new country for only 3 ½ years. In that time, a new constitution was forged making Bangladesh a secular state with a parliamentary system fashioned after the British model. However, in the wake of his move to make Bangladesh a one-party state and his dissolution of all other political parties, the president, members of his family, and close associates were assassinated by dissident factions, especially within the military, in a brutal act of terrorism in 1975.

Out of the chaos and in the aftermath of the "November 7 Uprising," General Ziaur Rahman emerged as president and martial law administrator. After forming the Bangladesh Nationalist Party (BNP), Zia's political legitimacy was solidified with his election to the presidency in 1978. The BNP also swept parliamentary elections in 1979. His shake up of the military was an attempt to eradicate the growing factionalism within, and neutralize its influence. But deep-seated resentment remained and once again, the reins of power were transferred brutally when Zia was assassinated in 1981.

Another military coup unseated the vice president who succeeded Zia, and General H.M. Ershad took over as public administration chief and imposed martial law. However, when the party pushed through a constitutional amendment making Islam the state religion, the opposition walked out of Parliament. With both BNP and Awami League boycotting the 1988 elections, Ershad's Jatiya Party (JP) won 206 of the 300 seats. But the victory was short-lived. BNP and Awami League, in an uneasy alliance, mobilized boycotts, strikes, and demonstrations that crippled the country, and Ershad's government was forced to step down in 1990.

The success of the long fought campaign to oust Ershad was insufficient to sustain opposition unity. The bitter rivalry between Sheikh Mujibur Rahman's daughter Hasina, who has been leader of the Awami League since her father's death, and Khaleda Zia, Ziaur Rahman's widow and leader of BNP, remains the single most significant source of disunity in the political life of the country. Hasina has openly accused Khaleda's former husband, General Zia, of involvement in the assassination of her father. In reply, the BNP leader has accused Hasina of involvement in the murder of her husband.

The personal enmity between these two powerful leaders continues to underscore their individual political agendas and is at the core of the confrontational and obstructive political environment that has characterized elections, the operations of the Parliament, and overall governance since 1991. The pattern established in advance of past elections appears to be unfolding once again as the 2001 elections approach: a boycott of Parliament by the opposition; calls for *hartals* (general strikes), processions and demonstrations; retaliatory resistance by the supporters of the ruling party; vitriolic rhetoric; and incidents of violence.

Although certain similarities with prior election cycles exist in the campaign strategies of the opposition and ruling parties, they are also dissimilar in several respects. As one source commented, having successfully forced the collapse of Ershad's government in a united opposition campaign, in 1991 opposition parties faced the elections in a state of "euphoria," genuinely believing that it could be anyone's race. They were hopeful in their belief that they could win. Having won the elections in 1991, BNP faced a fierce "political fight for a potential outcome," in an atmosphere of fear that the government would ensure its own victory in 1996. As the 2001 elections approach, each of the 2 major parties has served as the ruling party and as leader of the opposition. Each has engineered campaigns designed to obstruct the activities and policies of the other. Some analysts have suggested that the 2001 elections will be particularly important since the future strength and sustainability of either major party may be shaken if they fail to win in this "two-out-of-three tie-breaker."

On the pages that follow is a table that provides a "quick reference" overview that chronicles the histories of the major parties that will most likely participate in the next elections, and the intertwined relationships of their leaders.² It is this history that will serve as the backdrop for the 2001 election campaign.

² For a more detailed overview of the political history of Bangladesh since 1971, see IFES' *Pre-Election Technical Assessment, Republic of Bangladesh, Sixth Parliamentary Elections Projected for Winter 1995-96*, January-February 1995; and *The Electoral System in Bangladesh: A Report of Non-Governmental Group, International Center for Ethnic Studies*, 23 August 1990.

Brief Profile of Three Major Parties and Their Histories

Year	Awami League	Jatiya Party	BNP
Pre-1975	<ul style="list-style-type: none"> • First organized in 1948 by Sheikh Mujibur Rahman. With India's support, AL was the major force in the drive for independence in 1971. Sheikh Mujibur Rahman becomes Father of Independence. • Upon victory for independence Rahman assumes leadership of Bangladesh under provisional constitution. • Sweeps 1973 elections under new Constitution. • Split emerges in party with breakaway faction forming new party, Jatiya Samajatantrik Dal (JDS National Socialist Party). • President Rahman pushes through constitutional amendment giving him authority to declare state of emergency thereby granting him authority to take executive actions overturning certain civil liberties. 		
1975	<ul style="list-style-type: none"> • 1975 Rahman creates a one-party state, dissolving all other political parties. Refashioned his party under name Bangladesh Khasak Sramik Awami League. • August 15, 1975, dissident factions, especially among the military, assassinate Rahman, members of his family, and close associates. • AL is formally disbanded by right-wing leader Moshtaque Ahmed, the new president of a military-controlled civilian government. 		<ul style="list-style-type: none"> • Moshtaque Ahmed becomes new president of a military-controlled civilian government after assassination of Sheikh Mujibur Rahman in August of 1975. • Coup attempt by military officers succeeds and Ahmed is overthrown. General Ziaur Rahman emerges as chief of the military and leader of the new populist alliance of military and civilian forces.

Brief Profile of Three Major Parties and Their Histories, continued

Year	Awami League	Jatiya Party	BNP
1977-79			<ul style="list-style-type: none"> • April 1977 Zia becomes president and chief martial law administrator. New splits in the military cadre emerge. • 1978 Zia forms Bangladesh Nationalist Party (BNP) and wins presidential election giving his presidency political "legitimacy." • 1979, BNP sweeps parliamentary elections.
1980-81	<ul style="list-style-type: none"> • 1980 chasm develops in AL. Sheikh Hasina (Rahman's daughter) leads majority faction as president of the party and leader of the opposition. • Dissident faction of AL led by Mizanur Rahman Chowdhury. 	<ul style="list-style-type: none"> • After military coup unseats Abdul Sattar, General H.M. Ershad assumes title of "Public Administration Chief." • Ershad declares martial law. • Jatiya Party is formed. 	<ul style="list-style-type: none"> • By 1980 defectors from other parties join BNP government. • Zia works to neutralize military influence, negate political opposition, and diffuse radical elements. Strategy calls for secret trial leading to the execution of Colonel Tahir, and aggressive campaign against JSD. Estimated that 400 military officers are killed in shake-up. • 1981, deep resentment within military results in Zia's assassination. • VP Abdul Sattar succeeds him in new election gaining 66% of the vote. He too is overthrown by the military.
1985-87	<ul style="list-style-type: none"> • AL joins BNP as part of united opposition boycotting elections, demanding end to martial law and formation of neutral government to hold elections. • By 1987 unified opposition breaks down and parties are drawn along new alliances. • AL leads "8 Party Alliance". Seeks ouster of Ershad, while BNP "7 Party Alliance" pushes for dissolution of Parliament. • Sheikh Hasina put under house arrest but <i>hartals</i> and protests continue. 	<ul style="list-style-type: none"> • Promises of parliamentary elections in 1985 not kept. Elections become referendum of Ershad's policies. • Soon after election, political activity is banned and martial law is reinstated. • Khaleda Zia and Sheikh Hasina put under house arrest but campaign of <i>hartals</i> and protests continues. • In 1986 elections, Jatiya Party wins 152 seats; 26 independents join party strengthening JP's majority. • Miznur Rahman Chowdhury, formerly of AL, becomes PM under Ershad. 	<ul style="list-style-type: none"> • BNP joins Awami League in united opposition, demanding end of martial law and formation of neutral government to hold elections. • By 1987 alliance with AL breaks down. Khaleda Zia (General Ziaur Rahman's widow) launches her own campaign. BNP leads 7 Party Alliance and pushes for dissolution of Parliament while AL's 8 Party Alliance calls for ouster of the president. • Khaleda Zia put under house arrest but campaign of <i>hartals</i> and protests continued.

Brief Profile of Three Major Parties and Their Histories, continued

Year	Awami League	Jatiya Party	BNP
1988 - 90	<ul style="list-style-type: none"> AL boycotts 1988 elections. 	<ul style="list-style-type: none"> In 1988 elections boycotted by AL and BNP, Jatiya Party wins 281 seats. Ershad again bans political activities, rallies and calls on police and military to deal with social unrest. 1988 Ershad's move to make Islam the state religion succeeds. Constitutional amendment is passed. In protest entire opposition walks out on Parliament. Social unrest leads to collapse of Ershad's government in Dec. 1990. 	<ul style="list-style-type: none"> BNP boycotts 1988 elections demanding elections under neutral government.
1991	<ul style="list-style-type: none"> Competes in 1991 elections gaining the second largest number of seats (89) – 2nd to BNP. 	<ul style="list-style-type: none"> Jatiya Party wins 35 seats 	<ul style="list-style-type: none"> BNP wins 140 seats in Parliament Khaleda Zia becomes Prime Minister
1995-96	<ul style="list-style-type: none"> AL boycotts Parliament in 1995. AL boycotts February 1996 elections demanding elections held under caretaker government. AL calls for <i>hartals</i> and civil unrest forces the fall of BNP government. AL wins in repeated elections in June 1996 receiving 146 seats. 	<ul style="list-style-type: none"> Jatiya Party wins 32 seats in June 1996 elections. 	<ul style="list-style-type: none"> February 1996 BNP again wins elections that are boycotted by AL. Hartals, demonstrations and social unrest again result in dissolution of Parliament, and new elections are scheduled for June 1996. In June 1996 elections BNP is defeated, receiving only 116 seats.
1999-2000			<ul style="list-style-type: none"> Late 1999/2000, BNP boycotts Parliament and all by-elections.

Note: The 4th largest party is Jamaat-e-Islami. Having received the fourth largest number of seats (18) in the 1991 elections, the Jamaat-e-Islami represents fundamentalist religious views. A "pro-Pakistani" group which was revived in 1979 after seven years of inactivity, the party reinstated its former head, Golam Azam, as its president in April 1992. Golam Azam returned from self-imposed exile in 1978. However, it wasn't until April 1993 that the Dhaka High Court reversed Azam's loss of citizenship for allegedly collaborating with Pakistani military forces during the 1971 war for independence. In 1996, Jamaat-e-Islami won three seats in the Parliament.

B. Caretaker Government

Commencing in 1994, the political opposition led by the AL began to couple their calls for impartial administration of the scheduled 1995 parliamentary elections with a demand for a constitutional amendment to provide for the formation of a so-called caretaker government. This would occur after the termination of the mandate of members of Parliament (MP) and dissolution of Parliament. Parliament is dissolved 90 days prior to the holding of elections. At the time, the AL was boycotting parliamentary proceedings, and the government, then led by the BNP, resisted adopting this approach through legislation. In particular, the BNP was unwilling to turn over executive power and administration of the elections to a cabinet of un-elected figures.³

Following failure of the two opposing parties to reach agreement on the form of caretaker administration, the government proceeded with the scheduled February 1996 parliamentary elections. The ruling BNP decisively won these elections, but the credibility of the election process was undermined by the non-participation of the AL and other opposition parties, allegations of unfairness in election administration, and public perception that in the highly polarized political environment that existed, fair elections could not be held under regular governmental processes. Continued opposition boycotts and strikes finally combined with a strike of civil servants, bringing civil administration to a halt.

Under these circumstances, the ruling BNP and government were forced to agree to adoption of the 13th Amendment to the Constitution,⁴ requiring the formation of a caretaker government after the end of the mandate of a Parliament and during the election period. Under the constitutional provisions, the caretaker government must be appointed by the president within 15 days after dissolution of Parliament. The caretaker administration is comprised of a chief advisor and not more than ten other advisors. The chief advisor is usually the most recently retired chief justice of the country, but if he is not qualified, willing or available then other distinguished persons may be selected under further provisions.

The caretaker government exercises the executive powers of the state and also operates as an interim government. It is empowered to exercise all routine functions of the government but is not supposed to make any policy decisions, except as necessary to exercise ordinary operations of government. During the period of caretaker administration, the provisions of the Constitution requiring prime ministerial approval for presidential actions cease to apply.

The president could also exercise additional legislative powers during the period of caretaker government, however, under other provisions of the Constitution (contained in Chapter III, "Ordinance Making Power", of Part V, on the Legislature). When the Parliament has been dissolved, the president – if he "is satisfied that circumstances exist which render immediate

³ For an excellent account of the circumstances surrounding the adoption of the caretaker government concept, and the initial failure of the two main parties to agree on its form, see R. Sobhan, "Mediating Political Conflict in a Confrontational Environment: The Experience of the G-5", *Journal of Bangladeshi Studies*, Vol. 2, No. 1 (Bellevue, Wash. USA; 2000), pp. 1-9.

⁴ Constitution of the People's Republic of Bangladesh (as modified to 31 Dec. 1998). English version issued by the Ministry of Law, Justice and Parliamentary Affairs (Dhaka, Jan. 1999), Chap. IIA (Arts. 58B-E).

action necessary” – promulgates ordinances which have the force of law.⁵ Such ordinances must be laid before the next Parliament in order to continue in effect, and may not alter the Constitution or be inconsistent with it.⁶

The main purpose of the caretaker administration is to provide for fair elections. Article 58D(2) directs the caretaker to “give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially.” It would not appear that the caretaker has the power to discharge and replace members of the Election Commission (EC), since EC members are appointed to five-year terms and can only be removed through impeachment.⁷ The caretaker could, however, request that the president appoint additional members or request the resignation of the chairman or other members under other constitutional provisions.⁸

The concept, and practice, of caretaker administration for elections has now become an important component of the Bangladesh political system in both an institutional and popular sense. Bangladeshis appear to be quite proud of the development and implementation of this practice, and its inclusion in the Constitution. The consultants are not aware of another political system in which caretaker administration is constitutionally required during an election period, although such devices have been employed in several other countries during periods of political crisis.

The formation of a caretaker government for elections does not, however, resolve all the issues associated with the objective of impartial election administration. By the time the caretaker administration is formed, important aspects of the elections process – including compilation of the electoral roll (voter list) – have already been completed under normal governmental arrangements. Many political parties have already selected their candidates for parliamentary seats. The environment in which the elections will be held has already been largely created.

Nor does the formation of a caretaker administration change the fundamental assignment of responsibilities under the Constitution and election-related laws. Generally, the Election Commission constitutionally established as an independent body, is already in place with membership appointed directly by the president. Under the Election Law, the official responsible for performing nearly all important election functions at the constituency level is the returning officer (RO).⁹ The existing practice is that the district, or deputy, commissioner (DC) serves as the RO for constituencies within his district.¹⁰ The DC is a civil servant appointed by the government based on seniority, qualifications and performance. The fact that he is appointed by and works under the government, however, opens his role in election administration to question by the opposition. (Currently, the opposition notes that many of the current DCs joined

⁵ Constitution, Art. 93(1).

⁶ *Id.*, Art. 93(2).

⁷ *Id.*, Chap. VII, Art. 118 (3) & (5).

⁸ *Id.*, (1) & (5).

⁹ See generally *Representation of the People Order* [RPO], 1972 (P.O. No. 155 of 1972), Chap. III.

¹⁰ More precisely, the DC serves as district RO. Additional ROs may be appointed for individual constituencies within the district, or the DC may serve in these capacities as well. *RPO*, Art. 17.

government service during an expansion of civil administration during the first years of independence in the mid-1970s, when the country was led by an AL government.)

Among the election-related powers exercised by the DC *cum* RO are appointing subordinate election staff and workers (including assistant returning officers (ARO), presiding officers, assistant presiding officers (APO), and poll workers). The RO also compiles election results from the polling stations and announces the winning candidate(s). He is responsible for designating facilities for polling stations, and for providing security and other general support. As DC, he also supervises regular police operations, including during the pre-election period.

Technically, under the Election Law, it is the EC that appoints ROs. During the period of caretaker administration, the EC could attempt to replace the ROs with persons who are not linked to local government. During the relatively short caretaker period, however, it would be very difficult for the EC to change the ROs for all or most of the country's 300 constituencies. Following that, it would also be very difficult for the new ROs to review the many POs and other election workers and make any changes in personnel that might be desirable.

The political opposition (the BNP, *Jamaat-e-Islami*, *Jatiya* and other parties), many non-governmental organizations and other persons have advanced the concept of appointing persons to the election administration who are independent from local administration – such as district judges as ROs and lower-level judicial personnel, including magistrates, as POs.¹¹ This would undoubtedly contribute to the appearance of impartiality, but could create problems in that judicial personnel may lack the administrative skills and connections to conduct efficient election operations.

Due to their concerns over the impartiality of current and future election administration, the opposition is also calling for an extended period of caretaker government. The opposition would like to see Parliament – in which they are currently not participating in plenary proceedings – dissolved well in advance of the end of its current electoral mandate. They argue that only a longer period of caretaker government could rectify flaws in election administration and the political environment in which the parliamentary elections will occur.

The peculiarity of these arguments is that they are mutually inconsistent in terms of the specific constitutional provisions related to caretaker government. If the government did decide to dissolve itself and the current Parliament, then the caretaker amendment would be triggered and elections would have to follow in 90 days in any event. Thus early termination of the government's mandate would not have the effect of extending the period of caretaker government under the existing constitutional provision.

In fact, what the opposition really appears to want is for the government to disband itself, and the Parliament, but in a way which does not activate the caretaker government amendment. Thus, the opposition arguments appear to be demanding that the government hand over power to a caretaker administration appointed voluntarily and outside the constitutional provisions for doing

¹¹ See, e.g., Fair Election Monitoring Alliance (FEMA), *Strengthening Electoral Process in Bangladesh: Recommendations*, (Dhaka, March 2000), pp. 5-7.

so. Indeed, it is possible that the Supreme Court could at some point declare the 13th Amendment inconsistent with the Constitution. (A case has been brought by an apparently independent personality on this issue, and was recently argued before the Court.)¹² If so, the formation of a caretaker administration for the upcoming national elections would have to be done voluntarily by the current government, perhaps in accordance with a brokered agreement with the opposition.

II. SYSTEM OF GOVERNANCE

A. Form of Government

After the end of military government in 1990, and since the formation of regular government in 1991, Bangladesh has been a parliamentary democracy. The prime minister (PM), who holds a seat in Parliament, is head of government. She is assisted by a cabinet of ministers most of whom are also parliamentarians. The president, who is head of state but has limited powers especially during the tenure of a government, is indirectly elected by Parliament.

The Bangladesh Parliament, the *Jatiya Sangsad*, is mainly comprised of 300 directly elected members representing geographical constituencies. These members are elected on the basis of the single member majority (SMM) system. Under a constitutional amendment which expires prior to the termination of the mandate of the current Parliament, however, an additional thirty women MPs are elected indirectly.

During national elections, Bangladesh has repeatedly experienced periods of interim, or caretaker, administration. The interim government which followed the end of military rule in 1990 is widely credited with having conducted fair parliamentary elections in 1991. The BNP government that came into office through these elections tried to conduct the next parliamentary elections, in February 1996, without dissolving itself and handing administration over to a caretaker. Popular protests forced that government to nullify the results of those elections, however, and cede power to a caretaker government in accordance with the demands of the then AL-led opposition.

The June 1996 elections that followed were conducted under new constitutional provisions establishing a caretaker administration, particularly of election operations, after the end of the mandate of a government and Parliament. They were won by the current AL government, which continues to claim credit for institutionalizing the system of election administration under a caretaker government.

¹² The case is based not on fundamental issues concerning the structure of government and separation of powers, however, but whether the 13th Amendment was adopted in accordance with referendum procedures that were contained in the Constitution at the time the amendment was adopted. (Those procedures were adopted, in turn, by the former military government.)

B. Additional Seats for Women MPs

The small number of women candidates elected to Parliament in regular elections has led to the adoption of special procedures for the election of additional women MPs. These procedures are currently contained in the Constitution,¹³ but will expire at the end of the present parliamentary mandate.

Under the procedures for the election of additional women MPs, 30 women candidates are elected indirectly, through a vote by the Parliament. No additional rules are given as to how these seats are allocated. One result has been that the victorious party has used its parliamentary majority to elect women who are committed to the party. Thus 28 of the 30 seats currently awarded to additional women MPs are held by members of the ruling AL. (The two remaining seats were awarded to women from a faction of the *Jatiya* Party when the full *Jatiya* Party was in a coalition with the ruling party.)

Numerous proposals have been made to replace the current system for additional parliamentary mandates for women. Some women's organizations advocate a great increase in the number of women's reserved seats, with one proposal calling for enlargement of the Parliament by an additional 150 seats to be reserved for women candidates selected by direct election. Other civil society organizations (CSO) have recommended an alternative approach, such as direct election of women in each of the country's 64 administrative units. For its part, the government has introduced legislation that would continue the current system.

It is up to the people of Bangladesh to decide how many special parliamentary seats should be allocated for the laudable purpose of increasing representation by women in Parliament. The consultants would argue, however, that the method chosen for this purpose should involve direct election, reflect a democratic allocation of mandates, and if possible, avoid a second ballot.

C. The Political System

Three hundred MPs in Bangladesh are elected directly from geographic constituencies. Notwithstanding this factor, candidates for parliamentary seats do not have to be residents of the constituencies in which they run for office. Indeed, under the Election Law, an individual may run for as many as five seats from different constituencies simultaneously. Should the person be elected in more than one race, he or she is only able to occupy one seat.

The consultants have been informed that this peculiar provision allows parties to run prominent and popular candidates in that number of districts, so that they can achieve the maximum number of victories. Afterwards, the parties tend to retain these mandates when the seats are ultimately filled through by-elections, which under the law must be held within a relatively short period after the vacancies are created. (The voters tend to vote for the candidate of the same party in the by-elections that they voted for previously.)

¹³ Art. 65(3).

A second peculiarity of the Bangladesh system of political representation is that MPs, despite being elected from geographic constituencies, are subject to strict party discipline. An MP nominated by a particular party who resigns from the party or votes against its directions in Parliament may be forced to vacate his seat.¹⁴ The harsh rule is further defined to include abstention from a vote if the party member is present, or absenting himself from attendance, “ignoring the direction of the party which nominated him at the election...”

A third peculiarity, which is related, is that parties have no special role in the nomination of candidates for Parliament. Qualified candidates may be nominated by any person, with a second; there is no signature petition requirement. It is only after a nomination is accepted by the relevant authority (the returning officer at the constituency level) that the parties inform the authority which candidate from those nominated is the candidate of their party and is entitled to be associated with their symbol on ballot papers, other election materials, and campaign instruments.

In fact, many parties actually decide their candidates well in advance of the formal nomination process. The consultants have been informed that most parties have already chosen their candidates in many constituencies for the 2001 parliamentary elections.

A final peculiarity – which brings us to the core of the matter discussed in this section – is that aside from the powers identified above, political parties do not have a formal role in the Constitution or laws of the country. As we have seen, there are no special provisions related to the nomination of candidates by political parties. There is no registration requirement for parties, either as a general matter or in connection with their participation in elections. There are no laws or regulations pertaining to the purposes of political parties, the activities they may undertake, the bylaws or procedures that they must follow, reports they must make on related matters, or the ways they raise and expend funds (including disclosure and reporting requirements).

Looking at the recent political history of Bangladesh it is clear that power has shifted back and forth between the currently ruling AL and current opposition BNP parties. These parties are led by forceful personalities who are related to key political figures in the history of the country. The contest between these persons, and their parties, dominates all aspects of Bangladeshi political life, and has also extended into the non-political realm. Thus, the political polarization has made it difficult for even the academic community, businesses and nongovernmental organizations to remain neutral.

Arguably, Bangladesh has developed a two (or “two plus”) party system – perhaps as a result of the single member majority method of election to Parliament which it inherited as a former British colony, combined with the national social and political culture. The two-party system has not yet been reflected in the Constitution or laws of the country, nor regulations developed under them. Responding to this situation by developing responsive institutions could, in the longer term, do much to bring the rivalry between the main parties within acceptable bounds.

¹⁴ *Constitution*, Art. 70(1).

III. ELECTION LAW AND PROCEDURES

The Bangladesh national election law ("the Election Law")¹⁵ dates from 1972, a year after independence. It provides a logical and apparently complete basis for the conduct of parliamentary elections,¹⁶ but has a few unusual features that have created difficulties with respect to public perception of election administration as well as its actual implementation:

- a. The law creates a "ministerial" structure for election administration, in which most decisions made by election authorities are non-discretionary in nature
- b. While the national Election Commission has legal power to appoint and control election officials and supervise the activities of other personnel conducting election operations, the system appears designed to be administered by regular government officers and staff at the district and lower levels
- c. The system for dispute resolution and adjudication is largely separate from election administration, and is carried out by judges
- d. The procedures for nomination of candidates are extremely liberal, there are no special procedures for nominations by political parties, and the all-important association of a candidate with a party is based on subsequent advice from the party

A. Responsible Officials and Staff

The creation of an independent body to administer the conduct of elections is mandated by the Constitution. Under Article 118 the Election Commission is established consisting of a chief election commissioner and as many other commissioners as the president may from time to time direct. The term of an election commissioner is five years from the date of taking office. Except as provided by law, the conditions of service for the election commissioners may be determined by presidential order.

It should be noted that although the president has free rein to appoint the chairman of his choice independently, an election commissioner can only be removed from his post on the same grounds pertaining to the removal of a judge of the Supreme Court. Traditionally, the chief commissioner has been selected from the ranks of retired court judges, although such a selection is not mandatory, and has not been followed by the current or former government.

1. Role of the Election Commission

Specifically, the Constitution charges the Election Commission with the following responsibilities:

¹⁵ RPO, 1972, (P.O. No. 155 of 1972).

¹⁶ See IFES, *Pre-Election Technical Assessment, Republic of Bangladesh, for the Sixth Parliamentary Elections*, (Jan.-Feb. 1995) (L. Edgeworth & S. Lansell).

- a. holding elections to the office of president;
- b. holding elections of members of Parliament;
- c. delimiting parliamentary constituencies;
- d. preparing electoral rolls; and
- e. carrying out other functions prescribed by law.

It is noted that the Constitution vests no responsibilities or functions to the Election Commission related to local elections, although other laws supply the legal basis for their involvement.

Under the Constitution the president (and the caretaker government) is to make available to the EC such staff as may be necessary to carry out its functions. Based on these provisions, the Commission does not have its own administrative staff. Rather, its administrative staff or secretariat falls under government auspices, as does the Commission's budget. Some critics have suggested that questions regarding the Commission's independence will remain until it is assigned its own secretariat separate from government or presidential influence, budget or control.

In 1994, when AL's demands for administration of a caretaker government were being resisted by the BNP government, a number of concessions were made regarding the powers of the Commission, in the hope of satisfying concerns raised by the opposition. The battle to institutionalize the caretaker government in the Constitution was won. Nonetheless, the improvements in the Election Law did strengthen, improve and empower the EC as was intended, specifically to "ensure fairer and impartial elections to the Parliament."¹⁷ The amendments provided a broader base of power to the EC to (1) supervise the activities of lower level elections officials and (2) regulate its own procedures. On the basis of this authority, the EC was granted a degree of autonomy in making its own decisions regarding development of programs and guidelines. Importantly, the amended law also gave specific authority to the Commission to take punitive measures against those found guilty of violating rules while engaged in the conduct of elections.

2. Subordinate Administrative Structures

The key election official is the returning officer, who is appointed by the EC for each constituency.¹⁸ Ordinarily, the senior appointed official of national government at the district level – the deputy, or district, commissioner – is designated as the RO for the constituencies within his district.

¹⁷ "Aims and Objectives," *Representation of the People (Amendment) Bill*, 1994.

¹⁸ *RPO*, Art. 7(1).

- The RO is responsible for carrying out “all such acts and things as may be necessary for effectively conducting an election” under the law.¹⁹ In addition to performing necessary tasks, he also supervises all election work in the constituency (sometimes also referred to as “district”).²⁰
- Among the tasks of the RO is identifying the sites for polling stations²¹ and designating election officers and workers.²² Election workers are almost always government personnel from the locality, including administrative staff and teachers. For each polling station, the RO appoints a presiding officer and assistant presiding officer.²³ The PO is responsible for conducting polling activities in accordance with the law, and maintaining order at the polling station. The RO may relieve a PO, APO or other election worker of his responsibilities and replace him, if necessary.²⁴
- The RO is also charged with executing other election functions, such as posting the register of voters in the district, and delivering extracts to the polling stations.²⁵ He also conducts the nomination process.²⁶

B. The Electoral Rolls

Compilation of voter lists for the purposes of elections to the Parliament is based on the Constitution, which vests responsibility for preparation of the electoral rolls with the Election Commission.²⁷ Under constitutional provisions, there is to be one electoral roll for each constituency for the purposes of elections to Parliament; preparation of any special electoral roll classifying electors according to religion, race, caste or sex is prohibited.²⁸

A person is eligible to be enrolled in the voter list “if he –

- a. is a citizen of Bangladesh;
- b. is not less than 18 years of age;
- c. does not stand declared by a competent court to be of unsound mind; and
- d. is or is deemed by law to be a resident of that constituency.”²⁹

While these criteria are standard, conditions and circumstances within the country make an accurate enumeration of the population and its voters and delimitation of electoral constituencies extremely difficult.

¹⁹ *Id.*, Art. 7(4).

²⁰ *Id.*, Art. 7(5).

²¹ *Id.*, Art. 8(2).

²² *Id.*, Art. 9.

²³ *Id.*, Art. 9 (1B).

²⁴ *Id.*, Art. 9(4).

²⁵ *Id.*, Art. 10(2).

²⁶ *Id.*, Arts. 12-15.

²⁷ *Constitution*, Art. 119 (1)(d).

²⁸ *Id.*, Art. 121.

²⁹ *Id.*, Art. 122 (2).

1. Preparation of the Electoral Rolls – 2000

Bangladesh is the most densely populated agricultural country in the world. Approximately 55% of the population are age-eligible for voting purposes according to recent results of the voter registration exercise completed in the spring of 2000. The share of age-eligible voters in Bangladesh is significantly lower than the share of voting age population experienced in most western democracies, commonly found in the 67%-69% range. The smaller share in Bangladesh is no doubt attributable to the lower life expectancy, which in 1993 was estimated at fifty-five years of age.

The most recent voter registration drive was implemented nationwide during the 46-day period between May 15 and June 30, 2000, culminating in the preparation of the 6th electoral roll since Bangladesh gained its independence in 1971. According to the EC, the 2000 voter registration exercise involved the compilation of a totally new voter list gathered from scratch, rather than merely opening a window for incorporating additions and corrections of the previous list.

To accomplish the task registrars reportedly went door to door to visit each household. It was also expected that no person would be added to the register unless he or she was interviewed in person. According to the EC, a return visit would be scheduled if members of the household were not at home when the enumerator first visited. As a back up plan, voters who were missed were also advised of periods when they could apply in person at local administrative offices.

In spite of intentions that each voter be interviewed in person, it is probably overly optimistic to think that the traditional practice of information being provided by one member of a household on behalf of others who were not present could be set aside easily. Presumably in the interests of efficiency and as a service to voters, anecdotal evidence suggests officials were willing to complete applications based on the claims of family members about others residing in the household. One source acknowledged that she had witnessed such activity while visiting an acquaintance's home at the time the registration official came to call.

An important feature of the registration process in 2000 was revision of the application form. In 1995 an elaborate three-part form was utilized to serve multiple purposes. In particular, the form was designed not only to gather basic information about the voter. It also included a number of additional questions from which officials hoped to extract statistical and demographic data on the voting population. One part was left with the voter. The second copy went to the Election Commission. The third copy was intended for use in the preparation of a voter ID card that would ultimately be issued to the voter upon presentation of his or her receipt copy of the application form. The objectives, while laudable, failed to generate the desired results. The number of questions being asked on the form made data-entry inefficient and time-consuming. The issuance of ID cards was simply beyond the capacity of the administration at that time.

As a practical matter, the unavailability of self-carbon paper stock and reluctance to use carbon paper meant that completion of each form had to be replicated three times, tripling the time it took to register each voter.

A simpler form was devised for the 2000 registration effort in consultation with the major political parties. The new single-page form, which included a tear-off coupon for the voter, simplified the application process while providing the voter with proof of his or her application.

Once the draft lists were compiled, local segments of the lists were posted at district and *thana* offices, the offices of union council chairmen and commissioners of city corporations, educational institutions used as polling centers, and other "convenient public places." Under the law, the lists must be posted for two weeks. In meeting this requirement EC instructions called for the lists to be posted from July 18 to August 3, 2000. By the end of that period, BNP was raising questions as to the validity of the lists and submitted a request to the Election Commission for an extension of the public scrutiny period. They based their request for more time to review the lists on the inclement weather, the Dengue fever epidemic, and inadequate posting in some locations, which they claimed had hindered the public's scrutiny of the lists. In response, the EC indicated there was no legal foundation for granting the extension, and denied the request.³⁰

Ultimately the draft list for 2000 included 74,675,749 registered voters with slightly more than 1/3 of them registered in Dhaka. The EC's plans called for local authorities to incorporate revisions, additions and corrections by August 20, at which time the revised lists would be submitted to the EC. As of the 16th of August, the EC reported that they had received 68,746 appeals from the public for corrections to the voter list, of which 44,621 were requests for enrollment, 21,313 were objections, and 2,812 were for corrections. The EC anticipates that the final list will be published by October 26, 2000.³¹

2. Controversies Surrounding the Current Electoral Rolls

Controversy has continually surrounded the compilation of the voter lists, especially since 1988. The latest electoral roll is no exception. The AL, for example, challenged the authenticity of names listed at the cantonment residence of BNP leader Khaleda Zia, where 83 voters were supposedly registered. The AL claimed that at least 21 names were fictitious, while another 28 persons identified were not residents at that location.³² In response, the BNP declared that the figures included private staff, drivers, security staff, gardeners, and others residing in barracks, staff quarters and separate houses located at the site.

The BNP has also challenged the ever-increasing number of voters, which has leapt upward by an average of 6% with each new list, against what the party claims has been a population growth of about 1.6%. In raising the "red flag," leaders of the BNP question the increase of 14.7 million voters over those recorded in the list as updated in 1998.³³

Admittedly, it is difficult to corroborate such results based on population data projected from other sources in recent years. The number of registered voters for the 1991 elections was 62.1

³⁰ "EC Sees No Scope to Entertain BNP Plea," *The Daily Star*, August 7, 2000, p. 1.

³¹ "Final Voter List to be Published by Oct 26," *The Bangladesh Observer*, August 15, 2000, p. 12.

³² "83 Voters at Khaleda's Residence," *The Daily Star*, 10 August 2000.

³³ "BNP Expresses Surprise over Inflated Voter Lists, Demands Probe," *The Independent*, 6 August 2000, p. 1.

million. At that same time Commonwealth observers were estimating voter population at 56.5 million.³⁴ And the results of the 1991 census - which was only published in 1994 - projected the population over 18 years old at 53.1 million. At the time of IFES' visit in 1995, the Election Commission was preparing its plans for updating the list for the 1996 elections based on its own projections which put the number of potential voters at 64 million. Indeed, the final voter register for the 1996 elections included 56.9 million voters.

The significant drop in the number of voters between 1991 and 1996 was attributed to the changes implemented by the Election Commission in which voters had to register in person. In prior registration efforts, a single member of a household was able to provide information on behalf of all the others who might not have been present. It had been suggested that this provided the opportunity for artificial inflation of the rolls as well as entries of voters on more than one list. In updating the list in 1995, the EC required that voters being added to the list had to be interviewed individually.

Given such prior trends and projections, it is easy to understand how questions might arise in the face of the 19% increase reported in the draft voter list compiled in May and June 2000. However, it is equally difficult to refute the reported enumeration given general conditions in the country and the obstacles which continue to hinder both census and voter registration efforts. The challenges facing enumerators are compounded by several factors:

- a. Bangladesh is a country which has virtually no institutionalized system of records on its citizens. Birth records are inadequate, although records of marriages are apparently becoming more reliable. The vast majority of citizens have no identity documents whatsoever. The average citizen of Bangladesh, for example, has no such thing as a birth certificate, driver's license, ID card or health card with which to substantiate his or her identity or age. Tax, property and utility records are not sufficiently reliable to prove a person's place of residence.
- b. With a high rate of illiteracy (estimated upwards of 65%,) compilation of information on each person is only as accurate as the enumerator's judgment as to how a person's name should be spelled in each case. There are also many, many common names that are shared by thousands of persons, although the use of a "family" name in the western sense, linking family units, is not customary practice in Bangladesh. Common names and variations on the spelling used at different times for the same person make it almost impossible to eliminate duplicates, or to distinguish real voters from false or "phantom" entries that critics assert are present on the lists.
- c. Another compelling factor is the high number of the "homeless" or "slum dweller" population. Although there are no accurate figures accounting for these citizens even through the census, general estimates suggest there are 3 to 5 million people who live in self-devised, temporary shelters. There is no way of knowing if, or

³⁴ *Parliamentary Elections in Bangladesh*, The Report of the Commonwealth Observer Group, Commonwealth Secretariat, 27 February 1991, p. 13.

how many of these individuals have actually been included on the lists. At best, it appears that their inclusion is left to the discretion of local authorities.

The requirement that a person "is or is deemed by law a resident" of the constituency to be enrolled on the voter list for that constituency may serve to eliminate them altogether. "Shanty towns" are, in fact, illegal. In addition, such clusters of improvised residences spring up temporarily, with residents coming and going at random. Often authorities force them away, especially when they encroach on state or government lands or areas where commercial development is planned; but they simply spring up at a different location. The problem is twofold: how to ensure this population's right to vote, while at the same time maintaining an accurate voter list for the constituency in the face of their transient circumstances. The latter is particularly problematic given the length of time in advance of an election that the actual registration exercise is carried out.

3. Alleged Abuses of the Electoral Rolls in Previous Elections

Concerns have been consistently expressed not only by partisan groups with their own political interests, but also by a variety of domestic and international observer groups. Since 1991, a number of well-organized monitoring groups have published their findings related to general elections, by-elections and local elections. They have included such groups as the Fair Election Monitoring Alliance (FEMA),³⁵ Bangladesh Mukto Birbachan Andolon (Bangladesh Movement for Free Elections or BAMNA), the Coordinating Council for Human Rights in Bangladesh (CCHRB), Study & Research Group of Manabik Shahajya Sangstha (MSS/SRG), International Center for Ethnic Studies, the Commonwealth Observer Group, and the National Steering Committee for Observing City Corporation Elections in 1994. A common theme that has continued to emerge relates to the manner in which inherent flaws in the voter lists and the incapacity to substantiate voter identity can be used to perpetrate abuses and fraud on election day.³⁶

In past elections, not only had evidence been provided by various monitoring organizations demonstrating the inclusion of ineligible persons on the lists, but incidents were also reported regarding refusal of registration to certain minority groups. For example, CCHRB cited allegations reported to them at a center in Jigatola in Dhaka in 1991, that 400 voters of a caste of Hindus called "Rishi" had been eliminated. Only twenty of their applications were ultimately accepted and all others were denied. Published assessments have also asserted that at certain

³⁵ FEMA is an umbrella organization that was comprised of 175 nongovernmental organizations across the country during its nationwide election observation of the 1996 parliamentary elections. The coordinated effort generated reports from 269 of 300 constituencies in that election.

³⁶ For detailed accounts of the findings of various monitoring organizations, see: *Bangladesh Parliamentary Elections, June 12, 1996, The Report of the Fair Election Monitoring Alliance*, [FEMA], 30 June 1996; *City Corporation Election 1994*, National Steering Committee for Observing City Corporation Elections 1994; *Report on By-election Held in National Constituency No. 39, Bogra-4*, Study and Research Group of Manabik Shahajya Sangstha, 7 July 1994; *Election Observation Report - 1991, 5th Parliamentary Elections*, Coordinating Council for Human Rights Bangladesh, April 1991; *A Report on Elections to the Fifth National Parliament*, Bangladesh Mukto Nirbachan, 27 February 1991; *Upazila Election 1990 Observation Report*, Coordinating Council for Human Rights in Bangladesh, 1990.

locations voters have been enticed with money to register and to cast their vote for certain candidates; in contrast there have been documented complaints that election officials have demanded bribes before adding voters to the lists. In at least one such incident in a village in Barguna, a magistrate was assigned to investigate.³⁷

Under the current law, if a person's name does not appear on the electoral roll, he or she is not allowed to vote. There are no provisions for "election day registration." Another common complaint, however, is that voters whose names cannot be found on the list are too often allowed to vote under the names of "phantom voters," (names of unknown or non-existent voters added to the lists improperly). Likewise, it has been alleged that unregistered persons are allowed to vote under the names of deceased persons or persons known to have moved away.

Even more commonly, voters have complained that when they have arrived at the polling place, their names have already been marked off, indicating that someone has already voted in their place. In the majority of the latter cases, it is likely that simple errors have been made in identifying voters at the polls. Unfortunately, when voters encounter this problem, there is no real remedy. Under these circumstances, the law provides that the voter is added to a supplemental list called the "Tendered Votes List." The voter is allowed to vote, but his or her ballot is segregated and placed in a specially marked packet, rather than being deposited into the ballot box.³⁸ Tendered ballots are never included in the count – meaning that the voter is, in effect, disenfranchised. In addition, his or her name and voter number from the electoral roll is written onto the ballot paper which is then placed in a separate packet which identifies the candidate for whom the voter voted, violating the secrecy of the person's vote.

On the other hand, the "tendered ballot" process may have two benefits. Issuing a ballot, albeit one that will never be counted, may ease tensions which could flare if the voters were simply turned away. In addition, depending on whether the information is actually used, the "tendered ballot" process does provide evidence as to the frequency with which such incidents occur. It is not known whether the EC has ever utilized this information for assessing the problem, identifying trends or determining how it might be more successfully resolved.

4. The Quest for Solutions: ID Cards and Citizen Involvement in the Administration of Voter Registration

In virtually all quarters there appears to be a general consensus that the issuance of photo ID cards would greatly benefit the election process and reduce instances of fraudulent voting and misuse of the voter register. The lingering debate centers on two issues. First, there is a legitimate question as to whether such a massive campaign should be undertaken for the issuance a single-use voter card for election purposes, or whether a multi-use state ID card system should be institutionalized nationwide. Secondly, serious questions also remain as to the capacity of the government to fulfill such a massive program given the existing social conditions, administrative capacity, and time and monetary restraints.

³⁷ Reported in the *Daily Sangbad*, January 21, 1991.

³⁸ President's Order No. 155 of 1972, *The Representation of the People Order*, 1972, Art.32.

At the time of IFES' 1995 projects in Bangladesh, work was underway on two pilot projects testing programs to: (1) involve citizen "steering committees" or "voters' clubs" in the conduct of voter registration and polling day activities; and (2) facilitate a distribution of photo ID cards to all registered voters. The two pilot projects in Depunia in Mymensingh District, and in Tongi Pourshaba, were designed to accommodate local elections in those areas. In Tongi, the pilot project was delayed due to logistical difficulties that ultimately resulted in delay of the elections there.

In the case of Depunia, the pilot project accommodated a two-year lead-time prior to the actual election that was to be carried out under the new program. The elections involved approximately twenty-nine polling stations, and 19,800 voters out of a population of 38,315 who voted for a chairman and nine members comprising the *parishad*. Of the nine seats, three were allocated to each of the union's three wards. Ultimately 495 citizens were recruited to create the voter lists, organize the implementation and distribution of the voter ID cards, conduct voter education, monitor campaign spending by the candidates, conduct polling day activity and maintain order at the polling stations.

The Depunia project was considered a major success, and by some reports the Depunia election was considered the most efficient, free and fair election in the history of the country.³⁹ Its success was attributed to the involvement of private citizens, which was perceived to have neutralized the mistrust of government involvement. There was greater confidence in the accuracy of the voter lists due to citizen involvement in the door-to-door voter registration process. The issuance of voter ID cards also had popular acceptance. In its assessment of the pilot program, the MSS-Study and Research Group wrote, "The ID cards gave the voters a feeling of pride symbolizing for the first time the ownership of their own vote, and, coupled with the motivation/voter education conducted by the CV, enthused them to ensure a fair and free election."

The two-year project was not problem-free, however. In spite of the extensive lead-time, there were still some registered voters who had not received their ID cards by voting day. Special arrangements were made which allowed them to obtain a special document from the presiding officer to use in lieu of the official card when they appeared at the polling station to vote. The challenges of extending such a program throughout the country would be daunting. Not only would implementation be costly, time-consuming, and labor intensive; it would also require the creation of a sophisticated permanent infrastructure to accommodate a system capable of keeping pace with updates and changes in the lives of a transient society.

Nonetheless, the successes of the pilot project and the lessons learned from the stumbling blocks encountered along the way provide a valuable template for pursuing similar strategies on a broader basis in the future. There is little doubt that Bangladesh as a whole, its election system, and its citizens would benefit greatly if some sort of ID program were institutionalized.

³⁹Tarikul Ghani, *A Report on Dapunia Model Election Held on April 30, 1994*, MSG-Study and Research Group.

5. Fingerprints as an Alternative to Photo IDs

Although interest in implementing some sort of ID card program still exists, few steps have yet been taken to actually initiate such a program. However, the EC remains engaged in a search to find alternative solutions. During discussions with the IFES consultants, the EC alluded to an alternative procedure that had been suggested to Commission. The process would use fingerprints – currently a required element on an application for voter registration - as a means of identifying voters on election day, rather than a photo ID. A consultant (apparently under contract with United Nations Development Programme [UNDP]) had offered some preliminary ideas as to how such a system would work. The process would involve the scanning of fingerprints into a database. Segments of the electoral roll would then be stored in scanner/readers that would be available at polling stations. It had been learned that such equipment was available at prices as low as \$99.00 per unit. On polling day, the voter would once again offer his fingerprint and it would then be read by the scanning device. If it were found to be a match for a print in the database, the voter would be allowed to vote.

It seemed clear that this solution was only in the very preliminary stages of investigation and that no steps had yet been taken to move forward with such a program. If feasible, this alternative would have the advantage of eliminating many of the practical concerns involved in a massive photo ID distribution program. However, it would not be without its own pitfalls. Practical matters such as the availability of reliable electricity at rural polling stations and cost considerations would need to be evaluated. In addition, substantive issues would have to be considered and resolved. For example, if registration applications are sometimes completed by one member of a household on behalf of family members who are absent, a single fingerprint could be stored in the database for several individuals. Alternative rules for verifying a voter's identity would need to be envisioned in the event of system failures on polling day.

C. **Nomination of Candidates**

In general, the Constitution and Election Law provide for a system of representation based on the election of individual candidates in single-mandate constituencies. Nominations of candidates within the constituencies are made through nomination papers submitted on behalf of individual candidates, by one person who is registered as a voter in the constituency as well as a second.⁴⁰ There is no distinction between party and independent candidates at this stage, and no signature petition accompanies the nomination papers.

Assuming that the papers are in proper form, and accompanied by the required deposit (Taka 5,000 or about USD 100), they must be accepted by the RO provided that the proposed candidate is not disqualified by a specific factor. If a nomination is rejected for technical reasons, it may be resubmitted without prejudice.

The main point of discretion with respect to nominations is whether a nominee should be disqualified. Under the Constitution, individuals are qualified to run for parliamentary seats if

⁴⁰ *Id.*, Art. 12(1).

they are citizens of the country and have reached the age of twenty-five.⁴¹ An individual is disqualified, however,⁴² if he has been declared incompetent, is undischarged from insolvency, acquires citizenship of or affirms allegiance to a foreign state, has been subject to a substantial period of imprisonment after conviction for a crime involving moral turpitude, holds any salaried office in government service (except those exempted under law), or is otherwise disqualified under law.

Grounds for disqualification under the Election Law include:⁴³

- a. holding a paid public post;
- b. having a share or interest in a sales or service contract with the government by himself or another member of his family; or
- c. being in technical default on a bank loan or being a director or partner of a company, or director of a financial institution, which is in default.

Despite of the fact that the law does not contemplate a formal role for political parties in the nomination process, the election process in Bangladesh is party driven, with recent history demonstrating characteristics of a two-party system. The vast majority of candidates contesting the elections are party candidates; the association of an individual candidate to a political party relates to the use of the party's symbol on the ballot paper. The process by which a party grants permission for individual nominees to use its symbol is not clarified in the law.

The IFES team has been advised that, as a matter of practice, parties actually advertise or solicit applications from individuals who are interested in running for office. The party chooses from among the applications (often involving an interview) and identifies individuals they are willing to include among those who may be given permission to run under the party's symbol. In fact, the applications are frequently "sold" to perspective candidates.

According to a published report by FEMA, the price of the application form from BNP and AL was Tk. 500. "For submission of each application the BNP took Tk. 6000; AL, Tk. 5000; and JP, Tk. 3000." At the time of the elections FEMA also reported that AL had sold 2,738 applications, but ultimately submitted 1,485. BNP sold 1,700 and submitted 1,000; Jatiya Party sold 2,100 and submitted 1,200. With these kinds of figures, FEMA calculated a total revenue for AL at about Tk. 8.79 million, for BNP, Tk 6.85 million, and for JP, about Tk. 6.25 million.

Under this scenario, candidates sometimes apply to more than one party. In fact, in one race in Dhaka three parties had held up announcing their candidate waiting for the person to make his final decision.⁴⁴

⁴¹ Art. 66(1).

⁴² *Id.*, (2).

⁴³ RPO, Art. 12(1).

⁴⁴ *Bangladesh Parliamentary Elections, June 12, 1996: The Report of the Fair Election Monitoring Alliance, FEMA, July 30, 1996.*

An official with whom the IFES team met indicated that after the nomination process is over sometimes – during which nomination papers have been received from individuals – a meeting is called with the parties where they identify nominees they have selected to be assigned their party's symbol. A document is then prepared recording this agreement.

Allegations are regularly made that persons who should be disqualified from candidacy for parliamentary positions under these provisions are still accepted by ROs for the various constituencies. In particular, it is said that many candidates are actually bankrupt and – while not necessarily being in technical default on their debts from a legal point of view – have nevertheless succeeded in being discharged from them.

Some Bangladeshi commentators, including local nongovernmental organizations (NGO), have also noted that persons who are in default on loans from public bodies (including the House Building Financial Corporation) have been legally exempted from the scope of the disqualification for those who default on their debts.⁴⁵ An eleven-party alliance participated in a demonstration in front of the Bangladesh Bank to protest the government's proposals for changes in the definition of default loans.⁴⁶ Critics expressed concerns that to circumvent the prohibition, the loans are often "rescheduled," and that the government often includes known defaulters "in their entourage" and on the "Commercially Important Persons (CPI) list."

D. Election Campaigns and Campaign Finance

Regulation of campaign activities under the Election Law is mainly handled through the provisions of Chapter IIIA, Election Expenses, and Chapter VI, Offences, Penalty and Procedure.

1. Campaign Finance

Chapter IIIA of the Election Law, on Election Expenses,⁴⁷ requires disclosure and reporting of campaign funds only by individual candidates. Relatively modest ceilings are also imposed on the total expenditures by a candidate of his own personal funds (Tk. 5,000 or about USD 100),⁴⁸ as well as funds received from all sources (Tk. 300,000).⁴⁹

The failure to apply legal restrictions to the finances of political parties is one consequence of the omission of the role of political parties from the current Election Law and other legislation. One effect of this approach is that the actual and emerging functions of the parties – such as in financing election campaigns – are not brought within the field of regulation.

The consultants have been informed by various sources that the main political parties in Bangladesh raise considerable funds from a variety of sources, including business people associated with them. (Numerous allegations are also made that party "activists" – sometimes

⁴⁵ FEMA Recommendations, pp. 10-11.

⁴⁶ "11 Party Alliance Protests Change in Definition of Default Loans," *The Daily Star*, 14 August 2000.

⁴⁷ RPO, Chap. III A (Arts. 44A-44D).

⁴⁸ *Id.*, Art. 44B(2)(i).

⁴⁹ *Id.*, Art. 44B(3).

little more than thugs – also visit businesses to demand contributions.) These funds are used for a variety of purposes – not excluding funding the parties' cadre of activists, including armed persons (*mastaan*, or musclemen). If reports are reliable, these monies are also used for various illegal as well as legal purposes in connection with elections and other aspects of the political process. (For example, they might be used to organize violence or intimidation against voters, or to attempt to buy or influence votes in various ways, or – including outside the election period – mobilizing and enforcing mass action campaigns including the frequent *hartals*.)

It has also been reported that both parties and candidates regularly violate the disclosure and reporting requirements of the existing legislation, the ceilings on expenditures during an election, and the prohibitions on expenditures for certain enumerated campaign activities.⁵⁰ The consultants have also been informed that much of the funding available to parties is actually raised illegally by candidates seeking party nomination (see above).

2. Campaign Practices

Chapter VI of the Election Law, on Offences, Penalty and Procedure, defines as corrupt practices or otherwise makes illegal⁵¹ numerous questionable campaign practices. This chapter, like others in the law, is very detailed. Questions exist, however, about whether its provisions are implemented effectively through administrative action and judicial enforcement.

Among the interesting provisions contained in Chapter VI are the following:

- a. Expending funds for campaign purposes from undisclosed sources is a punishable corrupt practice⁵²
- b. Publishing a false statement concerning the personal character of a candidate which is calculated to adversely affect his election prospects is a corrupt practice⁵³
- c. Influencing voters through appeals to "religion, community, race, caste, sect or tribe" is a corrupt practice⁵⁴
- d. Providing transportation to the polling site is a corrupt practice⁵⁵
- e. Procuring the assistance of a government employee in an election campaign is illegal⁵⁶
- f. Obtaining a ballot-paper for false purposes is also illegal⁵⁷

⁵⁰ *Id.*, Art. 44B(3A).

⁵¹ While there may previously have been a distinction between "corrupt" and other "illegal" practices under the law, the penalties for each category are currently the same – "rigorous" imprisonment for a term of 2-7 years, and a fine. Arts. 73 & 74.

⁵² *Id.*, Art. 73(2).

⁵³ *Id.*, Art. 73(3)(a).

⁵⁴ *Id.*, Art. 73(4).

⁵⁵ *Id.*, Art. 73(5).

⁵⁶ *Id.*, Art. 73(2A).

The enforcement of most of these provisions, as they are the basis for criminal penalties, would be up to the court after filing of charges by the authorities. Offenses by election officials may be prosecuted only after a complaint has been filed by the Election Commission.⁵⁸ The EC can also refer other offenses for prosecution.⁵⁹

Under Chapter VII of the Law, the EC is also required to establish an Electoral Enquiry Committee to enquire into pre-polling irregularities. The committee is comprised of judicial personnel, and may undertake inquiries on the basis of information brought to it, complaints made to it, or upon its own initiative. The committee has judicial investigatory powers. After inquiry, the committee may propose to the EC various actions, including the issuance of relevant directives. The EC may also impose a fine, not to exceed Tk. 5,000 (approx. USD 100).⁶⁰

E. Election Observation

The Bangladesh Election Law does not as such provide for the attendance of domestic monitors or foreign observers at the polls on election day. Monitors and observers are not included among those who are authorized to be present, and the law actually excludes others who are not "on duty in connection with the election".⁶¹

In previous elections, the EC has permitted both domestic monitors and foreign observers to attend operations at polling stations on election day. The EC chairman anticipates continuing this practice for the upcoming elections.

Some problems have arisen in connection with the attendance of domestic monitors, however. First, the rule adopted by the EC in the past generally allowed only a single monitor to be present in a polling station at any time. If monitors from more than one organization present themselves, then the presiding officer at the polling station requires them to change over periodically. Second, the rule on monitors is often interpreted to permit only a single monitor per polling station, notwithstanding that most stations are divided into several polling "booths" which are, in fact, separate voting stations.

F. Dispute Resolution and Adjudication

Extensive provisions are provided in the Election Law⁶² for the resolution of election disputes. Election petitions may be submitted only by candidates⁶³ within forty-five days of the publication of the results of an election, and may be delivered by them personally, by a representative who has written authorization from them, or by registered mail.⁶⁴ In a petition, a candidate can seek to overturn the victory of another candidate, obtain a declaration that he or

⁵⁷ *Id.*, Arts. 73(3)-(7) and 81.

⁵⁸ *Id.*, Art. 89(1).

⁵⁹ *Id.*, Art. 89(2).

⁶⁰ *Id.*, Art. 91A.

⁶¹ *RPO*, Art. 29(a).

⁶² *RPO*, Chapter V (Arts. 49-72).

⁶³ *Id.*, Art. 49(1).

⁶⁴ *Conduct of Elections Rules, 1972*, Arts. 30 & 31.

another candidate is the winner, or void the election.⁶⁵ The Election Commission interprets the latter provision⁶⁶ as applying only to the results of an election within a particular constituency, and not more generally.

The EC determines whether a petition has been submitted on time and with the required fee. If so, the EC must refer it to an election tribunal within fifteen days of receipt.⁶⁷ The EC may establish such tribunals as necessary; a tribunal is constituted of a person who is or has been a judge in one of the specified courts.⁶⁸ The EC may, if it wishes, transfer a petition from one tribunal to another.⁶⁹ Tribunals established in this manner have judicial power and judicial rules of procedure apply to their proceedings.⁷⁰ Any aggrieved party may appeal the decision of a tribunal to the High Court Division of the Supreme Court of Bangladesh within thirty days after announcement of the tribunal's decision.⁷¹

The procedures for adjudication of disputes contained in the Election Law are very detailed and clearly adequate to describe an effective system of dispute resolution. The only defect is the absence of speedy procedures to adjudicate disputes, if possible, during the election period itself. A tribunal may not adjourn its proceedings except "in the interest of justice", and "shall try an election petition as expeditiously as possible ..." Still, even this requirement is framed only in terms of a responsibility to "endeavor to conclude the trial within six months from the date" it receives a petition.⁷² There is no provision related to time limits on the length of appeals proceedings.

In fact, the resolution of disputes referred to tribunals has been notoriously slow. Many disputes from the 1996 elections have still not been judicially resolved. It has also been stated that tribunals have taken a very narrow view of the scope of review on election complaints, and have imposed unrealistic standards for the production of evidence by contestants.

Another omission in the Election Law is the absence of reference to the resolution of disputes by the EC or election officials themselves, prior to judicial appeal. This absence appears to represent the "ministerial" style of administration reflected in the law, which seems intended to limit discretionary judgments by election bodies and officials.

Another curious aspect of the referral of disputes to tribunals constituted by district and other court judges is that these officials are nonetheless part of the administrative structure and not the judicial system proper. Thus the tribunals are not entirely independent, and applicants' first opportunity to seek a truly judicial review of election decisions actually comes only upon appeal from decisions by tribunals. The net result is certainly delay and quite possibly also some loss of credibility for the election system.

⁶⁵ *RPO*, Art. 51(2).

⁶⁶ *Id.*, Arts. 51(2)(c) & 65.

⁶⁷ *Id.*, Art. 52.

⁶⁸ *Id.*, Art. 53.

⁶⁹ *Id.*, Art. 54.

⁷⁰ *Id.*, Art. 59.

⁷¹ *Id.*, Art. 62(3).

⁷² *Id.*, Art. 57.

IV. THE CURRENT CONTEXT

A. The Jatiya Sangsad (Parliament)

As mentioned previously, the functioning of the *Jatiya Sangsad*, or Parliament, has been impeded by the longtime boycott by the main opposition parties – the BNP, *Jamaat-e-Islami* and *Jatiya* parties. The government enjoys a parliamentary majority, and may pass legislation since normal laws require only a simple majority of those present to be passed.⁷³ It is restrained on acting on certain important issues, however, due to the nonparticipation of the opposition. With respect to amendments to the Election Law in particular, the government is reluctant to take legislative action since the opposition would almost certainly claim unfairness.

The boycott of Parliament by the opposition also prevents constitutional amendments, since such amendments require an absolute 2/3 vote (*i.e.*, of the total membership of the body).⁷⁴ Reenactment of provisions related to special representation for women in Parliament would require such an amendment.⁷⁵

Parliament is entitled to establish committees through its rules.⁷⁶ The powers of the committees include legislative drafting and oversight.⁷⁷ Parliament may also, by law, grant its committees investigatory powers.⁷⁸ Currently, the Committee on the Ministry of Law, Justice and Parliamentary Affairs has jurisdiction over matters related to election law.

The current government has reformed parliamentary operations in several ways, particularly with respect to the work of committees. In particular, the government has differentiated between its own ministers and parliamentary committee chairman. The chairman, who may also be a deputy minister, is now always an MP. One committee chairman is from the opposition, but the traditional practice of appointing opposition members to chair financial (revenue and expenditure) committees has been abandoned.

Surprisingly, notwithstanding its boycott of plenary proceedings, opposition MPs have continued to attend committee meetings. It is said that one motivation is to protect the interests of their constituents. Additional inducements may be provided by the fact that it is only through the committees that parliamentarians have any access to office space, equipment (including telephone and fax), and any research or administrative support.

The UNDP has a major program of assistance to Parliament – totaling over \$10 million in multi-year funding, with over \$1.2 million budgeted for the year 2000 alone. This program has, in part, provided improvements in the facilities and support available to parliamentarians, including through the committees.

⁷³ *Constitution*, Art. 75(1)(b).

⁷⁴ *Id.*, Art. 142(1)(a)(ii).

⁷⁵ *See id.*, Art. 65 (3).

⁷⁶ *Id.*, Art. 76(1)(c).

⁷⁷ *Id.*, Art. 76(2).

⁷⁸ *Id.*, Art. 76(3).

Regarding parliamentary procedures, debate in plenary session tends to follow a set format, under which the Speaker calls upon MPs in serial order. When called, the MPs may make a short statement – of several minutes duration – during which they may offer amendments. A “committee of the whole” procedure is, however, used in connection with money bills so that the body can go through such bills in detail.

B. The Campaign Environment: Hartals, Demonstrations and Violence

If the current Parliament is able to sustain itself until the end of its normal term, it would be almost a year before elections would have to be held. But pressure is already building in pre-campaign activities and political rhetoric. The pattern established in advance of past elections appears to be unfolding once again: a boycott of Parliament by the opposition, calls for *hartals*, processions and demonstrations, retaliatory resistance by the supporters of the ruling party, vitriolic rhetoric, and incidents of violence.

Although certain similarities with prior election cycles exist in the campaign strategies of the opposition and ruling parties, they are also dissimilar in several respects. Whereas the boycott of Parliament by the Awami League in 1994/95 centered on a single issue - the conduct of elections under a caretaker government - the 1999/2000 boycott by the BNP is less precise. They have left the Parliament claiming that they have not been given a sufficient voice to participate effectively under the current leadership. They have called upon the government to step down for failing to maintain law and order and, more recently, for failing to take appropriate measures to avoid the Dengue fever epidemic that has hit the country. They have also called for an extension of the time during which a caretaker government would be in place before the elections.

If recent events are any indication, the lead-up to the next elections is likely to repeat the unfortunate and debilitating trends of the past. Even the press has expressed concern about the volatility of the upcoming campaigns.⁷⁹ Unless all parties can come to some consensus regarding a comprehensive code of conduct and can maintain an appropriate level of discipline and control over the activities of their supporters, campaigns for the upcoming elections are likely to be bitter and marked with incidents of social unrest and violence. During the IFES team’s visit, a number of events demonstrated that such concerns are fully warranted and that the confrontational nature of politics is not only like to continue, but could escalate unless there is commitment to halt it.

After a lull of about six months, *hartals* and demonstrations were once again resumed. This included a three-day *hartal* when the Public Safety Act (PSA) was passed, and a demonstration on 12 June 2000 protesting the appointment of the new chief of the Election Commission.

Both AL and BNP leaders have accused each other of attempts on their lives. In July, bombs were planted at Kotalipara, the compound of the Prime Minister. In response to unsubstantiated accusations that the opposition was responsible, the BNP leader countered with claims that a book in her possession authored by an AL leader proved that she was the target of an assassination plot in which a “5 lakh [500,000 Tk.] reward was offered.”⁸⁰

⁷⁹ “Political Front to be Volatile Again,” *The Daily Star*, 3 August 2000.

⁸⁰ *Id.*, “Khaleda Alleges Several Attempts on Her Life, Blames PM”.

Although earlier in the year *hartals* remained relatively peaceful, by August demonstrations, rallies and *hartals* were turning violent. Most notably, a joint public rally and procession sponsored by BNP and members of the opposition alliance to protest the government's failure to check Dengue fever incurred a harsh response from Dhaka police. Witnesses indicated that twenty-five people were seriously injured, while as many as one hundred more sustained less serious injuries. The Secretary General of BNP alleged that police suddenly attacked what had been a peaceful gathering of the alliance. According to reports, the attack began while a speaker was bitterly criticizing the Home Minister for "lawlessness" in the country.⁸¹ According to news reports, police were seen pelting activists with stones at the BNP central office. Teargas was also used. Among the injured were Jatiya Party's Secretary General of the City Unit, a BNP MP, and the General Secretary of BNP. Curiously, in the face of such criticism, no press coverage in the newspapers monitored by the IFES consultants in the days that followed included a response from police officials clarifying the circumstances that prompted their action, or comments in their defense.

In protest, opposition forces called a seven-hour *hartal* for the next day. However, in this instance, the AL leadership made a decision to ask unit leaders and party workers to remain "vigilant against any damage caused by opposition activists." They also resolved that party workers would bring out anti-*hartal* processions to mobilize public opinion against the *hartal* program. City unit leaders and party lawmakers also "vowed to make their respective localities *hartal* free."⁸² Violence once again erupted. It was reported that ten activists of the Jatiya Party were injured, one by gunshot, when the party's procession came under attack in Barisal; and the BNP Office at Satpai in Netrokona was ransacked, allegedly by the student wing of the AL. Although Dhaka remained relatively quiet, eleven people were injured, five when police intervened, and four in a bomb explosion. At a number of locations rickshaws and vehicles were damaged.⁸³ The Secretary General of BNP publicly blamed AL for purposeful obstruction of the alliance's *hartals*. He also attributed five traffic deaths that occurred during *hartal* hours to accidents involving buses and trucks rented by the ruling party.⁸⁴

There is also a grave concern that recent murders of party leaders and their family members are reflective of a dangerous pattern that cannot be contained. Most victims have been affiliated with the AL (at least nine since July), although supporters of other parties have also been killed. For example, the Secretary General of Jamaat-e-Islami claimed that two Jamayat activists were killed and over one hundred shops and houses of the party's leaders had been ransacked and looted in reprisal in Chittagong, though his party had no involvement in the murders of a group of AL workers.⁸⁵

It is clear that in many cases, the killings are directly linked to political activity. However, while the immediate response is to lay blame on opposing party activists, it has become difficult for police to discount other motives that might have been in play in some cases. Two such murders occurred during the time of the IFES consultants' visit. In the first case, the AL candidate for

⁸¹ "Police Attack on Rally Leaves Scores Hurt," *The Daily Star*, 7 August 2000, p. 1.

⁸² "City AL to Foil 'Destructive Activities'," *The Daily Star*, 8 August 2000.

⁸³ *Id.*, "Peaceful, Partially Paralyzing Hartal Passes Off".

⁸⁴ *Id.*, "Bhuiyan Blames Govt for Crushing 5 Under Wheels".

⁸⁵ "Govt Pushing Country Toward Civil War," *The New Nation*, 13 August 2000.

mayor in Khulna was murdered by a group of young men as he walked to a mosque. The killing sparked a violent protest by the AL, Juba League and student wing activists. BNP was the target of their attacks in which shops and vehicles were damaged and offices were ransacked. However, police also speculated that the murder could have been the result of intra-party rivalries within the local AL unit, when the candidate's rapid rise to prominence "dashed the hopes" of many local veteran leaders.⁸⁶ Nor could police rule out a non-political motive, alluding to speculations about the victim's ties to an outlawed organization.⁸⁷

In the same week, the son of a BNP leader and former government minister was shot as three terrorists intercepted the car in which he was riding some 50 yards from his house. At the time, the motive was not clear. A third murder also occurred when an AL leader in Kotwall Thana was gunned down. It was speculated that the killing might have been a sequel to enmity between the victim and one of the suspects over the managing committee of the Mahuttuly Free Primary School. Another theory was that the killing might have been linked to an argument over the raising of a Pakistani flag at a house nearby. The victim had apparently organized a protest meeting with local residents to protest the hoisting of the flag.⁸⁸

Regardless of the circumstances, the frequency of violence associated with political activism will jeopardize the freeness, fairness and integrity of the election unless aggressive measures are taken to address the growing problem. The issue is compounded by the presence of armed cadres deemed necessary in the current environment to provide security to party leaders and candidates. Concerns have also been expressed regarding the potential role these "musclemen" might play in intimidating voters, and enforcing party discipline on businesses, institutions and local officials. They have become a common fixture in the electoral environment in spite of complaints about their presence from nearly all quarters. While discussing the issue with the IFES consultants, one long-standing MP acknowledged the magnitude of the problem and expressed his concern that "as an honest man," he could not hire such people and might, therefore, simply be unable to compete in the next elections.

C. Provocative Nature of Political Rhetoric

Another concern that deserves the attention of lawmakers, political leaders, and those responsible for conduct of the elections and monitoring campaign behavior is the frequency with which the speeches, interviews, and presentations of some of the country's most powerful politicians are laced with provocative and inflammatory language. Often the rhetoric reflects lingering resentments and fears deeply rooted in the country's bloody political history. Nonetheless, there is room to question whether language intended to incite hatred, fear or violence has any rightful place in a free and fair election environment.

Perhaps the occasion of the 25th anniversary of the assassination of Sheikh Majibur Rahman rekindled emotions, especially as appeals of the convictions of some of the perpetrators are still

⁸⁶ "Gunman Kill AL's Khulna Mayor Aspirant Rab," *The Daily Star*, 12 August 2000, p. 1.

⁸⁷ "Rangu Identified as One of the Killers of Rab," *The Daily Star*, 14 August 2000.

⁸⁸ "AL Leader, 4 Others Murdered in City: One Linked to Hoisting of Pakistani Flag at a House," *The Independent*, 17 August 2000.

underway. Throughout August, AL leaders were particularly flagrant in using inflammatory language to express their views. The opposition is consistently associated with the "anti-liberation forces," and labeled "conspirators" attempting to kill the prime minister and unseat the government. Statements to the effect that the "opposition is out to protect the killers (of Sheikh Mujib, or "Bangabandhu") and threaten to oust the government by staging another August 15..." frequently make the newspapers.⁸⁹ On BSS the AL leader called upon countrymen "to remain vigilant against the evil alliance of the anti-liberation forces, killers, women-oppressors, autocrats and vote-riggers."⁹⁰ Addressing a rally of the student wing of the AL, one minister urged students to again take an oath to "eliminate fundamentalist forces, killers and their patrons," while student leaders urged their followers to be prepared for a "second liberation war to uproot religious fanatics and conspirators from the land forever."⁹¹

At the same time BNP leaders have appealed to Hindu minorities "not to be deceived by the AL" and accused the government of "torturing" all, irrespective of religion or creed." Talking to overseas correspondents, a Jamaat-e-Islami leader recently accused the government of pushing the country "towards civil war" through its attacks on the opposition and "using its cultural and media fronts to carry out anti-Jamayat canard."⁹² Peripheral groups also add fuel to the fire. One group publicly urged the government to "be tough, serious and legally equipped to ban fascist communal politics." In addition, the group's speaker opined that if the "war criminals" of a certain party "were tried earlier for genocide, rape and arson in 1971, the fascist and killer forces would have not dared to attempt on the life of PM..."⁹³

It is also noted that slander and libel are committed on a regular basis without any apparent sanction. Whether civil laws are inadequate, or whether civil remedies are insufficient to warrant litigation, is unclear.

Ironically, while berating the opposition for their boycott of the Parliament, "language of violence," attempt on the life of the prime minister, secret killings, and anti-liberation activities, a BNP Minister suggested to BSS that under such circumstances, knowledgeable people were compelled to "ponder over the future of politics in the country."⁹⁴

In spite of detailed provisions in the law outlining election offenses, no prohibition exists regarding use of language intended to incite social hatreds, fear or violence. However, a limitation was incorporated into the Code of Conduct for Political Parties and Contesting Candidates Seeking Election to the Jatiya Sangsad in 1996. Part 5 (17) stated:

During the election campaign, no contesting party or candidate shall make any bitter and provocative statement or any such statement that may hurt the sentiment of the followers of any religion.

⁸⁹ "Injustice Will Grip the Society if Wrong-Doers Are Not Punished," *The Daily Star*, 14 August 2000.

⁹⁰ "Anti-liberation Forces Trying to Foil Verdict of Aug 15 Killings," *Bangladesh Observer*, 15 August 2000.

⁹¹ "Ban Politics of Religious Fanatics," *The Daily Star*, 3 August 2000.

⁹² "Govt. Pushing Country Toward Civil War," *The New Nation*, 13 August 2000.

⁹³ "Prajonmo'71 Demands Ban on Communal Politics," *The Independent*, 4 August 2000.

⁹⁴ "Manju Expresses Apprehension about Future of Politics," *Bangladesh Observer*, 15 August 2000.

Without similar provisions in the law itself, there is nothing to enforce legally. And, of course, where laws include such provisions, they are usually limited only to the official campaign period, and do little to dissuade politicians at other times.

Nonetheless, every effort should be made to reinstate an enhanced Code of Conduct and to encourage all parties to commit to fair and non-violent campaign practices. It is also critically important that parties become more responsible for the campaign activities of their local and regional units, and their peripheral organizations and student wings.

D. Polarization of Society

Virtually every sector of society has been polarized along political lines. Regions and communities can often be differentiated in terms of their political leanings, as can labor organizations and major enterprises. Business owners with whom the IFES consultants met acknowledged that they had been approached by political activists encouraging monetary contributions in exchange for "certain assurances" of their safety. Even roads and thoroughfares are sometimes recognized as "belonging" to one or the other major party. Concern was also expressed that NGOs have succumbed, and their activities often reflect political biases depending on the allegiances of their leaders and general membership.

Professional and commercial organizations are not immune and can get embroiled in political controversy as well. The Federation of Bangladesh Chambers of Commerce (FBCC), for example, faced criticism when they allowed a former chamber president to hold a meeting in their conference room. According to reports, the meeting was held to settle an internal dispute within Murad Nagar Thana Awami League. In response to the furor that erupted over the matter, the FBCC decided to not allow the room to be used by any political party in the future.⁹⁵

One of the most compelling issues facing Bangladesh in the highly charged pre-election environment is the politicization of the country's universities. Not only are students mobilized under the different parties' banners, but elections of deans and teachers' representatives often involve political competition. During the August elections of three deans and thirty-three teacher's representatives to the senate of Jahangirnagar University (JU), for example, pro-BNP teachers supported the vice chancellor's (VC) panel, while others supported the anti-VC panel.⁹⁶ Ultimately, all three of the deans, and twenty-six of the thirty-three seats in the JU Senate were won by the candidates supported by the BNP faction.⁹⁷

Often student-wing activities pit one party's group against another. Bombs and gunfire jolt college campuses with some frequency. On August 6, 2000, several hand bombs exploded in the room of an Islami Chhatra Shirbir (ICS) activist at Rajshahi University (RU). (The ICS is the student wing of the Jamaat-e-Islami Party.) The event resulted in a rally held by the leaders of the Socialists Students' Front, which used the opportunity to place blame for recent killings in the country on ICS and to demand the immediate execution of the verdicts against the murderers

⁹⁵ "No More Political Meetings at FBCC." *Daily Star*, August 7, 2000, p. 1.

⁹⁶ "JU Dean, Senate Polls Today," *The Independent*, 6 August 2000.

⁹⁷ "Prof. Bayes' Panel Sweeps JU Senate, Dean Poll," *The Independent*, 6 August 2000.

of Bangabandhu in 1975.⁹⁸ Gunshots were also fired on the campus of Dhaka University (DU), reportedly by the armed activists of the Bangladesh Chhatra League (BCL), the student wing of the Awami League. A four-member team was organized to investigate.⁹⁹ Gunfire resounded through three halls of Dhaka University even in the presence of a large number of on-duty policemen a week later. Sources reported that a faction of the BCL was involved in a conflict with rivals in an effort to take control of Zia Hall.¹⁰⁰ A policeman apparently drew fire from BCL activists in Chittagong as he arrested one of their members at Moghultooly Agarabad.¹⁰¹

Activists frequently are embroiled in demonstrations and conflicts that become violent, resulting in clashes among themselves, and with police. Such clashes result in school closures and delays of classes and exams. Even within the narrow time frame of the IFES consultants' visit, headlines drew public attention to political disturbances and disruptions on several of Bangladesh's campuses in different sections of the country. On August 11, 150 people were injured in clashes between BNP's student wing, Jatiyatabadi Chhatra Dal (JCD), BCL and police at Rajshahi University. To break up the fighting, police fired teargas into the crowds, and were supported for a time by the BCL who took to throwing stones at JCD activists. JCD claimed that seven of their members received bullet wounds.¹⁰² JCD called for a strike, and put forward a four-point demand package that called for the resignation of the vice chancellor, withdrawal of police from the campus, expulsion of BCL cadres from the university, and compensation for victims of the clash. The university's academic activities were shut down for several days,¹⁰³ in spite of BCL's promises to resist the JCD's program, and the insistence of school officials that the university would remain open.¹⁰⁴

At the Islamic University (IU) campus, twenty students and two police officers were injured during a gunfight between activists of the BCL and the ICS. Both groups brought out processions at the same time and exchanged provocative slogans against one another. According to the news reports, gunshots were fired from the BCL faction leaving a Shibir activist injured. The conflict, which lasted nearly an hour, also involved small explosives. Police intervened and dispersed the clashing groups. All classes and exams were suspended in the aftermath.¹⁰⁵ The following day tensions on campus and in the surrounding area continued as thirty Islamic University students were arrested under Section 54 of the Safety Act.¹⁰⁶

In the meantime, troubles on campus are translated into political rhetoric by the parties themselves. The Sectary General of BNP publicly condemned what he called "repression of the opposition activists," claiming that forty of their JCD student activists were implicated in fabricated cases under the Public Safety Act in Sylhet and Kalapara. The BNP leader alleged that one of the JCD leaders arrested had been tortured in custody, and that BNP offices were

⁹⁸ "Several Hand Bombs Explode at RU Hall," *The Independent*, 6 August 2000.

⁹⁹ "Gunshots Rock DU Campus," *The Daily Star*, 14 August 2000.

¹⁰⁰ "BCL Factions Clash at 3 DU Halls," *Bangladesh Observer*, August 15, 2000.

¹⁰¹ "Policeman Shot at by BCL Activists in Chittagong," *The Independent*, 18 August 2000.

¹⁰² "Clashes Leave 150 Injured at RU: JCD Calls Indefinite Strike," *The Daily Star*, 11 August, 2000, p.1.

¹⁰³ "Second Day of Strike at RU," *The Daily Star*, 14 August 2000, p. 12.

¹⁰⁴ "RU Situation Tense as JCD Calls Indefinite Strike Today," *The Daily Star*, 12 August, 2000.

¹⁰⁵ "BCL-Shibir Gunfight at IU: 20 Injured," *The Daily Star*, 7 August 2000.

¹⁰⁶ "Tension Prevails on IU Campus, 30 Students Arrested," *The Daily Star*, 8 August 2000.

attacked and damaged by "ruling party hoodlums" in Gopalganj and Narail Districts.¹⁰⁷ At the same time the Jatiya Party chairman, addressing a public meeting at Mogi Union of Magura District, accused the government of trying to shut down Islamic education centers on the "pretext of fundamentalism."¹⁰⁸ One hundred fifty teachers backed by the Awami League participated in a procession at the Rajshahi University campus condemning the "recent terrorist attacks." They also used the opportunity to condemn the recent bombing attempt at the prime minister's compound.¹⁰⁹

On another front, the Bangladesh Teachers Action Coordination Committee (BTACC) comprising five associations of non-government striking teachers, have decried the politicization of schools.¹¹⁰ In particular, the BTACC has protested a proposed amendment regarding the managing committees or governing bodies of the country's educational institutions. Pointing to a proposal of the Education Ministry, the committee has indicated they would resist a move that they believe would result in more politicization of the schools. According to a committee spokesman, the government wants to penetrate party politics into the institutions by making MPs the chairmen of the governing bodies of schools in their constituencies. In Dhaka city, reportedly each of the MPs already occupy these positions in 20-25 of the institutions, although in most cases, the BTACC complained that they have too little time to devote to the posts, so that the normal functioning of the institution is disrupted.¹¹¹

V. CIVIL SOCIETY

Despite the low level of literacy in Bangladesh, there is a surprisingly high level of interest in politics among the population at large. Candidates for parliamentary seats (as well as other elective offices at the local level) are expected to mount an active campaign, which engages the public through organized mass events such as rallies and parades. The expectation of a mass-based campaign is reflected in the provisions on campaign finance and practices in the Election Law.

Knowledgeable persons also make other points about the special characteristics of the Bangladeshi electorate. It is said, for example, that even the most reserved people, such as housewives, are not afraid to express themselves when they have the opportunity to state their opinion in public meetings. It is also said that the Bangladeshi people have an excellent sense of when a government is dictatorial or lacks legitimacy.

¹⁰⁷ "Mannan Slates Repression on Opposition Activists," *The Independent*, 6 August 2000, p.1.

¹⁰⁸ "Govt Trying to Shut Down Islamic Educations Centers, Says Ershad," *The Independent*, 6 August 2000.

¹⁰⁹ "RU Teachers Condemn Recent Terrorist Activities," *Daily Star*, 8 August 2000.

¹¹⁰ The non-government teachers are on strike to demand that 100% of their pay come from the government. At present approximately 20% comes from local sources. In addition, their demands include regular promotions, and increases in housing, medical and other allowances. In a related incident, eighteen teachers were injured in Manikganj, when their procession was attacked from behind while passing a mourning procession on the same road. Allegedly, the attack was in retaliation to anti-government statements made by the teachers. ("Nongovt. Teachers to Continue Strike," *The Daily Star*, 14 August 2000.)

¹¹¹ "Teachers Oppose Amendment to Present Structure," *The New Nation*, 13 August 2000.

Bangladesh also has a large number of nongovernmental organizations operating at all levels. For reasons that will immediately become apparent, the term "civil society organization" will be used herein with reference to the role of organized civil society in politics and the election process.

CSOs in Bangladesh are officially divided into two types according to their focus and, primarily, the source of their funds. Voluntary organizations register with the Social Welfare Ministry, and generally focus on charitable activities associated in other countries (such as the U.S.) with the concept of the non-profit service organization. Other organizations, which plan to accept funds from foreign sources, are referred to as NGOs; these are required to register with the Finance Ministry. Thus, the term "NGO" has come to be associated with foreign support, and the officers of registered NGOs are often the object of envy due to their access to foreign connections and funds.

For some time, Bangladesh CSOs (including "NGOs") have conducted election-related programs, particularly domestic monitoring of various aspects of the election process both before and on election day, as well as citizen awareness and voter education programs. Since 1996, the involved organizations have coordinated their activities through an umbrella organization called the Fair Election Monitoring Alliance or FEMA.¹¹² As noted elsewhere in this report, FEMA has also been involved in promoting reform of election laws in Bangladesh,¹¹³ including through engaging in consultations with interested groups and formulating legislative and other proposals.

FEMA conducted a coordinated monitoring program for the June 1996 parliamentary elections, and published a report on its findings the following month.¹¹⁴ It subsequently coordinated monitoring of local elections held in 1997.¹¹⁵ FEMA has thus demonstrated a capability to organize coordinated national election monitoring and other election-related civic programs. FEMA's monitoring results have sometimes been criticized, however, for not being sufficiently thorough and timely. In addition, FEMA suffers somewhat from the perception that, as an NGO, it is somewhat distant from its citizen base. This perception is accentuated by the fact that most of the individuals who serve as citizen monitors on election day under FEMA auspices are volunteers who are not members of the organization or one of its component groups.

In addition to CSOs there is also another sector of Bangladeshi civil society that deserves mention. This is the role of prominent individuals and their organizations, including various institutes and other bodies. The Center for Policy Dialogue, led by Professor Rehman Sobhan, is one example.¹¹⁶ Prof. Sobhan has recently made interesting proposals on how to encourage the opposition to return to the formal political process,¹¹⁷ and previously was active in attempting to

¹¹² See "Fair Election Monitoring Alliance," (pamphlet, n.d.).

¹¹³ FEMA, "Promoting Reform of Electoral Laws," (pamphlet, n.d.).

¹¹⁴ *Bangladesh Parliamentary Elections, June 12, 1996, Report of the Fair Election Monitoring Alliance*, FEMA, (July 30, 1996).

¹¹⁵ *Union Parishad Elections, 1997, Report of the Fair Election Monitoring Alliance*, FEMA, (Feb. 26, 1998).

¹¹⁶ Centre for Policy Dialogue, *A Report on the First Five Years 1994-98*.

¹¹⁷ R. Sobhan, "Bangladesh's Confrontational Political System: The Search for Solutions", paper presented at a seminar sponsored by the Governance Coalition on "Rethinking Confrontational Politics: A Reform Agenda" (Dhaka, 7 Aug. 2000).

mediate political confrontation between the main parties at the time of the last parliamentary elections, in 1996.¹¹⁸

More recently, a "Governance Coalition" has been formed by leading figures, including representatives of various CSOs – *inter alia* the Bangladesh Legal Aid and Services Trust (BLAST), the Study and Research Group (part of FEMA) and Transparency International Bangladesh (TIB). CSO representatives to the Governance Coalition have also addressed themselves to the broader, governance-related agenda of the latter.¹¹⁹

Thus the role of civil society in Bangladesh serves several functions, including specific activities like election monitoring and more general themes such as how to improve governance and the political process. Unfortunately, entry into the latter field of operations inevitably raises questions about the motivation of any organization that is also active in the former. Thus, many government officials are concerned that the CSOs tend to criticize the election process and raise issues that are then seized upon by the opposition for political purposes. In such a highly charged political environment, there is a natural tendency to try to look for ideas that might work to lessen confrontation and enhance the credibility of democratic institution. But one must observe that not all the proposals that have been made – and are described elsewhere in this report – for reform of the elections process are thought through completely.

With respect to the role of Bangladeshi civil society in attempting to lessen the political confrontation that has been ongoing in the country for so long, it is perhaps worthwhile to quote the words of Prof. Sobhan, who was involved in an earlier mediating effort:¹²⁰

As far as negotiating settlements are concerned the important lesson learned is that this is a high-risk occupation where unsolicited negotiators are suspected by both sides as to their bonafides. As a result such negotiators, however well intentioned, leave themselves open to insult and finally rejection. ... Unfortunately, as a result of the complete absence of mediators between the two parties, there have been no negotiations worth the name to resolve the impasse. Today Bangladesh thus remains unique in that a major political crisis has lingered on for nearly two years with serious consequences to the role of Parliament and civic life of the country, without even informal political dialogues between the two parties ... being attempted ... to resolve the crisis. This extraordinary standoff is compounded by the even more singular situation where the Prime Minister and Leader of the Opposition have not had a face-to-face political discussion over the lifetime of two elected parliaments. This does not appear to be a tenable basis for sustaining a workable system of parliamentary democracy.¹²¹

¹¹⁸ R. Sobhan, "Mediating Political Conflict in a Confrontational Environment: The Experience of the G-5", *Journal of Bangladeshi Studies*, Vol. 2, No. 1 (Bellevue, Washington, 2000), hereinafter referred to as "Mediating Political Conflict".

¹¹⁹ F. Hassan (MSS/SRG & FEMA) and M. Hasan (TIB), "Ideas Paper for the Seminar on Rethinking Confrontational Politics: A Reform Agenda by Civil Society", presented at the seminar organized by the Governance Coalition (Dhaka, 7 Aug. 2000). See footnote *supra*.

¹²⁰ See Sobhan, "Mediating Political Conflict", *op. cit.*

¹²¹ *Id.*, p. 9.

PART II. RECOMMENDATIONS

I. SHORT-TERM RECOMMENDATIONS

A. Long-Term Election Observation by the International Community

The current confrontation between the government, led by the ruling Awami League, and the opposition, including the alliance of the Bangladesh National Party and Jamaat-e-Islami and Jatiya parties, has resulted in a highly-charged political situation in which numerous allegations are made about all aspects of the political process, including preparations for the upcoming elections. In this environment, it is difficult for both participants and observers (including the international community, local citizens and organizations, and the press) to reach objective conclusions about the issues.

The IFES consultants believe that adopting a long-term observation (LTO) approach could greatly assist interested parties to monitor the election process and assess its credibility. LTO refers to a systematic program of observation continued for a substantial period of time prior to an election, and has been pioneered by the Organization for Security and Cooperation in Europe (OSCE) in connection with monitoring the special commitments to democratic principles made by its member countries.

In order to implement an LTO concept in Bangladesh, the U.S. Embassy ("the Embassy") and other international donors in Dhaka should organize and/or sponsor programs to monitor developments related to the elections by competent international organizations; interested governments, including the main donor countries; and Bangladesh civil society (including civil society organizations – CSOs – and prominent individuals). The civil society component of the proposed approach is described further in the following section.

With respect to activities by international organizations and the U.S. and foreign governments, it should be noted that a detailed, institutionalized process for LTO largely does not exist outside the OSCE framework (which is, of course, applicable only within the latter's geographical area of competence), and to a certain extent the United Nations and the Council of Europe. The primary international organizations which could perform this function for Bangladesh – including the Commonwealth organization and South Asian Association for Regional Cooperation (SAARC) – have less mandate for doing so.

The IFES consultants believe that, at a minimum, the U.S. and other interested countries ("donor countries") should undertake a coordinated LTO program. In addition, the team believes it would be productive to explore the possibility of carrying out a formal LTO operation through a competent international organization, particularly the European Union or the United Nations.

1. Coordinated Approach

The consultants believe that the U.S. government should explore with the Commonwealth and SAARC the extent to which they plan to undertake LTO in Bangladesh in the lead-up to the next

parliamentary elections. In addition, the U.S. could coordinate with other donor countries to adopt a coordinated LTO approach and cooperatively sponsor related activities including by CSOs. Some areas for LTO activity include monitoring of the following:

- a. election preparations by the Election Commission and other components of the government of Bangladesh;
- b. indications and warnings about how the government and ruling Awami League party and the opposition are approaching the upcoming elections;
- c. the adequacy of public and voter education programs;
- d. campaign finance practices;
- e. the fairness of political and related news coverage by the state-owned media (TV and radio);
- f. emerging political, campaign and election strategies of the political parties; and
- g. the extent to which the government and opposition are involved in questionable activities (including organizing campaigns of violence or intimidation).

Of course, many of the functions described in this section are regularly exercised by diplomatic and overseas assistance personnel. The point of adopting a specific LTO approach would be to make such activities more systematic and coordinate them among elements of the international community to the extent possible.

2. International Organization Approach

A coordinated LTO could provide a systematic basis to assess the characteristics of the election process, as well as an independent basis to evaluate its fairness. The results could be used not only by the donors, but also potentially by the government of Bangladesh to gauge international views toward the election and by comparison, those of local society – including the political opposition, civil society and the public. This would be useful in judging the performance of the government and other political institutions.

The formal conduct of an LTO by a competent international organization would provide an even more influential approach, and should be considered. While such an operation is a bit unusual outside the OSCE area, it has been conducted on occasion through the United Nations or other international organizations. The consultants believe that the U.N., through its Office of Project Services, would be best placed to perform this mission.

If contacted by high-level representatives of donor countries, the Bangladesh government might be willing to extend a formal invitation for an international LTO team, as it has publicly stated that it welcomes international observers. The presence of international observers during the pre-election period might also cause the opposition to remain engaged in the process. If a well-

established body of international observers did ultimately certify the fairness of the elections, it would be much more difficult for the future opposition not to take their seats in the Parliament or to walk out for a certain period of time thereafter.

The long-term international presence would also do much to encourage the government and opposition to work together to resolve issues that arise. Neither side would want to walk away from an internationally supervised process. The observers could also serve as a channel for prominent Bangladeshis and civil society to communicate their views, and influence how the election process is conducted.

B. Long-Term Election Monitoring by CSOs

The consultants believe that, in order to create a publicly available independent assessment of the conditions under which the upcoming elections will be held, international donors should support LTO by Bangladesh CSOs. This would be in addition to whatever support these organizations might receive for their normal program of observation during the actual election period. The subjects of LTO by Bangladeshi civil society would parallel and complement those of interested outside parties, listed above.

As indicated previously, the objective of the Bangladeshi civil society component would be to create an independent indigenous assessment of the conditions for the upcoming election. The consultants cannot recommend precisely which local CSO or group of CSOs should be asked to expand their efforts in this way. We do note that one CSO, FEMA, has shown an ability – in conjunction with other CSOs – to field observers, coordinate their activities, compile results and issue substantive reports with respect to previous elections. It has also conducted consultations with interested groups in Bangladesh society about election issues,¹²² and published recommendations on election law and procedures.¹²³

It is worthwhile observing at this point that undertaking observation and surveillance of any sort, especially long term observation, is very difficult for any CSO to conduct in a highly-charged political environment. Inevitably, the observations made by such organizations can bring them into conflict with various political interests, and detract from their image of impartiality. In fact, the consultants have heard unfavorable comments about leading Bangladesh CSOs from political party representatives and others involved in the political and election processes.

In addition, it should be pointed out that engaging in formal LTO could potentially threaten the shorter-term election observation functions of the indigenous CSOs. This is because whatever observations they make earlier, during the pre-election phase, will strain their relationships with participants in the political process. The consultants believe, however, that the risks cited in this and the preceding paragraph may be worth running, provided they are carefully weighed as the involvement of the CSOs in the election process plays out.

¹²² FEMA, "Proceedings of the Consultation Meeting with Professional Groups on 'Election Law Reform'," (Dhaka, June 1999), 71 pp.

¹²³ FEMA, *Strengthening the Electoral Process in Bangladesh: Recommendations*, (Dhaka, March 2000), 47 pp.

In view of these concerns, it is recommended that the approach be designed around gathering factual information and tracking election-related events in a manner that allows them to be quantified to illustrate patterns and trends. Ideally, the data should ultimately be categorized and quantified in a format that allows the record to speak for itself, so that the need for subjective analysis and commentary is minimized.

Some areas of special focus for the indigenous LTO effort could include the following:

- a. determining the platforms and policies of the political parties;
- b. tracking political and election-related complaints and allegations, including court cases and the time taken for their resolution;
- c. examining the performance of the state media (radio and TV) and the balance of coverage devoted to parties and candidates;
- d. taking note of EC decisions and decisions taken by the government and district and local authorities with respect to election administration issues;
- e. maintaining a record of campaign related events such as public meetings, demonstrations, *hartals* and incidents of violence, etc.; and
- f. tracking pronouncements, actions or other indicators reflecting political strategies of the political parties regarding their participation in the elections.

Donor Participation

As one component of the program to encourage Bangladesh CSOs to conduct LTO activities, consideration should be given to providing technical assistance through consultations and training by representatives of indigenous and international NGOs about their experience and techniques. Their assistance might involve guidance to the CSOs in:

- a. development of the work plan for the implementation and coordination of the CSO observation program;
- b. determining reporting mechanisms and preparing appropriate instructions, forms and other materials necessary for carrying out the work at the central headquarters of the operation, as well as in the regions;
- c. designing a software package in which collected information can be categorized and quantified;
- d. defining a plan for the timely dissemination of the information gathered so that it can be used in a meaningful way. Dissemination could include publication, working sessions with the EC and other relevant bodies, briefings for the donor community, and conferences or workshops.

It is also recommended that a media-monitoring expert be provided to work with the CSOs in setting up an organized and coordinated program for the tracking of media coverage of the elections to measure:

- a. the balance of time devoted to each party in the categories of advertising, news or editorial commentary; and
- b. the positive or negative nature of such coverage.

C. Increasing Openness and Transparency of the Election Commission

One of the major impediments to free and fair elections and effective democracy in Bangladesh is the confrontational nature of the relationship between the opposing political forces, and the pattern of obstructionism that has become institutionalized in the parliamentary and election environment. With this paramount issue in mind the IFES team has focused its attention on recommendations designed to break the pattern of confrontation that has resulted in regular boycotts not only of the elections themselves, but of the Parliament as well. The objective is to identify legal and practical measures for:

- a. securing sustainable engagement of both majority and opposition political participants; and
- b. stimulating a "loyal opposition" culture to break the cycle of obstruction that continues to derail effective democracy and governance in the country.

In developing ideas that promote these objectives, the IFES team not only assessed patterns of failure, but also attempted to identify features of the system that have shown promise in overcoming total withdrawal as a political strategy. The one area that is commonly acknowledged as having demonstrated a capacity to sustain the engagement of all political participants has been the change in the committee organization within the Jatiya Sangsad. Prior to recent changes, committees were chaired by the government minister responsible for the departments associated with the areas of concern covered by each committee. A shift was made giving chairmanships to MPs instead, thereby returning "ownership" of the parliamentary committees to the legislative body rather than to the government. This has proved to be a significant improvement, since despite the boycott of the Parliament by the opposition alliance, opposition members have continued to participate in committee work.

The IFES team suggests that the success of this accommodation points to the importance of three elements which are necessary to support meaningful and sustainable participation by both majority and minority players:

- a. reasonable facilities and support for parliamentarians, including backbenchers and the opposition;

- b. a legitimate forum in which the opposition's voice is fully heard and meaningfully considered;
- c. full transparency afforded to all participants in the decision making process.

Just as opposition members have found an appropriate forum in the committee organization of the Parliament, consideration should be given to creating similar opportunities relative to consultation and transparency of the activities and decision-making process of the Election Commission. The introduction of consultative delegates to the Commission would provide a formal mechanism for ensuring such opportunities to majority and opposition parties throughout the election cycle.

Under the IFES team's proposal, enhancing the transparency and credibility of the EC would involve three elements.

1. The Election Commission as a Deliberative Body

At present there is little to suggest that the Election Commission functions as a true "commission" in the traditional sense. Rather, the Election Commission currently functions more as the senior leadership of an administrative agency responsible for conduct of the elections, with the chairman functioning as its director:

- a. Under Article 118 of the Constitution the EC may be established with a single member.
- b. There is no requirement that the Commission sit in regular sessions.
- c. There are no provisions guiding the manner in which the Commission makes decisions, i.e. it is not clear whether a formal decision requires a vote of its members, or whether the chairman alone decides.
- d. No requirements exist for the decisions of the Commission to be documented, formalized and/or publicly announced.

The IFES team recommends that the EC assume a more formal approach in its operation and that it adopt rules of procedure more in keeping with its status as a commission. By redefining itself as a deliberative body that holds formal sessions at which decisions are taken under appropriate rules of order, the Commission can elevate its status and achieve a higher level of transparency to promote public confidence, and more clearly distinguish itself from the day to day functioning of the administrative sub-structure supporting the process.

In order to achieve this end, the Commission should be encouraged to request that, pending any constitutional reform,¹²⁴ no fewer than five members be appointed. The president should be

¹²⁴ See Part II, Section D of this report. "Long Term Recommendations: Strengthening Independence of the Election Commission."

encouraged to consider appointing prominent individuals to the additional seats who are perceived as completely impartial or otherwise generally favorable to the opposition.

In addition, the Commission should meet regularly in formal open sessions during which its agenda, decisions and actions are documented for the permanent record, and thereby made accessible to public scrutiny. The rules of procedure should include provisions, which guide the manner in which the Commission makes and announces its decisions, whether by a formal vote of its members or any alternative procedure.

Arguably, formalizing its operations in such a manner does not require a change in the existing legislation or constitutional provisions. Article 118 of the Constitution already provides flexibility in the number of members that will be appointed to the Commission; the Election Law dictates that the "Commission shall regulate its own procedures."¹²⁵

2. Introduction of Consultative Delegates to the Sessions of the Election Commission

To promote a policy of inclusiveness and transparency, the rules of procedure could include provisions that allow for the presence of consultative delegates representing the political parties at all formal sessions of the Election Commission. In the interest of efficiency the number of party delegates could be limited to one representative from each of the parties holding seats in the current Parliament. This approach would provide an appropriate forum for parties to remain engaged in the pre-election process by ensuring equal access to the activities and decisions of the Commission, and a platform from which to advance their concerns in a formal manner.

In practice, the EC does maintain dialogue with the political parties, but generally on a one on one, ad hoc basis. This leaves the door open to speculation as to what "agreements" may be being made, and what biases might be interjected into the decisions and actions of the Commission as a result. By providing access to consultative delegates as part of a formal policy, the Commission can more adequately insulate itself from such speculations and allegations.

3. Rights of Consultative Delegates

To be effective, the consultative delegates should be afforded certain rights for their active participation at the formal sessions of the Commission guided by precise rules of order. Although they would not be allowed to vote or otherwise assume any authorities or privileges reserved for members, their entitlements might realistically include the right to:

- a. be notified as to when and where sessions will be held, and receipt of the agenda and any other relevant documents in advance of each session;
- b. address the Commission, ask questions and offer suggestions;
- c. request and receive copies of relevant documents;

¹²⁵ RPO, 1972 (PO No. 155 of 1972), Chapter II.

- d. request consideration of issues of concern;
- e. have any dissenting opinion noted in the record.

Donor Participation

International donors could provide funding, consultancy and technical assistance to the Election Commission to support their efforts in:

- a. determining a strategy, timeline and work plan for transforming the Election Commission into a deliberative body;
- b. drafting the Commission's rules of procedure as described under Chapter II, 3A of the electoral law;
- c. formalizing the internal organization plan within the Commission, and perhaps defining functional roles or areas of responsibility for each Commission member;
- d. drafting the Rules of Order to be utilized in the conduct of formal sessions of the Election Commission;
- e. establishing the mechanism for maintenance of the formal record of the actions and decisions of the Electoral Commission.

D. Strengthening Independence of the Election Commission and Subordinate Structures

Although the Constitution dictates that the Election Commission "shall be independent in the exercise of its functions and subject only to (this) Constitution and any other law,"¹²⁶ concerns are repeatedly expressed that political pressures continue to erode the integrity of election officials, particularly at the regional and local levels. Concerns are bolstered by the somewhat convoluted manner in which officials at the district and local levels are appointed and the fact that parallel tracks are created. The Election Commission has a vertical hierarchy of election officers supposedly subordinated directly to it, while returning officers technically appointed by the Election Commission spring directly from the government ranks. The deputy commissioners, for example, who are part of the hierarchy of the central government, serve as the district returning officer for election purposes.

In particular, critics question where allegiances might lie among the latter group if faced with political pressures that often prevail at the district and *thana* level. Several interlocutors suggested that the erosion of commitment and integrity of the election officials is due to the fact that many of the senior civil servants drawn into service for the election posts were originally appointed to public service in the 1970s when AL was in power. Now that they have returned to power, the cynical view is that the government is able to exert greater influence over the deputy

¹²⁶ Part VII, Article 118 (4), *Constitution of the People's Republic of Bangladesh*.

commissioners and tenured officials appointed to carry out the elections at the district and *thana* levels.

Even with the Election Commission, questions remain as to the level of independence that can be expected. In raising their concerns, representatives of the opposition with whom the IFES consultants met pointed to the fact that a newly appointed commissioner had been a home secretary. Several contacts expressed the view that if the 2001 elections are to maintain participation of the opposition parties, it will be mandatory that the EC be replaced. Even the chairman, who is generally respected as an individual, is subject to criticism due to the manner in which he was appointed. Contrary to traditional practice, critics pointed out, the new chairman was not selected from the judiciary. They indicated that, in their view, the only acceptable appointment for the chairman post would have been a justice of the Court. In addition, they argued that the appointment of any person closely associated with the ruling party is unacceptable.

1. Replacement of Members of the Election Commission

Under the Constitution it is very difficult to remove a member of the Election Commission, except on the same grounds as for the removal of a Supreme Court justice.¹²⁷ Those include circumstances when the president has reason to believe that the judge ceases to be capable of performing his functions "by reason of physical or mental incapacity," or if, based on a formal inquiry of the council called for by the president, a finding of "gross misconduct" is rendered.¹²⁸ Given these limitations there are few options open to the president to change the composition of the EC once appointments have been made except in the event of the resignation of a member. Recent history suggests, however, that in the face of sufficient pressure by opposition forces, resignations often occur.

If the pattern of past events is an indicator, the issue of the selection of the EC members will no doubt be a focal point of protest by the opposition. If opposition parties are to remain in the process, it will be necessary to eliminate as many grounds as possible for their withdrawal or obstruction. Therefore, it is recommended that the following options be considered:

- a. In the event that no vacancies occur in the current membership, the president should exercise his/her authority to increase the size of the EC. In view of the criticism relevant to perceived political bias in the current membership, this would allow for the appointment of additional members selected in a manner that would be perceived as achieving a more acceptable political balance on the EC.
- b. If the post of chairman were to become vacant, the president should be prepared to select a judge of the Supreme Court to serve as the EC's chairman.

¹²⁷ *Constitution of the People's Republic of Bangladesh*, Article 118 (5).

¹²⁸ *Id.*, Article 96 (5)(a).

2. Subordinate Election Commission Structures

Generally, criticism has been forthcoming from almost all quarters that the system of appointment of lower administrative structures for the conduct of elections places most responsibility with government employees. This is seen as an impediment to the neutrality and independence of the Election Commission structure at the district and local levels. Once again, neutralizing the pervasive level of distrust, especially from the opposition, must be a priority objective.

While there is almost universal cynicism about the capacity of government officials to maintain immunity from political pressure, the judiciary apparently continues to be seen as independent. However, the local judiciary – including district judges as well as magistrates – are appointed by the administration. In fact, magistrates in particular are seen as being subject to undue influence.

In general, however, there appears to be a widespread view that returning officers should also be appointed from the ranks of the judiciary, rather than the deputy commissioners who serve within the hierarchal structure of the central administration. The IFES team, however, does not necessarily agree. In virtually all established democracies, the conduct of elections is carried out by civil servants within the administration. In particular, the preparations and conduct of the elections, including the counting and reporting of results, requires extensive administrative experience as well as control over the material and staffing resources necessary to support the process. In fact, as described in the laws of Bangladesh, the role of the returning officer is primarily an administrative one.¹²⁹

Judges rarely have administrative experience normally associated with directing a campaign of the magnitude incumbent with conduct of an election. Rather, they are supposed to decide legal issues and deliver justice under the law.

The IFES team does not dismiss the seriousness of concerns that under the current system political participants will continue to question the integrity of the system and the neutrality and independence of the election officials. Even in cases where distrust is fundamentally unwarranted, perceptions of impropriety and bias can be just as injurious to public confidence in the system, especially when used grounds to obstruct or boycott an election. In addition, documented evidence suggests that in specific instances the allegations have had merit.

Therefore, an alternative proposal is cautiously offered which would leave the current role of the returning officers and their method of appointment virtually intact, while adding an additional level of checks and balances, specifically in an attempt to satisfy the concerns expressed by a distrustful opposition. Consideration of this proposal will warrant serious thought, however, to weigh potential benefits against the consequences if it ultimately fails to achieve the desired result. And, the addition of any new layer of bureaucracy can bring on its own set of problems and challenges.

¹²⁹ See Chapter III, *The Representation of the People Order*, 1972 (P.O. No. 155 of 1972).

The additional post of *judicial returning officer* could be introduced into the system. Selected from the judiciary, this person would serve as a counterpart to the returning officer, based on a set of guidelines and regulations adopted by the Election Commission. In particular, the judicial returning officer would have specific responsibilities relative to a number of functions and decision-making that require a level of legal discretion, are particularly vulnerable to subjective application, or are susceptible to legal challenge. Examples of such functions might include:

- a. Consultation and concurrence of the judicial returning officer regarding the rejection of the nomination of any candidate;
- b. Oversight of any enquiries called for by the returning officer;
- c. Review and concurrence of the judicial returning officer of reports to the Commission regarding stoppage of the polling which might result in a repeat poll;
- d. Review and concurrence on the appointments of presiding officers and assistant presiding officers;
- e. Co-signing the consolidated report of the results of polling prior to their submission to the Election Commission.

There should be no major impediment to the establishment of the judicial returning officer post, in spite of the fact that current legislation does not make specific reference to such a post. In fact, an additional layer of administration supposedly subordinated to the EC already exists in the case of various levels of election officers absent any reference to such a layer in the law. Thus, the existing legal framework may be sufficient to implement this proposal.

- a. The Constitution provides that the president shall “when requested by the Commission, make available to it such staff as may be necessary for the discharge of its functions...”¹³⁰
- b. The law governing elections gives authority to the EC to regulate its own procedures.¹³¹
- c. The law gives authority to the Commission to require “any person or authority to perform such function or render such assistance for the purposes of this Order as it may direct.”¹³²

3. “Civilian” Presiding Officers

The process of appointment of presiding officers and other polling station staff should be reevaluated. Similar criticisms to those lodged against the appointment of returning officers

¹³⁰ *Constitution of the People's Republic of Bangladesh*, Part VII, Article 120.

¹³¹ *RPO*, 1972 (P.O. No. 155-1972) Chapter II, 3A.

¹³² *Id.* Article 5 (1).

have also been expressed regarding the appointment of presiding officers. In particular, various groups have pointed to the importance of the independence of officials at the polling station level because of their control over the counting and reporting of returns at the end of polling. Once they have submitted their returns there are no provisions for review or correction built into the system.

As one official put it, "if the presiding officer reports that $3 + 3 = 5$," that report will remain part of the official consolidation of returns permanently, and can only be reviewed in the case of a judicial appeal. The only check on invalid reporting at the polling station level is the right of agents of political parties to receive copies of the returns. However, this safeguard, in and of itself, has apparently failed to provide sufficient grounds on which to build public confidence to overcome concerns regarding the manner in which presiding officers and assistant presiding officers are appointed.

Consideration should be given to advertising and accepting applications from the "civilian" population for these posts. The solicitation notices could include basic eligibility criteria, including levels of literacy, and prohibitions related to conflicts of interest, holding certain incompatible posts, or having affiliation with any political party. Applications could undergo scrutiny, and, to the extent possible, an interview process could be encouraged. The process of citizen participation in these roles was proven successful in pilot projects undertaken in Depunia and Tongi in 1995. These successes should now be replicated on a broader scale.

4. Election Officers

Although there are no provisions in law making reference to the appointment of election officers, the EC has a cadre of election officers subordinated directly to it. In spite of an understanding that they answer directly to the EC, a field visit by the IFES team suggests that, in fact, they are effectively subordinated to the returning officer. It is suggested that the duties and chain of command for these election officers be reevaluated and clarified and that their independence from the government structures be enhanced.

Donor Participation

In 1995, IFES provided extensive technical assistance to the Election Commission and to the Electoral Training Institute regarding the training of election officers. While the materials created by the IFES consultants are still relevant and in use by the Electoral Training Institute, another phase should be implemented relative to the proposals suggested regarding enhancement of the independence of the Election Commission and subordinate officials. Technical assistance could be provided to the Election Commission relative to the following:

- a. defining the functions of the judicial returning officer and formulating a plan for the implementation of the program in advance of the 2001 election;
- b. reevaluating the parallel subordinate structures of the Election Commission, assessing their effectiveness, and, where appropriate, redefining their functional

roles; and, exploring improved mechanisms for strengthening the linear chain of command under the Election Commission;

- c. developing a recruitment and hiring strategy for the introduction of "civilian" presiding officers and assistant presiding officers into the system;
- d. preparing a pyramidal training program to strengthen the capacity of "civilian" officers to perform their tasks with proficiency and integrity; and
- e. reinstating an enhanced Code of Conduct for election officials and developing a mass media campaign to promote public awareness of the standards of behavior voters should come to expect from their election officials.

E. Easing Rules Regarding Domestic Monitoring on Election Day

Bangladesh election law does not, as such, provide for the attendance of domestic monitors or foreign observers at the polls on election day; although rules adopted by the EC allow them to be present, the current regimen is too restrictive. One particular problem is the rule that allows only a single monitor (regardless of how many CSOs have provided observers) to be present in a polling station at any time. Each station may have many "polling booths," which have separate voter lists and ballot boxes.

The IFES consultants recommend that the EC consult closely with leading CSOs to develop procedures that would permit the latter to develop a comprehensive and widespread domestic monitoring program. In particular, provision should be made for monitors from a single organization or umbrella group to be present continuously in polling stations – indeed, individual polling booths if possible – throughout election day. Concerns about the effect of having local monitors present could be addressed through recruitment of qualified persons by the CSOs themselves.

F. Reinstating Codes of Conduct

The 1991 elections are widely perceived to have been free and fair. A key element that apparently contributed to the high level of public confidence was the Code of Conduct to which all political parties subscribed. Efforts should be made to renew that Code of Conduct for the upcoming elections. The Party Code of Conduct should include a pledge to take every measure possible to restrain the behavior of their supporters, and to condemn violence, intimidation and engagement in any other activities which violate the law or endanger the peace and order of the elections. The Code of Conduct should also be enhanced to more strongly deter leaders and candidates from the use of inflammatory language or engagement in behavior that incites fear, violence or hatred.

In 1995, a Code of Conduct was established for election officials as well. The Code should be incorporated into the training of all persons serving in electoral posts.

The EC should create a mass media campaign to promote public awareness of the standards to which the parties and election officials have subscribed to raise their expectations about their rights to a peaceful and secure election. A separate "I'll Do My Part," campaign could be developed to stress the responsibility of every individual to ensure that the elections are safe, free and fair.

G. Encouraging the Development of Legislation to Address Certain Outstanding Election Issues

The consultants understand that it will be extremely difficult to enact legislative amendments prior to the elections. This is because the main opposition is boycotting plenary proceedings in the Parliament, but not committee meetings. Government officials are undoubtedly at least partially correct arguing that any attempt by the government to enact amendments to the election laws prior to the elections would be met with hostility by the opposition.

At the same time, certain amendments to the election laws either are or may become necessary prior to the elections. In particular, the current provision related to the election of (additional) women MPs¹³³ will expire prior to the likely date of the upcoming elections. In addition, it may be desirable to adopt provisions (such as limiting the number of different constituencies in which candidates may run for election) that would reduce the number of by-elections that would have to be held immediately after the general election to fill seats vacated by candidates winning in more than one constituency.

It would be possible to defer these issues until after the pending elections. Doing so would carry its own risks, however, as anything done in this regard by the victors would likely be protested by the opposition. The IFES consultants believe, therefore, that it would be worthwhile at least to encourage the development of legislative proposals on these issues. The decision whether to proceed with such proposals could be made depending on the circumstances as the date for the election continues to approach.

In addition, interested parties, local NGOs, international specialists and others have raised numerous other legislative issues.^{134 135} It would be politically desirable to consider legislative amendments to address these issues, if at all possible. While the opposition is boycotting parliamentary sessions, they continue to work in the committees, including the committee on the Ministry of Law, Justice and Parliamentary Affairs, which also has jurisdiction over election law. The EC, pursuant to its mandate under law, may submit a package of legislative amendments to the government. This package, as well as other proposals, could be referred to the committee.

Perhaps a chance exists that, thereafter, that these amendments could be voted upon by the Parliament as a whole if the opposition could be persuaded to participate. Otherwise, the ruling coalition could enact the necessary and desirable legislative changes based on their majority.

¹³³ Constitution, Art. 65(3).

¹³⁴ See Fair Election Monitoring Alliance. *Strengthening the Electoral Process: Recommendations*, Dhaka, March 2000.

¹³⁵ See IFES, *Pre-Election Technical Assessment, Republic of Bangladesh*, (Jan.-Feb. 1995. L. Edgeworth. S. Lansell, authors).

However, the issue of additional women MPs could not be addressed in this way since it would involve a constitutional amendment requiring passage by 2/3 of the members of Parliament.

If the opportunity to amend the Election Law does arise, the consultants would also encourage inclusion of legislative items discussed in connection with its long-term recommendations (discussed in Section II, following).

1. Election of Women to Parliament

As mentioned previously, the system for increasing women's participation in Parliament that was used in previous elections was based on indirect election by the other, directly elected, members of Parliament. Certain methods of indirect election could be designed which would reflect the partisan composition of the elected body.

The IFES consultants believe that special procedures should continue to be applied to ensure an adequate representation of women in the next Parliament. The precise number of special seats is best decided by interested local groups and individuals. The consultants recommend, however, that consideration should be given to a method for special election of women to Parliament which is direct but does not require a second ballot.

- a. The IFES consultants propose a system of compensatory mandates awarded on the basis of proportional representation.
- b. The most straightforward approach along these lines would be to establish a certain number of additional mandates to be awarded to women candidates, then to award these mandates to women candidates put forward by the various parties, in proportion to the parties' overall success at the polls during the election.
- c. In order to benefit from these additional mandates, parties should be required to publish in advance of the election their lists of women candidates and to receive a threshold percentage of the overall vote in the elections in order to receive the additional mandates for women members.

2. Reducing the Number of By-elections

By-elections in Bangladesh appear to occur more frequently than would be normally expected, often bringing on further political tensions, boycotts and allegations of unfairness. Unfortunately, the law increases the need for by-elections by allowing a candidate to be nominated to run in as many as five constituencies simultaneously although a winning candidate is only able to keep one seat. For each seat vacated as a result, a by-election has to be called soon after the general election. This scenario is wasteful, and places an unwarranted burden not only on election administration, but also on the voters.

Normally, in constituency-based election systems, there is an expectation that once elected, the candidate will represent the interests of the voters in that constituency. In order to reduce the number of by-elections, and to ensure that candidates seeking to run for office in a constituency

have an appropriate tie to the community, it is recommended that the Election Law be amended to:

- a. allow a candidate to be nominated in only one constituency; and
- b. require that the candidate's name be on the voter list for that constituency. (Currently, the law does not require that candidates be registered voters in their constituencies.)

II. LONG-TERM RECOMMENDATIONS

A. Strengthening Independence of the Election Commission

1. Composition of the Election Commission

The Constitution should be amended to eliminate the rather loose formulation for the composition of the Election Commission that currently exists, in favor of a process that serves to reduce the occasions for political controversy that comes with the appointments of its membership. Consideration might be given to the following proposals:

- a. The number of members of the Election Commission should be fixed, rather than be at the discretion of the president.
- b. The terms of members of the Election Commission, other than the chairman, should be rotated so that $\frac{1}{2}$ of the members' terms expire at the same time the terms of members of the Parliament expire, or at the time Parliament is otherwise dissolved. This would mean that only $\frac{1}{2}$ the members would be appointed during the term of any sitting government. This provision could ultimately result in a balance in the membership over the course of time. In the event of a resignation of a member, the replacement member should only serve for the balance of the former member's unexpired term.
- c. The term of the chairman of the Election Commission should expire at the same time as the terms of the members of Parliament expire. The new chairman should be appointed at the time the caretaker government takes office.
- d. Alternative approaches should be considered regarding the manner in which the chairman is appointed. One option would be to establish rules for selecting the chairman of the Election Commission patterned similarly to those outlined for the appointment of chief advisors and advisors to the caretaker government. These provisions define the pool from which the chief advisor is to be selected, giving priority to retired justices of the Supreme Court, followed by retired judges of the Appellate Court. If from these ranks no candidate can be tapped, the Constitution requires that the president make a selection of another qualified citizen after

“consultation, as far as practicable, with the major political parties.”¹³⁶ A similar formulation should be considered for appointment of the chairman of the Election Commission. This alternative might serve to ease some of the controversy that currently surrounds each EC appointment.

- e. Restrictions as to other members of the Election Commission should also be adopted including a prohibition against the appointment of any person who is a member of a political party or affiliated with any political party.

2. Election Commission Budget and Secretariat

There has been some debate regarding the capacity of the EC to be truly independent as long as it has to rely on the government that currently provides its secretariat and manages its budget. Consideration should be given to strengthening the autonomy of the Commission by providing it with a separate budget and making it responsible for the recruitment and management of its own secretariat separate from the administration.

B. Strengthening and Reform of Parliamentary Operations

One salient characteristic of Bangladeshi democracy has been the confrontational tone of the contest between major political formations. Since the end of military government in 1990, however, political control has been successfully transferred through democratic means from one party or coalition to another – in particular between the previously-governing Bangladesh National Party and currently ruling Awami League.

Notwithstanding the functional success of democratic institutions including elections, the political opposition has consistently taken a confrontational approach to its competition with the government of the day. Elections have been boycotted and the results of elections met with boycotts and strikes. Even when the opposition has agreed to take its seats in Parliament after elections, they have often not remained but instead walked out and stayed out for extended periods. Meanwhile, opponents of the government have repeatedly disrupted society and the economy by calling *hartals* as a way of putting pressure on it.

It would appear in this context that ways should be found to bring the opposition into Parliament, and political debate within its halls.¹³⁷ Perhaps the opposition could be induced to remain in Parliament if participation in parliamentary proceedings were perceived as bringing them greater benefit.¹³⁸ This might occur if the parliamentary opposition enjoyed greater privileges, more influence over legislation and other parliamentary activities, and a greater ability to communicate and implement their political strategy through parliamentary procedures.

¹³⁶ Article 58C (3)-(5), *Constitution of the People's Republic of Bangladesh*.

¹³⁷ See Dr. Rehman Sobhan, “Bangladesh’s Confrontational Political System: The Search for Solutions”, paper delivered to a conference on *Rethinking Confrontational Politics: A Reform Agency by Civil Society* sponsored by the Governance Coalition (Dhaka; Aug. 7, 2000).

¹³⁸ *Id.*

To this end, the consultants believe that over the longer term the U.S. Government and other donors should continue to sponsor programs of assistance, including material support and technical assistance, to the *Jatiya Sangsad*. Such support has already been provided by USAID through programs of the National Democratic Institute (NDI) and other organizations. Assistance has also been funded through the UNDP. Support for the strengthening and reform of parliamentary operations should focus on the Parliament as a whole, on its committees, and on the conditions under which individual members carry out their work.

1. Expanding Committee Functions

It is of special interest in connection with the theme of building up parliamentary processes as a way of keeping the opposition engaged in governance that – notwithstanding the current boycott of Parliament by the BNP and its current alliance partners (the *Jamaat-e-Islami* and *Jatiya* [Freedom] parties) – opposition members of Parliament have continued to participate in committee operations. Clearly, the opposition and its members feel that they are deriving tangible benefits from continued participation in this aspect of parliamentary proceedings.

The current government has moved to improve committee operations including by increasing their effectiveness and providing better working conditions. Committee chairmanship has been transferred to leading members of Parliament from the ruling party, some of whom also serve as deputy ministers of the relevant ministries. Office space has been established for committees in which their members may use the facilities, including communication equipment such as fax and telephone.

The consultants believe that the program of strengthening the committees and providing better facilities to them could succeed in leading to a higher level of opposition engagement in parliamentary processes. If possible, parliamentary committees should acquire greater research and administrative support that would enable them to play a greater role in developing legislation and performing other functions. More office space and facilities should be provided in order to attract MPs to participate in committee operations. Both these objectives could be facilitated through external support of both the material and technical variety.

2. Improvement of Parliamentary Rules and Practices

In addition to enhancing committee operations, it might also be useful to improve rules and practices for debate on the floor of Parliament – *i.e.*, during plenary proceedings. Rules could be changed that would perhaps result in a more engaging and dynamic floor debate; in addition, perhaps some controls should be imposed through procedures to respond to unfair or personal attacks on members made by others.

a. Procedures for Floor Debate

Currently, debates in plenary sessions are somewhat static in nature. When a bill is being considered on the floor (during second reading), members who wish to address the body are recognized by the Speaker in serial order. Members' statements are required to be brief, although members may offer amendments during their presentations.

It might be useful to explore ways to give the parliamentary opposition greater opportunities to use parliamentary debates constructively as part of their overall political strategy. For example, rather than members being recognized directly by the Speaker in order of request to speak, it might be advisable to adopt procedures under which the Speaker would designate floor managers for the proponents (usually led by the committee chairman) and opponents (usually led by a prominent member of the opposition). The floor managers for the bill would then be able to organize debate in a way that enables them to present their positions in the most favorable light.

Another idea for strengthening floor debate would be to permit a more open amendment process. Rather than having amendments offered in speeches given serially during second reading of a bill, the floor managers could organize debate around amendments. This would tend to focus debate on the key issues, and enable the opposition to organize more effective legislative tactics on particular issues. In order to encourage more of a "working session" type of consideration, a "committee of the whole" procedure could be followed during second reading of important bills.

Finally, when important legislation is brought to the floor of Parliament it might be beneficial to provide special debate procedures through adoption of a suitable rule. This would enable both the government and opposition a means of organizing debate to maximum parliamentary and public effect.

The changes in rules and practices discussed in this subsection could be adopted anytime as a part of the internal rulemaking of Parliament. The only assistance that might be necessary would be by technical experts on parliamentary procedures, or perhaps providing members the opportunity to learn about or witness such procedures followed elsewhere.

b. Rules of Etiquette

It has been commented to the consultants that parliamentary debate and the remarks made by MPs to one another on the floor of the body sometimes do not have a properly respectful tone. It is said that on certain occasions foul words have been directed at even senior members of political parties on the floor.

Improper references to other members by MPs in Parliament cannot fail to be destructive of parliamentary proceedings. Consideration should be given to developing appropriate rules to take note of, and respond to, improper references to members which are made on the floor or in other parliamentary proceedings. Overseas models could be brought to the attention of parliamentarians in this connection.

3. Enhanced Research and Administrative Support to Committees and Individual Members

Most MPs in the Bangladesh Parliament do not have any staff or even office facilities available to them (except through the committees, as noted earlier). Providing research support through expanded research materials and staff expertise, and also administrative support through secretarial staff and office facilities, could also make the participation of individual MPs – government and opposition alike – more effective. It could also provide opposition MPs greater

inducements to continue their participation in parliamentary proceedings despite their opposition to the government's program.

External assistance to improve the research and administrative facilities available to Bangladeshi MPs could take the form of financial aid to Parliament, provision of equipment (including computer systems and software) and technical assistance on organizational matters. Depending on priority and funding, the consultants believe that further assistance in these areas would be desirable.

C. Registration of Political Parties

Treatment of political parties within the legal framework of Bangladesh is sparse. The Constitution includes no language, for example, identifying Bangladesh as a multi-party state. Nor is there any legal guidance as to the formation of political parties or their status as legal entities for financial, contractual or other legal purposes. However, the election process in Bangladesh is party driven, with recent history demonstrating characteristics of a two-party system.

In recognition of the influence of political parties in the election and parliamentary systems, the time has come that parties become accountable and subject to a reasonable level of regulation. The regulations should not serve to inhibit the constitutional guarantees regarding freedom of association; nor should they promote the intrusion of the state into the internal organization or affairs of the political party. However, given their role in the Parliament, and their extraordinary influence in the nomination of candidates, the conduct of the campaigns, and the mobilization of voters through *hartals*, demonstrations, and rallies, it is time that the parties fall under some degree of formal accountability within the system. As a matter of principle several interlocutors have reflected a common view that parties cannot effectively participate in and promote a democratic system unless they are democratic institutions themselves.

1. Registration of Party's "Intent to Nominate Candidates for the Election"

Developing a formal legal framework for the registration and regulation of political parties in the broader sense of establishing them as legal entities is beyond the scope of this mission. However, the IFES team believes the preliminary phase could be consideration of a narrower requirement that to participate in a specific election, a party should have to register its "Intent to Nominate Candidates for Election" with the EC by a deadline to be established as part of the formal election calendar. In addition, minimum criteria should be established to gain the right to identify individual candidates as nominees of the party and authorize the issuance of the party's symbol.

Under the IFES team's proposal, the registration of a party's "Intent to Nominate Candidates" would not require major changes in the current nomination process. Rather, the registration of a party's "Intent to Nominate Candidates" would center on the submission of required documents to the EC substantiating that the party has met basic requirements before its symbol can be issued to individually nominated candidates. Having to meet certain standards seems amply justified

given the importance of party membership in the balance of power in the Parliament and the binding voting obligations of party members once they are elected.

2. Required Documents

It is recommended that the documents to be filed with the “Intent to Nominate Candidates for Election” include:

a. Copy of Bylaws or Charter

At a minimum it should be a requirement that such bylaws include descriptions of:

- the titles and functions of officials comprising the party’s organizational leadership at central and regional levels, including a treasurer or other financial officer responsible for the financial affairs of the party;
- the process by which the party’s officers are elected and/or replaced, and a definition of the terms of each office;
- the frequency with which regular sessions and/or congresses of the party must be held (with a requirement that such sessions be held at least annually);
- the circumstances under which special sessions or closed sessions may be called;
- rules of order and quorum under which official actions and decisions of the party are taken;
- the structures and authority of central government officials at the district and *thana* levels.

b. Minutes of Meeting or Congress

In particular, a copy of the minutes should relate to the meeting, congress or session in which a decision was made to nominate candidates for election and the party platform was approved. The minutes or other document should demonstrate that the decision was taken in a manner consistent with the decision making process described in the party’s bylaws.

c. Notice of Responsible Officials

The submission should include notification of the party officers and the financial officer authorized to act on the party’s behalf relative to any issue or activity related to the party’s participation in the election. The notice should include their contact information, and their signatures.

d. Party Platform

Each party seeking to nominate candidates should be required to have an official party platform available for public disclosure. There should be an understanding that the Election Commission is authorized to include the party's platform in an official publication. Consideration could be given to providing for the platforms to be published in the Official Gazette.

D. Reporting, Disclosure and Limitations on Party Finance

One of the most important aspects of political party activities in Bangladesh that should be made subject to some sort of legal control is the raising and expenditure of funds by political parties. Currently, the chapter of the Election Law related to election expenses¹³⁹ requires disclosure and reporting of campaign funds only by individual candidates. There are no controls or limits on the campaign funds of political parties.

The failure to apply legal restrictions to the finances of political parties is one consequence of the failure to deal with political parties directly under the current Election Law or other legislation. One consequence of this approach is that the actual and emerging functions of the parties – such as in financing election campaigns – are not reflected in the legislation.

The consultants have been informed by various sources that the main political parties in Bangladesh raise considerable funds from a variety of sources, including business people associated with them. (Numerous allegations are also made that party “activists” – sometimes little more than thugs – visit businesses to demand contributions.) These funds are used for a variety of purposes – not excluding funding the parties' cadre of activists, including armed persons (*mastaan*, or musclemen). If reports are reliable, these monies are also used for various illegal as well as legal purposes in connection with elections. (For example, they might be used to organize violence or intimidation against voters, or to attempt to buy or influence votes in various ways.)

It is perhaps understandable that in the current highly confrontational political climate in Bangladesh such practices occur. The major parties will undoubtedly be resistant to give up the confidentiality in which they raise and expend funds, and the purposes for which they are used. On the other hand, it would appear absolutely essential to bring the financing of the political parties under some form of legal control.

It has also been reported that both parties and candidates regularly violate the disclosure and reporting requirements of the existing legislation, the ceilings on expenditures during an election, and the prohibitions on expenditures for certain enumerated campaign activities.¹⁴⁰ The consultants have also been informed that much of the funding available to parties is actually raised, illegally, by candidates seeking party nomination.

¹³⁹ RPO. 1972 (P.O. No. 155 of 1972). Chap. III A (Arts. 44A-44D).

¹⁴⁰ *Id.*, Art. 44B(3A).

The consultants believe that, to address all these issues, nothing short of a comprehensive approach can be taken. That is, the financing of political parties should be regulated not only with respect to elections but also between electoral events. The precise forms of regulation – including the scope of disclosure, accounting and reporting requirements, prohibited acts, and ceilings – can only be established by Bangladesh political leaders. Technical assistance could be provided at the appropriate time, including through a consultancy by a qualified specialist or by providing information about how related issues are addressed in other electoral jurisdictions.

E. Improved Dispute Resolution and Adjudication Procedures

The procedures for adjudication of disputes contained in the Election Law are very detailed and clearly adequate to describe an effective system of dispute resolution. The only apparent defect is the absence of speedy procedures to adjudicate disputes, if possible, during the election period itself. A tribunal may not adjourn its proceedings except “in the interest of justice,” and “shall try an election petition as expeditiously as possible ...” Still, even this requirement is framed only in terms of a responsibility to “endeavor to conclude the trial within six months from the date” it receives a petition.¹⁴¹ There is no provision related to time limits on the length of appeals proceedings.

In fact, the resolution of disputes referred to tribunals has been notoriously slow. Many disputes from the 1996 elections have still not been judicially resolved. In addition, it has been commented that the tribunals have taken a very narrow view of the scope of review on election complaints, and have imposed unrealistic standards for the production of evidence by contestants. As a result, parties and candidates may feel that they have no effective remedy for unfairness resulting from actions by election administrators, particularly local officials (returning officers, polling officers and others) who perform election functions.

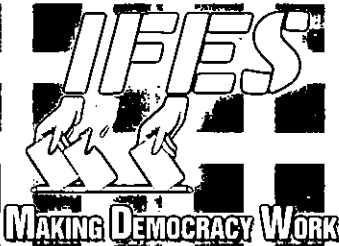
Another omission in the Election Law is the absence of reference to the resolution of disputes by the EC or election officials themselves, prior to judicial appeal. This absence appears to represent the “ministerial” style of administration reflected in the law, which seems intended to limit discretionary judgments by election bodies and officials. In fact, establishing regular procedures for election officials to review decisions – including their own previous decisions and decisions made by officials subordinate to them – could enhance transparency and provide for more expeditious resolution of many disputes. In addition, establishing internal dispute resolution proceedings could provide an avenue for expanding the right to complain so that it includes not only candidates but also other interested persons.

It would appear desirable in this connection to provide technical assistance to the government and EC in order to encourage the development of legislative proposals for more effective judicial resolution of disputes, including during the immediate election period. As part of a technical assistance project in this area, expert advice could be provided, and information on approaches in other jurisdictions could be made available.

¹⁴¹ *Id.*, Art. 57.

IFES

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