

Bangladesh: Elections and Beyond

I. OVERVIEW

Bangladesh's 29 December 2008 general election is expected to end a two year military-enforced state of emergency and return the country to democratic governance. While an end to emergency rule and elections do not equal democracy, both are necessary preconditions for the country's stability. Through peaceful dialogue – an important achievement in its own right – the army-backed caretaker government (CTG) and the country's main political parties have reached agreements on many issues that could derail the elections. However, there are no guarantees that the election will take place on time, that all the major parties will participate, or that all of them will accept the results. Even a successful election will only be the initial step to developing a more effective democracy in Bangladesh. The immediate goals for all stakeholders – including the international community – should be to ensure that all registered political parties contest and that the elections are credible and free of violence. Beyond the general election the political parties will face the challenges of making parliament work and contending with an army seeking a greater say in politics.

By late 2007 the CTG realised that reforms were easier to advocate than execute. Corruption had worsened despite its anti-graft campaign, and the political parties refused to undertake reforms or go to the polls without their jailed leaders. Faced with a failing reform agenda and declining popular support, the CTG was forced to abandon its "minus two" policy of sidelining the two major political parties' leaders, Sheikh Hasina and Khaleda Zia, and negotiate an exit strategy with the parties. Talks overcame many obstacles to elections contested by all the major parties, including the release of Sheikh Hasina and Khaleda Zia, compulsory political party registration and the timing of the *upazila* (sub-district) polls. The *upazila* elections are slated for late January 2009, although their schedule is disputed.

The government has met many of the technical requirements to enhance poll credibility, but it has fallen short on several political conditions. New legislation aims to minimise the influence of ill-gotten wealth and a new electoral roll of over 80 million vot-

ers has been widely praised. However, a longstanding state of emergency curtailing fundamental rights, which may be lifted only after campaigning is under way, threatens the credibility of the election.

The political situation is complex and fragile. Bangladesh's two largest political parties, the Awami League and the Bangladesh Nationalist Party (BNP), are approaching the election from opposite positions. The Awami League, viewed as the frontrunner, is eager to contest the polls promptly and with few preconditions. The BNP is in disarray. The party threatened to boycott if emergency laws barring many of its members from standing in the election were not rescinded. BNP boycott threats have already forced one poll delay, and party leaders maintain a boycott is still an option if the state of emergency is not lifted before the election. If the election goes ahead without the BNP, its staunch ally and Bangladesh's largest Islamist party, the Jamaat-e Islami, believes it could go it alone and run as the default option for Bangladeshis who would otherwise vote for the BNP.

A number of factors could adversely affect the elections and their aftermath. Although the election laws make electoral malpractice more difficult, the Election Commission (EC) has been reluctant to enforce them. Allegations of rigging could spark a party boycott or political violence; the continued emergency could prompt rejection of results. Technical flaws on election day with ballots or the voter roll could cause a delay or require re-polling in some areas. Islamist militants like the Jamaat'ul Mujahideen Bangladesh are still active, even in Dhaka, and pose a threat not only to the election but also to the country's longer-term security.

Keeping the military in the barracks will require the new government and the opposition to seek accommodation with each other and the army. Dialogue with the CTG has demonstrated to the political parties that they can advance their interests through peaceful negotiations. If civilian rule is to succeed in Bangladesh, cooperation must be placed before confrontation. A return to zero-sum politics by the parties could be an excuse for the army step in yet again. Only Islamist forces stand to gain from another military government.

In terms of next steps:

- **The caretaker government** should follow through on its decision to lift the state of emergency before the elections and refrain from issuing presidential ordinances that restrict the rights and freedoms necessary for credible democratic elections.
- **The Election Commission** should appropriately enforce the election law and the election code of conduct; immediately initiate a public information campaign on voting procedures, in particular clarifying what identification is needed to vote; publish results in a timely and transparent fashion and at all levels of the election administration; and refrain from positioning security personnel in polling stations or in a manner that interferes with the election process.
- **Election observers** should consider the impact of the state of emergency or any emergency provisions issued as presidential ordinances on poll credibility before issuing public statements.
- **The political parties** should abide by the election laws; continue to seek solutions to electoral-related issues through peaceful negotiations with the CTG and other parties; and accept the election results if independent election observers deem the elections free and fair.
- **The international community** should pressure all parties to play by the rules and accept the results, as well as encouraging the new government and parliament to continue institutional reforms. The European Union (EU) should consider Instrument for Stability funding to support such steps.

II. THE ELECTIONS

Bangladesh's parliamentary election is scheduled for 29 December 2008.¹ 33 political parties will field candidates in 300 constituencies across the country.² On 22 January 2009 voters will elect 486 *upazila* (sub-district) councils. Some 81 million people are eligible

¹For background see Crisis Group Asia Reports N°121, *Bangladesh Today*, 23 October 2006; and N°151, *Restoring Democracy in Bangladesh*, 28 April 2008.

²There are 345 seats in the National Parliament (Jatiya Sangsad). 300 members are elected to five-year terms in single-member constituencies. The remaining 45 seats, which are reserved for women, are allocated to parties in proportion to their overall share of the vote.

to vote;³ in recent elections turnout has been around 75 per cent.⁴

More than just the political parties have a stake in the general election. Both the CTG and the military have attempted to influence the next parliament's character and composition. The international community, which has largely been uncritical of the CTG, has played a positive role by encouraging the parties to contest the election and accept the results. A new electronic voter roll should reduce fraudulent voting, which has marred previous elections. The redrawing of 133 constituencies will change the shape of some contests. And stricter election laws and a shorter campaign period could limit the impact of illegal wealth on the poll results.

In other respects, however, there will be little change. The failure of the CTG's efforts to prosecute or exile the Awami League's Sheikh Hasina and the BNP's Khaleda Zia means that one of them will almost certainly return to the prime minister's mansion. Both parties remain opposed to reforms necessary to institutionalise democracy both within and outside their own structures. The BNP continues to rely on Islamists for electoral gain, allowing them to wield power disproportionate to their share of the vote. Whichever party gains power in January will inherit a longstanding culture of impunity that no government has been willing to tackle. Parties' student wings, often responsible for election-related violence, will continue to be deployed in the campaign. A return to the confrontational politics of the post-1990 democratic period is a distinct possibility.

The *upazila* council elections will be held for the first time in fifteen years.⁵ The reconstitution of these councils could have significant consequences for devolution

³According to Bangladesh's Election Commission website (www.ecs.gov.bd) there were 81,130,973 registered voters in country as of 14 October 2008.

⁴According to the EC 74.96 per cent of registered voters cast ballots in the June 1996 general election and 75.59 per cent cast ballots in the October 2001 general election. These statistics are problematic because they are based on the 2001 voter roll that had over 12 million extra names on it.

⁵The first *upazila* election was held in 1985 under H.M. Ershad's military regime. The last election was held in 1990. Khaleda Zia's BNP-led government abandoned the *upazila* system in 1991. Sheikh Hasina's Awami League-led administration revived it in 1998 but did not conduct elections. Both parties pledged to strengthen the local councils during the last BNP government as a way to expedite local development projects, but again the polls were never held. Some ministers and parliamentarians feared the councils would curtail their power at the local level. Crisis Group interviews, Dhaka, November 2008.

of power. An emergency ordinance reallocates the power to distribute local development funds from members of parliament (MPs) to the *upazila* councils. In the past MPs misused this money to maintain political patronage networks. It is unclear if the reorganisation of power will stick: the next parliament must vote to ratify or reject all of the ordinances issued during the emergency,⁶ and the three main parties indicate that the *upazila* ordinance might not pass muster.⁷ One person close to the Awami League said, “It doesn’t matter if the money moves away from MPs to local councillors, the money still has to come from the centre. As long as one party’s people dominate at the top or the bottom, that party will still have the ability to dictate how the money is spent”.⁸ Nevertheless, the parties are taking the polls seriously and preparing candidate lists.

A. ELECTION FRAMEWORK

Following the cancelled January 2007 polls the CTG amended the electoral framework with the stated aim of encouraging competent and non-corrupt candidates and limiting the influence of illegal wealth. The changes were made without consultation; the parties, which demanded the release of their jailed leaders, saw the EC’s subsequent attempts to win their support as half-hearted. Once Sheikh Hasina and Khaleda Zia were released, agreement was reached on most aspects of the election framework, with the exception of the state of emergency and one controversial article provision (discussed below).

1. The Representation of the People Order

The Representation of the People Order 2008 (RPO) is the crux of the legislative framework for the elections.⁹ The CTG has significantly amended the exist-

ing RPO during emergency rule to provide itself with enhanced powers.

Party registration. The RPO requires political parties to register with the EC to contest the elections;¹⁰ to date, 39 parties have registered.¹¹ Criteria for registration include: instituting regular internal elections; reserving one third of leadership positions for women;¹² severing ties with affiliated organisations such as student wings;¹³ and selecting candidates recommended by parties’ local committees. Party constitutions cannot contradict the state’s constitution and membership cannot be based exclusively on religion, race, caste, language or sex.

The Awami League and BNP initially objected to the demand to sever ties with their student wings but subsequently relented.¹⁴ Despite this, party officials privately admit, “Youth organisations will remain a large component of our party electioneering during the campaign period”.¹⁵ An analyst in Dhaka noted that “Student wings are the most valuable commodity that [the parties] have; they are crucial, if not essential, to getting out the vote – even if that means by force”.¹⁶

The Jamaat amended its constitution, recognising Bangladesh’s 1971 independence war as a war of liberation rather than a civil war and changing the party’s name from Jamaat-e Islami Bangladesh to Bangladesh Jamaat-e Islami to underscore its independence from foreign parties such as the Jamaat-e Islami Pakistan. It has also extended membership to non-Muslims, reporting that some 5,000 non-Muslims are already members.¹⁷ The EC dropped a hearing on the Jamaat’s alleged role in atrocities during the liberation war, which critics say should disqualify the party.¹⁸

⁶Normally, general elections are overseen by a three-month caretaker administration meant to ensure government neutrality and a fair contest. Caretaker governments are non-party administrations responsible for exercising the routine functions of government from the date on which the parliament is dissolved and until a new prime minister takes office. The primary function is to create an environment in which a general election can be held in an impartial manner.

⁷Crisis Group interviews, Dhaka, October–November 2008.

⁸Crisis Group interview, Dhaka, 4 November 2008.

⁹The RPO (2008) was issued as a presidential ordinance on 19 August 2008. Other pieces of legalisation such as the Code of Conduct for Parliament Elections (2008) and the Political Party Registration Rules (2008) will impact the general election. The *upazila* polls will be governed by the *Upazila* Ordinance (2008) and the *Upazila* Election Rules (2008).

¹⁰Registration for political parties was voluntary under the RPO (1972). A total of 55 political parties contested in the eighth parliamentary election held on 1 October 2001.

¹¹Crisis Group telephone interview, election commission official, 24 November 2008.

¹²According to the RPO 2008 the parties have to achieve this goal by 2020.

¹³Young party activists have often been at the centre of violent inter-party politics and the CTG feared that political parties could use their student organisations to disrupt the election process. Crisis Group interviews, CTG officials, Dhaka, October–November 2008.

¹⁴“Supreme power of BNP chairperson curtailed”, *The Daily Star*, 21 October 2008, at www.thedailystar.net.

¹⁵Crisis Group interview, member of a large political party, Dhaka, 30 October 2008.

¹⁶Crisis Group interview, Dhaka, 30 October 2008.

¹⁷Crisis Group interview, Mohammad Kamaruzzaman, Jamaat acting secretary general, Dhaka, 30 October 2008.

¹⁸“Jamaat skips EC’s war crime hearing”, *The Daily Star*, 2 November 2008.

Candidates. Prospective candidates have to present the EC with eight pieces of information regarding their wealth, police records and educational qualifications. The RPO debars loan defaulters if they do not re-schedule loans with lending institutions at least fifteen days before the nomination deadline.¹⁹ But the government, under pressure from the parties, reduced the deadline to one week, a move that has drawn criticism.²⁰ A CTG adviser²¹ explained, “This is a token gesture of goodwill to show them [the Awami League and the BNP] that we are serious about their full participation in the election”.²²

Disqualifying candidates. The RPO’s Article 91(E) allows the EC to cancel candidatures for electoral law violations and misconduct. The parties have criticised this provision for granting excessive powers to election officials; the BNP has made rescinding Article 91(E) one of its four central conditions for contesting the parliamentary election.²³

RPO violations. Both the Awami League and BNP have already violated the stipulation that parties must choose candidates based on recommendations from constituency leaders.²⁴ On 17 November the Awami League’s parliamentary board rejected the candidates put forward by its local leaders and instead chose its own.²⁵ According to the RPO the party’s registration could be cancelled for this infraction.

¹⁹The CTG amended Article 12 of the RPO to require loans to be repaid six months before the nomination deadline. However the government amended the law again and reduced the timeframe from six months to fifteen days. The previous RPO allowed loans to be rescheduled one day before the deadline. RPO (1972), available at www.ecs.gov.bd/MenuExternalFiles/Eng/154.pdf.

²⁰Shakhawat Liton, “Hail loan, bill defaulters”, *The Daily Star*, 18 November 2008.

²¹“Adviser” denotes a CTG minister.

²²Crisis Group interview, Dhaka, 17 November 2008.

²³Notable changes already made to the RPO are: i) a no-vote option will be given to voters. If 50 per cent of votes are no votes then the constituency will run another election; ii) former government or military officials who resigned or retired will have to wait three years before contesting an election; and iii) no candidate will be able to contest in more than three constituencies.

²⁴RPO, Article 90(B).

²⁵For example, the Maulavibazar-2 constituency committee recommended Sultan Mohammad Mansur, but the national leadership chose instead to nominate Atiur Rahman Shamim. This was repeated in five other constituencies. On the Awami League violations see “RPO, party constitution overlooked”, *The Daily Star*, 18 November 2008. On the BNP’s, see Shakhawat Liton, “BNP constitution, RPO choked”, *The Daily Star*, 28 November 2008.

2. Election code of conduct

The EC published a revised code of conduct for the parliamentary polls in February 2008 that came into effect on 18 September.²⁶ The most significant change is a reduction of the campaign period, which will now run for eighteen days, ending two days before the polls.²⁷ The parties have raised almost no objection to the shorter campaign timelines. An Awami League party member said, “The less time we have to campaign means the less money we have to spend”.²⁸ However, one prospective independent candidate in Sylhet said he was concerned that that tighter campaign period would make it difficult for him to compete against better-known candidates.²⁹

The new code requires political party candidates or anyone campaigning on their behalf to seek permission for rallies and other campaign activities from district magistrates, police commissioners or other authorised officials. It prohibits campaigning at mosques, temples or any place of worship. Violations are punishable by a maximum six months in prison and or a fine equivalent to \$725. A similar code of conduct will govern the *upazila* elections. The EC has already accused Sheikh Hasina and Khaleda Zia of violations for holding rallies before the formal campaign period has begun.³⁰ The EC has not yet taken any formal action against them.³¹

3. Redrawn constituency boundaries

Redrawing parliamentary constituency boundaries was highly contentious. They had been redrawn only three times since 1973 (in 1979, 1984 and 1995), in each case incompletely and without accurately reflecting population densities. The EC’s redrawing of 133 constituencies aimed to correct this inconsistency but attracted criticism for being undertaken at the last minute instead of

²⁶The election code of conduct in the previous parliamentary elections took effect with the announcement of the election schedule.

²⁷During previous elections the formal campaign period began with the announcement of the election schedule.

²⁸Crisis Group interview, Dhaka, 28 October 2008.

²⁹Crisis Group interview, Dhaka, 13 November 2008.

³⁰On 10 November the EC issued a press release accusing the Awami League of violating the code of conduct by turning Sheikh Hasina’s return to Bangladesh on the same day into pre-election campaigning. See “EC warns AL”, *The Daily Star*, 11 November 2008. A day earlier it had sent a letter to the BNP leadership accusing Khaleda Zia of pre-election campaigning in the southern port town of Chittagong. See “EC warns BNP for violating electoral code of conduct”, *The Daily Star*, 10 November 2008.

³¹Crisis Group interview, CTG official, Dhaka, 17 November 2008.

at the start of the CTG's tenure. Given the first-past-the-post system, the redrawing could significantly alter the contest. One third of the constituencies in 2001 were swing seats – with a winning margin of 20 per cent or less.³² In 2001, an 8 per cent increase in the BNP vote gave it a 44 per cent increase in seats, while the Awami League lost 3 per cent of its vote but 57 per cent of its seats.³³

All major parties opposed the EC's demarcation exercise, fearing that the process could be lengthy and delay the elections as well as increase the number of swing seats. Legal challenges were filed, but on 12 November the Supreme Court ruled in the EC's favour.³⁴ A BNP party member speculated as to why his party had accepted the court's verdict: "The party leaders know that the boundaries will be a problem for us but I think they saw that they had a more important battle to fight: so many of our leaders cannot run in the election. What is the purpose of arguing over constituencies when you may not have anyone to run in them?"³⁵

4. State of emergency

The state of emergency remains the biggest obstacle to free and fair elections. The government indicated that it would completely lift the emergency on 17 December, which is roughly one week into the campaign period and twelve days before the general election.³⁶ Some provisions have been relaxed, but if it is not completely lifted its legal framework, the Emergency Powers Rules (EPR), will override the election laws.

On 3 November the CTG eased the state of emergency by reinstating several rights suspended since January

2007 including media freedoms and a ban on political activity.³⁷ Other restrictions will be eased on 12 December.³⁸ However EPR provisions such as Section 16(2), which enables warrantless arrest and detention without bail of anyone likely to commit "prejudicial" acts against the CTG, will remain in force for part of the election campaign.³⁹ The CTG has seriously considered holding elections under a state of emergency and it contends that the EPR will not impact the credibility of the polls. Shamsul Huda, Bangladesh's chief election commissioner said, "I don't think [the emergency] has any implications for the conduct of polls".⁴⁰ The August 2008 municipal polls, held under the emergency, satisfied domestic and informal international observers; the internationally supported Election Working Group (EWG) termed them "credible and peaceful".⁴¹

While the CTG says it will fully withdraw the state of emergency on 17 December, it could still keep provisions such as Section 16(2) in effect by issuing them as presidential ordinances. One Bangladeshi election observer said, "It does not matter how relaxed the state of emergency becomes, any election with the emergency rules cannot truly be free and fair. It will be a shame to have gone through these two years and have an election under emergency rule and have questions whether it really was a fair election".⁴² On these grounds, maintaining the state of emergency in whole or in part easily gives a losing party or candidates reason to

³²For a discussion on election swing seats in Bangladesh, see Owen Lippert, "Proposal Summary: Poll-Level Electoral Return Map", National Democratic Institute, at www.ndibd.org/election_analysis.php.

³³A swing seat is considered one for which the victory margin has been 20 per cent of the vote or less. For example, a 10 per cent increase in the vote of the opposition party would cost the incumbent his or her seat in a two-candidate race. For a discussion on election swing seats in Bangladesh, see Lippert, "Proposal Summary", op. cit.

³⁴"HC dismisses petitions against re-demarcation", *The Daily Star*, 3 November 2008.

³⁵Crisis Group telephone interview, Dhaka, 17 November 2008. Hannan Shah, an adviser to Khaleda Zia, said that redrawn boundaries would affect BNP seats in many districts including Dhaka, Manikganj, Gazipur and Satkhira. See Rakib Hasnat Suman and Rashidul Hasan, "BNP assessing equation in redrawn constituencies", *The Daily Star*, 31 October 2008.

³⁶"Bangladesh 'will lift emergency'", BBC, 10 December 2008. As of 11 December 2008 the remainder of the 23 emergency rules remain in full force.

³⁷On 3 November the CTG relaxed Section 3 of EPR, the ban on political activity, to allow for campaigning. The relaxation allows for election-related processions, meetings and rallies only in so far as they are held in accordance with the election law. Other public gatherings for political purposes remain banned. The government also revoked sections 5 and 6 of EPR on same day, removing restrictions on media coverage of campaigning and public criticism of the government.

³⁸"Bangladesh 'will lift emergency'", BBC, 10 December 2008.

³⁹For more information on rule of law and due process under the state of emergency see Human Rights in Bangladesh 2007, Ain o Salish Kendra 2008.

⁴⁰"CEC sees JS polls under emergency no problem", *The Daily Star*, 5 August 2008.

⁴¹"Voting Credible, but Observers Barred from Ballot Counting", Election Working Group, 7 August 2008, at www.ewgbd.org/details.php?id=220&n_type=1. The EWG is a non-partisan, 34-member coalition of civil society organisations that share a commitment to free and fair elections in Bangladesh. It is supported by the Asia Foundation, Australian Agency for International Development, Canadian International Development Agency, Danish International Development Agency, Swedish International Development Cooperation Agency, UK Department for International Development and the Norwegian embassy in Dhaka.

⁴²Crisis Group interview, head of an independent Bangladeshi election-monitoring organisation, Dhaka, 10 November 2008.

reject the poll results, setting the stage for political deadlock and violence reminiscent of late 2006.

The emergency has led to state intimidation of journalists, human rights defenders, social activists and those who criticise the CTG or publicise rights violations. In the run-up to the election there has been an expansion of media freedoms, but the CTG, albeit subtly, continues to muzzle journalists and other vocal critics. Media self-censorship is the norm but control can be more direct. For example, journalists say that the Directorate General of Forces Intelligence (DGFI), the powerful and politically active military intelligence agency, has given them a list of its preferred candidates and is preventing media outlets from publishing interviews and broadcasting radio and television programs with other candidates. One television journalist said, "The DGFI is making us campaign for its candidates".⁴³

B. SAFEGUARDING THE VOTE

1. Voter roll

The new electronic voter roll is the CTG's most obvious success, replacing a disputed roll which was a major factor in the controversy that led to the abandoning of the January 2007 polls.⁴⁴ The new electoral roll is widely considered the most accurate in Bangladesh's history. One European ambassador described it as a "gold-plated achievement". "It's something that even some Western countries do not even own".⁴⁵ With some 81 million voters, the roll is consistent with census estimates of the voting-age population and, if used correctly by polling agents, should reduce the risk of fraud.⁴⁶

However, confusion over identification is a problem. The voter registration process was combined with a separate government exercise to issue each citizen a national photo identification card. Bangladeshis were simultaneously issued a voter registration number and a separate national ID card. However the voter registration numbers are not printed on the photo ID cards

and the ID cards are not required to vote. During the municipal elections both voters and polling agents were confused as to what identification was required.⁴⁷ Voters carrying only their registration number were wrongly turned away for not having their ID cards.⁴⁸ Despite urging from both domestic election monitors and members of the international community, the EC has yet to issue any public directives clarifying this. One election expert said, "All it would take for the EC to clear up this confusion is a couple of radio statements to the public and a fax to the polling stations. It's a pretty easy thing to do to ensure everyone has a fair shot at voting".⁴⁹

2. Observers

The general election is likely to be the most closely observed in the country's history, with over 165,000 domestic observers, primarily from the EWG, which will also field around 42,500 observers for the *upazila* polls. Around 330 EU and U.S. observers, as well as organisations such as the Asian Network for Free Elections, will also be present.⁵⁰ The UN has sent a high-level expert mission to assess preparations but will not have a formal observation role. Domestic and international monitoring can provide an objective and independent assessment of the vote and count. However, experts have raised concern over the EC's regulation of observers. A National Democratic Institute (NDI) pre-election assessment mission warned that the EC's guidelines overregulate election monitors and violate international standards.⁵¹

Observers will have the additional challenge of assessing the impact of the emergency rule, taking into consideration three factors:

- the impact of the two-year suspension of fundamental rights on the pre-election period even if the state of emergency is fully lifted for election day;
- the impact of any presidential ordinances keeping in effect EPR provisions that curtail fundamental rights necessary for free and fair elections even if the state of emergency is lifted; and
- their previous positions on the credibility of elections under a state of emergency in other countries.

⁴³ Crisis Group interview, Dhaka, 29 October 2008.

⁴⁴ The old roll, developed under the BNP government, had over 12 million extra names, 13 per cent of the total, and was widely seen as unreliable and a potential tool for rigging the vote. See Crisis Group Report, *Restoring Democracy in Bangladesh*, op. cit., p. 14.

⁴⁵ Crisis Group interview, Dhaka, 17 November 2008.

⁴⁶ Statement of the National Democratic Institute Pre-Election Delegation to Bangladesh's 2008 Parliamentary Elections, 19 November 2008, at http://accessdemocracy.org/library/2418_bd_peamreport_engpdf_11192008.pdf.

⁴⁷ Anwar Ali and Abu Kalam, "Confusion over NID", *The Daily Star*, 5 August 2008.

⁴⁸ Ibid.

⁴⁹ Crisis Group interview, Dhaka, 29 October 2008.

⁵⁰ As of 20 November no international observers had formally committed to observing the *upazila* polls.

⁵¹ Statement of the National Democratic Institute Pre-Election Delegation, op. cit.

Inconsistent approaches to election assessments by observers have consequences not only for the conduct and credibility of elections elsewhere but could also jeopardise the impartiality of future observation missions.

3. Security

Bangladesh's security forces will be deployed in much the same way as they have been for past elections.⁵² 50,000 army personnel will be in the field from one week before the general election until one week after the *upazila* polls.⁵³ During the municipal elections, the stationing of police and paramilitary personnel inside polling stations sparked allegations of electoral fraud.⁵⁴ On election day, security personnel will have the authority to arrest anyone without warrant and take action against any violation of the electoral code of conduct.⁵⁵

Election security is also tightly bound to the state of emergency. Although the emergency may be lifted on 17 December there are indications that the government wants to keep some EPR provisions in place to ward off security threats before and after the polls. There are legitimate security concerns: both major parties' leaders have received death threats, and the government is eager to avoid assassination attempts.⁵⁶ Beyond this, there is a long history of political violence

around elections. An ambassador in Dhaka confirmed that the CTG will lift the emergency but said:

The government is toying with the idea of keeping aspects of the EPR for reasons of law and order by issuing them as presidential ordinances ... the emergency could go in name but very well continue in another form.⁵⁷

Tighter security under emergency rules could also encourage more minorities and women to vote and prevent Islamist militants, who remain organised and active, disrupting the polls.⁵⁸

However, the major parties argue that the security situation does not warrant a state of emergency or any additional ordinances. In the words of an Awami League leader, the peaceful nature of the municipal polls is reason to lift, not maintain, the emergency: "There was no violence during the city corporation elections, not because of the emergency, but because security officials and polling officers were less partisan than in the past".⁵⁹ The new voter roll and stricter elections laws, election experts say, limit the scope for electoral fraud, often a cause for election-related violence. A foreign election expert said, "The EPR will be less important to maintaining law and order during the elections than cutting down on ways to rig the election. The new voter registry goes a long way in that regard".⁶⁰ A former army general added, "The EPR won't really give them [security forces] ability to do more now. The problem with election security is not the laws. We don't need more laws or new ones; we need to enforce the ones on the books".⁶¹

4. The count

The vote count is a period that lends itself to fraud. Ballots cast in the general election will be counted at each polling station after the polls close, and the results will be sent to the district returning officer and then on to the EC in Dhaka.⁶² Results from previous elections were allegedly fabricated in the transmission process.⁶³ Although the EC will not release official

⁵² Bangladesh's security forces include the military, the Rapid Action Battalion (paramilitary forces), the police and the Ansars (auxiliary police, most of them reserves).

⁵³ In 2001 over 50,000 army personnel were deployed to maintain law and order fourteen days before the general election. In 1996 the military was deployed eighteen days ahead of the election and 23 days before the 1991 polls. Crisis Group telephone interview, ministry of home affairs official, 9 November 2008. See also "EC seeks troops from Dec 12", *The Daily Star*, 13 November 2008; and Statement of the National Democratic Institute Pre-Election Delegation, op. cit.

⁵⁴ There were numerous allegations that Bangladesh's paramilitary forces, the Rapid Action Battalion, and its intelligence services had attempted to alter the outcome of the 4 August Barisal mayoral elections by tampering with ballot boxes in the polling stations. See "Last minute drama in Barisal", *The Daily Star*, 5 August 2008.

⁵⁵ On election day, according to Article 87 of the RPO, the security forces "will have the responsibility for the maintenance of peace, law and order, in the polling station or within a radius of four hundred yards of the polling station, on the polling day" and "a member of any law enforcing agency performing any duty in connection with an election shall have, even if he is not a police officer, the same powers as a police officer ... to arrest without warrant any person, other than a person performing any duty in connection with an election", who commits an election-related offence.

⁵⁶ Crisis Group interviews, senior Awami League and BNP leaders, Dhaka, October-November 2008.

⁵⁷ Crisis Group interview, Dhaka, 3 November 2008.

⁵⁸ Crisis Group interview, Bangladeshi analyst, Dhaka, 3 November 2008.

⁵⁹ Crisis Group interview, Syed Ashraf Islam, Awami League acting secretary general, 1 November 2008.

⁶⁰ Crisis Group interview, Dhaka, 28 October 2008.

⁶¹ Crisis Group interview, Dhaka, 10 November 2008.

⁶² Crisis Group telephone interview, EC official, 20 November 2008.

⁶³ Crisis Group interviews, Dhaka, October-November 2008. See also Statement of the National Democratic Institute Pre-Election Delegation, op. cit.

results until roughly a week after the election, polling station results will be made public immediately after the presiding officer at each polling site has certified them.⁶⁴

III. POLITICAL STANCES AND POSITIONING

A. THE POLITICAL PARTIES

Two parties, the Awami League and the BNP, dominate the political landscape.⁶⁵ Smaller parties like the Jamaat-e Islami and the Ershad faction of the Jatiya Party can play important roles as king-makers in party alliances. Political allegiances to these parties are strong, and each has become a source of social and financial security for their supporters. Party coalitions and seat-sharing calculations (the division of constituencies between alliance partners) will be important. Under the first-past-the-post system it is the number of seats, not the percentage of the vote, that counts. A BNP-led four-party alliance won a comfortable majority in 2001 (taking 214 seats out of 300) even though the Awami League and its allies received more votes. For the smaller parties in particular, the negotiation with alliance partners over the seats they can contest – how many and how winnable they are – is as important as the election itself.

1. The Awami League

The Awami League is expected to perform well in the general election. The party's central leadership remained cohesive during the emergency, despite what an Awami League leader labelled as "numerous attempts by external forces to split us from the inside".⁶⁶ At the local level too, it has weathered the emergency well, as demonstrated by its strong performance in the municipal elections, when it won eight of nine municipalities (although the BNP technically boycotted the polls). But party activists privately acknowledge tensions simmering

just below the surface. One explains, "Some leaders are afraid of Sheikh Hasina's return. They're worried they won't get nominations for their disloyalty while she was in prison. It's not one or two people that are afraid, it is a handful".⁶⁷ However, another says, "It is unlikely this housecleaning will happen before the elections, Sheikh Hasina needs all hands on deck to win".⁶⁸

Talks with the CTG have cleared most obstacles to the Awami League's participation in the polls, including the eligibility of Sheikh Hasina to run. Outstanding issues such as the timing of the *upazila* polls and the state of emergency remain, but a senior leader said, "there's not much distance left between the government and us on most issues".⁶⁹ Given the perception that it is the frontrunner, party insiders say the leadership has been willing to accommodate the CTG. A former Awami League minister suggested his party's objections to the CTG's position on the elections are "for public consumption and to demonstrate that the leaders still have some capacity to bargain with the government".⁷⁰

The Awami League will lead a coalition of fourteen like-minded parties into the election. The coalition is more symbolic than significant; none of the other members won seats in the last parliament. To maximise its chances of winning, the Awami League has formed an electoral or "grand alliance" which includes the fourteen-party coalition and the three other parties, the Liberal Democratic Party, the Jatiya Party-Ershad and a faction of the Islamist party the Islami Oikya Jote.⁷¹

The alliance with the former military dictator H.M. Ershad and his faction of the Jatiya Party is the most electorally significant addition to the grand alliance.⁷² The Jatiya Party and its allies,⁷³ which won fourteen

⁶⁴ Crisis Group telephone interview, EC official, 20 November 2008.

⁶⁵ The two parties have tended to alternate power since the country's independence in 1971. The Awami League, considered left of centre, secular, pro-Indian and rural, has governed twice since independence; the BNP, right of centre, urban, anti-Indian, Islamic-leaning with close ties to the military, has been in power longer than any other party. While these descriptions are generally accurate, neither party is rigid in its ideology.

⁶⁶ Crisis Group interview, Awami League presidium member, London, 18 September 2008.

⁶⁷ Crisis Group interview, Dhaka, 27 October 2008.

⁶⁸ Crisis Group interview, Dhaka, 7 November 2008.

⁶⁹ Crisis Group interview, Syed Ashrafur Islam, Awami League acting secretary general, Dhaka, 1 November 2008.

⁷⁰ Crisis Group interview, Dhaka, 31 October 2008.

⁷¹ The faction of Islami Oikya Jote (IOJ) in the Awami League's "grand alliance" is led by Mishabur Rahman Chowdhury. An Awami League leader says it was admitted into the coalition because of its "commitment to secularism and the IOJ's pro-liberation war position". Crisis Group telephone interview, 1 December 2008.

⁷² H.M. Ershad was Bangladesh's army chief between 1978 and 1982. He took power in a bloodless coup in 1982 and served as president from 1982-1990. He formed the Jatiya Party in 1988 but in 1999, the party split into three main factions, the Jatiya Party (Ershad); the Jatiya Party (Monju); and the Jatiya Party (Naziur) also referred to as the Jatiya Party (Naziur-Firoz).

⁷³ Ershad's Jatiya Party leads the Islami Jatiya Oikya Front (Islamic National United Front), an alliance of five parties.

seats in the last election, could give the Awami League the margin of victory it needs to gain leverage with a military that has shown willingness to intervene in politics. "The Awami League does not have its own constituency in the army like the BNP. They need to win the election to establish credibility with army; the larger the victory, the longer the arm to keep the military in check".⁷⁴ In return for joining the coalition, Ershad wants 50 seats for his party as well as the Awami League's support for his presidential bid.⁷⁵ Rehman Sobhan, a respected Bangladeshi scholar, said, "The Awami League's belief that Ershad can do for them what the Jamaat did for the BNP is a serious fallacy. Votes for Ershad are not necessarily transferable to the Awami League or even the BNP".⁷⁶

If elected, the Awami League says it will ratify "in one stroke of a pen" all of the CTG's reforms and endorse the presidential ordinances issued during the emergency.⁷⁷ The acting secretary general of the party, Syed Ashraf Islam, declared, "Not only the Awami League but any party that will form the next government will have to ratify the present government's activities for its own legality".⁷⁸ Sheikh Hasina told Crisis Group that the CTG had adopted her own party's agenda, "the plan we put forward before the cancelled election".⁷⁹ She said however that the government "is going about it illegally and they are failing ... none of [the reforms] started by the government have been done properly.... We will continue with the reforms but we will do it the correct way, by the laws of the land".⁸⁰

Even if the Awami League wins, questions linger as to how democratic the party will be once in power. Decision-making power remains highly centralised; more reform-minded individuals accused of disloyalty may well be marginalised or expelled. A party member explained, "There is hardly a chance the reforms

promised to the EC will happen if the old guard is back on top of the party. None of the younger, democratic members will come up, they're too afraid to challenge the party president.... They're all afraid of her".⁸¹

2. The Bangladesh Nationalist Party (BNP)

The emergency has hit the BNP harder than other parties. The government has attempted to bar 109 senior BNP leaders from standing for election, many of them former parliamentarians and the party's preferred candidates.⁸² Internal divisions may also threaten the party at the polls. Abdul Mannan Bhuiyan, the party's reform-minded and popular general secretary expelled for indiscipline, is standing as an independent; he and others like him may take their supporters with them. Taken as whole, "it easy to see why the BNP is hesitant about going to the polls. It [the BNP] sees the very existence of the party on the line", suggests one foreign analyst.⁸³

Unknown candidates face a struggle: established personalities like Bhuiyan are at a premium at election time. One Bangladeshi analyst said, "Awami League voters care less about personalities than they do about the party. People tend to vote for the Awami League ... more than they vote for a specific candidate. The opposite is usually the case for the BNP; BNP supporters vote for the person they know". A former BNP member said, "Unlike the Awami League the BNP does not have four or five other candidates to choose from if the government bans its candidates from running; it does not have others that it can put up in most constituencies and feel confident they can win".⁸⁴

Worried at its electoral prospects, the BNP pushed for a postponement to enable it to regroup. A Bangladeshi analyst explains, "The corruption and criminality of the last BNP regime are still fresh in many Bangladeshis' minds. The more distance the BNP can put between itself and its last administration, the better it believes it will do on election day".⁸⁵ But Hannan Shah, an adviser to the BNP chairperson, Khaleda Zia, suggests, "If the BNP just selects proper candidates acceptable to the people, we will sweep the elections".⁸⁶ BNP

The front won fourteen seats in the 2001 parliamentary elections and received 7.5 per cent of the vote.

⁷⁴ Crisis Group interview, Bangladeshi analyst, Dhaka, 28 October 2008.

⁷⁵ Current President Iajuddin Ahmed's five-year term expired on 5 September 2007, but the military has allowed him to stay on until the next parliament can elect his successor. See "Bangladesh president to stay on after term expires", Reuters, 5 September 2007, at <http://in.reuters.com/article/southAsiaNews/idINIndia-29345820070905>.

⁷⁶ Crisis Group interview, Dhaka, 3 November 2008.

⁷⁷ Crisis Group interview, Syed Ashraf Islam, Awami League acting secretary general, Dhaka, 1 November 2008.

⁷⁸ Ibid.

⁷⁹ Crisis Group interview, Sheikh Hasina, Awami League president, Washington DC, 30 September 2008.

⁸⁰ Ibid.

⁸¹ Crisis Group interview, Dhaka, 17 November 2008.

⁸² 67 out of the 109 BNP party members on the government's list were former MPs. A majority, if not all, of 67 MPs were likely to be nominated by the party for the 2008 election. A copy of the CTG's list is on file with Crisis Group.

⁸³ Crisis Group interview, Dhaka, 28 October 2008.

⁸⁴ Crisis Group interview, Bangladeshi election expert, Dhaka, 29 October 2008.

⁸⁵ Crisis Group interview, Dhaka, 27 October 2008.

⁸⁶ Crisis Group interview, Dhaka, 1 November 2008.

leaders have also made attempts to reconcile with former members like Bhuiyan to boost the BNP's popularity. But national and grassroots leadership remain divided. Activists loyal to Khaleda Zia attacked a group of ex-BNP lawmakers, diminishing the prospects of reconciliation.⁸⁷

To offset the impact of the candidate ban, the BNP will rely more heavily than in previous elections on its alliance with four smaller parties, the Bangladesh Jamaat-e Islami, Islami Oikya Jote, Khelafat Majlis and the Naziur-Firoz faction of the Jatiya Party. In 2001 the BNP could have formed the government on its own: it won 193 seats to its partners' 23.⁸⁸ However, in light of the BNP's potential candidate shortfall, the alliance has taken on a new significance. If the coalition partners can hold on to their 23 seats, it could be the difference between the BNP alliance winning a narrow victory or taking up the opposition. But the BNP's alliance with the Jamaat is the party's most valuable asset. Hannan Shah said, "We need the Jamaat more than ever". But he is also concerned about the party's long-term political relationship with the Islamists: "We are with Jamaat not by choice but by necessity. [It's a] case of my enemy's enemy is my friend. We know today or tomorrow they [the Jamaat] will eat us up, in fact they are already eating us from the inside".⁸⁹

3. Bangladesh Jamaat-e Islami

Emergency rule has left the Jamaat relatively unscathed. It has used religious festivals and mosques to continue public political activities during the emergency's ban on political activity.⁹⁰ Despite recent convictions of the party's top two leaders, Motiur Rahman Nizami and Ali Ahsan Mojahed,⁹¹ less than fifteen Jamaat members have been imprisoned or convicted in the CTG's anti-corruption drive.⁹² Jamaat leaders say this is because

their party members are not as corrupt as other politicians.⁹³

The Jamaat won eighteen seats in the 1991 election, only three in 1996 and seventeen in 2001. It may do better this year: Jamaat leaders are asking the BNP for 50 candidatures in return for their loyalty to Khaleda Zia during the emergency.⁹⁴ An analyst close to the BNP explained, "Khaleda Zia trusts the Jamaat more than ever because many of the BNP leaders turned their back on her while she was in prison. This reinforced what she always believed: the Jamaat was more loyal to her than members of her own party".⁹⁵ However, the Jamaat is eager to contest the elections, and throughout the pre-election period there were indications that the party was considering going it alone if the BNP boycotted.⁹⁶

However, an expert said, "The electorate has not changed radically enough for the Jamaat to win much more than it did in 2001".⁹⁷ Other factors could also limit the Jamaat's ability to win in more constituencies. "Jamaat voters are very disciplined and vote the way they are told. Although they are alliance partners, secular BNP voters don't always vote for the Jamaat".⁹⁸ Large sections of the public consider the Jamaat to have collaborated with the Pakistani military during Bangladesh's liberation war. Harun-ur Rashid, a former army chief and a liberation war veteran, said, "The liberation war is still fresh in many Awami League and BNP minds. On these grounds, if the choice for a BNP voter is Awami League or Jamaat in their constituency, many people will vote for the Awami League".⁹⁹

B. THE MILITARY

Emergency rule has shown the military the limitations of its political capabilities. Its reform agenda has been

⁸⁷ "Fate of 'reformists' in BNP still not clear", *The Daily Star*, 9 October 2008.

⁸⁸ In the 2001 election, as part of the BNP four-part alliance, the Jamaat contested 37 seats and won seventeen; the Jatiya Party (Naziur-Firoz) contested seven seats and won four; and the Islami Oikya Jote contested six seats and won two.

⁸⁹ Crisis Group interview, Dhaka, 1 November 2008.

⁹⁰ Article 3, paragraph 2 of the EPR exempts religious gatherings, meetings and processions from the CTG's ban on political activity. Copy of the EPR on file with Crisis Group.

⁹¹ Both Nizami and Mojahed are on bail but were convicted of abuse of power in the Barapukuria coal mining case filed by the Anti-Corruption Commission (ACC) on 26 February 2007; Khaleda Zia and ten former BNP ministers have been charged with illegally awarding mining rights in the same case.

⁹² Crisis Group telephone interview, DGF official, 11 November 2008.

⁹³ Crisis Group interview, Ali Hasan Mojahed, Secretary General, Jamaat-e Islami, Dhaka, 12 November 2007.

⁹⁴ Ahead of the delayed 2007 elections, Jamaat-e Islami asked for 50 seats to participate as a member of the BNP alliance. It was only allotted 35. According to a BNP leader, "The Jamaat will not obtain over 35 seats this year [2008]. I would say that 34 or 35 seats are a possibility for them". Crisis Group telephone interview, 7 December 2008.

⁹⁵ Crisis Group interview, Bangladeshi analyst, Dhaka, 28 October 2008.

⁹⁶ "Parties prepare to contest alone", *The Daily Star*, 20 November 2008.

⁹⁷ Crisis Group interview, Bangladeshi election expert, Dhaka, 10 November 2008.

⁹⁸ Crisis Group interview, Bangladeshi analyst, Dhaka, 5 November 2008.

⁹⁹ Crisis Group interview, Dhaka, 10 November 2008.

drastically scaled back and aspects of it abandoned altogether, affecting morale and leaving some officers privately questioning whether the army's foray into politics was worth the effort. "What has been achieved? We started with zero and we have ended with zero", one asked.¹⁰⁰ Others defend their role, insisting they are about to achieve their goal of a smooth return to civilian rule.¹⁰¹

However, serving and retired military officers occupy key positions in the administration and some will remain even under a new government.¹⁰² One retired senior general said, "It [the army] has been literally running the country and unable to train soldiers. It will be very difficult to take officers out of the government and to put them back into the field".¹⁰³ Some speculate whether the army will become a permanent fixture of politics. One prominent writer asked, "Why would the military want to run the country, in the traditional sense – through martial law – when it has officers in almost every branch of the government, running private businesses and heading up civil society organisations? What we have here is an embryonic Pakistani military".¹⁰⁴

As a result of the emergency three camps have emerged within the army's officer ranks. One believes the military, as a matter of principle, should keep its distance from politics, while another advocates a direct role in governing. The third camp – the largest – would prefer a significant role in political decision-making but understands the practical, rather than principled, drawbacks of direct involvement in governing the country. In the near term this section of the army will not prevent elections, but it remains interested in limiting civilian oversight of the military as a safeguard against politicisation of promotions and assignments and interference in the army's access to UN peacekeeping operations.¹⁰⁵

Senior army officers are reportedly still interested in the formation of a national security council as a way to formalise the military's role in government decision-making. A draft ordinance creating the council was circulated among the CTG advisers and generals, but it has not yet been issued. General Moeen U. Ahmed, the army chief, has rebutted widespread rumours that he is interested in becoming president, and thereby the supreme commander of the armed forces.¹⁰⁶ However, he has consolidated his grip over the army by neutralising potential rivals, strengthening his hand with the next civilian administration. A former army chief summed up, "There is genuine desire in the army to hand over power now but no matter who wins [the election] in December, the military will have more influence over the next civilian government than those that came before it".¹⁰⁷

C. THE CARETAKER GOVERNMENT

For most of the state of emergency, the CTG was indistinguishable from the military. "The ten [CTG] advisers were more or less in place to implement the military's political agenda".¹⁰⁸ However, by the end of 2007 it was clear the army's attempt to force reforms within the political parties, and displace Sheikh Hasina and Khaleda Zia, was failing. Hossain Zillur Rahman, a prominent CTG adviser, explained,

The old strategy did not bear any fruit and by the end of 2007 popular support for the CTG began to wane. The government's legitimacy was challenged at the end of 2007. In order to reposition itself to deal with the political realities, the chief adviser [Fakhruddin Ahmed] with the support of the army replaced four advisers, almost half of his cabinet.¹⁰⁹

¹⁰⁰ Crisis Group interview, military officer, Dhaka, 10 November 2008.

¹⁰¹ Crisis Group interview, serving army general, Dhaka, 2 November 2008.

¹⁰² For a detailed list of serving and retired military officers currently in the government, managing businesses and civil society institutions, see "Bangladesh: Military must not dominate civil administration", Asian Human Rights Commission, 29 August 2008, at www.ahrchk.net/statements/mainfile.php/2008statements/1671/.

¹⁰³ Crisis Group interview, 2 November 2008.

¹⁰⁴ Crisis Group interview, Dhaka, 11 November 2008.

¹⁰⁵ Bangladesh is the second largest contributor to UN peacekeeping missions, from which its military earns nearly \$400 million a year. A percentage of the revenue is given directly to individual soldiers who participate in peacekeeping operations; this is a powerful recruitment tool that the army would

be loath to risk. Soliders and officers also attach a great amount of prestige to individual peacekeeping assignments, allowing senior officers to use mission postings as internal patronage. Since 1998, Bangladesh has participated in 33 peacekeeping missions contributing nearly 75,000 peacekeepers. Currently it has 9,850 peacekeepers deployed in fourteen UN peacekeeping missions. See Statement by Brigadier General Ilyas Iftekhar Rasul, defence adviser, Permanent Mission of Bangladesh to the UN at the General Debate of the Special Committee on Peacekeeping Operations, New York, 11 March 2008, at www.un.int/bangladesh/statements/62/other_peacekeeping_c34_mar_08.htm.

¹⁰⁶ Before taking the oath as president, General Ahmed would have to step down as army chief.

¹⁰⁷ Crisis Group interview, Dhaka, 6 November 2008.

¹⁰⁸ Crisis Group interview, CTG official, Dhaka, 7 November 2008.

¹⁰⁹ Crisis Group interview, Dhaka, 30 October 2008.

The army has since given the ten advisers more authority over the reform agenda, although one adviser pointed out that “there is no difference in opinion between the army chief and the CTG on how they view the events unfolding”.¹¹⁰ A “core group” of advisers led by Hossain Zillur Rahman has been implementing a revised political strategy.¹¹¹ The CTG’s stated goal is to hold the elections in December with “full participation by all parties and with honest candidates”.¹¹² To this end the CTG has abandoned the failed “minus-two” strategy of sidelining Sheikh Hasina and Khaleda Zia. Instead it has come up with a “plus two, minus many”¹¹³ approach, allowing both women to stand in the elections but excluding large numbers of second-rank leaders.

This strategy has provoked a sharp reaction from the political parties, in particular the BNP, which threatened to boycott if their preferred candidates were barred. The CTG has taken the boycott seriously and has begun negotiating candidate lists acceptable to the parties. Kamal Hossain, the eminent jurist and legal advisor to the CTG, described the government’s move as “bowing down and compromising with the corrupt”.¹¹⁴ Others agreed and argued the CTG should hold the election even if the BNP boycotts. A Bangladeshi political analyst suggested, “The CTG could call the BNP’s bluff and push ahead with the election schedule hoping that Khaleda Zia will not keep her party out of the elections. The chance that the party will universally boycott is not high”.¹¹⁵

Government talks with the political parties have made progress, and an election with their full participation seems possible by 29 December although all three major parties accuse the CTG of bias. The Awami League’s Motia Chowdhury said, “It would appear the CTG and its backers have a soft spot for the Jamaat, or, if not, at least they have not been an obstacle to the Jamaat”.¹¹⁶ The BNP and Jamaat argue that government is rigging the election in favour of the Awami League; Hannan Shah, an adviser to Khaleda Zia said “We [the BNP] have every indication that the CTG is working with the other party to favour it in the elec-

tion”.¹¹⁷ However, a former CTG adviser said, “It’s a good sign that all sides are mildly upset, it means that they [the CTG] are acting in a fair manner”.¹¹⁸

In the court of public opinion, however, the CTG is not faring well. Salim and Nurul, shopkeepers in Dhaka, believe the government has buckled under pressure from political parties. Salim said, “I don’t like that this government has given freedom to corrupt people so we can have elections. The politicians want power, so they have to go for the election. They won’t stay out”.¹¹⁹ Nurul said, “What is this caretaker government anyway? Maybe they have done some good things, the law and order situation is better. But if more people come out of the jailhouse that will change, I know”.¹²⁰ A member of civil society suggested that CTG advisers “do not have much to gain from being very principled in their negotiations with the parties”. He said, “The CTG advisers have their own futures to worry about. All is very well for the army but who will protect the advisers from the next government? So why not give away the store?”¹²¹

D. A CRISIS OF CANDIDATES

Beyond the stated purpose of using emergency powers to maintain law and order, the government wishes to use the EPR to restrict candidacies for the general election. According to Section 11, any person convicted of corruption under the EPR will be barred from participating in both the parliamentary and *upazila* elections, even if the conviction is being appealed in a higher court. The convicted will remain ineligible unless acquitted.¹²² Since 11 January 2007, the government has convicted 116 politicians and businessmen of criminal offences using the EPR. Of the 116 political leaders convicted, 54 belong to the BNP and 33 to Awami League.¹²³

The major parties say this candidate ban is unconstitutional, and the convictions are illegal on the grounds

¹¹⁰ Crisis Group interview, Dhaka, 31 October 2008.

¹¹¹ Crisis Group interview, Hossain Zillur Rahman, CTG adviser, Dhaka, 30 October 2008.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ “CG to face court if fair polls not held: Dr Kamal”, *The Daily Star*, 9 November 2008.

¹¹⁵ Crisis Group interview, Dhaka, 3 November 2008.

¹¹⁶ Crisis Group interview, Motia Chowdhury, Awami League presidium member, Dhaka, 31 October 2008.

¹¹⁷ Crisis Group interview, Dhaka, 1 November 2008. Jamaat’s Mohammad Kamaruzzaman said, “The government is try to install a secular party to power”, referring to the Awami League. Crisis Group interview, Dhaka, 30 October 2008.

¹¹⁸ Crisis Group interview, Dhaka, 13 November 2008.

¹¹⁹ Crisis Group interview, Salim, employee in an electronics shop, Dhaka, 10 November 2008.

¹²⁰ Crisis Group interview, Nurul, employee in a mobile phone shop, Dhaka, 10 November 2008.

¹²¹ Crisis Group interview, civil society member, Dhaka, 2 November 2008.

¹²² Section 11 of the EPR 2007. Copy on file with Crisis Group.

¹²³ Crisis Group interview, CTG adviser, Dhaka, 17 November 2008.

that individuals cannot be tried under the EPR for an offence committed prior to 11 January 2007.¹²⁴ Party leaders say they are in favour of prosecuting the corrupt and barring those convicted but only with due process. The Awami League's Motia Chowdhury said, "Trials are being held under the cover of an emergency are unlawful. People must be tried by civil law in the open courts. We're for corruption trials but trials themselves have to be free from corruption".¹²⁵

The BNP has been the most affected. A foreign election expert commented, "The EPR ban has only curtailed the Awami League and the Jamaat's ability to nominate their candidates but it has absolutely crippled the BNP's".¹²⁶ The BNP made its participation in the election conditional on the CTG meeting four demands including the immediate lifting of the emergency to allow its candidates to compete, the scrapping of the RPO's Article 91(E) and a postponement of both the parliamentary and the *upazila* polls. BNP leaders said a delay would buy the party time to negotiate a deal over candidates with the CTG and give it time to groom new candidates if necessary.¹²⁷

On 23 November the CTG and the BNP alliance reached an agreement on a ten-day poll postponement loosely securing the alliance's participation in the general election. However, the BNP has not dropped its demand regarding the emergency, and as one BNP member said, "We will participate but of course we reserve the right to stay out of the election if the conditions are not favourable to us".¹²⁸ Some BNP leaders have reluctantly acknowledged that popular party members will be barred from the polls, but remain adamant that the emergency be lifted so that they can campaign for other candidates.¹²⁹ The BNP's bottom line, as one of its leaders explained, is not about winning the election anymore, "It's about a respectable showing and an acceptable number of parliament seats. For us, the state of emergency is an obstacle to that".¹³⁰ Although the CTG says it will lift the emergency by 17 December, boycott threats remain. There are concerns within the CTG and other political parties the

BNP could yet shun the polls if the emergency is not lifted as promised, or reject the results if it could force another election on its terms.

IV. ELECTION OBSTACLES

While most Bangladeshis would like to see an election held by the end of the year, the pre-election situation does not guarantee that polls will take place on schedule.¹³¹ This section identifies some of the factors that could shape the elections and their aftermath.

Full or partial boycott. A boycott by either of the two main parties would undermine the credibility of the polls and make the formation of a stable government impossible. Bangladesh has experienced such problems in the past. An Awami League boycott in February 1996 forced a second election five months later, with political violence characterising the intervening period. The Awami League's threatened boycott in late 2006 led to the military intervention of January 2007. The continuation of emergency rule beyond 17 December could be grounds for all major parties to shun the elections. Another potential cause could be the EC's actual or perceived abuse of Article 91(E) of the RPO. An Awami League presidium member said, "We would have to take into consideration why the BNP is boycotting. If they boycott for purely political reasons and the public is against their move we will likely go ahead. But if they boycott for sound reasons, for example if the government is being overly harsh with them or the EC is unfair, we may consider joining them".¹³²

Technical and procedural flaws. The EC has held a series of workshops and trainings for polling staff to limit prevent technical and procedural flaws. However a technical malfunction with the electronic voter roll could cause a delay if hard copies of the voter registry are unavailable at polling stations. The confusion over identification requirements is a serious risk. If significant numbers of voters are erroneously turned away, the EC could have to re-poll in some areas. Moreover, technical flaws, if not explained properly or in a timely manner, could be perceived by parties and candidates as government attempts at rigging, leading to potentially more serious risks than just a poll delay.

¹²⁴ Article 35, Constitution of Bangladesh.

¹²⁵ Crisis Group interview, Motia Chowdhury, Awami League presidium member, Dhaka, 31 October 2008.

¹²⁶ Crisis Group interview, Dhaka, 9 November 2008.

¹²⁷ Crisis Group interview, BNP leaders, Dhaka, November 2008.

¹²⁸ Crisis Group telephone interview, Dhaka, 22 November 2008.

¹²⁹ According to the election schedule announced with the 29 December poll date, 11 December is the deadline for withdrawing candidate nominations.

¹³⁰ Crisis Group telephone interview, Dhaka, 19 November 2008.

¹³¹ In fact, Bangladesh's ninth general election has already been delayed twice. The first delay came with declaration of the state of emergency on 11 January 2007; the second was on 23 November when the CTG moved the election from 18 December to 29 December 2008.

¹³² Crisis Group interview, Dhaka, 10 October 2008.

Election rigging. By virtue of their control over the election machinery, the greatest potential for electoral malpractice lies with the government and the military. Analysts suggest the security forces are unlikely to resort to vote buying or ballot-box stuffing but could detain potential candidates on fabricated corruption charges to prevent them from contesting the elections.¹³³ This would be easily done if the EPR remains in effect throughout the election. Evidence, or even perceptions, that the army is engaged in rigging could spark a full or partial boycott or lead to violent protests. August 2007 riots at Dhaka and Rajshahi universities showed how quickly anger with the military can boil over. The political parties may also revert to established practices of vote buying and intimidation. Although this will be more difficult than in past elections given the intense scrutiny they are under, allegations of fraud could lead to inter-party violence.

Deteriorating security. Events such as an assassination attempt on a major political figure could delay the elections and would likely provoke a violent response from their supporters. The potential also exists for Islamist militants to disrupt the election to further their agenda. Worsening security could lead to martial law. Prolonged emergency rule or a flawed election could produce party-led street violence, similar to run-up to the January 2007 polls. In this case the army could feel compelled to step in as it did on 11 January 2007. However, as a Dhaka-based diplomat suggested, “The lesson the military learned is that if they have to do this again, they will do it with a heavy hand. Next time there won’t be a caretaker government with a gentle state of emergency”.¹³⁴ Serving and retired officers insist there is little if any appetite for martial law among the army ranks, but many accept that the army will not sit idle if significant numbers of Bangladeshis are killed or injured in political violence.¹³⁵ Despite the failures of emergency rule, the army remains a widely trusted institution, and for a short time some Bangladeshis would likely accept martial law over political instability.

V. A BEGINNING, NOT AN END

Even if elections are held on schedule with all major parties participating and accepting the results, longer-term stability is not guaranteed. The polls are only the

first step in the transition towards a functioning democracy. The next government will need to work constructively with the opposition, which in turn will have to resist the temptation to boycott parliament if there are disputes. The military will also have to adapt to a degree of uncertainty about the new political landscape and accept civilian rule.

In its first days, the new government and parliament will be faced with a series of challenges. The constitution requires the next parliament within its first 30 days to vote on presidential ordinances issued during the emergency.¹³⁶ This is likely to be contentious. The major parties may well endorse the ordinances, many of which, such as the reconstitution of the Election Commission and the Public Service Commission, are popular. However, an endorsement of CTG reforms is not the same as a commitment to continue the process. Equally important – and equally contentious – will be the formation of parliamentary committees, which should have meaningful bipartisan participation, including the appointment of some opposition chairpersons. The parties’ own cultures are key. A former Awami League parliamentarian said, “If we cannot practice democracy within our own party, there is little hope that the parliament be any different”.¹³⁷

Whatever the outcome of the elections, Bangladesh’s next government will be faced with several challenges that should transcend partisan politics. Civil-military relations need to be put on a secure footing. Five military coups in five decades have prevented democracy from taking root. Addressing the culture of impunity will mean investigating and prosecuting past and present crimes including those perpetrated by the security forces and senior politicians. Tackling impunity will also require rooting out widespread corruption in the judiciary and law enforcement agencies. The government will also need a coherent strategy to meet the distinct but interrelated challenges of endemic poverty and climate change.

The next government will have to contend with increasing Islamist radicalisation. Although military rule has historically favoured Islamist groups linked directly or indirectly to violent extremists, civilian governments have done little to counteract it: extremism in Bangladesh has as much to do with the deficiencies and self-interested behaviour of mainstream parties as it does

¹³³ Crisis Group interviews, Dhaka, November 2007 and November 2008.

¹³⁴ Crisis Group interview, Dhaka, 1 November 2008.

¹³⁵ Crisis Group interview, Harun-ur Rashid, former army chief, Dhaka, 10 November 2008.

¹³⁶ When parliament is adjourned (as it currently is) presidential ordinances have the same weight as acts of parliament and are valid until one month after an elected parliament begins to function.

¹³⁷ Crisis Group interview, Dhaka, 3 November 2008.

with the strengths of radical groups.¹³⁸ Militants active in Bangladesh pose a threat not only to the country, but also to the region and further abroad.¹³⁹ Senior military officials say they have curtailed the threat of Islamist militants over the past few years but are quick to add that there is no room for complacency.¹⁴⁰ For example on 10 November 2008, security forces seized over 70kg of explosives and 150 hand grenades from active members of the banned Jamaat'ul Mujahideen Bangladesh (JMB) in the capital. Despite a number of arrests of Islamist militants in the last few years, JMB affiliates and other militants continue to concern security officials. Over 250 trained JMB operatives are still at large and may be attempting to regroup. One intelligence official said, "We have no idea where some of these guys are and what they're planning".¹⁴¹

Although Islamist parties do not command a large share of the vote, the wider movement has other sources of power. As an academic observed, "Islamist managed banks, NGOs and businesses have woven themselves through the fabric of Bangladeshi society, creating an alternative power structure to the government".¹⁴² Retired military officials and government bureaucrats have raised concerns about increasing support for Islamist groups within the army and their effect on the government policy. A retired general said that he has "enough proof that hard-line religious elements have made inroads at every level in the army".¹⁴³ Comparisons drawn between Pakistan and Bangladesh are often overblown and misinformed, but one that many Bangladeshi analysts agree on is that Islamists in both countries have more power than their success at the ballot box would dictate.¹⁴⁴

VI. CONCLUSION

The state of emergency was inherently misconceived, and the process was flawed. The CTG has failed to qualitatively reform Bangladesh's politics as it promised when it took power two years ago. Despite this, the next government should continue several of the CTG's reforms. Talk of delaying elections has understandable attractions for leaders afraid of underperforming at polls, but there is no viable alternative to timely elections. However flawed the pre-election period has been, elections offer the best route to stability. Prolonging the state of emergency would invite serious risks including expanding the space for extremists. The parties must not take the international community's support for elections as an endorsement of their behaviour but rather see it as a belated recognition of the dangers of military rule. A sceptical public will offer yet another chance to the political parties to deliver on democracy and change. If they do so, they will also serve their partisan interests as well as the country's. If they fail, the public and the international community will have little patience for a collective betrayal of their aspirations. Neither will the military.

Dhaka/Brussels, 11 December 2008

¹³⁸ Bangladesh's previous military rulers, Generals Zia and Ershad, both cultivated Islamists for political support.

¹³⁹ For background on Bangladesh's various Islamist organisations, see Crisis Group Asia Report N°121, *Bangladesh Today*, 23 October 2006.

¹⁴⁰ Crisis Group interview, active army general official, Dhaka, November 2008.

¹⁴¹ Crisis Group interview, DGFI official, Dhaka, 19 November 2008.

¹⁴² Crisis Group interview, Bangladeshi scholar, Dhaka, 2 November 2008.

¹⁴³ Crisis Group interview, Dhaka, 1 November 2008.

¹⁴⁴ For more information on the influence of Islamists on public policy formation in other Asian countries, see Crisis Group Briefing N°78, *Indonesia: Implications of the Ahmadiyah Decree*, 7 July 2008; and Crisis Group Asia Report N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008.

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