



## TRANSPARENCY INTERNATIONAL BANGLADESH

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## Bangladesh Election Commission: A Diagnostic Study

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### Executive Summary

#### Background

The Constitution of Bangladesh (Article 118) gives the provision for setting up an Election Commission (EC) for the superintendence, direction and control of the preparation of electoral rolls for election to the office of the President and to the Parliament, and the conduct of such elections in accordance with the Constitution. According to the Constitution, the EC is independent in the exercise of its functions and subject only to the Constitution and applicable laws. Bangladesh EC is constitutionally responsible for the conduct of elections in a free and fair manner. To ensure such elections, transparency and accountability are required at all stages of the electoral process.

Allegations of vote rigging and other forms of electoral malpractices are often made before and after every election by common people, political leaders and activists, journalists, media personnel, academics, and election observers. Major allegations include partisan roles played by the EC, gross electoral irregularities and malpractices, inability of the EC to contain the political parties from nominating musclemen and black money holders, and having no control over the law enforcing and intelligence agencies.

Although a large number of civil society organisations are engaged in poll observation, there is a serious dearth of documented information on the EC itself, along with a diagnosis of the EC's limitations. Keeping in mind the next national parliamentary election, this study was undertaken to find out the strength and limitations of the EC. This study also tries to give an in-depth understanding of the law, processes and practices of the EC.

In conducting the study, information was collected from both secondary and primary sources. **Secondary sources** of information include daily newspapers, reports of the monitoring agencies on different elections, books, academic journals, websites and relevant reports collected from different sources. **Primary sources** include interview with the former Chief Election Commissioners (CECs) and Election Commissioners and other concerned officials of the EC, leading political parties, district and upazila election officials, and key informants including election experts, academics, executives of national and international election monitoring agencies, and media personnel. The study was conducted between October 2005 and August of 2006.

Major limitations of this study include lack of access to the EC, lack of documented information of different administrative and financial aspects of the EC, contradictory opinions given by key informants, and non-cooperation from some of the field level and Dhaka officials of the EC.



## **Key Findings**

The EC of Pakistan was first established in Islamabad in 1956, with one regional office in Dhaka. From 1956 to 1971 four CECs were appointed to conduct elections during that period. Among these elections, only the provincial elections were held under a civil government which was reportedly free from electoral irregularities.

After independence, the EC was shifted to its own premises located in Sher-E-Bangla Nagar, Agargaon with a larger set up. Since independence the EC has so far conducted a number of elections that include eight parliamentary elections, three president elections with direct voting from the common people, three referendums, and several other local body elections. Among these, 13 were held under military (five local, three referendums, two presidential and three parliamentary) government, and the remaining under civilian government. Three parliament elections were held under non-party caretaker governments in 1991, 1996 and 2001.

Since 1972, nine CECs have been appointed, among whom seven were from the Judiciary. Only three of the CECs completed their tenure of five years as CEC. Elections held under different CECs were criticised for gross violation of electoral rules and termed 'un-free' and 'unfair'.

## **Legal Framework**

The EC was established on the basis of the Constitution of Bangladesh which clearly provides the establishment, structure, functions and authority of the Commission. The second most important law with regard to the functions of the EC is the Representation of the People Order 1972. A number of laws, rules and regulations have also been enacted and/or provided. These laws discuss, in detail, procedures of different functions such as preparing of electoral rolls, delimitation of constituencies, election of the president and women members of parliament, and conduct of election. Another set of laws and rules provide for administrative functions with regard to salary and privileges of Election Commissioners, and appointment, promotion and transfer of the officials and staff of the EC Secretariat.

However, it has been observed that despite a good number of laws and rules, the EC still lacks legal provisions in respect of an enabling law for its establishment and structure like other constitutional bodies, an independent Secretariat on its own, hiring and firing authority, financial independence, monitoring authority over political parties and proper mechanism of processing election disputes. Inconsistencies among some of the electoral laws and rules are also observed.

## **Institutional Capacity**

There are three different organisational structures in the Commission – the EC, EC Secretariat and field offices. Although the EC is a constitutional institution, the Secretariat is under the office of the Prime Minister.

The Constitution of Bangladesh provides for the appointment and tenure of the CEC and Election Commissioners. It also provides the guideline how a Commissioner can be removed from his office. The Election Commission (Officers and Staff) Rules 1979 provides the procedure of recruitment of officers and staff at different offices of the EC Secretariat. However, neither the Constitution nor the rules prescribes qualifications for appointment to the post of CEC or Election Commissioner.

For recruitment of first class officers at the field offices of the EC, the responsibility lies upon the Ministry of Establishment, and the selection procedure is conducted by the Public Service Commission. The appointment of 300 Upazila Election Officers in



September 2005 raised serious controversy. All major opposition parties, backed by investigations by national dailies, alleged that the UEOs have been selected on partisan background.

According to the Constitution, all executive authorities are bound to assist the EC in discharge of its functions. So the Commission engages RO, ARO, PO, APO, Polling Officer, security personnel and others from public (administration, law enforcing agencies, defense etc.) and private (NGO, school etc.) offices to conduct different types of election at national and local levels. During election, their duties go under the authority of the Commission.

### ***Financial Issues***

The expenditure of the EC is charged upon the consolidated fund. However, it is dependent on the Ministry of Finance for its budgetary allocations. Considering the experience to conduct election and election-related expenses such as voter list updating, training of the personnel, costs of the administrative machinery, the Commission estimates the yearly budget. However, the Ministry of Finance does not necessarily provide the amount as required. There is a huge gap between the demand placed by the EC and provided by the ministry. Sometimes the ministry delays fund disbursement which hampers the activities of the Commission.

The budget allocation of last four consecutive financial years are Tk 137.82 crore, Tk 87.99 crore, Tk 26.48 crore and Tk 28.84 crore respectively. The estimated budget for conducting the next general election is Tk 100 crore.

The EC undertook a number of projects with the financial support from both the government and development partners. The voter identity card project initiated in 1995 initially had a budget of Tk 300 crore, which was later reduced to Tk 180 crore in 1996. However, this project was not completed and the whole fund used in this project was wasted.

From 1997 to 2004 the EC implemented another project titled *Strengthening the Election Commission for Improvement in the Electoral Process*. This project was mainly funded by UNDP with Tk 67 crore, while the contribution of Bangladesh Government was Tk 6 crore. Under this project key components included setting up of computerised database with linkage among all the district level databases, a computerised electoral roll with image of voters, capacity building of election officials through training, and arrangement of elections using electronic voting machines.

### ***Activities of the EC***

The key functions of the EC are preparation of electoral rolls, holding elections to the office of the President and MPs and any such elections, and delimit the constituencies for the purpose of elections to parliament.

Since 1971, voter registrations have been done in 1973, 1976, 1983, 1989, 1995, 2000 and 2006, before each national election. Every time a new voter list was prepared without taking into concern updating the previous list. The provision for updating voter list before each election was highlighted through the debate raised from the controversial activities by the present CEC, as he decided to go for a fresh voter list in August 2005. The High Court gave a verdict for updating the voter list on the basis of the electoral roll of 2001 against the writ petition filed by opposition lawmakers. The Supreme Court judgement upheld the High Court verdict against an appeal to the Appellate Division and thus made the provision clear.



The total voters on the new list published on 3 May 2006 was 9,13,14,592, which is 21.77% higher than the number on the list prepared in 2000. The new list has over 65% of the present population as voters. However, irregularities in the voter growth are observed in the previous voter lists prepared before previous national elections. Moreover, existence of fake voters in different periods was reported by EC staff and a number of individual surveys done by the NDI and EU.

Delimitation of constituencies has to be done on completion of each population census. Delimitation by visiting the constituencies has been done in 1984 and 1991 (partially). However, for the next general election, the EC made no attempt to demarcate the constituencies in line with the latest population survey of 2001.

Major activities for conducting elections include appointment of ROs and AROs, submission of nomination paper, appeal against rejection of nomination by the RO, list of contesting candidates, statement of probable sources of fund, affidavits, declaration of rules after scrutiny, symbols to be used in elections, count on close of poll, procedure of consolidation of results, and return of election and public inspection of documents. In conducting elections, the EC formulated a Code of Conduct in 1996 which provides a set of rules that the contesting political parties and their candidates must abide by. The Electoral Enquiry Committees were also established with judicial officers in 1996 and 2001.

Resolution of election petitions is another issue of concern. Very few of the election petitions were resolved within the duration of the concerned parliament. The highest number of election petitions resolved was 19 out of 31 between 1991 and 1995. Before the 2001 election the EC introduced a new system of lodging election dispute cases with the High Court, instead of election tribunals. A total of 31 cases were filed with the High Court after 2001 election, of which 18 cases have either been dismissed or resolved. The objective of creating a special tribunal at the High Court has not been fulfilled.

### ***Role of Key Stakeholders***

Free and fair elections depend on many other stakeholders such as the non-party caretaker government (NCG), political parties, candidates, development partners, civil society organisations and media.

Lack of trust on the EC and the ruling party government created the scope of NCG for conducting parliamentary general election. International and national observers and the common people commended two elections held under this system in 1996 (June) and 2001, and another election held under the interim government in 1991. NCGs so far have also contributed to some of the key amendments and enactments of electoral laws during their tenure.

Political parties and the candidates are the key stakeholders of elections. However, the EC is unable to enforce the main political parties to register with it. On the other hand, the political parties are not noted for practicing internal democracy, transparency and accountability regarding their activities and financial matters. This is one of the key factors for not being registered with the EC. The political parties nominate hoodlums, businessmen and unscrupulous industrialists as candidates for winning parliamentary and other elections.

The USAID, Asia Foundation, DANIDA and UNDP have been providing funds for voter awareness, education, election monitoring, research and strengthening the electoral system. In the last parliamentary election in 2001, almost Tk 80 crore was spent to



monitor the election through 29 NGOs with the financial support of the Asia Foundation. The UNDP funded more than Tk 67 crore for infrastructural and technical development of the EC between 1997 and 2004. However, the offer of the European Union for providing transparent ballot boxes and the initiative of the Tuesday Group for arranging a conference on *International Electoral Best Practices* were not accepted by the EC and the government.

International and national observers are permitted to observe the national and local elections with the approval of the EC and concerned RO. However, allegations have been raised against their neutrality, motivation, irregularities and corruption. Six monitoring NGOs (four of them have also been selected as members of the Election Monitoring Working Group for the General Election 2007) acknowledged the irregularities during the monitoring of UP election and returned a portion of the fund to DANIDA. Civil society organisations and the media are also playing commendable roles to aware people for electing the right person as their representatives in the parliament and the voters about their rights. However, the EC criticises their roles and does not cooperate with them.

### ***Election Commissions of other Countries***

Many countries practice democracy through parliament and supremacy of the constitution like our country. India is the largest democracy and the Indian EC is an excellent example of an independent constitutional body to conduct free, fair and impartial election. The Indian EC gained some achievements such as mandatory disclosures of the candidates for informed choices of the people, proper implementation and practice of laws, mandatory of political parties, budgetary independence, updating of electoral rolls every year, strict maintenance of code of conduct and many other provisions out of its courage and honesty as well as receiving support from the political parties.

The ECs of Sri Lanka and South Africa are good examples for organising free and fair elections. In Sri Lanka, a constitutional council appoints five members of the EC. Besides, there is a Commissioner-General of Elections by the approval of this council. The EC of South Africa has an Electoral Court for the Republic, with the status of the Supreme Court. The electoral court practices huge power to conduct free and fair elections.

### ***Diagnosis of the EC's Limitations***

From the diagnosis of the EC, it is revealed that the EC in reality has to depend on the government functionaries in respect to appointing CECs and other Commissioners, recruiting staff for the EC Secretariat, discharging its functions at field level during elections, maintaining law and order, and managing different financial issues including budget allocation and disbursement of funds.

The EC's neutrality is hampered due to arbitrary appointment of CECs and Election Commissioners with partisan image, recruitment of local level election officials with partisan background, politicisation of the NCG, and planned placement of officials of the administration before elections. All these are reflected in the results of elections in favour of the ruling party.

The EC has not been up to the mark in terms of efficiency since there is existence of fake voters in the voter list, irregularities in voter list preparation, imbalance in voter distribution due to not conducting delimitation of constituencies over the last 22 years, lack of actions undertaken on electoral malpractices, and controversial roles played by the CEC and other Commissioners.





A number of irregularities and corruption within the EC has been observed in respect to promotion and transfer of the officials at both the EC Secretariat and field offices, and financial irregularities and lack of transparency in a number of cases such as the voter ID card project, UNDP project, and training.

In a number of instances the EC has failed to abide by the legal provisions laid in different electoral laws and rules. The EC violated laws in terms of voter list preparation and upgrading, delimitation of constituencies, issuance of voter identity cards, collection of information of candidates and its dissemination, taking actions against candidates violating electoral code of conduct, taking actions against candidates and political parties for not submitting statement of expenditure, illegal promotion and transfer and so on.

### ***Concluding Remarks***

It is observed that since independence, elections have been used for legitimising military regimes coming to power through unconstitutional avenues, and retain the power as elected governments. Therefore, these elections cannot be termed completely free and fair. Most of the elections held under civilian governments in Bangladesh were also not free and fair. Elections under NCG were accepted to all, except in some instances when the opposition alleged that subtle irregularities had occurred.

No legal provision or system of accountability of the Election Commissioners and other officials exists, as a result of which millions of public and donor money was wasted in different projects. Election laws have been interpreted differently by different Commissioners and other EC officials, indicating the complexity of the law and vested interest of manipulating the situation. Gross violation of law and rules with regard to voter list preparation and updating indicates poor understanding of such law by CECs and Commissioners. Questions may be raised on such confusions even most of the CECs and Commissioners were from the judiciary. Implementation of law has not been strictly maintained by most of the CECs, although the EC has enough power within the existing law. Non-implementation of these laws indicates weak moral standing of the Commissioners including the CECs.

There is a serious lack of professionalism in terms of discharging the functions of the EC. Poor understanding of electoral laws, non-implementation of the laws, non-performing regular jobs such as delimitation and updating the voter list, lack of precedence, handing over responsibilities, lack of proper orientation to the job nature at the EC, sense of accountability, and absence of stock taking indicate that capacity building is necessary for the Commissioners as well as other officials of this institution. There is no government policy on strengthening the EC in terms of using the experience of field level officials through their proper placement.

No successive governments have shown the commitment to strengthen the EC in terms of legal reforms – through enacting enabling laws for the EC administration. No government really wanted an independent EC empowered with its own budget, hiring and firing power in staff recruitment, a secretariat of its own, and adequate logistical support.

The lack of enthusiasm from major political parties to be registered to the EC indicates their unwillingness to be accountable and transparent in their activities.



Donor agencies provide funds for mainly observation of the Election Day, but not for infrastructural and technical development of the EC. This indicates lack of vision and strategic planning on their part. Civil society organisations and media are playing important roles in making people aware so that they can choose right candidates and can vote in free and fair manner.

## ***Recommendations***

### ***Constitutional and Legal Framework***

1. The ruling parties have key responsibilities to strengthen the EC by enacting suitable laws such as enabling law and creating healthy political environment. In the relevant enabling law, among other things, qualification and number of Election Commissioners must be determined.
2. The CEC and Election Commissioners must be made accountable to the common people for their activities which incur wastage of public as well as donor money. Necessary laws may be enacted in this regard. This can be done through the parliament.
3. All complications, limitations, and inconsistencies of election laws, rules, orders and ordinances must be identified and resolved with a group of law experts, so that no debates are raised in future.
4. High Court benches may be increased in order to resolve election petitions within a reasonably short period (six months). It should be made mandatory for the EC to provide all kinds of information required by the High Court.
5. A prosecution wing of the EC should be set up for dealing with all kinds of irregularities election. The EC should be given the authority to file cases against any candidate who violate electoral law and code of conduct, and to cancel candidature if the concerned candidate is proven guilty of violating electoral laws or code of conduct.

### ***Institutional Structure and Capacity***

6. The inter-relationship between the EC and the EC Secretariat should be clearly defined. According to the present organogram the three tier of the EC are separate. How they coordinate with each other should be made clear.
7. The EC should have its own Secretariat under its own control.
8. The EC should increase its own capacity in terms of empowering staff and developing infrastructural and logistical strength, so that its dependence on bureaucracy may be reduced. The frequency of elections is increasing, so effort to build capacity of EC is needed.
9. Important positions such as Secretary or Additional Secretary must not be vacant for more than a week.
10. Officials sent on deputation for the legal section at the EC Secretariat should be stopped. The EC should develop its own section of legal experts to handle thousands of pending/current legal cases.
11. The Dhaka and field level offices should be entitled to its own building with sufficient spaces for personnel, modern equipments and other logistical facilities.
12. The library should be developed into a modern documentation centre with all necessary gadgets and information.
13. The website of the Commission should be made inter-active. It must be updated and enriched with past and present documents, all laws and updates, activities, budgets, and other financial information to ensure transparency and access to information.
14. The quality and number of training and logistical facilities of ETI must be increased to train up the election personnel properly. Such training should be realistic and long-term.



## ***Recruitment and Promotion***

15. A neutral mechanism should be developed for appointing the CEC and Election Commissioners. This responsibility may be laid upon the Law and Parliamentary Standing Committee. It can also be a selection committee comprising of eminent persons from all segments of the society who will select the CEC or Commissioner for appointment. Necessary amendments may be brought in the Constitution prior to consensus from all political parties.
16. A new cadre of BCS (Election) may be introduced so that they can achieve equal status to other cadre officials at the field levels. However, the EC should have selecting and recruiting authority for its own staff, and the PSC will only facilitate the process. This recruitment process should be transparent, efficient, neutral and accountable.
17. Election officers with partisan identity must be removed from the office after verifying recruiting procedures and track records with proper investigation, if needed.
18. Indiscriminate promotion of the election officials must be stopped. The recommendations of Azizul Islam Committee should be implemented immediately to materialise promotions of the deprived officials.

## ***Financial Issues***

19. The EC must be financially independent. There should be separate allocations in the national budget for the EC.
20. Projects implemented by the EC have to be designed and developed incorporating monitoring and evaluation activities. There should be evaluation after each project and the assessment report should be made open for public review.
21. All financial documents including yearly audit reports, detail budget, annual statement must be made open for all.

## ***Activities of the EC***

22. For transparency and accountability of the EC, it should submit the annual activity report and election reports to the President through the parliament. These reports should be discussed in the parliament and made public.
23. A specific policy of the EC should be developed. This will include specific plan with specific timelines that the EC is supposed to achieve. Schedules incorporating regular works such as voter list updating and delimitation of constituencies should be prepared according to the law. This schedule may be coordinated with the formation of a new government.
24. Updating the voter list should be done every year. The existing computer-based voter database must be updated each year and shared through the website. This should be a continuous process.
25. A multi-purpose voter ID card must be introduced step by step with proper coordination and planning. In this regard, proper investigation on the corruption in the previous voter identity card project should be initiated and actions should be taken against the concerned personnel.

## ***Role of Stakeholders***

26. The NCG system should not be followed for long, and should be limited to a certain period of time or abolished after a certain number of national elections. However, the NCG should take the opportunity to bring in legal and administrative changes for the EC, as proposed and advocated by different civil society organisations.
27. The EC should take initiatives to make the political party registration with EC mandatory and provide facilities/benefits to the registered parties.





28. Decriminalisation of polls will start if the 8-point affidavit is disclosed before the people by the EC. The concerned political party should assist the EC through making the candidate submitting the affidavit.
29. Donors should concentrate more on strengthening the EC and electoral system. The EC should also negotiate efficiently and timely with donors for such development.
30. The EC should have a media policy.
31. Registration of the election observers to the EC should be made mandatory.
32. The civil society members and organisations both at the national and local level should take initiatives as monitors for raising awareness and voice against any irregularities and malpractices. It will act as a pressure group operating continuously. The EC should welcome initiatives of civil society organisations and the media as they are assisting the EC in establishing democracy.

### ***Good Practices of Election Commission in Other Countries***

33. The EC of Bangladesh may follow the development of Indian electoral process, courage of the Indian CEC in discharging his duties.