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**POLICY BRIEF ON “GOVERNANCE”
CPD TASK FORCE REPORT**



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G o v e r n a n c e

Fair Elections, Institutional Reforms and the Role of Civil Society

Introduction

Free and fair elections are a fundamental pre-requisite for ensuring good governance. It prevents malpractices in the various stages of elections: nomination, campaign and election of people's representatives and thus facilitates reflection of people's will in governance.

The holding of free and fair elections in a country like Bangladesh calls for institutional reforms and active participation of the civil society. Strong and vigilant institutions and civil society have also a pivotal role to play in the post-election periods to check corruption and ensure accountability of the administration.

The various reform issues relating to elections and the post-election periods are sometimes inextricably intertwined. For example, ensuring transparency and democracy within the political parties is equally important for fair election as well as for their post-election performances. Other reform needs could be identified as relating either to election process or to the post-election issues of good governance.

This policy brief, therefore, comprises two basic components. The first relates to the promotion of free and fair elections, and the second concerns institutional reforms and civil society participation for good governance. The policy brief has been prepared by the 'Governance Task Force', one of the 16 Task Forces set up as a part of the process undertaken by the CPD for formulating pre-election policy briefs. The process also involved round table dialogues at various places of Bangladesh participated by members of civil society, professional groups and politicians.

The Governance Task Force, like others, has taken the recommendations of the round-table dialogues into cognizance in preparing this draft policy brief. In view of the forthcoming national parliamentary elections, this brief focuses first on fair election issues; some of which could also be instrumental in facilitating good governance in the post-election period.

I. Promoting Free and Fair Election

Elections are the central institutions of democratic representative governments. This is so because in a democracy, the authority of the government derives solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is holding of free and fair elections.

Most elections in Bangladesh until 1991 were blatantly rigged often marked by violence, intimidation, booth capturing, ballot box snatching, vote buying, political interference, and manipulation of results. Consequently, people lost confidence in elections. The

credibility of elections greatly eroded threatening collapse of the democratic structure of the country. Corrupt and illegal practices became so rampant that the voters were hardly able to exercise their right to franchise freely.

Free and Fair election is vital for sustenance and development of democracy. The election laws, rules and procedures as well as the institutions, which regulate and administer them, provide the essential framework and the mechanics for holding these elections.

It has been identified that one of the major impediments to free and fair elections and effective democracy in Bangladesh is the confrontational nature of the relationship between the opposing political forces. Lack of enforcement of existing election laws is another fundamental problem of the electoral process. Many election laws are violated with impunity. Mechanisms to enforce laws need to be strengthened. For example there is a spending limit for campaigning but the law is flagrantly violated with impunity as if such a law does not exist.

An election is a complex process comprised of components (or mechanics), any one or more of which can enhance or destroy the credibility of the whole process. This section of the policy brief is intended to look into some broader aspects of the election process. It focuses on the mechanics and procedures of elections and suggest policy recommendations for change. The primary objective is to identify what practical measures can be taken to improve the electoral process immediately and in the short term. However, some of the recommendations seek to change the legal framework, but are thought to be very important. The paper draws heavily from the extensive work done by FEMA and other local and international election organizations working for the improvement of the electoral process in making its recommendations.

A. Increasing Transparency of the Election Commission

Openness (transparency) in the election process plays an important role in gaining public confidence in the election system and as well as acceptance of elections results. It may be achieved through constitutional or legislative measures and also through sound, practical and sensitive administrative practices.

1. The Election Commission as a Deliberative Body

At present there is little to suggest that the Election Commission functions as a true “commission” in the traditional sense. Rather, the Election Commission currently functions more as the senior leadership of an administrative agency responsible for conducting elections in the country, with the Chief Election Commissioner (Chairman) functioning as its director.

Under Article 118 of the Constitution the Election Commission may be constituted or established with a single member. There is no requirement that the Commission seat in regular sessions. Even there is no provisions guiding the manner in which the Commission makes decisions, i.e. it is not clear whether a formal decision requires a formal vote of its members, or whether the chairman alone decides. Further no

requirements exist for the decisions of the Commission to be documented, formalized and/or publicly announced.

It is strongly recommended here that the Election Commission assume a more formal approach in its operation. The Commission should adopt necessary rules of procedures more in keeping with its status as a Commission in conducting its business. It should hold formal sessions. It should be working more as a deliberative body and clearly distinguish itself from the day to day functioning of the administrative sub-structure that support the process.

Pending any constitutional reform to achieve this, the president may be persuaded to appoint additional members to the Commission (suggestion 7 seven member). In appointing people to additional seats the president may be encouraged to consider appointing prominent individuals who are perceived as completely impartial and objective.

The Commission should meet regularly in formal open sessions, and its agenda, decisions, and actions are documented for permanent record, and such are made easily accessible to public.

The task force believes that formalizing its operation in such a manner does not require a change in the existing legislation or constitutional provisions. Article 118 of the Constitution already provides flexibility in the number of members that will be appointed to the Commission. In addition The Representation of People Order (RPO), 1972 (P.O No.155 of 1972), chapter II, dictates that the “Commission shall regulate its own procedures.”

2. Consultative Membership to Election Commission

To encourage a policy of inclusiveness and promote transparency, the rules of procedures could include provisions that allow the presence of consultative delegates representing the political parties at all formal sessions of the Election Commission.

The task force is aware that at present the Election Commission does maintain some sort of contact and engage in dialogue with the political parties, but generally on a one to one basis. The greatest danger to the present practice is that it leaves the door open to speculation as to what “agreements” may be made, and what biases might be interjected into the decisions and actions of the Commissions. By providing access to consultative members (delegates) as a part of a formal policy, the Commission can more adequately insulate itself from such allegations and can increase confidence of the political contestants.

In order to ensure active participation of the consultative delegates at the formal session, they must be properly notified the schedule of the session. In addition, they must have the rights and privilege to

- Receive the agenda and relevant documents

- Request and receive additional relevant documents
- Address the Commission, ask questions and offer suggestions
- Request consideration of issues of concern
- Have any dissenting opinion noted in the records

The task force does not see any need for legislative changes to adopt this measure.

B. Increasing Credibility of the subordinate structure of the EC

1. Returning Officer and Assistant Returning Officer

Generally there is strong criticism about the present practice and system of appointment of people at the lower administrative structures for conduct of elections as well as their role in discharging the duties. This is seen as an impediment to the neutrality and independence of the Election Commission structure at the district and upazilla level.

The role of Deputy Commissioners as Returning Officer and Thana Nirbahi Officers as Assistant Returning Officers in the conduct of the polls has been controversial. Under the election law the official responsible for performing nearly all important election functions at the constituency level is the Returning Officer (RO) and at the upazilla level is ARO.

The Election Commission under Article 7 of the RPO appoints the RO or ARO's, but this article does not specify that Deputy Commissioners should be appointed as the Returning Officer. The recommendation of the task force is that Election Commission should consider appointment of RO and ARO from its permanent staffs and from Judiciary at least for the next two elections.

2. Presiding officers and other polling officials

The process of appointment of Presiding Officers and other polling officials needs to be looked into. The present practice has drawn sufficient criticism and there are sufficient evidences available to believe some of these complaints.

All political contestants have always pointed to the importance of the independence of officials at the polling station level because of their control over the counting and reporting of returns at the end of the polling.

We suggest that instead of mandatory recruiting of govt. officers, these posts could be filled by "civilians". Through public notice application should be solicited from general public "who meets the basic eligibility criteria". Applications should undergo objective scrutiny and interview process.

This way the independence of these officers from the Government will be enhanced.

3. Publicizing the names of the Presiding Officers

The Election Commission should general public announcement and inform the public the names of the Presiding Officers and the Assistant Presiding officers through newspapers and also through the TV and Radio at least 30 days before the poll.

4. Publicizing the List of Polling Stations

List of Polling stations should be published not only in the official gazette but also widely publicized through the news papers at least 15 days before the poll date. Also voters should be informed through news papers where his/her assigned polling station is located at least 15 days before the polls.

C. Strengthening Independence of the Election Commission

In order for the Election Commission which is responsible for conducting elections in the country and be able to nurture the integrity of the election process, it must not only be independent of government control, it must be perceived to be so by the general public and the political parties.

While the legal framework is a necessity and should be firmly in place at times, the persons appointed to it must be respected for their impartiality and competence.

Although the Constitution dictates that the Election Commission “shall be independent in the exercise of its functions subject only to (this) Constitution and any other law,” concerns are repeatedly expressed that political pressures continue to erode the integrity of election officials.

1. Composition of the Election Commission

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

- a. The number of members of the Election Commission should be fixed, rather than be at the discretion of the president.
- b. The terms of members of the Election Commission, other than the chairman, should be rotated so that ½ of the members’ terms expire at the same time the terms of members of the Parliament expire, or at the time Parliament is otherwise dissolved. (This would mean that only ½ the members would be appointed during the term of any sitting government and could ultimately result in a balance in the membership over the course of time. In the event of a resignation of a member, the replacement member should only serve for the balance of the former member’s unexpired term.)
- c. The term of the chairman of the Election Commission should expire at the same time as the terms of the members of Parliament expire. The new chairman should be appointed at the time the caretaker government takes office.

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

2. Election Commission Budget and Secretariat

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

3. Commission's authority to nullify results

Under the existing law, the Election Commission has no authority to nullify or withhold results declared by the Returning Officer even if it is convinced that the result was manipulated through unfair means. It is therefore, recommended that the power to declare results should vest in the Election Commission instead of the Returning Officer. This would mean that the Returning Officer will file the returns but not authorized to officially declare the winner.

D. Registration of Political Parties

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

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

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

Developing a formal legal framework for the registration and regulation of political parties in the broader sense of establishing them as legal entities and extending them state support to conduct their lawful activities is absolutely necessary. In a representative democracy well-organized and accountable political parties are essential.

The Task Force strongly recommends that in the preliminary phase consideration could be given to a narrower requirement that to participate in a specific election, a party must register its “Intent to Nominate Candidates for Election” with the EC by a deadline.

It should be noted here that the registration process must aim at ensuring accountability and inner democracy of parties. It must not be allowed to be used to facilitate unfair state control over political parties and in-built procedure should be put in place to prevent malpractice in the registration process.

The Governance task force believe that, the registration of a party’s “Intent to Nominate Candidates” would not require major changes in the current nomination process. Rather, the registration of a party’s “Intent to Nominate Candidates” would center on the submission of required documents to the EC substantiating that the party has met basic requirements before its symbol can be issued to individually nominated candidates. Having to meet certain standards seems amply justified given the importance of party membership in the balance of power in the Parliament and the binding voting obligations of party members once they are elected.

2. Required Documents

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

a. Copy of Party-Constitution or Bylaws

At a minimum it should be a requirement that such constitution/bylaws include descriptions of the titles and functions of officials comprising the party’s organizational leadership at central, regional and local levels and the process by which they are elected.

b. Minutes of Meeting

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

c. Notice of Responsible Officials

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

d. Party Platform (manifesto)

Each party seeking to nominate candidates should be required to have an official party platform or manifesto available for public disclosure. There should be an understanding that the Election Commission is authorized to

include the party's platform in an official publication. Consideration could be given to providing for the platforms to be published in the official Gazette.

E. Party Finance, Reporting, and Disclosure

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

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

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

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

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

Experience suggests that, the financing of political parties should be regulated not only with respect to elections but also between electoral events. The precise forms of regulation – including the scope of disclosure, accounting and reporting requirements, prohibited acts, and ceilings – can only be established by Bangladesh political leaders.

F. State Funding for Political Parties

The funding of political parties is a controversial issue in many countries. The question of funding by the state has not been countenanced in many countries because it is felt that

taxpayers should not pay for parties' election campaign. Usually party funds should come from subscription and contributions of their members.

As there is no requirement for the political parties to publish report about their subscriptions, contributions or donations it is difficult to determine what is the exact source of their funds. However they spend huge sums of money for their political activities. It is believed that, the political parties are largely dependant on the business community for funds. Since the business community finances the political parties, it becomes a moral obligation for the party forming the Government to compensate those members of the business community who provided fund for meeting their election and other expenses. In doing so the larger interest of the state and the nation is often subordinate to the interests of those who helped to come to power through election.

For organizing the political parties up to the standard not only the funds but also some regulatory principles are essential. In many democratic countries funds are provided by the State to the political parties for meeting their election expenses as well as for organizing research institutes and political education centers. Under the circumstances a scheme for state funding of political parties and candidates be introduced subject to certain conditions including registration of political parties with the Election Commission in a manner prescribed earlier in this report. This scheme may be introduced easily as Article 93A which provides that “The Government may provide the contesting candidates or the political parties which have nominated them as candidates with such facilities as it deems fit for the purpose of ensuring a fair election.”

G. Limit, Control and Regulation of Election Expenses

The expenditure of political parties and specially the candidates during an election campaign should be subjected to some limit and should be strictly controlled. At present there is no law on the subject for political parties, but there is for candidates. The present limit is too low to be realistic considering the cost of various election materials, therefore ignored by many. Besides the present rules and regulations are weak in respect of control and regulation.

The task force believes that greater attention should be paid to the monitoring and enforcement of the legal requirement. Election Commission should ensure that proper election returns are submitted on time and undertake inspections of accounts etc., including audit and verification. Further if realistic limits are set and strict enforcement is applied the excessive expenditure and impact of money may be lessened.

All candidates should be required to submit weekly report of his/her election expenses to the Election commission in prescribed format. The EC should put in system to inspect audit the election expenses. The Election Commission should appoint one special officer for each constituency who will inspect, scrutinize, verify and audit the expenses on daily basis and shall have the power to sanction punishment in case of violations. The Election Commission has already done detailed work on the regulation of election expenses, which may be seen for further details.

H. Code of Conduct:

To ensure, free fair and honest election, *Article* 91B was added to the R. P.O., 1972 before the general election held in 1996 authorizing the Election Commission to frame Code of Conduct for observance by the political parties and the candidates mainly in the course of their election campaign. The Commission under the authority delegated to it by the aforesaid Article framed for the observance of the political parties and the candidate, a Code of Conduct in 1996. This Code of Conduct should not only be further improved to meet the present needs, it should also be made part of the law. The code should be strictly enforced with penalties for violations including debarring candidates to contest the election or loose his seat.

While dealing with the issue of code of conduct it is pertinent that the powers and functions of the electoral enquiry committee (EEC) that probes into pre-poll irregularities should be increased. The EEC currently has the power to recommend penalty for pre-poll offenses up to Tk.5000 while for the same offenses the RPO prescribes imprisonment and fine or both. Thus, the EEC that is headed by a judge should be empowered to fine up to Tk.50, 000 for an offense.

I. Level playing field – a media policy

In all democracies media play a very important role in electioneering. As the large part of the media, particularly the electronic media is controlled by the government the ruling party often gets undue coverage of their events at the cost of the opposition parties. In Bangladesh, the introduction of caretaker government may be seen as a partial and temporary resolution of this problem during the election period. A more comprehensive measure in this regard is found in countries like India, where the state owned the Election Commission controls electronic media during the election period. Election Commission allocates time among the contesting political parties based on past electoral performances and number of candidates nominated to run the election.

The Election Commission in Bangladesh should take necessary practical measures to ensure proper and legitimate access to media to satisfy the requirement for maintaining a “level playing field”, for the contending political parties and candidates. Given the growth of the private media it may be prudent to establish a guideline for the conduct of both government and private media. In addition the Election Commission should appoint a Special Observer for Media who shall be responsible for monitoring the fairness of the media during the three months period and also ensure that the guidelines are followed.

J. Improvement of Dispute Resolution and Adjudication Procedures

The procedures for adjudication of disputes contained in the Election Law even though are very detailed and elaborately described, but still has problems.

Due to the absence of clear provision related to time limits the resolution of disputes referred to tribunals are notoriously slow. In fact, many disputes from the 1996 elections

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

Under provision of the Article 53 of the RPO, the Commission constitutes Election Tribunals with District Judges of Additional District Judges. The delay in the disposal of the election petitions as they are called is attributed to mainly four factors.

Firstly, the absence of time limit for disposal of the election petition in the law.

Secondly, the District and Session Judges who are appointed as to the Election Tribunal can devote very little time for the trial of the election petitions due to pre-occupation with their normal duties.

Thirdly, the respondents, being the Members of Parliament are exempted by law from attendance in the tribunal during 14 days before the parliament is called to session and 14 days after the closing of the parliament, including during the session.

Fourthly, delegation of power to the Election Commission for transferring election petition at any stage from one Tribunal to another on application made by any of the parties.

Taking into consideration following recommendations are made:

- i. That there should be time limit for the disposal of an election petition and that time should not be more than 180 days including appeal procedures.
- ii. That more Tribunals are constituted to dispose of the petitions quickly even by appointing retired judges.
- iii. That the respondents' i.e. the MP's existing privileges should done away with.

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

K. Transparency of Polling and Counting Process:

Transparency in the process of taking poll is a precondition for credible result. Because of this foreign as well as local non-political and non-partisan groups of the Civil Society are invited or encouraged throughout the democratic world by the Election Authority to observe the poll and submit the factual report for information of all. Bangladesh Election Commission like all other Election authorities in the democratic world also believe and acknowledge the need for observation for poll by the foreign as well as domestic non-political and non-partisan local groups formed by NGO's. But because of absence of any legal provision permitting the entry of persons other than those deployed in connection with the election, the observers and monitoring of the poll by the foreign as well as domestic observers become difficult. In the interest of making the entire proceedings of poll transparent, fair and credible the observers should be allowed to see the polling, and counting at polling station. The task force recommends that to make it happen Article 29 of RPO, 1972, be amended. They should be properly accredited and have distinctive badges for identification

- Also Election Commission will benefit from introducing a special form at each polling station to take written comments from the election observers.
- For avoiding any manipulation in the process of aggregation of the results, the presiding officers be instructed to hung a copy of the count tally out side the polling station after counting. The presiding officer should give a copy of the tally to every polling agent after obtaining his signature on the official tally sheet.
- Voter list should be pasted at each polling station so that voters could see their names in the list and proceed to appropriate polling booth without going to the party camps near polling stations. In the process election camps of political parties and candidates should not be allowed. Abolition of election camps on the election-day would save money for candidates.

L. Limiting a person to seek election from more than one constituency

The privilege of seeking election from more than one constituency exists in a handful of democracies. Ours is one of them. The trend is now to do away with this privilege. Article 71(2) of the Constitution allows a person to seek candidature in two or more parliamentary constituencies. Article 13A of the RPO, 1972 (as amended in 1986) prescribes an upper limit allowing a person to seek election in not more than five constituencies at the same time. President Ershad did this amendment when the combined opposition was contemplating put up Sheikh Hasina and Khaleda Zia in 150 constituencies each. Article 71(2) (a) stipulates that in the event of being elected to more than one constituency, the elected member shall send a signed declaration to the Chief Election Commissioner specifying the only constituency which he wishes to represent. Following such written declaration within one month of his election the seats of the other constituencies from which he was elected would become vacant. This system which is essentially a privilege given to the politicians completely ignores the electors and forces them to come and vote again to elect a new representative.

The task force recommends doing away with this privilege immediately, but since it requires constitutional amending, at the present situation the President may be persuaded to change the upper limit of five to change to two by amending the RPO.

Concluding Remarks

The Task Force believes that most of the recommendations for change suggested in this paper would not require any new legislation. A lot of these measures, which are basically technical and procedural, can be implemented as best practices. However there others would require amending the constitution and the RPO, such as the change in the composition, powers and function of the Election Commission The ones that need new legislation are thought to be of great importance even before this election and there fore it is desirable that the President can be persuaded to bring in the change.

It needs to be noted further that good electoral laws require periodic reform thus improving election laws and its quality is an on-going process. We need to make a lot of reforms in the election laws and election process. And many organizations including political parties have made elaborate recommendations. FEMA made detailed and elaborate recommendations for reforming the election laws for parliamentary elections. All these suggestions and recommendations should be given serious consideration by the Election Commission and the next parliament.

II. Institutional Reforms and the Role of Civil Society

Institutions like the Parliament and the traditional ‘watchdogs’ bodies are often designated as the essential pillars of the governance structure. The effective functioning of these institutions could be instrumental in curbing corruption and ensuring good governance in a young democracy like Bangladesh. These institutions, along with a vigilant and organized civil society, could enforce transparency and accountability of the political leaders and government officials, who are entrusted with the maintenance and improvement of governance standards. This underlying premise explains why often fundamental and radical reform measures are advocated for these institutions in order to make them more autonomous, functional and efficient.

The institutions in Bangladesh work under various constraints. The ‘watchdogs’ like the Public Accounts Committee of Parliament, the Office of Comptroller and Auditor General and the Bureau of Anti-corruption lack structural strength, autonomy and authority to enforce their decisions. The Police are often subjected to unfair political influence. The civil society has remained disunited and succumbs to pressure from political quarters. Consequently, widespread corruption and non-accountability have degraded the state of governance and has brought about immense sufferings to the general public.

This Task Force underscores the urgency of reversing the whole trend by undertaking reform measures including the restructuring of the existing institutions, setting up new ‘watchdog’ institutions and reinvigorating the focus of the civil society. The Task Force has made its recommendations based on widespread consultation and has also relied on the in-depth research undertaken by Transparency International Bangladesh (TIB) and other organizations on good governance issues.

A) Political Party Reform

Most of the essential aspects of political reforms have already been addressed in the Fair Election Component of this report. The reasons for recapitulating those measures is to underscore the fundamental necessity of democratizing political parties in order to enhance their capabilities to ensure democracy in, and accountability of, the governance system. The present state of politics has led to an erosion of commitment of the political leaders to bring about the needed changes such as administrative reform, strengthening of ‘watchdog’ agencies and strengthening of institutional checks and balances to curb corruption. Furthermore, the present system of politics encourages corrupt practices. Politics need to be disciplined to allow infusion of committed people. It can be brought about in the following ways:

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- Political Party registration: Political parties should be registered and recognized as formal institutions. Criteria for registration and continuance (or cancellation) of registration should be clearly laid down with necessary safeguards to avoid

misuse of registration/de-registration. Such criteria may include financial regulations and accountability, regular meetings at designated tiers of leadership, exercise of internal party democracy by way of, for example, the election of party leaders.

- Regulation of finance: The sources of political funding are stated to take the form of private donation from various vested interest groups including the bank loan defaulters and protectors of organized criminal groups. Once elected the repayment takes the form of unfair business privileges and impunity from law enforcing agencies. In order to check such activities, all the financial accounts of the political parties must be made transparent.
- Budget Allocation for Political Parties: A certain portion of the budget should be allocated for the financing of the political parties. In turn, the political parties will have to submit an audited account to the C&AG or PAC. To ensure healthy democratic practice it is advocated that a certain portion of the national budget should be allocated for the nurturing of political parties and institutions.
- Annual Meetings and inner democracy: Political parties should hold annual meetings to inform people of their activities. It must hold periodical, secret ballot to decide on the party leadership at its every tier.
- Modification of Article 70: Article 70 deters internal democracy within a party leading to party dictatorship. All members of a political party should be able to voice their own opinion without the fear of being ousted from the party, other than certain exceptional circumstances. The modification of Article 70, however, must not be at the expense of Members of Parliament changing their party allegiance in return for undue advantages and privileges from competing parties.

B) Administrative Reform

A separate task force is covering administrative reform. Therefore, this paper does not focus on the administrative reform, except certain areas of administration that directly lead to corrupt practices. These areas are government procurement, tendering process and collection of income tax. Free flow of information is one of the most important prerequisites for introducing transparency and accountability in administration. The civil servants by and large value secrecy and are absolutely unwilling to share information with citizens about the decision-making process. A number of actions have been recommended to ensure transparency and, thereby, considerably empower citizens and contain corruption.

Short Run

- The Official Secrets Act of 1923 and the Government Servants Conduct Rules of 1979 should be suitably modified to enhance citizens' right to information.

- The proposed Right to Information legislation should be framed immediately. This could enforce transparency in the decision-making and execution process and considerably prevent corrupt practices.
- Civil servants, long accustomed to transact public business under a veil of secrecy, should be appropriately trained to bring about necessary changes in their attitudes and work habits.
- The system of income-tax payment should be simplified. The tax administration should be reorganized and its efficiency and effectiveness enhanced to check widespread tax evasion.
- The responsibility of collecting taxes should be reposed on a private organization with necessary safeguards to avoid corruption and malpractice. There are incidents of Tax Department officials inducing the taxpayers to enter into arrangements whereby they are required to pay only a part of their taxes and the rest are given to the corrupt officials as bribes. The taxpayers face harassment if they do not comply.
- International standard for tendering process should be strictly followed. In particular, measures must be taken to curb irregularities and use of muscle power in bid submission.
- Existing rules, regulations and procedures for procurement of goods and services should be updated and made transparent to reduce corruption and wastage of public fund. Proper inventory control systems should be installed through computerization to enable public agencies to curtail wastage on account of procurement and inventory.
- Law allowing all contract evaluation reports to be made public should be enacted. This would enable all bidders to see how evaluations were made. Still other steps should be taken to ensure transparency and reduce corruption.
- Earnings and tax payments of all public officials - elected as well as appointed - should be published each year to detect unusual amassment of assets, which would be considered disproportionate to their income.

C) Independence of the Judiciary

The rule of law is not being enforced by the judicial system impartially and promptly. The integrity of judiciary, particularly the lower strata, is being questioned.

The reasons for the above situations are many. These include lack of independence of the judiciary from the executive branch, inadequate training of lawyers, poor standard of legal education and lack of supervision and monitoring of the functions of the lower courts.

Possible remedy to improve the judicial system:

- Separation of the lower judiciary from the executive

- Repeal (simplification and modernization) of existing statutes and greater public scrutiny prior to new enactments.
- Better pay structure for the judiciary as a whole.
- Quick recognition of good service, particularly from the lower judiciary.

Actions to be taken:

Short run

- Setting up a Judicial Service Commission (JSC) modeled on institutions built in countries such as USA and UK for the purpose of advising the president in matters of appointment, promotion, transfer, suspension, removal and otherwise disciplining of judges at all levels.
- A modern consolidated Code of Conduct should be articulated for regulating judicial conduct on and off the bench at all levels of the judiciary. A committee consisting of judges, lawyers' representatives, Chairman of the Public Service Commission and distinguished law academic, should draw up the Code. Regional and international networking should be encouraged while the Code is being prepared, and later on as well.
- A National Judicial Pay Commission (NJPC) should be constituted to recommend an improved new salary and benefits structure for the subordinate judiciary. NJPC should be composed of retired judges from all levels of the judiciary. It should have a secretariat of its own and it should develop its own operating procedures. A comparative study of judicial salary structures in other countries, particularly those within the region, should be carried out. NJPC should complete its work within a year of its establishment.

Long run

- A central administrative structure should be created for the judicial branch. This should consist of: (i) a judicial policy making and oversight body, composed of representatives of the judiciary at all levels and the executive (ii) a central administrative office, headed by the administrative director, reporting to the Chief Justice and responsible for the day to day administration
- A modern and efficient records management system should be put in place for courts at all levels. The elements of this system should include: rules for numbering case files; a determination of the number and locale of court registries; methods of handling case exhibits, standards for record security including access to records, use of computers and other modern record management equipments. Inactive records will be destroyed or sent to secondary storage. Areas of major sources of court delays should be paid special attention. A manual should be prepared documenting the new system and standards. A standing records committee, composed of representatives of the Bench and the Bar and reporting to

the judicial policy making and oversight body, should be constituted to oversee the implementation and further development of the new system.

The Judicial Administrative Training Institute (JATI) should be strengthened to become a premier institution for training District Court judges, lawyers and support staffs as well as a support and resource facility for training Supreme Court judges. The judiciary should be given control over JATI through a governing body reconstituted to consist of a majority of judges from all levels of the judiciary. A modern curriculum for JATI should be developed. Full-time instructors should be created within JATI.

- Measures should be taken to enable the Legal Education Committee (LEC) of the Bar Council to play its allotted part in delineating and enforcing standards of legal education in the country. LEC should be reconstituted and its status raised to consist of representatives of the superior judiciary, the Bar Council and other relevant bodies from the civil society. Legal education should include sensitizing students of crucial societal issues and ways of addressing these issues. As a result, as per the requirements of LEC, educational institutions will be required to restrict their intake through standardized entrance examinations of a high standard, modernize their curriculum with an emphasis on legal etiquette and ethics and overhaul the examination system with an emphasis on practical examinations.
- LEC should prescribe and enforce higher standards, in terms of training and examinations, for entry to the legal profession. LEC should require the Bar Council's Enrolment Committee to review and overhaul its professional qualifying examination system.

Reform of the judicial system will create an enabling environment for the civil society to make more effective use of public interest litigation.

D) Police

The common perception of people about the police is that they collect money, torture people, do not record complaints as per rules and procedures, have relationship with criminals/mastaans and enjoy largess from smuggling and drug trafficking. There is a considerable shortage of income over expenditure; in other words, there is a considerable gap between the legal income of the police and their expenditure, which inevitably allows extortion and corruption to creep in.

Remedial actions:

Short run

- Police should not be allowed to use section 54 indiscriminately. A regulating mechanism involving judges and ombudsman should be evolved to protect innocent people and political opponents from arrest without warrant procedures.

- Police officials should be protected from political leaders and influential offenders by provisions such as, making it mandatory to record all instructions from any higher authority and regular monitoring of these records by the office of ombudsman. This will reduce fear of intimidation, which drastically dissuades police from carrying out investigation if the offenders are influential.
- Police should be provided with logistic support, modern technological instruments like cameras, tape recorders, videotapes, slides, projections, wireless, fax, radar screens and computers for qualitative police investigations should be made available.
- Citizens should be made aware of what the police can and can't do, and such information must be provided and displayed in all police stations. Attitudinal change through training of the police force in a necessity and recruitment and retraining must emphasize the social commitment on their part including public as well as private morality.

Long Run

- Police administration should be decentralized and the basic force should work at sub-district level.
- The incentive and punishment structure in police administration should be reviewed and made fair. Incentive and punishment structure in police administration is not based on service to the community but on the servitude to people in power and influence. Alliance of police with influential people for private/personal gain begets corruption.
- Entrance into police service should be made such that the police service attract the best quality product with high moral and integrity standards, together with commitment to public service.
- Provisions should be made for police to exercise power consistent with the job it is expected to perform. The police autonomy is to be overseen by special committees composed of cross-section of citizens.
- The policies and programs of the police force should be modernized in the light of existing socio-economic realities.

E) Bureau of Anti-Corruption

Corruption has been identified as such an obstacle to economic development, and the impact of this greatly outweighs other factors, such as, political instability, lack of infrastructure, regulatory uncertainty and inflation. The argument is that if a state can

reduce corruption by strengthening institutions and ensuring their accountability, the economy, after a time lag, will record higher levels of growth.

In order to curb corruption it is important to have an independent and efficient anti-corruption agency. Unfortunately, the agenda of the Bureau of Anti-Corruption in Bangladesh is seriously compromised by a number of factors, including institutional weakness, irregularities and absence of political will.

Short run

- Bureau of Anti-Corruption (BAC) should be given the opportunity to work independently. To be effective, BAC must be independent of executive control. To this end the Director General (DG) should be given authority to institute investigation and criminal proceedings independently. In addition, DG should be given full authority to carry out all inquiry and First Information Report (FIR) of all nature
- An autonomous standing committee should be formed with judges, senior public officials and leading citizens to oversee the activities of the BAC as well as authorize investigations into ministries, corporations and other agencies by a statutorily appointed and protected public prosecutor.
- Trials of the accused in the cases filed by BAC are held in the court of Special Judges who are actually District and Sessions Judges. The Judges remain overburdened with cases other than those of BAC and they in fact, work part-time for BAC. Similar is the case with the prosecution, since BAC has no Public Prosecutors (PPs) of its own. The bureau has to depend on government PPs working in courts of the District and Sessions Judges who are not always available for the purpose of BAC's cases. Therefore, judges should be appointed who will only handle BAC cases.
- The provision of seeking permission of the Prime Minister before instituting cases in courts against mid-level and top-level officials should be dispensed with immediately. Since initiation of anti-corruption cases against government servants from mid to the highest level and against political office holders needs prior permission of the Prime Minister there is no instance of corruption case being filed against a political office holder belonging to or supporting the party in power. For its effectiveness the BAC should have full and unfettered powers to decide the course of action on the basis of its findings upon the conclusion of an investigation against a public servant, political or bureaucratic, of any rank and status. Further, the standard of investigating officials and their work method should be improved.

Long Run

- Recruitment standard for BAC should be made higher. Higher-ranking officers should be recruited. Currently, inspectors, who generally rise from the ranks, sometimes even from that of constable are the investigation officers of BAC. They are unskilled. This leads to a system of working that is not satisfactory.

- A mechanism should be put in place to enable BAC to make use of the power it has through Acts, Rules and regulations, which are quite adequate for BAC to discharge its functions.

F) Comptroller and Auditor General

The Office of Comptroller and Auditor General in Bangladesh is constitutionally entrusted with the examination of financial transaction and compliance with rules and regulations. This institution is over-burdened and it lacks efficiency. It does not have the capacity to determine the priority areas of audit and often corrective actions aren't taken on its findings.

Short Run

- Audit activities must be separated from accounts.
- The office of the Comptroller and Auditor General should be allowed to function independently. It should not remain dependent on Ministry of Finance, especially in matters of budgetary sanctions and manpower. The Rules of Business of the Government need to be reviewed as the present ones have considerably curtailed the authority and autonomy of the C&AG guaranteed by the Constitution.
- The Rules of Business should be modified to allow the audit reports to be presented directly to Parliament, via the Head of the Government. The Rules of Business prescribes that the C&AG shall submit his reports to the President through the Prime Minister, who is the executive Head of the Government. Since the executive Head of the Government is also being audited this provision has a negative impact on the high ideals of independence and objectiveness, which the C&AG should uphold.
- Provisions for higher education and training should be made for auditors. Inadequately qualified and poorly trained personnel, who cannot perform quality audits, man the C&AG's office. The accounting system has changed and the auditors need to be more familiar with the new systems of accounting.
- The tenure of the Comptroller and Auditor General should be raised. As stipulated in the constitution, the Auditor General of Bangladesh retires at the age of 60. In India and Pakistan, the Auditor General retires either at the age of 65 or after discharging responsibility for 5 or 6 years, whichever is earlier. In the USA or Canada, the Auditor General works for a fixed tenure of 15/10 years. In comparison, the tenure of the Auditor General in Bangladesh is too short. He cannot realize his objectives within such a short time in line with his/her vision or mission statement.
- The C&AG should be given full independence for reconstituting its organizational and manpower structure in accordance with its present requirements.

Long run

- Modern audit standard and audit methodology should be introduced and practiced in the office of the C&AG and existing audit approaches, techniques and reports should be modified to suit the requirement of time.
- Global comparison in the field of auditing should be carried out. Its cost-effectiveness should be evaluated through comparisons with other countries.

G) Public Accounts Committee

The Parliamentary Committees, particularly the Public Account Committee, are expected to be very productive with strong objective members. Their effectiveness, however, is seriously undermined by factors like shortage of budget and staffs, inadequacy of research facilities and the general reluctance of the ministry to give effect to their recommendation. The public accounts committees (PAC) are over-burdened with thousands of audit objections arising from the offices of the auditor general.

Short Run

- The implementation of the recommendations of PAC should be monitored. The concerned government departments have rarely implemented hundreds of recommendations made by the PAC till today. But what is noticeable is that no charge has been brought against any government department till now for ignoring the PAC directives.
- The reports of PAC should be discussed on the floor of the Parliament.
- Clear guidelines should be given in the Rules of Procedures on what would be done with the reports submitted by the PAC.
- A Secretariat for PAC with dedicated personnel and logistic support should be established. Because of these constraints, PAC cannot play an effective role as a powerful watchdog body for tackling corruption in ministries. In contrast, the PAC in a democratic developed country is usually the principal watchdog agency.
- A Member of the Opposition should head public Accounts Committee.

H) Ombudsman

The Constitution of the Republic of Bangladesh has provided for the office of the Ombudsman under article 77 with power to investigate any action taken by a Ministry, a public officer or a statutory public authority. The office of the Ombudsman has not yet been created nor has any Ombudsman been appointed. It is strongly felt that an efficient, independent and objective network of Ombudsman office could contribute immensely to prevent and control corruption, irregularities and malpractices in almost every sphere of governance.

Short Run

- A network of Ombudsman should be set up immediately with responsibilities for all departments of the government.
- Ombudsman should look into the all areas of unnecessary harassment including irregularities in issuing passports, registration of lands, official permission for construction of different structures, and different kinds of licenses and permits.

D) Parliament

An effective parliament is a body of elected people that acts as a bridge between the wider society and the state. Within that scheme of things parliament should serve as an institution to safeguard public accountability and maintain the highest of standards.

Parliament has a particular role to play in raising issues and putting them on the national agenda. In order for its recommendations to be effective, the operation of other supporting institutions like the market place, the civil society, others, are vital. But the primary task lies in strengthening the parliament itself.

- Opposition Members of Parliament should head committees. Out of 46 Committees of the last Parliament an Opposition MP headed only one Committee. Placement of Committees under non-Minister MPs as Chairman has also not given the desired result because concerned ministers were not attending the meetings of the Committee. Furthermore, opposition MPs should be proportionately represented in Committees to ensure effective participation.
- The question and answer session should be made effective by scheduling specific days of the week for the purpose and ensuring the participation of the ruling party and the opposition.
- Mechanism should be put in place to ensure neutrality of the Speaker.
- Mechanism should be put in place to ensure regular meetings of the parliamentary committees. Accountability of the government cannot be ensured if the meetings of the parliamentary standing committees are not held regularly
- Provision for the ministers to face a no-confidence motion should be put in place.

- A mechanism should be put in place to seek public opinion in case of bills where public interest is involved.
- A code of conduct should be put in place by the parliament to provide guidelines for the conduct of elected representatives and to take appropriate steps when departures from accepted norms are detected.

J) The Role of Civil Society

An active civil society can bring about the needed political commitment to initiate necessary actions towards curbing corruption. It is common knowledge that political scenario of Bangladesh is generally dominated by the private gains of the politicians. This has been possible due to lack of transparency in the conduct of the affairs of the political leaders and bureaucrats. The present scenario is unlikely to change unless an active civil society stands up to the unethical practices of a minority few. The needed measures such as political party reform, administrative reform, a neutral judiciary, effective police and strong ‘watchdog’ agencies will not materialize into reality unless an active civil society demands such changes.

Actions to be taken:

- Strengthen and broaden the education system to contribute to increased citizen involvement, emphasizing both rights and obligations of citizens
- Make arrangement for involvement of civil society organizations in the work of parliamentary committees, in the work of parliaments generally and in election monitoring activities.
- Empower local and private organizations like union parishads, consumers’ organizations, citizens’ groups/associations.

Only a well-educated and motivated group of individuals could reach out to the general public and encourage them to believe in the principles of democracy. The general public should be informed of their rights. Only then can they be mobilized to create pressure on the government to bring about the necessary changes that would improve the quality of life of the citizens of Bangladesh.

Conclusion

This policy brief represents a do-able agenda for the establishment of good governance in Bangladesh. Even though it may not be an exhaustive list for any in-coming government it could, nevertheless, be a starting point for reform in many of sectors discussed. Certainly most of the issues raised in this policy brief merit immediate consideration by

the political parties. In view of the rising expectation of the citizens at large it is imperative that some of these measures are translated into policies for immediate implementation. Complacency would give rise to greater frustration, which needs to be avoided at all costs.