



### BANGLADESH ELECTION COMMISSION: POLICY NOTE

A credible electoral process, which leads to the peaceful transfer of power, plays a vital role in democracy. The success of an election depends to a large part on the independence, capacity and impartiality of the Election Management Body of a particular country (Elklit *et al*, 2001; Pastor, 1999). Under the Constitution of Bangladesh (Article 119), the Bangladesh Election Commission (BEC) is responsible for administering direct elections to the Parliament and at all levels of local government. The concerned subordinate legislations have entrusted the BEC with conducting indirect elections for the office of the President and the reserved seats of the Parliament. Besides, the BEC is responsible for preparing electoral roll for all elections under its jurisdiction and delimiting constituencies for the parliamentary election. Reliable performance of these functions largely depends upon the institutional capacity of the BEC. But the profusion of electoral malpractices has unveiled the lack of institutional capacity of the BEC, even during the course of the so-called 'democratic period' since 1991. Most recently, events in the lead-up to the aborted election scheduled for January 2007 have questioned the impartiality and accountability of the BEC.

The present Caretaker Government started reforming the BEC by reconstituting the Commission. The newly formed Commission undertook several significant reforms in the legal framework through a consultative process and started preparing a photo-attached digitised voter list. The Government also responded to the long-standing demand for enhancing the BEC's independence, by placing its secretariat under the control of the Commission itself - rather than the

Prime Minister's Office - through promulgating the Election Commission Secretariat Ordinance 2008.

In order to strengthen the BEC's reform initiatives, the Institute of Governance Studies (IGS) has developed some broad-based policy options for increasing and sustaining the institutional capacity of the BEC.<sup>1</sup> The recommended policy actions cover four thematic areas:

**Issue 1: Independence:** The BEC should be free from the undue influence of the executive branch of the government, political parties, and electoral candidates.

**Issue 2: Accountability:** The BEC should be transparent in its activities and financial management. The secretariat should be accountable to the Commission, which should remain accountable to the President and the Parliament. Judicial review should be explicitly available to citizens where the Commission is in violation of the law.

**Issue 3: Efficiency:** The BEC should make optimum utilisation of available resources to carry out its mandated functions in holding free, fair and timely elections.

**Issue 4: Effectiveness:** The BEC should be effective in achieving its objectives and performing its mandated functions in accordance with the Constitution, laws and subordinate legislation.

<sup>1</sup> IGS organised an international workshop on 23-24 January 2008 to facilitate a deliberative process to formulate policy recommendations. This Policy Note is based on the workshop discussions, literature review and an empirical study conducted in the preparation for the workshop.

# 1. INDEPENDENCE

## 1.1. Freedom from Government Interference

Article 126 of the Bangladesh Constitution and Article 5 of the Representation of the People Order 1972 (RPO 1972) provide that it is the duty of the executive branch of government to assist the Commission in the discharge of its functions. The BEC depends on the Government for preparing the electoral roll, preserving law and order during elections and conducting the elections. But no redress is available if the government does not comply with the BEC's directions or distorts them during implementation.

**Policy Recommendation: Promulgate an enabling law clearly stating the power of the BEC in relation to the government and a clear avenue for redress in the event that the Government fails to comply with or distorts the implementation of the BEC's directives.**

The experience of other countries provides clear guidance in this respect. For instance, the Electoral Commission of Australia is entitled to take any action in the interest of free and fair elections and can lodge a petition with the Federal Court against any person or authority trying to manipulate elections.

## 1.2. Appointment of the Chief Election Commissioner (CEC) and Other Election Commissioners (ECs)

Despite having the constitutional provision (Article 118(1) of the Bangladesh Constitution) for enacting a law governing appointments of the CEC and the ECs, no such law yet exists. As in the case of other decisions and appointments to senior constitutional positions, the President acts on the advice of the Prime Minister under Article 48(3) of the Constitution. This arrangement provides the opportunity for politicising appointments of the CEC and the ECs.

**Policy Recommendation: Promulgate an Act/Ordinance devising a consultative and transparent process for appointing the CEC and ECs and ensure proper parliamentary deliberation on such appointments.**

The Act/Ordinance may have the provision to form a search committee appointed by the President

or the Parliament to select competent persons to be appointed to constitutional bodies, including the BEC. To counteract government interference, the committee should include (i) MPs from ruling and opposition parties, and (ii) representatives from the civil society. The search committee may offer a shortlist of qualified persons for the consideration of the Parliament, and this process should be public. To ensure greater transparency and legitimacy, the Act/Ordinance may provide for a Special Parliamentary Committee on Constitutional Bodies to be formed in accordance with the Rule 266 of the Rules of Procedure to review the qualifications of the nominated persons. The Parliament should approve the list of selected persons on recommendation of the Committee and send it to the President for appointment.

Considering the importance of leadership in independent functioning of the Commission, the Act should specify qualifications and ineligibility criteria for such appointments.

**Policy Recommendation: Specify qualifications and ineligibility criteria for appointments to the posts of CEC and ECs in the proposed Act/Ordinance.**

As the posts of the commissioners are senior constitutional positions, it is important to emphasize on extensive experience in administrative or judicial services (for instance a period of twenty years' service). Persons outside of the government services who are renowned for their innovative management capacity, leadership, civic awareness and integrity may also be considered. Special achievements of the appointees, such as awards and fellowships, should be taken into consideration to gauge their leadership capacity.

The following should be considered as disqualifying criteria:

- any disciplinary action suffered during career
- record of criminal offence
- political affiliation in the forms of formal membership of a party or any of its wings, known supporter or donor of that party
- candidature in elections at any level
- a member of a trade union or any similar body or association, such as the student or professional wing of a political party

- having contract bearing personal gain with the government or any political parties, and
- loan default/utility bill default/tax default, which can be investigated through BB, utility service providers, and NBR respectively.

### 1.3. Autonomy of the Commission's Officials

Until recently, the BEC secretariat and its field offices were under the control of the Prime Minister's Office (Schedule IV, ROB, GOB). Therefore, the Government had ample opportunity to influence the BEC's operations. The newly promulgated Election Commission Secretariat Ordinance 2008 places the Secretariat under the control of the Commission. However, the new Ordinance provides that deputed officials are not considered as officials of the BEC secretariat and thus the BEC's service rules are not applicable to them. This provision may leave room for significant government influence.

**Policy Recommendation: Stop the practice of deputation in the long run and allow the BEC to have complete control over deputed officers in the short run.**

The recruitment rules that the BEC shall have to enact in pursuance of Article 9(1) of the BEC Secretariat Ordinance 2008 should limit the scope of deputation only to technical posts, and stop it to higher managerial posts. In the short run, to gain full control over deputed officials, the Commission should enjoy the authority to select such officials for a fixed tenure. Moreover, during this tenure, the Commission should have the authority to manage their careers. This will require revision of the existing Rules of Business.

### 1.4. Financial Independence

As per Article 88 of the Constitution, salaries of the commissioners and BEC officials and its administrative expenses are charged on the consolidated fund. However, the Ministry of Finance (MoF) has the authority to circumscribe the charged administrative expenses of the BEC in the name of financial discipline. The capital and the development expenditures of the BEC are not charged on the consolidated fund and are thereby subject to the control of the MoF. There is currently no recourse for the BEC to justify its budget proposal to Parliament if the MoF denies its reasonable demands.

**Policy Recommendation: Define and specify administrative expenses of the BEC and ensure proper parliamentary deliberation on capital and development expenditure proposals of the BEC through the formation of a Special Parliamentary Committee.**

The administrative expenses of the BEC should be considered in the same way as those of the judiciary. A Special Committee could be formed pursuant to Rule 266 of the Rules of Procedure to conduct deliberations on the budget proposals of all constitutional bodies, including the BEC. Development budgets of constitutional bodies should not be included in the Annual Development Plan (ADP) and can be shown separately in the annual financial statement. Once approved by the Parliament, the development (non-recurrent) activities of constitutional bodies should be exempted from approvals of the Executive Committee of the National Economic Council and Planning Commission.

## 2. ACCOUNTABILITY

### 2.1. Financial Accountability

Until recently, the MoF was responsible for ensuring pre-expenditure accountability by approving heads of expenditure and disbursement. It also ensured accountability of charged administrative expenses by circumscribing limits. The office of the Comptroller and Auditor General (C&AG) was responsible for ensuring post-expenditure accountability. But the latter was largely ineffective and the Public Accounts Committee's jurisdiction in overseeing the BEC's financial matters was unclear. After promulgation of the BEC Secretariat Ordinance 2008, the BEC is not required to have the approval of the MoF for spending from its budget allocation (Article 7 of the BEC Secretariat Ordinance 2008). Thus pre-expenditure accountability of the BEC has been relaxed. However, to balance this budgetary independence with accountability, the role of the C&AG and parliamentary committees should be strengthened.

**Policy Recommendation: Strengthen the parliamentary accountability of the BEC in financial matters through the C&AG, PAC and establish a Special Parliamentary Committee for Constitutional Bodies.**

The proposed special committee can scrutinise audit reports of the BEC. It can also monitor procurement and implementation of development (non-recurrent) activities.

## 2.2. Procedural Accountability

Accountability of election officials is very important for ensuring credible elections. At present, any investigation against an accused official for allegedly manipulating the election process is carried out by other BEC officials and government officials vested with electoral responsibilities (Deputy Commissioner, Upazilla Nirbahi Officer etc.) and done so in private, which casts suspicion about the impartiality of the process. Moreover, no court can entertain such cases without the approval of the Commission. Therefore, it is necessary to ensure transparency and independence of any investigation process.

**Policy Recommendation:** Ensure representation of the complainant in the investigation process and disseminate the outcome of such investigation through the Official Gazette.

Implementing this recommendation will require a revision of the RPO 1972. Representation should be limited to producing evidence, monitoring progress of the investigation and lodging a no-confidence motion with the Commission about the investigation process on specified grounds to avoid unnecessary complexities.

## 2.3. Performance Accountability

2.3.1 At present there is no mechanism for holding the BEC accountable for its performance. The Parliament might be the best formal instrument for holding the BEC accountable in this regard.

**Policy Recommendation:** A legislative provision should be promulgated so that the BEC publishes an annual report on its yearly activities and present it to the Parliament through the President.

The report should be candid. It should contain information about the cases where the BEC sought assistance from the executive, but such assistance was not forthcoming or was problematic. The proposed Special Committee can scrutinise the report. An MP can raise a petition as per the Rule 100 of the Rules of Procedure of the Parliament

against any irregularities of the BEC based on the report.

2.3.2 Political parties and citizens are the major clients of the BEC. Therefore, the BEC's activities and performance should be transparent to them. The BEC has started consulting political parties only recently. But it has no formal channel of communication to inform the parties about its actions and to receive feedback from them on a regular basis. At present, the BEC has no accountability for service delivery to citizens other than through a prerogative writ viz. public litigation, which is expensive and lengthy.

**Policy Recommendation:** Create a formal channel of communication between the BEC and political parties by revising the existing Political Party (Registration) Rules 2001 and enact a citizen/service charter to ensure accountable service delivery.

The Commission may create a separate wing to establish regular communication with political parties. The citizen/service charter should be developed in line with the Right to Information Ordinance.

## 3. EFFICIENCY

### 3.1. Human Resource Management

3.1.1 Under the existing system, recruitment in the secretariat and field offices is carried out separately. This practice creates an artificial boundary between the secretariat and field offices and makes positions non-transferable. This is a major source of internal conflict and inefficiency.

**Policy Recommendation:** Organise positions in the secretariat and field offices and determine equivalency among officers in qualification and job responsibility, and make them transferable.

Implementing this recommendation will require enacting the forthcoming service rules following position classification principles. The Commission may consider framing a transfer policy following job rotation principles within the field level posts to motivate its personnel.

3.1.2 The Election Commission (Officers and Staff) Rules 1979 provide highly discriminatory promotion rules in favor of Secretariat officials.

For instance, persons who joined as Assistant Secretaries (AS) in 1984 were promoted to the posts of Joint secretaries in 2003. But those who joined as the District Election Officers in a field office (equivalent to the AS in the Secretariat) during the same year had not received a single promotion until 2004. This discrimination frustrates the officials working at field level.

**Policy Recommendation: Consider equitable and merit-based promotion in the forthcoming recruitment rules.**

Implementing this recommendation will require an effective performance-planning system for measuring merit.

### 3.2. Human Resource Development

3.2.1 The BEC has no sound human resource development policy. The Electoral Training Institute provides training to entry-level employees on election management. Mid-level officials receive training only when some changes are made in the election administration. There are no needs-based training facilities for mid-level and higher-level officers on subjects like project management, financial management, public policy, office management, strategic planning, organisation design and development. Therefore, BEC staff suffers from severe lack of expertise and career planning.

**Policy Recommendation: Develop training facilities for officials at all levels.**

This can be done by partnering with Bangladesh Public Administration Training Centre as well as professional training institutes in the private sector. At the same time, the BEC should take measures to create opportunities for overseas training in collaboration with development partners. Besides, efforts should be taken to link training with career planning.

3.2.2 Disclosure of eight kinds of information about a candidate (such as asset and liabilities, bank loans, utility bills payment, education and criminal record) with the nomination paper has been made mandatory by the High Court (*Abdul Momen Chowdhury and others vs. the Government of Bangladesh*, delivered on 24 May 2005). The BEC has not yet developed techniques to examine authenticity and accuracy of submitted information.

**Policy Recommendation: Make information about candidates public and consider building partnership with relevant organisations to examine accuracy of given information.**

The BEC can ask for the latest tax return of each candidate instead of asking information on assets and liabilities. It may take help from the NBR and the ACC to examine disclosed information. Similarly, it can ask for submitting no-objection certificates from relevant utility services, Bangladesh Bank, Office of Police Super, etc. It can reexamine submitted documents in collaboration with the concerned agency, which issued no-objection certificates.

## 4. EFFECTIVENESS

### 4.1. Organisational Structure

4.1.1 The existing organisational structure of the BEC is inadequate to carry out its responsibilities. As the structure has been designed like a typical government agency, it hinders the BEC in communicating with different stakeholders. It also thwarts the much needed internal co-ordination necessary for its financial management, strategic planning and research activities.

**Policy Recommendation: The BEC, the MoE, and the MoF together should revise the existing organisational structure.**

The role of the MoE and the MoF should be advisory and not be authoritative. In the revised structure, positions should be rearranged in a way that will accommodate required new skills (i.e automation/digitalisation, outreach and stakeholder management etc.) without an increase in total manpower. Increasing in-house financial management capacity should be a major concern in the revised structure. Emphasis should be given on reducing the strength of class III and IV level employees, which currently constitute 72% of the staff.

4.1.2 At field level, the organisational structure is quite diffused and disorganised. The upazilla offices have only three officials. District offices have seven officials, of whom only two belong to class I. In fact, the BEC does not require offices at each upazilla, as it is not engaged in day-to-day administration of public affairs. Moreover, the

digital electoral roll requires a rearrangement of the manpower structure in the field offices.

**Policy Recommendation:** The BEC should consider establishing district based field offices that commensurate with the number of population and restructuring the organogram of those offices according to their activities.

This recommendation may be implemented by merging existing upazilla offices with those of districts. This will enable the BEC to have better equipped field offices by concentrating various skills-mix within a single zone.

4.1.3 The Returning Officer (RO) plays a key role in conducting election. Deputy Commissioners (DCs) and Upazilla Nirbahi Officers (UNOs) are usually chosen as ROs to the parliamentary and union parishad elections respectively. As both the DCs and the UNOs are government officials, the Government can influence election results by placing partisan civil servants in these posts.

**Policy Recommendation:** The BEC should consider District Election Officers (DEOs) for parliamentary election and Upazilla Election Officers for union and upazilla elections as ROs.

No legislative amendment will be required to implement this recommendation. The new arrangement should provide the RO with the authority to co-opt any government officials under his/her supervision during election period, subject to the approval of the Commission.

#### 4.2. Lack of Planning

The BEC does not engage in strategic planning. As a result, it quite often takes initiatives in a haphazard manner which lack vision and run against the Commission's objective of holding free and fair elections.

**Policy Recommendation:** The BEC should introduce a strategic plan for 3/5 years and develop a yearly action plan based on the strategic plan. It should also introduce periodic reviews of the strategic and action plans.

Reviews will detect lapses in the progress and design corrective measures. The BEC should

develop activity-based performance indicators for each objective to review performances objectively.

#### 4.3. Electoral Enrolment

A credible electoral roll is a precondition for a free and fair election. The BEC has prepared a photo-attached digitised roll in collaboration with the Bangladesh Army to increase the authenticity of the roll. The Electoral Roll Ordinance 2007 provided for yearly updating of the roll, which may become a challenge for the BEC. Purposive updating may be considered as well. For example, Electoral Commission of Australia undertakes an 'election drive' before an election (federal/state/local).

**Policy Recommendation:** Revise the Electoral Roll Ordinance 2007 to make using of voter ID number mandatory in obtaining services, such as social safety net services, school admission of children, marriage registration, passport issuance, opening bank account, job application, public utilities services etc.

The success of this policy will depend upon the awareness of the people. Continuous awareness-raising programmes about the roll update can be undertaken in partnership with NGOs and local government institutions. The BEC can follow a target-based approach in enrolment, e.g. rural people with the help of union parishads, office-based enrolment for service holders, university-based enrolment for students, etc. The Commission should take special notice of vulnerable groups like slum dwellers, daily labourers, etc.

**Policy Recommendation:** The BEC should undertake periodic target-based enrolment drive and analyze the distribution of different target groups in terms of fresh enrolment and update for identifying vulnerable groups.

#### 4.4. Regulatory Activities

4.4.1 The BEC has vast regulatory power on paper, but it often fails to exercise it. There are two probable reasons behind this - the BEC often faces difficulty in obtaining concrete evidence about electoral offences and second, there exists a feeling of insecurity among BEC officials and the police in taking actions against pre-poll irregularities

presumably due to the perpetrators usually being the mafia/thugs affiliated to the political parties.

**Policy Recommendation:** The BEC should build an effective partnership with the ACC, the NBR and national intelligence agencies for generating evidence. It should form and head an all-party advisory committee on the prevention of pre-poll irregularities in the lead-up to elections to neutralise threats and publicise legal actions taken in response to irregularities.

The BEC should make efforts to gradually build informed stakeholders for facilitating its regulatory activities. For example, it can use the all-party advisory committee to inform political parties and electoral candidates about laws on one hand, and compel them to supply all necessary information required by the ACC, the NBR or other regulatory bodies on the other.

4.4.2 There is often confusion about which agency is responsible for enforcing electoral laws. For instance, according to the current practice, the Code of Conduct Rules 1996 can be enforced by any police officer on his/her own motion or on the order of the Returning Officers or Presiding Officers. As a result, both may refrain from enforcing the law themselves to avoid responsibilities.

**Policy Recommendation:** Revise the RPO 1972 to clearly assign a regulatory role for different enforcement agencies and clarify the mode of their interaction.

The Commission should monitor the performance of each of the regulatory agencies according to the revised law.

#### 4.5. Distributive Activities

4.5.1 The BEC depends upon the local administration for providing its services to citizens, electoral candidates and political parties. But the BEC officials find it very difficult to obtain cooperation from local administrators who are superior to them in service grades. For example, the District Election Commissioner enjoys the status of a Senior Assistant Secretary, but his local counterparts like the Deputy Commissioner or Police Superintendent enjoy the status of a Deputy Secretary.

**Policy Recommendation:** Upgrade the status and service grade of the BEC officials to a level that is equivalent to their counterparts in local administration.

## CONCLUSION

The predominant confrontational politics has made election management quite difficult in Bangladesh. The BEC so far played a passive role in the election process to avoid such difficulties. This *laissez-faire* policy followed by the Commission partly encouraged commercialisation and criminalisation of politics. Therefore, a proactive BEC is a demand of the time for consolidating democratic process in the country. The present regime has collaborated with the Commission in introducing some entrenched reforms, particularly in the legal framework governing the electoral process, which are expected to bring about positive changes in election management. However, legal reform alone may fail to produce desired results until and unless significant changes are brought about to the structure, management and the process through which the BEC functions and interacts with its stakeholders. Therefore, future reform efforts should concentrate on designing such policies. This policy note has made an attempt to propose certain changes, which will assist the BEC to become proactive with greater functional independence, accountability, efficiency and effectiveness.

## FOR FURTHER READING:

Elklit, Jorgen and Regnolds, Andrew (2001) 'Analyzing the impact of election administration on democratic politics,' *Representation*, 38:1, 3-10

Institute of Governance Studies (2007) 'Institutions of Accountability: The Election Commission. Background Paper, Dhaka: BRAC University.

Pastor, R A (1999) 'The role of electoral administration in democratic transitions: Implications for policy and Research' *Democratization*, 6:4, 1-27

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