

"All citizens are equal before law and are entitled to equal protection of law" - Article 27 of the Constitution of the People's Republic of Bangladesh

## Caretaker Government and general elections

DR. M. ERSHADUL BARI

In a representative democracy, all powers belong to the people and election is the constitutional means of selecting the chief decision-makers of a government. The popularly elected public representatives hold the reins of power under the laws and the constitution and exercise it on behalf of the people for a definite period of time. "Governments are instituted among Men, deriving their just powers from the consent of the governed." The consent of the governed means the exercise of the voting right of the people in the election freely. Therefore, the core issue in a democratic state is to conduct the general election in a free, fair and impartial manner. Keeping this in view, ultimately the Constitution (Thirteenth Amendment) Act was passed on 26 March 1996 in pursuance of the demand of the opposition parties during the regime of the Bangladesh Nationalist Party which provides for the establishment of Non-Party Caretaker Government after the dissolution of Parliament.

### What is a Non-Party Caretaker Government

The Non-Party Caretaker Government may be defined as an interim and non-elected Government which comes into power within fifteen days after the dissolution of the Parliament and remains in power until the date on which the new Prime Minister enters upon his office after the constitution of next Parliament (and, as such, remains in power for only three months), the Government which is mainly instituted to give all possible aid and assistance to the Election Commission for holding the General Elections of the Members of Parliament peacefully, fairly and impartially (Arts. 58B(1), 58C(2), 58C(12) and 58D(2)). As an interim Government, it performs the routine functions (day to day administration) of the Government and can make policy decision only in case of necessity. It is called Non-Party Caretaker Government as its Members (i.e. Advisers) are appointed from among the persons who are not members of any political party or of any organisation associated with or affiliated to any political party and are not, and have agreed in writing not to be, candidates for the ensuing election of the Members of Parliament (Art. 58C(7)).

### History of Caretaker Government: Down the memory lane

It is to be stressed here that the Constitution of Bangladesh as amended in 1996 for the first time in the history of the world provides for details and comprehensive provisions for the institution, composition and powers of the Non-Party Caretaker Government. What we can trace in the United Kingdom in 1945 and India in 1979 is the existence of Caretaker Government which was essentially a Party Caretaker Government in stead of a Non-Party Caretaker Government. Although the 1973 Constitution of the Islamic Republic of Pakistan speaks of the appointment of a Caretaker Cabinet by the President

in his discretion upon the dissolution of the National Assembly, it is silent as to whether politicians can be appointed as the members of the Caretaker Cabinet and whether they can take part in the general election.

The Ministry formed by Sir Winston Churchill after the Second World War in the afternoon of 24 May 1945, one-and-a-half month before the General Election of 5 July 1945, has been described by Sir Ivor Jennings as the "Caretaker Government". Liberal and Labour MPs were afraid that Churchill, who had replaced Neville Chamberlain as the Prime Minister of the National Government and made a significant contribution in the victory of the Allied Forces, would "capitalise upon his reputation as the war winner to have a 'Khaki' election; and to allay their fears, he spoke of a period of two or three months after the end of the war in Europe, in the course of which suitable preparations could be made. This would allow time for the Liberal and Labour parties to withdraw from the Government and for a 'Caretaker' administration to be constituted by the conservatives, who had been since 1935 the largest Party in the chamber." After resignation of the Labour Ministers in May 1945 in pursuance of the decision of the Annual Conference of the Labour Party at Blackpool, Churchill tendered his resignation on the morning of 24 May (1945) as Prime Minister and First Lord of the Treasury and Minister of Defence. The same afternoon the King 'was graciously pleased to accept his resignation' and invited him 'to form a new Administration'. Churchill formed 16-Member 'Caretaker Government' consisting of Conservatives, National Liberals and a few non-party members. Sir Ivor Jennings in his explanation of this Government said, "it is not British practice to appoint a 'Caretaker Government' for the duration of a general election. It was done in 1945 because the Wartime coalition had broken up. The electors had to decide whether they wanted a Conservative Government or a Labour Government, and meanwhile the King's service had to be carried on. This was quite exceptional. The Government which advises the dissolution remains in office throughout the election and continues to do so after the election, unless it is defeated." It should be mentioned here that the Conservative Party led by Churchill met a humiliating defeat in the General Elections and the Labour Party, which did not join the Caretaker Government, won a landslide victory under the leadership of Clement Richard Atlee.

Although there is no mention of any Care-taker Government in the 1949 Constitution of India, the continuance in office of the Prime Minister Charan Singh and his Council Ministers, after their resignation on 20 August 1979 without facing a vote of confidence in the Lok Sabha by the third week of August, "till other arrangements are made" is described as the (Party) Caretaker Government. Charan Singh, who was the leader of the minor party in the Lok Sabha having 75 Members out of 544 Members,

was appointed as the Prime Minister since he was recommended by the leader of the opposition and the President was convinced that he enjoyed the support of more Members than Morarji Desai (leader of the Janata Party in Lok Sabha

possible to understand the expression, 'Care-taker Government' as the Government in power after dissolution of the Lok Sabha and before its reconstitution".

In Pakistan, the General Elections were held in 1988 and

conducts the General Election, the Government, Non-Party Caretaker Government or the Election Commission. The answer is obvious. It is the constitutional body of the Election Commission, which conducts the election. As Article

peacefully, fairly and impartially." Therefore, it is noticeable that even after the establishment of the Non-Party Caretaker Government, it is the Election Commission which is to organize and conduct the elections and the said Government is to

submitting to pressures, threats and inducements from any quarter only in accordance with his oath "that I will faithfully discharge the duties of my office according to law? In fact, neutrality of mind greatly depends upon the nature, character, and qualities of the persons who hold the office of the Election Commissioner. He should be independent of his "passions and prejudices, likes and dislikes, affection and ill will, hatred and contempt and fear and recklessness, the qualities which cannot be injected into a human system by the Constitution or by laws.

However, it should be admitted that the Election Commission has to work under certain constraints. It does not have the power to recruit its own staff and according to the Rules of Business, its staffs are under the administrative control of the Establishment Division of the Prime Minister's Secretariat. Since the Election Commission does not have adequate Upazila and district level field officials with necessary powers and logistics to conduct the elections, it is to depend mostly on the administration cadre in this regard. Under the Representation of the People Order, 1972 the key officials with crucial powers for conducting the General Elections are the Returning Officers who are the Deputy Commissioners of different districts. Whereas a Returning Officer may be appointed for more than one constituency but an Assistant Returning Officer could be appointed for one constituency only. The Returning Officer appoints a Presiding Officer for a polling station and such number of Assistant Presiding Officers and Polling Officers as he considers necessary and has the power to suspend them. The Returning Officer scrutinizes the nomination papers of the candidates, prepares and publishes a list of validly nominated candidates. The Returning Officer, on the direction of the Election Commission, fix the hours of poll and give public notice of the hours so fixed. The Returning Officer consolidates the results furnished by the Presiding Officer and declares, by public notice, the candidate who receives the highest number of votes as elected. Then he submits to the Election Commission a return of the election together with a copy of the consolidated statement and the Commission then publishes the name of the returned candidate in the official Gazette. Therefore, what matters most is the neutrality and impartiality of the Returning Officer who have been given wide and unfettered powers from the beginning to the end of the General Elections. It is apprehended that some of them might influence the election results in favour of the party of their choice.

### The Caretaker administration and the challenges ahead

The key issue is that, whether the eleven member Non-Party Caretaker Government having no political background or prior experience of governing the country can effectively control the Returning Officers who very much know that the (said) Government shall remain

in power for only the duration of a general election (that is for three months) and thereafter shall have to hand over power to an elected government. The Caretaker Government, therefore, must take all necessary measures to ensure that the administrative machinery must act in an impartial manner. Once a retired Chief Election Commissioner of India commented that three C's dominate the general elections, which is obviously applicable in case of Bangladesh. Once 'C' stands for the corruption of the persons associated with the election process (e.g. returning officers, assistant returning officers, presiding officers and polling officers). The second 'C' stands for cash, which means the use of black money. Certain candidates with no political experience or standing buy nominations by making huge payments to the parties or top party functionaries and spend millions of taka in excess of the prescribed limits to get themselves elected by bribing voters and election officials. The third and last 'C' stands for criminality i.e. the use of muscle power and armed squads for obtaining votes. It seems that it is not at all possible on the part of the Caretaker Government alone to control all the three 'C's' effectively. It may be recalled here that allegation was made about some of the members of the last Care-taker Government to the effect that they had not joined the movement against the Government of the Bangladesh Nationalist Party rather they had cooperated to keep that Government in power. It is further alleged that the said Government posted in some of the Districts new Deputy Commissioners and some officers in key positions who had joined "Janar Mancha" that served as the turning point for the movement against the B.N.P. Regime. It is, therefore, difficult to assert that they maintained absolute neutrality in conducting or in the matter of the elections. Furthermore, it is noticeable that in the last (1996) General Elections, more clashes taken place at the polling centres resulting in the death or injury of more persons, polling interrupted or obstructed at a larger scale and polling suspended in more centres than those of the 1991 General Elections held during the impartial and neutral Government of Justice Shahabuddin Ahmed. It is apprehended that the next general elections shall witness unprecedented use of the aforesaid three C's- cash, corruption and criminality. The ensuing general elections may be held in a free and fair manner if the Election Commission and the administrative machinery perform their functions impartially and independently, illegal arms are recovered, Election Code of Conducts for the political parties are strictly adhered to, candidates behave sensibly and demonstrate their commitment to fair play, and finally media serve as a watch-dog to ensure that concerning all parties including the bureaucracy and the law enforcement agencies behave in an impartial manner.

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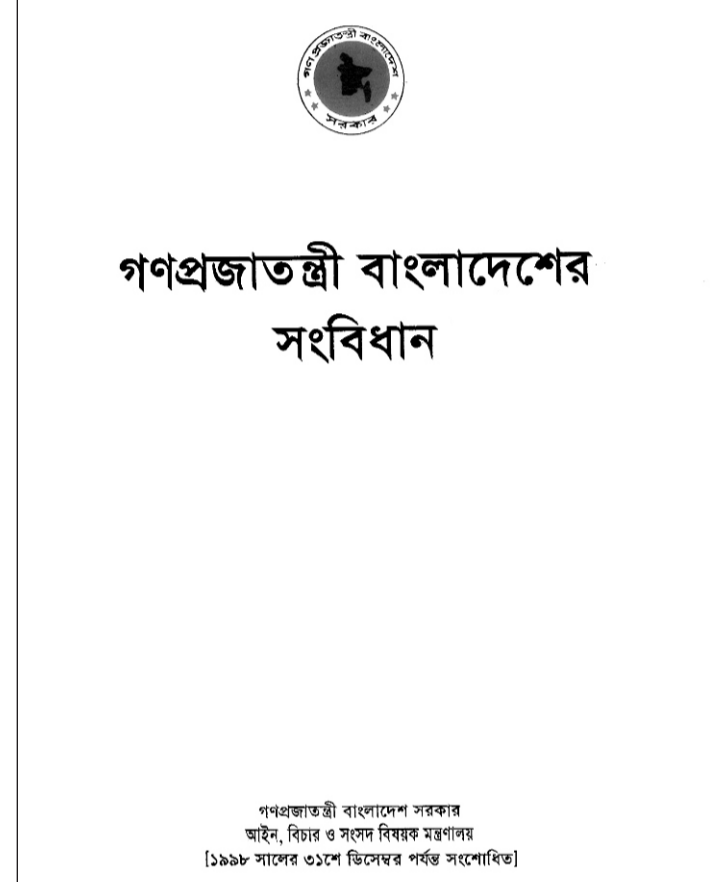
1990 under the Party Caretaker Governments in pursuance of the provisions of Article 48(5) of the existing Constitution of Pakistan in which all the Ministers of the Government took part in the Election and there were widespread allegations of rigging and malpractices. The third Caretaker Government (of which Moeen Qureshi was the Caretaker Prime Minister who had not even registered as a voter in the country and was political discovery from the Columbus Country) and fourth Caretaker Government were Non-party Care-taker Governments which conducted the General

have 205 Members) who had tendered his resignation as the Prime Minister on 15 July 1979 without facing the no-confidence motion in the sitting session of the Lok Sabha (the session of the Lok Sabha was convened on 9 July 1979). It was mentioned in the Indian newsweekly Statesman of 23 August 1979 quoting President Sanjiva Reddy to the effect that "The [Charan Singh] Government will not take decision during this period, which set new policy or involve new spending of significant order or constitute major administrative and executive decision. However, work of an urgent nature involving the nations interest will not be held up." When his appointment was challenged before the High Court of Calcutta in the case of Madan Musari Verma V. Choudhuri Charan Singh and another, Justice Sabyasachi Mukharji commented that "There is no mention of any Caretaker Government as such, in our constitution or in the constitutional law... But an extraordinary situation like the present, in my opinion, calls for a Caretaker Government and therefore... [Charan Singh] and his Council of Ministers can only carry on day-to-day administration in office, which are necessary for carrying on "for making alternative arrangements." In effect the President, in my opinion, is, therefore, not obliged to accept the advice that the... [Prime Minister] and his Council of Ministers tender to him except for day-to-day administration and the Council of Ministers and the... [the Prime Minister] should not make any decisions, which are not necessary except for the purpose of carrying on the administration until other arrangements are made. This in effect means that any decision or policy decision or any matter which can await disposal by the Council of Ministers responsible to the House of People must not be tendered by the... [the Prime Minister] and his Council of Ministers. With this limitation... [the Prime Minister] and the Council of Ministers can only function." (AIR 1980 Cal 95). It has also been mentioned in the decision of the Madras High Court given on 10 October 1979 in the Case of S. Ramaswami v. Sri Charan Singh (W. P. No. 3671 of 1979) and O.V. Alagesan v. Union of India (W.P. No. 3742 of 1979) that "Though the Constitution itself does not refer to a Care-taker Government is, yet it is

119(1) of the Constitution of Bangladesh provides that the Election Commission shall, in accordance with this Constitution and any other law, hold elections to the office of President and of the Members of Parliament, prepare electoral rolls for these elections and delimit the constituencies for the purposes of elections to Parliament. With regard to the role of the Government in the matters of election, the original Constitution states that "It shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions". In this regard, Article 58(d)(2), as added to

extend cooperation for conducting the elections honestly, justly and fairly. Furthermore, the Constitution has contemplated the Election Commission as an effective institution when it provides that "The President shall, when so requested by the Election Commission, make available to it such staff as may be necessary for the discharge of its functions under this Part." (Art. 120)

Then the next question which arises is that, whether the members of the Election Commission are in a position to perform their functions independently and without fear or favour. The Constitution of Bangladesh not only provides that "The Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law." (Art. 118(4)), it has guaranteed security of tenure to the members of the Election Commission taking into account the fact that nothing can contribute so much to their firmness and as permanency in office as it shields them from any personal political pressure on the part of the Executive. An Election Commissioner can be removed from his office only in like manner and on the like grounds as a judge of the Supreme Court. (Proviso to Article 118(5)). Thus he (the Election Commissioner) may be removed by the President if the Constitutional body of the Supreme Judicial Council consisting of the Chief Justice of Bangladesh and the two next senior Judges, after making the inquiry, reports to the President that in its opinion the Election Commissioner has ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity or has been guilty of gross misconduct. Like the Judges of the Supreme Court, the Election Commissioner has been given the guarantee that his right to remuneration, privileges and other terms and conditions of service shall not be varied to his disadvantage during his term of office (Clauses 2, 4(e) and 4(9) of Article 147). Thus the constitutional provisions concerning the grounds and method of removal as well as the remuneration and privileges of the Judges of the Supreme Court and of the Election Commissioner are exactly identical. Then why it cannot be expected that, an Election Commissioner shall perform his functions independently without



Elections of 1993 and 1997 respectively in which no members of the Governments participated in the Elections. Who conducts the general election? Now the basic question is, who

## Taking care of Caretaker Government

KHALED S. AHMED

Intrigue in intent and manipulative mind is not compatible with development of democratic process in anywhere in the world. Those who genuinely believe in the participation of people in all national affairs and want people to decide their fate and destiny can only promote democracy. Concept of caretaker government in itself result of long drawn tragic history of democracy in Bangladesh where politician including army Generals in their political adventure systematically manipulated election results in their own favor ignoring people's will. But in all critical national decision making, people of Bangladesh never failed to decide for the best option they were made to believe and most of the time betrayed by people they put trust on. It is not true that those who betrayed were not ruthlessly punished but only tragedy is that our politicians could hardly learn any thing from those tragedies. During former President General Ershad's time, present Prime Minister Sheikh Hasina and her Awami League agreed to play as 'B' team bypassing strong political oppositions those who were not willing to participate in the General's bid to consolidate power by staging fake election. After the fall of General Ershad by way of people's movement against his corrupt regime, where Begum Khaleda Zia played a pro active role in bringing the General down, there was a free and fair election on an even field where Begum Khaleda Zia could gain majority (not absolute) and could form a government. As an elected Prime Minister Begum Khaleda Zia and her Bangladesh Nationalist Party (BNP) could not ensure fairness in elections held under their regime, it made Sheikh Hasina to rightfully demand for election conducted by a neutral authority in the name and style of Non-Party Caretaker Government. While at that time Begum Zia remained adamant against such measure even against the advise of her right thinking colleagues, she certainly had to face the humiliation for trying maintain her control over election apparently to deceive people.

This strategy certainly worked for Sheikh Hasina and that made her the Prime Minister although she did not get absolute majority. Since she became Prime Minister one thing she or her mentors must have forgotten is that state power cannot be sustained through state terrorism, especially in this age of information technology. Because of internet, in many part of the world, people can see what are in the local Bangladesh dailies before Bangladeshis pickup their own copies. When foreign countries offer election monitors it is the first phase of peacekeeping. It may be true that Bangladesh is now the only country where election

manipulations are a great concern for the world community. And even provision of Caretaker Government could not reduce that concern.

Sheikh Hasina government by passing oppressive law like Public Safety Act armed the police to arrest and harass hundreds of thousands of political opponents. Recent event of shooting at opposition procession by Awami League supporters under the direct supervision of a Member of Parliament and with the protection of police, is the most glaring example of politicization of nation's police forces. She has systematically purged police those she believed are not loyal to her. Same thing she did to bureaucrats both in civil and army. Finally she could terrorize the judiciary of the country including highest level at the Supreme Court.

These entire thing put together is now great concern for people because who will take care of the caretaker government when entire government machinery are politicized and party supporters have been provided with huge supply of fire arms and ammunitions to continue to terrorize people. There were several pictures of Awami League terrorists brandishing arms published in the national dailies. Until now virtually none of them were arrested or punished, a very obvious but foolish attempt to terrorize a nation of 130 million. During past 55 months armed goons belonging to the ruling party thwarted most political program of the opposition and in the process either thousands of opposition workers were killed or there are false legal proceedings drawn against them. Whenever opposition called for any political program participants were stopped at different point far away from the venue creating roadblocks. Even during by elections voters were stopped from going to the polling station for casting votes and loyal polling officials obliged the government by putting seal on ballots to fake the election. It appears that the Prime Minister Sheikh Hasina is now trying to fix the terms of Caretaker Government before she would finally resign and waiting for the oppositions demands to ensure neutrality.

Under these extreme circumstance provision of Caretaker Government may not do any good for the nation until our politicians want to believe that people are sovereign and willing to win their heart with love and compassion. How election observer will help if our intents are not honest. On one side we will extend open invitations to the foreign observers and on other side we will make all efforts to manipulate the election believing that foreign observers are not intelligent enough to understand our trick will never help to develop real democracy in the country.

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## Guidelines for election observation

### INTERNATIONAL IDEA

WHAT is election observation? The purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of information collected, by persons who are not inherently authorized to intervene in the process.

### Fundamental Ethical Principles

1. Election observers must be non-partisan and neutral
  2. Election observers must be comprehensive in their review of the election, considering all relevant circumstances
  3. Election observation must be transparent
  4. Election observation must be accurate
- 1. Election observers must be non-partisan and neutral**  
A fundamental role of election observers is to support the democratic process, by conferring or denying legitimacy as the circumstances require, on a particular electoral process. The capacity of observers to perform this function will be irretrievably compromised if they are perceived to as having a commitment to any particular electoral outcome. Observers must therefore undertake all their tasks in a manner that is strictly non-partisan and politically neutral.
- An election observer should:  
Act in a strictly neutral and unbiased manner in relation to the national authorities (including election management body), parties, candidates, the voters and the press and media.
- Avoid doing anything that could

indicate, or be seen as indicating, partisan support for a candidate, political party, political actor or political tendency.

Disclose to the appropriate body or authority any relationship that could lead to a conflict of interest with their duties as election observers, or with the process of observation and assessment of the election.

Not accept any gift or favour from a political party, organization, or person involved in the election process.

Not participate in any function or activity that could lead to a perception of sympathy for a particular candidate, political party, political actor or political tendency, for example, visits to official ceremonies sponsored by local authorities or political parties.

Not communicate with any voter on a matter of partisan significance.

Not wear, carry or display any party symbols or colours of a partisan nature.

### 2. Election Observers must be comprehensive in their review of the election, considering all relevant circumstances

When assessing the validity of an election, observers must consider all the relevant factors that affect different aspects of the process. Unless this takes place, the observation process could give unearned legitimacy to a flawed electoral process. Typically observers should be considering all the following factors:  
The degree of impartiality shown by the election management body.  
The degree of freedom of political parties and alliances to organize, move, assemble, and express their views publicly.  
The opportunity for political parties to have their agents observe

all aspects of the electoral process.

The fairness of access for political parties to state media and other resources of the state.

The proper registration of voters without distinction or discrimination on the basis of gender.

Issues of human rights, including women's rights, that relate to the ability of voters to participate in the electoral process.

Any other issue that concerns the essential freedom and fairness of the election.

The proper conduct of polling and counting of votes.

Election observers should:  
Try to form a valid view of all aspects of the election process, in order to determine its legitimacy.

Try to form a valid view of the progress of the election process in all parts of the country.

Analyse the legal framework within which the election is being conducted, and assess whether it is adequate in the circumstances.

Try to determine whether the laws governing the electoral process are generally being observed.

Try to determine whether the electoral management body has acted impartially and in a manner that is consistent with a free and fair election.

Try to determine whether freedoms of expression, organization, movement and assembly have been respected.

Take special note of the participation of women in the election, in relation to the degree of participation of men.

Take special note of the participation of the illiterate and the disabled with a focus on measures which facilitate casting a vote in secret by those individuals.

Try to observe political meetings and demonstrations

Try to determine whether the

process for registering voters, candidates and parties has been carried out equitably and comprehensively.

Try to determine whether voters have enough knowledge of the process to be able to participate in the election.

Try to place observers in polling stations and counting centres, in order to observe the compilation and communication of results.

Try to determine whether effective steps have been taken to prevent persons from voting more than once, and to guarantee the secrecy and security of the ballot.

Try to examine all complaints about the electoral process made to the election management body or to the observer, and assess the validity of each complaint.

### 3. Election Observation must be transparent

To establish the validity of observers' conclusions, observers should fully disclose their methods, assumptions, data, analyses, and the details of their comprehensive observations.

Election observers should therefore:  
Identify the objectives of their observation, both at the beginning of the process and when they report.

In all their reports, follow principles based on recognized scientific methodology, including the following: a) identify the exact information they have gathered and used as a basis for their assessment of the electoral process; b) when reporting statistical information, identify the basis of sampling they have carried out, and disclose measures of uncertainty associated with those statistics; c) identify all the assumptions that they have used; and d) provide evidence and argument to support all their assumptions and

judgements.

Be prepared to communicate to the election management body a final collective assessment of the observation process.

If appropriate and necessary, inform the election management body of alleged shortcomings in the electoral process, so that body can take remedial action if it wishes.

Communicate directly and openly all collective conclusions arising from the observation process.

### 4. Election observation must be accurate

The information on which observers base their reports must be accurate as well as reliable. Inaccurate or unreliable information can undermine confidence in both the electoral process and the observation process.

Election observers must perform every task on the basis of the highest standards of accuracy of information, objectivity of analysis and recognized scientific methodology. Information relied on by observers should be received first-hand, and should be verifiable. In particular, observers should:

Ensure that information is collected, compiled, and published in a way that is systematic, clear and unambiguous.

Take any action to ensure that all the information that they compile, use or publish as part of the observation process is received first-hand and is verifiable.

If they receive any allegation that reflects adversely on the election management body, or on any particular participant in the electoral process, seek a response from the person or organization concerned before treating the allegation as valid.

Adapted from "Ethical and Professional Observation of Elections".