

"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

LAW OPINION



# Monitoring elections: The guiding principles

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**I**N a democratic system elections play a vital role and in order, for the elections to be fair it is important to examine whether the voters could freely exercise their rights, adequately informed to do so, and have confidence that the electoral process will accurately reflect their choice. Impartial and effective management of election can not ensure a fair poll if the contesting candidates do not have the opportunity to conduct election campaign freely for popular support. The process must ensure that government machineries & resources, law enforcement agencies are acting impartially. Most importantly the judiciary must be free to perform impartially and effectively and the news media must enjoy the freedom to disseminate accurate information so that the voters can make an informed decision. The Citizen Group can act as watchdog over the political processes as well as media whether they provides access to all contestants and objective coverage of event of national and local importance.

Electoral process must be monitored in the context of the current debates and political transitions. Critically the attempt must help building public confidence in the electoral process. If the citizens do not have adequate information and freedom to choose the right candidate elections will not be truly meaningful. A 'level playing field' must be there where all the contesting candidates will have confidence that they can reach and win the support of the voters.

Participation of Citizen Group in the electoral process is central to public confidence. Recent development in the global electoral trends is the widespread acceptance of the contribution of non-partisan neutral election observers. In Bangladesh reports of the election monitoring group has been accepted by the international community and the political actors during the last two decades and has been cited in reference to the authenticity of the outcome of elections. Election monitoring by the impartial election observation groups has significant contributions

in building public confidence in the electoral process which on the other hand has ensured citizens participation in governance system making the government more accountable. Citizen's engagement in monitoring elections has been recognized in the "Copenhagen Document of the Commission on Security and Cooperation in Europe [CSCE]" and in the UN training series on "Human Rights and Elections" as effective to enhance public confidence in the electoral process.

Bangladesh Election Commission (BEC) has also recognized election monitoring by non-partisan citizen group as an important tool to ensure fairness and enhance acceptance of the outcome of elections. BEC has finalized a "Guideline for Election Observers" limiting election monitoring being stationed at polling booth during the Election Day. The Guideline has created options for the domestic election monitoring groups to deploy mobile observers in a Team of five members who are allowed to visit the polling booth for a limited time [Article 7.4]. This has posed a serious challenge and limits the observers to monitor the entire process of the Election Day. Although observation of counting process were allowed with special permission of the Presiding Officer but due to limitation of number of observers to be deployed in a team it is not possible to observe the counting process in each of the polling centers. Along with others age limit for the observers and provision of issuing accreditation card for the observers centrally from the Election Commission brings serious challenge for the election monitoring agencies in Bangladesh. Where the Parallel Vote Tabulations has significantly recognized in other parts of the world, Bangladesh Election Commission should not restrict the

observers group in monitoring election on stationary basis narrowing the scope for integrated election monitoring down.

Human Rights aspect of Election Monitoring has been found in the Universal Declaration of Human Rights, applicable to all member state as stated "Everyone has the right to take part in the governance of his [or her] country, directly or through freely chosen representatives .....the will of the people shall be the basis of the authority of the

government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent voting procedures". In a society where fundamental rights of citizens are not maintained there remain little scope for holding a free and fair elections. Thus election monitoring also provide the degree of freedom of a society or a range of institutions are functioning in a country and level of respect for human rights in general and civil and political rights in particular. The historical perspec-

tive and the political context are the continuum where arrangements of free and fair election are feasible ensuring wide range of participation by its populace. In harmonization of such critiques, Bangladesh Election Commission may reconsider to revise the qualification of an 'Observer' to a certain level that will really be able to contribute in the process of election monitoring. The election monitoring agencies however may think of establishing a

way provide a systematic basis to assess the characteristics of the entire election process in accordance with a neutral basis to evaluate the fairness of the recommended process. The result not only helps the winners of the election race but also can be referred or quoted by the defeating parties that may help reconsider the possible arrangement of re-election. LTEM enhance credibility of the election process and help building confidence among the general voters about the outcome of elections. LTEM comprises of pre and post election period also useful in judging the performance of the electoral administration and the political institution. More over non-partisan election monitoring contribute to a transparent and open election through ensuring increased participation of concerned citizens in the electoral process that helps promote other basic human rights such as the right to freedom of expression, movement, peaceful assembly and association. However the "Guideline for Election Observer" does not include criterion for Long Term Election Monitoring, duration of deployment, areas of observation and reporting protocols.

Monitoring election in a long-term basis through involving recognised competent Citizen Group helps creating a congenial atmosphere where the general voters get a sense of security to come out for voting during the Election Day. Pre-election monitoring activities are deemed essential therefore for maintaining the integrity of the electoral process and to ensure democratic outcomes. Long Term Election Monitors observe the conduct and activities of the local administration and the Law Enforcement Agencies and other officials engaged in election duty. This may help to assess whether the officials performed their duties properly and in an

impartial manner. This also includes observation of EC decisions and those taken by the government, district and local authorities as they related to the election process.

Long Term Election Monitoring also include observation of the law and order situation prevailing in the country including incidents of violence, the general political environment and the extent to which the local political activists were involved in activities such as organized violence, coercion or intimidation.

Nomination process is another important phase which is being observed as it has been found that inter party and intra party conflicts rises to numerous violence intolerable to congenial democratic environment before an election. Long Term Election Monitors also try to monitor the election campaign events such as public meetings, processions, demonstrations and keep track of the number of election camps set up by each candidate number of microphones used by them at any given time their election expenses campaign strategy and other campaign related matters.

During the campaign period the Long Term Election Monitors also meet the election administrators, representatives of political parties, state administration, law enforcing agencies and the media. The Long Term Election Monitors are given some guidelines questions as a starter of their conversation with different categories of people. The purposes of these meetings are to find out the views about key events in the election calendar, campaign activities of different candidates their opinions about the rules and regulations governing elections and the way they were being implemented.

LTEM designed around gathering factual, well-documented information that can be objectively verified to analyze the situation, help adopting decision for creating a congenial atmosphere for voting. The findings coming out of the long term observation should be made public immediately so that Election Commission can take immediate and appropriate measure of handling any unwanted situation against the poll.

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permanent database of observers which will create the scope to scale up the quality of observation report, collecting and training such huge number of observers from across the country and finally to ease the process of getting accreditation from the election commission. The Election Commission can think of making this mandatory for the election monitoring groups which may be applauded by the international community who ultimately funding such endeavour.

Long Term Election Monitoring (LTEM) designed in a coordinated

## HUMAN RIGHTS WATCH

# Justice for 1971 Atrocities

**T**HE Bangladeshi government's effort to bring to trial those responsible for atrocities during the struggle for independence in 1971 is an important and long overdue step to achieve justice for victims, said Human Rights Watch. In a letter to Prime Minister Sheikh Hasina, Human Rights Watch said that it strongly supports a successful legal and judicial process that is fair and impartial.

Seven people have been arrested so far under the International Crimes (Tribunals) Act, though specific charges have yet to be filed against them. Five are members of the Jamaat-e-Islamiya Party, which is broadly considered to have been against the establishment of an independent Bangladesh, and two from the main opposition Bangladesh National Party. All who have applied for bail have been denied except an 82-year-old, wheelchair-bound man, who was released into his son's custody after he surrendered his passport to guarantee that he would not flee the country.

"The Bangladeshi government has an unprecedented opportunity to hold those responsible for the 1971 atrocities to account in credible trials and, in doing so, to show it is firmly committed to the rule of law," said Brad Adams,

Asia director at Human Rights Watch. "This is a complicated process with many challenges, including gathering evidence 40 years later and ensuring that the law and rules of procedure meet international standards so the trials are beyond reproach."

The 1971 war followed the victory of the East-Pakistan-based Awami League in national elections. The Pakistani government, led by the military ruler General Yahya Khan, refused to accept the results. On March 26, it began Operation Searchlight, sending troops into East Pakistan to arrest Awami League leaders and put down protests. The Pakistani army and affiliated vigilante groups embarked on a massive wave of violence, including widespread rape. Estimates of the number of people killed range from 300,000 to 3 million. As many as 10 million people were reportedly displaced and fled to neighboring India. The Indian army intervened and joined resistance forces to defeat the Pakistani army after nine months of violence. The independent state of Bangladesh emerged in December.

In response to this carnage, the new government in 1972 established special tribunals to try collaborators. In 1973 the parliament passed the International Crimes (Tribunals) Act. But trials never hap-

pened for political reasons. Bringing those responsible for the 1971 crimes to trial continues to have considerable popular support and was one of the main planks of the successful Awami League election campaign in 2008. In a concession to Pakistan, the law excludes the prosecution of Pakistani military officials and soldiers.

On a recent visit to Bangladesh, Human Rights Watch met with Law Minister Shafique Ahmed and the prosecutor of the International Crimes Tribunal, Zead al-Malun. Both said they were committed to ensuring that the tribunal meets international standards. The Law Minister welcomed suggestions from Human Rights Watch and others to improve the process. The prosecutor explained that his office has begun to collect documentary evidence and to interview potential witnesses.

"The atrocities and number of victims in Bangladesh have largely been overlooked by the rest of the world for four decades," Adams said. "It is good news that officials are open to suggestions for improvement and that investigations have started in earnest. If the government and tribunal iron out some of the problems with meeting international standards, this effort will deserve the full support of the international community." Human Rights Watch

pointed out that the government has already made some important amendments to the 1973 law. These include changing the composition of the tribunal to civilian judges instead of military judges and mandating the independence

are carried out in accordance with Bangladesh's international human rights obligations, international criminal law, and Bangladesh's constitution. While the 1973 Act was largely based on international standards at the time, interna-

International Criminal Court, to which Bangladesh is a state party, have yielded important jurisprudence and valuable experience in handling complex cases that should be taken into account to ensure that trials before the tribunal conform with international standards.

In its letter, Human Rights Watch said these problems can be addressed by:

- Amending the definition of crimes to articulate more clearly the relevant definitions of war crimes, crimes against humanity, and genocide as they existed under domestic or international law at the time of the offense;
- Amending the act to allow challenges to the constitution of the tribunal and the appointment of its members;
- Amending the act and rules to ensure that the due process rights of the accused are consistent with Bangladesh's international legal obligations;
- Repealing Article 47(A) of the Bangladesh Constitution to allow the accused full protection of their constitutional rights, including the right to enforce their fundamental rights under Article 44, which protects fundamental rights;
- Creating an effective and well-thought-out victim and witness protection plan well ahead of the trials, to address protection and support

needs before, during, and after proceedings;

- Establishing a defense office to ensure that the principle of "equality of arms" between the prosecution and defense is recognized; and
- Equipping prosecutors and judges with the relevant technical expertise to handle cases under the tribunal's jurisdiction in accordance with international practice. Human Rights Watch also urged the Bangladeshi government not to use the death penalty in tribunal cases or others. Human Rights Watch opposes the death penalty in all circumstances as an inherently cruel and unusual form of punishment and a violation of fundamental human rights and therefore recommends this penalty be removed.

"The attempt by the Bangladeshi government to create a domestic tribunal for such grave crimes could set a valuable international precedent," said Adams. "But without changes to the law and rules of procedure, the process may not meet international fair trial standards. This could result in a lack of credibility for the process in Bangladesh and internationally, which would only benefit those responsible for the horrific crimes of this period. Fortunately, the government and tribunal can fix these problems easily if they have the will."

Source: Human Rights Watch.



for the tribunal's judicial functions. The adoption of Rules of Procedure in 2010 allowed the tribunal to begin its work in earnest.

However, Human Rights Watch said, additional amendments to the Act and Rules are needed to ensure that trials

tional criminal law and practice have since evolved significantly. Trials before a number of international courts, including the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the