

# Power outages must be addressed

## Govt must expedite efforts to resolve the crisis

We are concerned about the frequent power outages that have put citizens in a state of distress. In many areas, according to one report, residents are having to endure up to 12-14 hours a day without electricity. This has caused immense suffering, particularly amid sweltering temperatures, which are likely to go down with increased rainfalls expected. But any relief from heat will not immediately lead to a relief from power outages because of supply problems, warned the finance adviser. This situation is disrupting not only daily life but also businesses, industries, and essential services.

According to our findings based on data from the Power Grid Bangladesh PLC, the power supply shortfall reached 2,312MW early Tuesday, a record in recent weeks, with Rajshahi, Rangpur, Cumilla, Mymensingh, Sylhet and Dinajpur being the hardest hit. Even Dhaka has not been spared, with its two power distribution companies reporting a combined supply shortfall of around 500MW. The question is, what's causing this shortfall? Insiders have blamed operational failures, dollar shortages, and natural disasters for this situation.

Since Monday evening, the operations of Dinajpur's 525-megawatt Barapukuria thermal power plant remained suspended after its lone functioning unit shut down. Apparently, this happened because the plant's Chinese contractor failed to conduct timely repairs, which will now take about two weeks. Additionally, at least 25 gas-fired power plants have been offline since May 27 when Cyclone Remal hit coastal areas. The cyclone damaged one of the country's two floating storage and regasification units (FSRUs), significantly reducing our LNG regasification capacity. Despite efforts to resume its operations several times, it has failed. The FSRU is now slated to open on September 15, but it will not improve the situation immediately as it will take at least two weeks for its LNG gas cargo to arrive.

Another major challenge has been the persistent dollar crunch, which has delayed the import of primary fuels such as coal, gas, and furnace oil. The Power Development Board is reportedly grappling with a backlog of outstanding payments, including \$800 million owed to India's Adani Group for electricity supplies, for which it has been pressing the interim government of late. The authorities must find a way to navigate this crisis, chiefly because the financial shortfall is directly contributing to insufficient fuel imports, and thus hindering our ability to ramp up power production.

The urgency of resolving the power outage problem cannot be overstated. Without a reliable supply of electricity, the country's industrial output and overall quality of life will continue to suffer. We, therefore, urge the government to further expedite its efforts to fix ongoing issues like maintenance of power plants and delayed fuel imports. Going forward, the government should also focus on diversifying our energy sources, including expanding renewable energy projects, which will help make the power sector more resilient in the future.

# Bring back prisoners on the loose

## Targeted measures needed to improve prison security

We are gravely concerned that a good number of prisoners who escaped amid the chaos surrounding the events of August 5 are still at large. According to a report, 928 inmates, 84 of whom are condemned criminals, have yet to surrender or be arrested. Prison authorities say the police are still largely clueless about their whereabouts. This is worrisome as having these people, including convicted militants and terrorists, on the loose poses a considerable threat to society, especially considering the current law and order situation in the country.

These inmates reportedly broke out of five penitentiaries across the country: Narsingdi, Kashimpur, Kushtia, Sherpur, and Satkhira. Most of the condemned criminals broke out of the Kashimpur High Security Jail in Gazipur. According to the recently appointed inspector general of prisons, poor structures as well as prison officials' lack of preparedness amid a nationwide mass uprising facilitated the prison breaks, with most of the escapees taking advantage of the situation.

The current authorities, dealing as they are with an unprecedented situation, are hard to blame for this. The prison chief has rightly said that this was a lesson for them, highlighting the importance of ensuring that a situation like this never recurs. The first step towards that is getting back absconding prisoners. Sources said measures have been put in place to prevent the prisoners from fleeing the country. While these are necessary actions, more concerted efforts are needed because the longer they are out, the greater the threat for the nation. To this end, a joint drive by security forces—much like the one being conducted to retrieve firearms stolen from police stations—should be immediately launched to arrest all the escapees.

Another issue that requires attention is prison reform. The prison staff is currently stretched thin, with fewer than 11,000 staffers managing more than 75,000 prisoners spread out in 68 penitentiaries. Jail guards are underpaid and overworked, which makes them susceptible to corruption. We agree with the home adviser that most problems in the prisons would be gone if corruption and bribery were eradicated, but that can't be achieved without providing proper incentives to the staff, including decent wages and work hours. We are glad that the relevant authorities are interested in making meaningful changes to overhaul the system. These efforts must lead to significant improvements in prison security and rehabilitation of all inmates.

# THIS DAY IN HISTORY

## First African American woman goes to space

On this day in 1992, Astronaut Mae Jemison became the first African American woman to travel into space, as part of the STS-47 Spacelab J mission.



# Focus first on constitutional process, not content

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**Views expressed in this article are the authors' own.**

ZIA HAIDER RAHMAN and MANZOOR HASAN

In the first public event following his appointment as special assistant to Chief Adviser Prof Yunus, Mahfuj Alam repeatedly invoked the idea of a new people's will, observing that "a new populace" has emerged and the will of this new populace must shape the future of Bangladesh. The event was convened to discuss constitutional issues. In this piece, we make two overarching points regarding constitutional design, which we respectfully urge the interim government to consider.

There is already a proliferation of Dhaka civil society forums discussing the content of a new constitution, as well as debate about whether we need an altogether new constitution or whether we should merely amend the existing one. But the focus right now should not be on content, nor on how drafting should take place or whether we start from scratch or merely amend. Instead, attention must concentrate on establishing a "process" towards a ratified final constitution and announcing that process as soon as possible. A new era with a new populace doesn't just need a new constitutional dispensation but a new way of arriving at such a dispensation.

In a 2018 referendum, the Irish people voted to repeal a constitutional prohibition against abortion. The issue of abortion is irrelevant to this discussion: What took place before Ireland decided to remove the ban is what concerns us here, as well as what "didn't" take place after the decision.

Before the referendum, over the course of a year, Ireland held a number of televised citizens' assemblies, appropriately moderated, to discuss several issues, including, for example, abortion and fixed term parliaments. What did "not" take place after the referendum, in which 39 out of 40 constituencies voted to make abortion legal, was public acrimony or ongoing grievance about a decision taken on a potentially incendiary topic in a deeply Catholic country. Everyone

understood that because of the process the referendum reflected, crucially, an informed will of voters.

By contrast, in referenda in 2022 and again in 2023, the Chilean people twice rejected different proposals for a new constitution, despite the fact that the proposals would have replaced a widely reviled constitution inherited from the era of the dictator Augusto



VISUAL: ANWAR SOHEL

Pinochet. The consensus of expert observers is that, fatally, the draft constitutions had been put together by cliques, the first-time comprising actors on the political left and the second actors on the right, who doubtless believed themselves acting in the service of the nation but who were, in fact, far removed from the concerns of the people.

There is broad consensus among scholars of constitutional engineering about the importance of public involvement, reflecting also a trend in such involvement in practice around the world. Since a constitution consists of higher laws standing above laws passed by the legislature, its importance is paramount. A new constitution should not be written exclusively by the Dhaka elite, without discussion among and input from the

public, starting at the very beginning. A constitution founded on the widest practicable public engagement is more likely to achieve the greatest legitimacy, thereby making it, among its other virtues, more robust in the face of attempts to subvert it in years to come.

Scholars of constitutional process and design describe the process we propose as an "hourglass model." Like an hourglass, it is wide at the top, with inputs from the public, after public discussions, and from civil society. It then narrows in the middle to a deliberating and preliminary drafting body, before widening again into the public, either in the form of an elected constitutional assembly, or a referendum, or a combination. A ratification stage follows. The

body, there will be questions regarding its composition, of course. Should such body be required first to provide a review of the public and civil society submissions? As for a constitutional assembly, who should sit in it? Should former and current elected officials be barred from the assembly and should assembly members be barred from holding future office? Such questions themselves could form part of public discussions.

In process design, what are called upstream and downstream constraints will need consideration. The work of actors downstream, such as a deliberating body, will be shaped or constrained by what the public and civil society provide them. Equally, since the public and civil society—the actors upstream—will know that what they submit will go through a deliberating and preliminary drafting body before coming to a constitutional assembly or referendum, they will shape their submissions accordingly. Such effects will have to be considered carefully.

These are only some of the many issues that will need consideration. Importantly, we should bring to bear learning gained from relevant experience around the world.

All this discussion of detail neatly brings us to the second overarching point we wish to make. To run the process we describe involves managerial skill, more so than legal expertise. For too many years, we have endured an autocratic regime that has degraded the standards of our administrative sector, our civil service. It grieves us to acknowledge this. Constitution-building that is inclusive of the public will require us to draw in the best and the brightest. Even if a member of the great and the good stands as figurehead, the work—including day to day decision-making—will have to be done by people with recognised talent for getting things done. That may mean drawing in people from outside the usual channels.

In future pieces, we address other matters, constitutional and otherwise. But we lead with this piece because it is vital that the interim government address process issues swiftly and announce a roadmap, with some detail and not mere generalities, outlining what we will all do to take a new Bangladesh with a new populace to a new constitution.

# Futility of restoring the non-party caretaker government



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Since the interim government under Prof Muhammad Yunus came to power, intellectuals have been writing and speaking about how the interim government can be legitimised under the current constitutional system of Bangladesh. Some have even argued that removing the non-party caretaker government (NPCG) from the constitution was unconstitutional as it affected democracy and the people's right to a fair election. Learned lawyers have even filed petitions to restore the NPGC system in the constitution. I would argue that restoring the removed provisions of the constitution would be futile, and over-reliance on the system of the past would lessen the chances of achieving the reform people desire.

To plan for a better future for Bangladesh, we must first acknowledge that the Bangladesh Constitution has failed to maintain a robust democratic system. Under the 1972 constitution, Bangladesh has continuously struggled with peaceful transitions of governmental power. The struggle did not end after the introduction of the NPCG system. In its 53 years of existence, the people of Bangladesh had to shed their blood and sacrifice valuable lives multiple times for changing political regimes. In a constitutional system, if the transition of power

frequently causes loss of lives, the system must be flawed, if not a complete failure. However, it would be unfair to blame the constitution solely for Bangladesh's misfortunes. Our constitution is not a divine book containing ultimate wisdom, but an artifact weaved from political decisions and compromises. It has been amended by democratically elected parliamentarians and autocratic regimes alike, bending the constitution to meet their political agendas respectively. Sticking to a failed system or bringing back another is neither necessary nor wise.

We recognise the constitution as having more democratic and legal legitimacy than ordinary legislation because we consider constituent power to be greater than legislative power. Constitutional supremacy does not stem from a provision of the constitution that declares itself to be supreme. Instead, its supremacy comes from the people's decision to treat it as such. The theory of constituent power that was presupposed by the makers of the constitution of the United States of America notes that "people's will [is] both anterior and superior to every instance of positive law, not excluding any constitutional text" (Richard S Kay, 2011). The same principle that gave the people of Bangladesh the power to adopt our

previous constitutional structure allows us to create a new one. The people's willingness to breach the curfew order and take to the streets to overthrow the previous regime can be taken as people's will to reject the previous system. However, we do not have to rely on the implied will of the people. One way to know if the people want a new constitutional system is

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by holding a referendum. Thus, we can expand our visions of reform beyond the boundaries of the existing or past systems.

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same as the NPGC. The NPGC system had a fixed tenure, and its primary mandate was to ensure a free and fair national election. The current interim government's primary mandate is not only to hold an election but also to bring significant reforms. The NPGC was designed to be headed by the most recently retired chief justice of Bangladesh unless she/he refused. The design of the interim government is quite different from the design of the NPCG. If the interim government had the same design as the NPGC system, the people may not have accepted it as openly as they have. Thus, even if the NPCG system is brought back into the constitution, it would not automatically give legitimacy to the interim government. It is also important to note that the interim government's legitimacy will derive from the legacy it leaves behind and its ability to reform Bangladesh and restore democracy, in spite of any justification it has in its favour.

We must appreciate that the current time and circumstances have presented us with an opportunity not enjoyed by most generations. Time has presented us with the chance to reconstitute ourselves. The cost of lives is too great a price to ensure the proper transition of governmental power. It is not feasible or reasonable to ask the people of Bangladesh to pay this price every 10 years or so. An ideal constitutional system should outlive at least its framers' generation. If we fail to create a system that is peacefully carried on by future generations, we will have failed to "constitute" anything. The spirit of the constitution is more important than the text. As long as we can retain this spirit, we do not need to carry the mistakes of our ancestors forward.