

Analysing the constitutional reform recommendations

Aparajita Debnath
is an advocate at Dhaka Judge Court.

Anupam Debnath Roy
is pursuing PhD at the University of Oxford. He can be reached at anupam.roy@sociology.ox.ac.uk.

APARAJITA DEBNATH and
ANUPAM DEBASHIS ROY

Following the student led mass uprising that led to the historical fall of the fascist Sheikh Hasina government on August 5, 2024, the interim government formed the Constitutional Reform Commission in October to draft and adopt a new, inclusive and democratic constitution, ensuring the inviolability of human dignity. After months of deliberation, the committee, headed by Prof Ali Riaz, a political scientist and Bangladesh specialist with international renown, has submitted their report with a number of key reform recommendations. Some of those recommendations are unprecedented, and praiseworthy, whereas some of them need further clarifications or even amending through consultation with the citizenry and other stakeholders.

Let's start with the Preamble, which is the soul of the constitution and is considered its legal and moral basis. Along with the historic Liberation War of 1971, the anti discrimination movement of 2024 is mentioned with equal respect in the new proposed Preamble. This may seem like a good decision, but one may wonder if the wording is not clear enough to distinguish the difference between these two historic events. While 2024 will forever be a glorious chapter in our history that the new generation brought about, it would be foolhardy to try and compare it to 1971, which marks the genesis of the nation. We are not suggesting that the new Preamble does that directly, but we believe that more careful wording could avoid this equivocation and distinguish both events in their own glory.

A major change has been proposed in the fundamental principles of state policy by removing nationalism, socialism and secularism, retaining only democracy from the original principles. The other three have been replaced by equality, human dignity, social justice, and pluralism. By adding pluralism, they encourage the state to promote communal coexistence and mutual respect among different communities as Bangladesh is a pluralistic, multi-ethnic, multi-religious, multi-linguistic and multi-cultural country. Although removing "secularism" may seem counterproductive, hopefully, the inclusion of "pluralism" will help the people consider every ethnic/religious community as equal and maintain harmony in society.

Discarding secularism makes further sense because Bangladesh has not experienced separation of "church" and "state" the way

Western nations have, and the ideology of secularism may not apply to our context as they would in the nations that ordain secularism as their basic tenet. In our part of the world, religion has always played a key role, and often a political one, to ensure that the machineries of state work properly in favour of the oppressed.

constitution, which describes the offences related to the constitution as sedition, and Article 7B, which says the basic structure of the constitution is not amendable, is needed because this reform proposal does recommend changes to the basic structure. However, to prevent the future regimes from turning into new fascists and use the

this may prove to be too chaotic and expensive to maintain for a small country like Bangladesh. Having 350 seats for 64 districts should be enough for the legislature to function smoothly, if the government has the goodwill to run it properly. Unicameral parliament is typical in small countries with unitary systems of government (e.g.

the judiciary by establishing permanent benches of the High Court in every division of Bangladesh. This is not an entirely new concept for our country. The Eighth Amendment introduced this system in 1988. Although it was widely criticised back then in the *Anwar Hussain vs Bangladesh* case (known as the eighth amendment case) as it was challenged on the ground of *ultra vires*, the basic doctrine was nullified in 1989. Now, if it becomes possible with the new constitutional reform, it will be an effective step towards reducing the backlog of pending cases that is too big a burden for only one capital-centric High Court Division.

Another notable recommendation is to establish an independent Judicial Appointments Commission (JAC), led by the chief justice and six other members, to select judges for recruitment to both divisions of the Supreme Court. In the present time, the appointment of judges to the Supreme Court is handled by the president with prior mandatory consultation with the prime minister. This appointment process has a room for bias as it is greatly influenced by the executive. With the JAC, transparency and accountability will be ensured in the appointment of judges, which will make the judiciary truly free and independent, ensuring the separation of power.

One thing that the committee did not recommend, but would have been a good idea, is including the provision for the posts of vice president and deputy prime minister. This could have been a great addition to the constitution, especially if there were provisions that the opposition would nominate the vice president and also would appoint the deputy prime minister. This would ensure that the opposition has a strong role in state affairs and are not just lame ducks who are only good for walking out of parliament in a fit of rage. It is important to note here that the commission commendably suggested that floor-crossing be allowed in most cases. This will empower the MPs as their votes will actually matter, and real politics will take place in parliament.

Denmark, Sweden, Finland, Portugal, Hungary, New Zealand, etc), some of which are bigger than Bangladesh. However, the way the Senate has been planned is progressive and innovative. Choosing members through proportional representation, reserving seats for disadvantaged sections of society, and creating an option for the president to choose more members show that this new plan has a way of increasing representation from the citizenry. And due to its structure, more non political people from the citizenry and civil society can be present in the upper house.

Another

recommendation

is to ensure at least 10 percent youth participation in the national assembly from every political party. Also, the number of reserved seats for female members of parliament has been increased from 50 to 100, which will include more women in the legislature.

However,

the timeliest

reformation

recommendation

is perhaps decentralising



VISUAL: SALMAN SAKIB SHAHRYAR

Another praiseworthy recommendation is the abolition of Article 6 (2) of the current constitution, which says all the people of Bangladesh are a "nation of Bangalees," to be replaced by "all citizens of Bangladesh will be considered as Bangladeshi," irrespective of their ethnic origin. This is a must-have for a pluralist Bangladesh that is inclusive of all other ethnic identities. Ethnic minorities have been sidelined and marginalised throughout much of Bangladesh's history; it's high time this was rectified. Since independence, we have spent much of our time trying to tell the ethnic minorities to assimilate with the Bangalee majority, not taking into account their distinct ethnic cultures. This is a foundational contradiction for our nation that started its journey of nationalism on a quest for equal cultural recognition in the Pakistani state. It's high time for the course of history to bend towards justice in this respect.

However, the recommendation to completely abolish Article 7A of the

constitution as their shield with flexible amendments at any time, there should be some provisions to address such constitution-related offences, which might be added later in the newly reformed constitution. A point may be made against keeping the constitution as rigid and inflexible as it is now: it is better to have a constitution that can be changed as per the needs of the time. However, our existing constitution has had 17 amendments over the last five decades even after being a rigid one. Our history teaches us that making the constitution flexible may backfire and turn it into a plaything in case a party gets enough votes to change it as they wish—like the Awami League got in the 2008 election. This may be prevented if there are more seats in parliament.

One of the most significant changes recommended is to make the parliament bicameral, dividing it into two chambers: National Assembly and Senate. While this sounds like a good idea as it will increase public representation in the assembly,

Denmark, Sweden, Finland, Portugal, Hungary, New Zealand, etc), some of which are bigger than Bangladesh. However, the way the Senate has been planned is progressive and innovative. Choosing members through proportional representation, reserving seats for disadvantaged sections of society, and creating an option for the president to choose more members show that this new plan has a way of increasing representation from the citizenry. And due to its structure, more non political people from the citizenry and civil society can be present in the upper house.

Another really positive recommendation is to ensure at least 10 percent youth participation in the national assembly from every political party. Also, the number of reserved seats for female members of parliament has been increased from 50 to 100, which will include more women in the legislature.

However, the timeliest reformation recommendation is perhaps decentralising

How carbon markets can drive Bangladesh's green transition



Shafiqul Alam
is lead energy analyst for Bangladesh at the Institute for Energy Economics and Financial Analysis (IEEFA).

SHAFIQUL ALAM

With the flow of international climate finance still slow, carbon markets, supported by results-based finance, will likely pave the way for developing and least developed countries to incentivise emission reductions. The approval of Article 6 at the 29th UN Climate Change Conference (COP29), held in Baku, Azerbaijan, has finally laid the foundation for a global carbon market.

Article 6 defines two market-based approaches under Article 6.2 and Article 6.4. The former allows direct country-to-country carbon trading, known as the Internationally Transferred Mitigation Outcomes (ITMOs). ITMOs may contribute to a country's mitigation target under its Nationally Determined Contributions (NDCs), while the other country will receive revenue against the sold ITMOs.

Article 6.4, also known as the Paris Agreement Crediting Mechanism (PACM), is a centralised and stringent carbon market framework, which a supervisory body of the United Nations Framework Convention on Climate Change (UNFCCC) will regulate. A host country may implement clean energy and environment friendly projects, register these with the UNFCCC, and sell the verified emission reductions to another country seeking carbon credits to meet its mitigation target. Article 6.4 will allow both countries and companies to participate in trading.

This article will further assess the eligibility of the transition of the Clean Development Mechanism (CDM), which has been the UNFCCC administered carbon

trading instrument between developing and developed countries since 2006.

As CDM is the largest project-based carbon crediting programme, different countries will now build on their experience with it to utilise it in carbon markets under Article 6. While some countries largely benefited from CDM projects, Bangladesh has enjoyed limited success. The country needs to prepare, drawing lessons from the CDM era, and undertake measures for readiness to develop suitable mitigation projects for swiftly tapping the opportunities of carbon markets.

Moreover, Bangladesh's apparel sector may buy carbon credits under Article 6.4 to meet its goal for emission reductions beyond what it can achieve by implementing measures locally.

Bangladesh's lacklustre performance in the CDM

As of December 2023, 99 host countries (least developed, developing, and small island countries) registered 7,841 CDM project activities. The UNFCCC issued 2,357 million Certified Emission Reductions (CERs).

Notably, 10 of the 99 host countries registered more than 87 percent of CDM projects, while China and India combined registered 69.5 percent. However, China benefited the most as its projects generated more than 50 percent of the CERs issued by the UNFCCC. Projects in India, Brazil and the Republic of Korea, which delivered around 30 percent of the CERs, were behind China.

On the contrary, Bangladesh could register 10 CDM projects, resulting in a paltry 1.26 million tonnes of CERs, representing only 0.53 percent of the total issuance till December 2023. While Bangladesh has also registered 11 CDM Programme of Activities (POAs), to date, only around half of them have generated CERs.

Such a lacklustre performance in registering the CDM projects can, at best, be described as a lack of capacity in, among other things, establishing the baseline emissions and writing the project design document (PDD), following the suitable methodologies approved by the UNFCCC. By the time a few people developed the capacity to establish baseline emissions, write PDDs and complete the project cycle until the issuance of CERs,

the CDM market collapsed. Prices crashed to \$0.65/CER in 2012 against a lucrative price of more than \$30/CER in 2008, owing to unsold CERs due to oversupply and lack of demand. Prices stayed low for carbon credits and were less than avoided even for most of the period between 2021 and 2024. Buyers attribute this to a lack of high-quality carbon credit projects. Therefore, many potential local project developers lost their intrinsic motivation to pursue CDM projects.

Lessons from CDM projects

Bangladesh's readiness will dictate how it will fare in the new carbon market regime. The country should decide on, among other things, the potential role of Article 6. Building on its limited experience with CDM, the accounting mechanism for the ITMOs to avoid double counting. Bangladesh should highlight its strong commitment to utilise carbon markets to stakeholders, including the private sector.

country should design targeted programmes to develop the capacity of professionals and organisations to implement high-quality greenhouse gas (GHG) mitigation projects swiftly.

Furthermore, it should develop policy and regulatory processes to expedite the implementation of projects under Articles 6.2 and 6.4.

The Department of Environment (DoE), which is Bangladesh's designated national authority (DNA) to the UNFCCC, may help in designing and facilitating the country's readiness programme for carbon markets to develop the technical capacity of stakeholders in designing, implementing and monitoring projects. The DoE would also need to establish a national registry and

largest sources of GHG emissions, will emit 23.98 million tonnes of CO2 in 2030 under the business as usual (BAU) scenario. Transitioning to energy-efficient and non-fired brick technologies will drastically cut the sector's CO2 emissions and improve air quality in adjacent areas. These expensive technologies will require incentives. International carbon markets may incentivise the quick deployment of these technologies.

The National Action Plan for Clean Cooking shows the country had 29 million biomass-based inefficient cookstoves during 2019-20. Improved cookstove projects can generate considerable carbon revenues.

Bangladesh may further capitalise on carbon markets to promote renewable energy technologies, including battery storage, both in utility-scale and rooftop segments, which under the BAU scenario shows a sluggish trend. Innovative solutions, such as replacing gas boilers with electric ones or heat pumps, can also deliver additional carbon revenue.

Among other things, municipal waste to energy and leakage reduction in the gas distribution systems will likely qualify for carbon revenue.

The apparel industry, which has committed to reducing 30 percent of its GHG emissions by 2030, may consider a combination of approaches—implementing projects locally for part of the mitigation and purchasing the remainder from high-quality projects implemented elsewhere under Article 6.4.

While carbon markets under Article 6 echo the promises that CDM initially showed, Bangladesh needs a clear sighted approach to benefit from it. This approach should include designing and implementing a readiness programme for carbon markets to develop the capacity of key stakeholders and bridge the knowledge gap. The major stakeholders will then determine which projects to prioritise. However, unclear or poorly defined priorities may limit Bangladesh's success in the new carbon market regime.

How Article 6 can benefit Bangladesh

Bangladesh faces challenges in expanding renewable energy, enhancing energy efficiency, and mitigating pollution from sectors like brick and household cooking. Article 6-driven carbon markets present a significant opportunity for the country by creating an additional revenue stream for projects and increasing their commercial viability.

Potential projects for carbon markets

The brick kiln sector, one of the country's