

Bangladesh Hearing - Testimony of Peter Manikas (NDI)

STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE

PRE-ELECTION DELEGATION TO BANGLADESH'S

2008 PARLIAMENTARY ELECTIONS

Dhaka,
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I. INTRODUCTION

This statement is offered by an international delegation organized by the National Democratic Institute (NDI) that visited Dhaka from November 16 through 19, 2008. The delegation assessed the political environment, electoral preparations and the legal framework for the upcoming parliamentary elections scheduled for December 18, 2008.

The delegation included Sam Gejdenson, former U.S. Congressman and current NDI board member; Honorable Saumura Tioulong, member of the National Assembly of Cambodia; and Peter Manikas, senior associate and regional director for NDI's Asia programs. The delegation was assisted by Jacqueline Corcoran, NDI/Bangladesh resident senior director; Dileepan Sivapathasundaram, NDI program manager for Asia; and Najia Hashemee, NDI/Bangladesh resident program manager.

The delegation sought to express the interest and concern of the international community in Bangladesh's return to a democratically elected government. It met with electoral and government officials, political party and civil society leaders, and representatives of the news media and the international community. The delegation stresses that it did not seek to reach any final conclusions on the 2008 electoral process. The delegation offers its findings and recommendations in the spirit of international cooperation and recognizes that it is the people of Bangladesh who will ultimately determine the credibility of the upcoming elections.

This delegation has arrived in Bangladesh at a critical time. After almost two years of rule by a military-backed caretaker government, the nation is on the eve of national elections. If the elections are participatory and conducted in an impartial manner, they will be an important step toward restoring democratic rule. If, however, the elections fail to gain the confidence of Bangladesh's citizens, they could lead to a continued erosion of the nation's democratic institutions and further entrench the role of the military in governing the country. All of the nation's political parties have not yet agreed to participate in the coming polls. Broad participation in fair and credible elections is an essential feature of a democracy. The delegation hopes that the caretaker government and political parties can quickly resolve any outstanding issues so that the elections are as inclusive as possible.

The interruption of the democratic process in Bangladesh was a major setback for the nation. The pending transition is an opportunity to build the public's confidence in the ability to govern the nation effectively in the interests of citizens. Bangladeshis are weary of rampant corruption, hartals (general strikes called by political leaders) and political violence. An important opportunity will be lost if the transition back to elected government is not sustained through more accountable and modern political organizations capable of gaining the public's trust.

II. POLITICAL ENVIRONMENT

On January 11, 2007, Bangladesh's president, with the backing of the military, interrupted the democratic process and postponed pending elections with the stated purpose of restoring public order to the nation. The caretaker quickly adopted emergency powers that brought all political activity to a halt, placed restraints on freedom of expression and threatened critics of the government with criminal penalties. These measures, though severe, were apparently supported by many Bangladeshis.

While Bangladesh's constitution envisions a caretaker with powers limited to preparing for an election, the new caretaker government launched an ambitious reform program and announced that it would need two years to complete its tasks. The program included addressing economic problems, endemic corruption, independence of the judiciary, as well as civil service and electoral reform.

Many Bangladeshis hoped that a so-called "third force" would replace the existing configuration of political parties. On February 23, 2007, for example, the Nobel Prize laureate, Dr. Mohammed Yunus, announced the formation of a new party, Nagorik Shakti (Citizens Power). The party sought to position itself as a more responsible alternative to the existing parties but failed to garner public support. Two months after the new party was launched, it was disbanded.

As part of the government's anti-corruption drive, Sheikh Hasina, the leader of the Awami League, and Khaleda Zia, the head of the Bangladesh Nationalist Party (BNP), were taken into custody on corruption charges. It was widely reported that efforts were made to force both leaders into exile. This was labeled the "minus two" strategy. However, Sheikh Hasina and Khaleda Zia are no longer in custody and are heading their parties in the lead-up to the national elections.

While the political landscape remains much the same as before the January 11 military intervention, there are some new developments. Several new parties have emerged and plan to contest in the upcoming polls. These new entrants into the nation's political life demonstrate the continuing interest and enthusiasm of many to participate in the political process. The commission has registered 35 political parties and the registration of several more parties is pending. November 20 is the deadline for parties to file their nomination papers.

There remains strong support for many of the caretaker government's reforms. However, there is every indication, including public opinion polls, that Bangladeshis want an early return to elected government. The nation is enthusiastic about the coming election, but disappointment will again result if political polarization, the failure to deal with corruption and the use of coercive tactics once again threaten to disrupt the political process.

III. ELECTION COMMISSION

The Election Commission is responsible for all election preparations including establishing the election schedule, delimiting constituencies, registering political parties and maintaining voter rolls. The commission is designated as an independent body in the Constitution but the appointment of key personnel is controlled by the prime minister, or in this case, by the chief adviser. Following the January 2007 military intervention, the new caretaker government replaced the commissioners appointed by the previous government. The new Chief Election Commissioner is highly regarded by most observers of Bangladesh's electoral process. However, the Election Commission became embroiled in a controversy when it invited a breakaway faction of the BNP to attend a series of dialogues the commission was conducting with the political parties. The commission has acknowledged that this invitation was a mistake.

There is general agreement that the election commission is a substantial improvement over those of the past. Former election commission appointments were viewed as politicized and undermined the credibility of past elections. Confidence in the impartiality and expertise of the Election Commission plays an important role in the ability of the country to hold an election acceptable to the voters and the political parties. The perception of bias or inefficiency may seriously erode confidence in not only the electoral process but also the electoral outcome.

The commission has worked to build confidence with political parties although some disagreements over the election rules and regulations remain. The commission discussed its proposed modifications to electoral laws with the political parties during three consultative rounds conducted this year. The recent amendments to the Representation of the People Order (RPO) 1972, Bangladesh's electoral law, include regulations that stipulate that the commission can cancel candidatures for electoral law violations and misconduct. This provision, in particular, has been criticized by the political parties as granting excessive discretion to election officials.

In addition, the amendments include the compulsory registration of parties and candidate disclosures, democratization of internal decision-making through regular party elections, transparency in finances and fundraising, a 33 percent minimum quota for women in all party decision-making bodies, and scrutiny of candidates' income and asset statements. While some political parties expressed concern with the level of information and documentation now required for candidate nomination, others indicated that the regulations generally seek to encourage openness and transparency in the political process. Potential candidates are required to file a 16-page form with the commission that includes detailed information on their financial holdings. While there were some delays in the final deadline for party registration due to party requests for extensions, 32 political parties were registered earlier this month.

The redrawing of constituency boundaries was also included in the electoral roadmap and completed by the commission. The 1976 Delimitation of Constituencies Ordinance requires redrawing after each census but the redrawing has not occurred since the 2001 census. The commission conducted the constituency boundary delimitation which was published on July 10, 2007.

Although redrawing boundaries had been one of the tasks of the election roadmap, the commission did not hold dialogues with the parties on this issue until after the announcement of the initial delimitation boundaries and then within the context of other electoral issues. Political party leaders subsequently filed petitions in court challenging the commission's action which were recently dismissed. The pending litigation was a major concern for the commission since the lack of resolution on this matter was delaying the announcement of the poll schedule as well as the finalization of polling stations.

An accurate voters list helps to ensure that only eligible voters cast their ballots on election day and assists in preventing fraudulent voting practices. A study by NDI in December 2006 found that primarily through duplication error and migration, 12 million extra names were in the old electoral roll. Following mounting domestic and international pressure, the commission recently completed the creation of a new electronic voters list with photographs. The new electoral roll is widely considered the most accurate in Bangladesh's history. The list of 81 million names is consistent with census estimates of the voting-age population. If broadly used by election officials and party polling agents, the photographic list should reduce the risk of electoral fraud. Voters have also been issued photographic identification cards which have been enthusiastically welcomed by Bangladeshis. Although not required for casting a ballot, the cards can assist voters in identifying themselves to election officials and speed the process of locating the voter's name on the electoral roll.

The Election Commission stated that it would hold municipal and city corporation elections. These local elections, held in August 2008, were originally scheduled for December 2007 but were postponed due to delays in the voters list. On November 2, the date the courts dismissed the pending delimitation cases, the commission announced that the national parliamentary elections would be held on December 18, 2008, and subsequent elections for 486 upazilla parishads (sub-districts). Previously several parties demanded that the polls be conducted as soon as possible but some are now asking for changes to the election schedule.

The August 4, 2008, municipal and city corporation elections, which were non-partisan, were considered a test or pilot run for elections conducted under emergency rule. There were no major incidents of election-related violence that were reported and the candidates expressed their general satisfaction regarding the overall voting environment. While voting in four city corporations and nine municipalities proceeded smoothly with a relatively high voter turnout, there was widespread confusion over voter identification numbers. It was reported

that a considerable number of voters returned home after spending hours in line because polling officials could not determine the identities of some voters despite having voters list with photographs. The commission reports that it will provide candidates with the new voters list well in advance of upcoming national elections. Some parties note, however, that the entire list is being provided only in digital form, thereby making it difficult for candidates without significant resources to effectively access the list, the cost of which would be considered a campaign-related expenditure falling within mandated spending limitations.

Another potential issue of concern is the transparency of the vote counting and tabulation process. After the closing of the polls, the ballots are counted at each polling station. Following the count, the results are transmitted to the district Returning Officer and then to the Election Commission in Dhaka. There have been allegations in past elections that polling center results were altered at the district level before transmission to Dhaka. It is vital to the credibility of the election process that the commission makes every effort to improve the transparency of the counting of votes and tabulation of results. The election commission told the delegation that, while official results will be announced after roughly seven days, polling station-level results will be provided to polling agents and observers immediately after the count at each polling station has been certified by the presiding officer. The results will also be posted at each polling station.

The commission is also conducting a dialogue with the media on a draft code of conduct. The four objectives of the draft code are to: provide a set of guiding principles for the mass media, ensure candidates' equitable access to mass media; provide adequate and accurate information on matters relevant to elections; and allow the media to perform their responsibility of providing voters with elections education. The proposed draft allows the media to report on opinion polls, election projection and exit polls. The media cannot present results as "official" until the commission has done so. Under the code, the media must also maintain a balance in the coverage of candidates and political parties. The government is considering suspending mobile phone networks on election day. Although this decision is designed to deter organized attempts at fraud and interference in the election process, it also makes it more difficult for candidates, party polling agents, and civil society organizations to rapidly share information on the election, including polling station results.

Domestic election observers can increase public confidence in the election and build the integrity of the election process. While the current election commission has been more receptive to domestic election monitors than have past commissions, it has crafted regulations that over-regulate the monitors and do not comply with international standards. The commission guidelines view the monitors as agents of the commission, rather than as a check on the electoral process as a whole. For example, they state that "domestic election observation is conducted to provide the commission unbiased information about the conduct of the elections that it may not receive from any other source." International standards now widely used throughout the world, conceive of domestic monitoring as primarily serving the broader public and providing impartial information on every aspect of the elections, including the

workings of the election commission. The impartiality of the monitors and the public confidence in their findings are jeopardized if they are viewed as too closely linked with those responsible for the conduct of the elections.

Another concern in the electoral process has been with the complaint process which in the past has taken up to five years. The commission advised the delegation that recently adopted regulations stipulate that complaints will take no longer than nine months to be processed.

IV. LEGAL FRAMEWORK

The military's intervention on 11 January 2007 was justified on the grounds of preventing a slide into widespread violence. The caretaker government, headed by highly-regarded technocrats, but heavily influenced by the military on sensitive matters, quickly ended street violence and raised hopes of political change. The caretaker government promised to tackle the corruption, nepotism and infighting that had crippled fifteen years of elected governments. It used wide-ranging emergency powers and argued that the exceptional situation ambitious program. Overall, while the caretaker government assumed power with a high degree of public expectation, confidence has eroded. legitimized its extended tenure and

The Emergency Power Rules (EPR), adopted by the caretaker, prohibited any procession, demonstration or rally without authorization from the government and imposed severe restrictions on press freedom by prohibiting any criticism of government deemed "provocative". The government also imposed a ban on all forms of public and private political activity although some restrictions have been relaxed. The EPR also authorized any member of the military and security forces to arrest any person on suspicion without a warrant. In addition, it authorizes the use of force to execute any order and grants immunity to the government for any action performed under the authority of the ordinance. These broad powers for the security forces have resulted in arrests and arbitrary detentions, as well as claims of mistreatment. International human rights groups such as Human Rights Watch, as well as Bangladeshi human rights organizations such as Odhikar, have documented numerous cases of abuse including extrajudicial executions. These are often disguised as "crossfire killings" by the Rapid Action Battalion (RAB), a paramilitary unit drawing personnel from the police, military and other security agencies. The RAB's abuse of power occurred under past administrations as well.

In past elections, minority groups including Hindus, Ahmadias, Urdu-speakers and women have been prevented from freely exercising their legal rights on election day and experienced post-election violence. The violence directed against minorities has repeatedly been initiated by political

party activists. Law enforcement agencies, however have a responsibility to ensure that the rights of all citizens are protected.

One of the key components of the government's ambitious reform program was tackling corruption. Although there is no reliable data available on the total number of arrests that have occurred, some human rights groups estimated that in the first year of the emergency alone tens of thousands of people were arrested, many of whom had no arrest warrants issued against them. While many were released, thousands were not, and the resulting public outcry prompted the government to rethink its strategy. Although there is broad public support for efforts to tackle corruption, the lack of due process during the anti-corruption drive has led human rights and civil society leaders to question the fairness and legality of the anti-corruption effort.

The caretaker government has used two bodies to underpin its anti-corruption drive: the Anti-Corruption Commission (ACC) and the National Commission on Combating Corruption (NCC). The ACC was established in 2004, but not fully implemented. The caretaker is attempting to breathe new life into this agency. It is currently led by a former army chief. The NCC is a temporary body designed to pursue anti-corruption cases until the ACC is fully organized. The government also established a Truth and Accountability Commission (TAC) under the 2008 Voluntary Disclosure Ordinance. The Commission was designed to permit persons to voluntarily disclose illegal gains received through corruption and return the proceeds to the government. The Commission was found to be unconstitutional by the High Court on November 13, 2008 but two days later the Supreme Court stayed this order for one month until further notice.

Judicial reform was also an important part of the caretaker government's program. Several steps have been made to help guarantee judicial independence such as amending the Criminal Procedure Ordinance and the Judicial Service Commission Pay Order. To finally establish an independent judiciary, however, it remains necessary to amend Article 116 of Bangladesh's constitution. This can only be done by parliament.

Another issue of concern will be the role of the military and security forces in the upcoming national parliamentary election. During the municipal and city corporation elections, police were inside polling stations which contributed to allegations that ballot secrecy was jeopardized. Currently, the caretaker government has noted that the armed forces will be in the field along with other law enforcement agencies for 20 days from December 12 onwards to maintain law and order before and after the parliamentary and upazilla parishad elections. The army was deployed 14 days before the polling day in 2001, 18 days ahead of the June 1996 election and 23 days before the polling day in 1991. Over 50,000 army personnel were deployed to maintain law and order before and after the 2001 elections. In 2001, the armed forces will have the authority to arrest anyone on the polling day without any warrant and act against any activity that goes against the electoral code of conduct.

V. RECOMMENDATIONS

The delegation offers the following recommendations in the spirit of international cooperation:

Election Commission

The commission should:

- .
review campaign finance limitations, in consultation with the parties, to determine if such limitations are realistic;

- .
amend its Domestic Election Monitoring Guidelines to ensure the independence of monitors and not permit political parties to veto monitoring organizations or individuals without a hearing;

- .
review the issue of shutting down mobile phone networks to determine if there are alternative ways to ensure public safety on election day;

- .
provide the voters list in print form as well as digital to ensure that all parties and candidates are able to campaign effectively and reach eligible voters;

- .
adopt measures to ensure that minority groups can exercise their rights on election day and are not subjected to post-election violence.

Caretaker Government

The caretaker should:

-
continue
dialogue with the political parties and the election commission to ensure
broad participation in the election;

-
act in
a completely neutral manner during the election and refrain from actions
that, in fact or appearance, favor or oppose any candidate or party;

-
lift
the state of emergency so that political activity can begin as soon as
possible;

-
not
deploy police or military personnel on election day in polling stations or
in a manner that appears intimidating to voters or that interferes with
the electoral process;

Political Parties

The parties should:

-
agree to sustain several
of the reforms adopted by the caretaker, including reforms to the Public
Service Commission, anti-corruption efforts and securing judicial
independence;

-
continue efforts to reform
their parties internally to make them more democratic and responsive
organizations;

-
agree to end hartals and
to use their elected roles in parliament as the principal forum for
constructive deliberation on issues and resolving disputes;

-
provide for a meaningful
role for the opposition in parliament.

Civil Society

The civil society should:

-
educate
the public about the need to refrain from violence, calling for
accountability to the law through and beyond the elections.

Military

The military should:

-

accept
its proper role in a democratic society and refrain from intervening in
the political process.