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Parliamentary Elections, 29 December 2008

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I. EXECUTIVE SUMMARY

EU EOM Mission

Elections for 299 of the 300 Members of the Jatiya Sangsad (JS) took place on 29 December 2008. Following an invitation from the Caretaker Government of the People's Republic of Bangladesh and the Bangladesh Election Commission (BEC) the European Union (EU) decided to re-deploy the Election Observation Mission (EU EOM) to Bangladesh that was suspended on 11 January 2007. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections as well as the laws of Bangladesh. The Chief Observer was Alexander Graf Lambsdorff, Member of the European Parliament. The EU EOM deployed the largest international observation mission in Bangladesh with 150 observers from 25 EU Member States plus Norway and Switzerland. The Mission undertook observation in all 6 Divisions of Bangladesh and was joined over the Election Day period by a four member delegation from the European Parliament.

Overall Conclusion

The 2008 Parliamentary elections marked an important step in the restoration of democratic governance to Bangladesh. A remarkably peaceful environment and high turnout on Election Day showed the determination of the people of Bangladesh to return to democratically elected government. In accordance with EU election observation methodology, the EU EOM to Bangladesh assessed the conduct of the JS elections in line with international standards and best practice for democratic elections. Minor technical difficulties aside, the EU EOM concluded that professionalism, transparency and credibility were the hallmarks of the election and that the election broadly met international standards. The outcome of the election appears to reflect the will of the people of Bangladesh and EU EOM observers did not report patterns of fraud in the process.

Legal Framework

The main legal basis for elections is the Representation of the People Order (RPO) which is excessively prescriptive in some places and insufficiently detailed in others. Over-regulation with the aim of transparency led to difficulty implementing some procedures, and some otherwise reasonable and useful processes, such as the scrutiny of candidates, disrupted the electoral preparations because of their implementation too close to Election Day. Bangladesh has acceded to and is bound by the International Covenant on Civil and Political Rights (ICCPR), the principal source of international standards for elections and committed to by 160 Member States of the United Nations. In line with EU methodology, the EU EOM also referred to General Comments of the United Nations Human Rights Committee, the body charged with providing interpretive guidance on the implementation of the rights and freedoms laid down in ICCPR. The EU EOM considers the comments of the Human Rights Committee relevant and valid as the rights to which they refer are those first laid down in the Universal Declaration of Human Rights (UDHR). The EU EOM also considered other treaties to which Bangladesh has acceded to, including the Convention on the Elimination of

All Forms of Discrimination against Women (CEDAW) and the Convention on the Political Rights of Women (CPRW).

Election Administration

There was a high degree of confidence in the Bangladesh Election Commission (BEC) which showed itself to be impartial and demonstrated its ability to conduct technically sound elections. While discharging most of its responsibilities in a transparent and responsible manner, efficiency was hampered by overreaching: the BEC regulated beyond its practical capacity to implement, which overwhelmed the system and left other areas such as the postal ballot system and the regulation of the consolidation process poorly-addressed.

Voter Registration

A key improvement in line with international electoral standards was the Final Voter List (FVL) which proved to be accurate, inclusive and reliable. However, the right to vote was undermined by the omission of some 3 million 18-year olds unable to vote in this election due to the registration cut-off date of 1 January 2008.

Party Registration

The RPO made registration of political parties taking part in the election compulsory for the first time in Bangladesh. The BEC managed the registration in an equitable manner, offering parties that initially failed to meet the requirements the opportunity to resubmit their application having made necessary changes. One consequence of the registration requirements was that very small or geographically concentrated parties could not qualify.

Campaign period

The campaign was generally conducted in an open and free environment with parties and candidates not reporting any obstacles to holding meetings and rallies. Although the State of Emergency was lifted five days into the official campaign period, on 17 December, before this it did not stand in the way of the campaign as the Government had relaxed the restrictions on election-related political meetings and rallies as of 3 November. On the same day, the Government had repealed the emergency provisions restricting freedom of expression and speech. Overall the campaign was peaceful but isolated violent incidents occurred between supporters of rival candidates. Police and security personnel discharged their duties appropriately on the whole. The army was deployed to ensure additional security from 20 to 31 December.

Media

Print and broadcast media covered the elections extensively and for the most part equitably. The media enjoyed a reasonable degree of freedom of expression with no reported instances of intimidation or violence against journalists during the campaign. Overall the coverage by the state owned media was neutral in tone.

Polling and Counting

Opening, voting and counting were conducted in a calm and orderly atmosphere, with procedures generally being implemented appropriately and only 2.8 per cent of cases being assessed as poor or very poor. The BEC polling staff proved to be committed and generally well-trained. The closing and counting procedures were followed and implemented appropriately in 86 per cent of cases observed, with some minor technical exceptions. Despite these minor procedural lapses, the observers noted that the Statements of the Count accurately reflected the results. The presence of party/candidate agents as well as domestic observers was considered important and contributed to the transparency of the voting and counting processes at polling centre and polling booth level. However, the BEC's reliance on party representatives to inform voters of their polling booths was unfortunate and arguably enabled campaign activities to continue on Election Day.

Consolidation of Results

The consolidation process, although transparent overall, was marred by a significant number of technical and procedural irregularities in its implementation. Both the informative network and the official consolidation process became entangled in a disorderly manner in 29 of the 38 consolidations observed. While this was regrettable it does not put the validity of the results produced in these consolidations into serious doubt.

Women in Elections

The participation of women in political and state institutions in Bangladesh is still very limited. The main reasons for the low number of women in the political process are the lower educational achievements of women, the patriarchal social system and particularly the influence of wealth in Bangladesh politics which is a constraint on women's political participation since very few women have independent access to financial resources. Of the 55 women who contested the elections 19 were elected. These 19 elected women will be joined by 45 women nominated to the parliament as per the provision in the Constitution on reserved seats for women. Beside the Prime Minister Sheik Hasina, there are four women who have been appointed as ministers – Foreign Affairs, Home Affairs, Agriculture and a State Minister.

Minorities in Elections

The political party's registration requirements in the RPO adversely affected the ability of national or ethnic minorities to form political parties, especially for those concentrated in particular areas. Of the 63 candidates from minorities groups, 14 candidates, all of whom stood for the AL won a seat. Three members of Sheik Hasina's new cabinet belong to minority groups: one Hindu, one Buddhist and one person of tribal origin from the Chittagong Hill Tracts (CHT). Issues relating to national minorities did not feature in the campaign, with none of the candidates making contentious comments about ethnic relations in the country. The enfranchisement of Bihari people was a positive development.

Civil Society

Participation of civil society organisations and a large number of accredited domestic observers was one of the positive features of this electoral process. There was a number of election activities carried out by civil society organisations, including election observation, civic education, political party development and efforts to increase women's participation.

Complaints and Appeals

Appeals and petitions related to candidate nominations had a significant impact on the election process in the month prior to Election Day. However, EU EOM observers reported that the establishment of the Election Enquiry Committees (EECs) and their flexible approach towards offenders had a positive effect on the campaign period. The EECs effectiveness can also be attributed to the fact that EECs were composed of experienced district judges who had received a two day briefing well in advance and with a well defined task as described in the Code of Conduct. At the end of the EU EOM's deployment in Bangladesh only one election petition contesting the election results in the constituency of Sirajganj-5 had been filed at the High Court with a court hearing still pending.

Key recommendations

- The annual update of voter registration conducted in the month of January should include citizens of 17 years of age but who will become 18 years of age before the next annual update, to ensure that those turning 18 between the registration cut-off date and the date of elections will be registered and allowed to vote.
- In view of the total dysfunction of the postal ballot, the BEC is advised to remove it as a polling option for security agents, displaced electoral personnel, polling staff and persons in legal detention and replace it with alternative mechanisms for the groups concerned.
- The BEC should undergo a review of its activities during the 2008 elections with a particular view to maintaining/increasing confidence in its activities. It should review the structure of its organization in order to strengthen and develop the capacity of its middle management and its secretariat.
- Political Parties and the BEC should achieve a minimum of one third of their leadership and decision making positions occupied by women by 2020, meeting the targets set in the 2008 National Women Development Policy.
- The Voter List should be organised in alphabetical order at the PCs and PBs so as to facilitate the information to voters for them to know in which PB they should vote. A second copy of the VL should be available at the PC for voters to check by themselves or with the help of some BEC official which is their PB rather than with party representatives.
- A Broadcasting Law should be drafted to ensure clear legal provisions for the media sector. Furthermore, a new instrument should be introduced setting out the mandate

and responsibilities of state owned broadcasters, and guaranteeing their independence from the authorities.

II. INTRODUCTION

Elections for 299 of the 300 Members of the Bangladesh National Parliament (Jatiya Sangsad) took place on 29 December 2008. Following an invitation from the Caretaker Government of the People's Republic of Bangladesh and the Bangladesh Election Commission (BEC) the European Union (EU) decided to re-deploy the Election Observation Mission (EU EOM) to Bangladesh that was suspended on 11 January 2007. The EU EOM is independent from EU Member States, the European Parliament and the European Commission in its findings and conclusions. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections, as well as the laws of Bangladesh. The Chief Observer was Alexander Graf Lambsdorff, Member of the European Parliament.

The EU EOM was deployed on 7 November 2008. Its headquarters were located in Dhaka and the Mission undertook observation in all 6 Divisions of Bangladesh. The EU EOM deployed the largest international observation mission with 150 observers from 25 EU Member States plus Norway and Switzerland. The EU EOM was joined by a four-member delegation from the European Parliament, led by Dr. Charles Tannock, Member of the European Parliament. On election-day observers visited some 800 polling booths across the 300 constituencies to observe voting. They remained stationed across the country during counting and consolidation process. The EU EOM issued its statement of preliminary findings and conclusions on 31 December 2008. The EU EOM closed its operations on 16 January 2009.

The EU EOM wishes to express its appreciation for the cooperation and assistance it received during the course of its work from: the Ministry of Foreign Affairs, the Bangladesh Election Commission, political parties, civil society organisations, international organisations, the European Commission Delegation in Bangladesh, and representatives of EU Member States and other embassies.

III. POLITICAL BACKGROUND

A. Political Context

The Parliamentary elections held on 29 December 2008 were the 9th Parliamentary elections since Bangladesh secured independence in 1971. The election was originally scheduled to take place on 22 January 2007 under the administration of a non-partisan Caretaker Government, as provided for in the Constitution of the People's Republic of Bangladesh. However, one of the main party alliances, led by Awami League (AL), decided to boycott the elections on the grounds that the Caretaker Government, headed by President Iajuddin Ahmed, was favouring its main opponent, Bangladesh Nationalist Party (BNP). On 11 January 2007, the EU EOM and other international observer missions judged that conditions precluded credible elections and suspended their activities. The same day President Iajuddin

Ahmed, under pressure from the army, cancelled the elections, resigned as Chief Advisor of the Caretaker Government, and declared a State of Emergency. A new Caretaker Government was appointed to prepare for credible and participatory elections and took office for an unspecified period of time.

In April 2007 the Caretaker Government committed to holding the elections before the end of 2008, a timeframe largely determined by the period of time required to complete a new electoral roll. To implement this project and other election-relation reforms, the Caretaker Government appointed fresh leadership to the BEC.

The State of Emergency was declared under Article 141A of the Constitution and remained in force from 11 January 2007 to 16 December 2008. It curtailed fundamental rights enshrined in the Constitution such as freedoms of movement, assembly, association, and expression. The ban on political party activity was gradually relaxed, with indoor meetings permitted in Dhaka from September 2007 and countrywide from August 2008. On 3 November 2008, the emergency rule restrictions on the freedoms of association and expression were lifted. In the light of the restoration of these fundamental rights, the European Commissioner for External Relations, Dr Benita Ferrero-Waldner decided to re-deploy a full EU EOM to Bangladesh.¹ The State of Emergency was lifted as of 17 December 2008.

The BEC had originally scheduled the parliamentary elections to take place on 18 December 2008. However, following a threat from the BNP-led alliance not to participate in the elections unless they were postponed, a compromise was found to hold the elections on 29 December. The Caretaker Government and BEC also met several other demands put forward by the political parties, including the postponement of the upazila local elections by several weeks. The authorities thus made significant efforts to ensure that elections could take place in an environment acceptable to all parties.

B. Key Political Actors

Thirty-eight registered political parties participated in the elections which were held in 299 single-member constituencies.² The two main electoral alliances were led, respectively, by the AL and the BNP. Since the restoration of democratic government in the 1990s, BNP had won two parliamentary elections in 1991 and 2001 and AL in 1996. Their respective leaders, Sheikh Hasina from AL and Khaleda Zia from BNP, had both served as Prime Minister in the past.

AL allied itself with the Jatiya Party (JP) of former army chief and President Hussain Mohammed Ershad and several smaller leftist parties. BNP continued its alliance from the 2001 election with Jamaat-e-Islami (JeI), led by Motiur Rahman Nizami, and a number of smaller parties. Five mostly new parties formed a third alliance called “Jatiya Jukta Front” (National United Front). The remaining parties contested the elections independently. In addition to party candidates there were 148 independent candidates, some of whom had failed to secure a party nomination and decided to run on their own.

¹ She had initially deployed an EU Election Assessment Mission with fewer observers and a more limited mandate than a full-fledged EOM.

² The election in Noakhali-6 constituency was postponed until 12 January 2009, following the death of one of the nominated candidates.

The electoral alliances concluded internal agreements for the allocation of constituencies to the component parties. The stated aim of each alliance to be represented by a single candidate in every constituency was not completely achieved. BNP and JeI fielded concurrent candidates in six constituencies while AL and JP candidates competed against each other in 19 constituencies. Both these alliances were represented country-wide. The parties of the Jatiya Jukta Front fielded close to two hundred candidates, many of whom were overlapping, particularly in the main urban areas.

IV. LEGAL ISSUES

A. The Legal Framework

The main legal acts governing the elections in Bangladesh are the Constitution of the People's Republic of Bangladesh of 1972 and the Representation of the People Order (RPO) of 1972 (as amended 2008).

The Constitution of Bangladesh and the RPO meet the terms for voting rights as stipulated in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). This implies periodic, universal elections with equal suffrage to be held by secret ballot and guaranteeing the free expression of the will of the elector.

The Constitution also includes the necessary elements for genuine elections: freedom of movement, of assembly, of association and of thought and conscience. These fundamental human rights were suspended with the proclamation of the State of Emergency 11 January 2007. In preparation for the parliamentary elections and to make possible a regular campaign period the Caretaker Government relaxed on 3 November 2008 the restrictions on meetings, demonstrations and freedoms of expression. The complete lifting of emergency took place on 17 December 2008.

The Constitution has been amended fourteen times and the newly-elected government with a necessary two thirds parliament majority has already announced a revision of the constitution.

Article 70 of the Constitution says that a Member of Parliament has to resign if she/he votes against her/his party. This article has been debated as it may give any political party leadership in the parliament undue influence over its parliamentary members.

Article 66 of the Constitution describes the criteria for being eligible to stand for election to parliament and the requirements are also reflected in the RPO and in the EPR. The article, notably sections 2(d) and 2(dd) has, during the candidate nomination process, been criticised for ambiguity.

Section 2(d) states that a candidate shall be disqualified if convicted “for a criminal offence involving moral turpitude, sentenced to imprisonment for a term not less than two years unless a period of five years has elapsed since the release”. The main issue was if anyone convicted could contest elections if an appeal remained pending at the Supreme Court Appellate Division. At the end of November 2008 the High Court finally decided that a convict could not contest the parliamentary elections ruling that the state of emergency must

be lifted before the scrutiny of candidate nomination papers. Although the scrutiny was finalized before the lifting of the state of emergency, convicted candidates were, after appeals had been filed at the Appellate Division, permitted to contest the elections.

Section 2(dd) disqualifies candidates holding “any office of profit in this service of the Republic”. The Election Commission took the position that, among others, mayors in local administrations could not contest as candidates. Mayors filing writ petitions at the Supreme Court had their petitions accepted and could at a late stage in the process enter the polls as candidates. It should be noted that these Supreme Court decisions were temporary awaiting a final decision after new hearings.

Shortly after the Caretaker Government took office it initiated an electoral reform programme, partly in response to international recommendations. As a result the election legal frameworks were substantially amended during 2007 and 2008. The amendments were promulgated as ordinances or auxiliary statutory regulatory orders (S.R.O.). All ordinances were presented at the first meeting of the new parliament and must be accepted or rejected within a month after the first parliament sitting. A special committee was established to evaluate the ordinances before parliament’s decision.

The election related legal acts that were presented before the Parliament are the recent amendments to the RPO and the entire Electoral Rolls Ordinance (Ordinance No. 18/2007). The Electoral Rolls Rules (S.R.O No.31/2008) is linked to the Electoral Rolls Ordinance and does not need to be submitted to the Parliament as a separate act. The Code of Conduct for the Political Parties and the Candidates (S.R.O. No.269/2008), the Conduct of Election Rules (S.R.O. No. 286/2008) and Political Party Registration Rules (S.R.O. No. 25/2008) are other important and recently amended acts. The most recent amendments are all connected to the previous version of the RPO before the emergency period and the acts will not pass before Parliament.

The RPO itself has been amended several times since 1972 and the result is a fragmented structure of detailed instructions mixed with general directives. The RPO contains a meticulous description of campaign irregularities and election offences, while the provision for consolidation of the election results lacks a comprehensible explanation of the process.

Article 91E in the RPO has been criticized as it grants the BEC wide-ranging powers to exclude a contesting candidate. It gives the BEC the possibility of excluding candidates after scrutiny of nomination papers and enables the BEC to initiate investigations based on “information from any source or any verbal or written report”. The article was criticized by the BNP alleging that the BEC could make subjective decisions against parties of their choice. At one stage the BNP had insisted on the suspension of 91E as a requirement for their participation in the polls. The BEC argued that this power is vested with most election administrations and would remain intact. Transparency International Bangladesh favored the position of BEC and called the article indispensable.

Legal employees at the BEC admitted that article 91E has entrusted the BEC with wide-ranging powers but regarded article 91E as a necessary tool for the time being to safeguard against abusive activities commonplace during previous elections.

A decision made by the BEC based on 91E can only be challenged at the High Court with reference to Article 102 in the constitution. Despite the criticisms no petition was filed by BNP or any other stakeholder.

Political party registration has for the first time been a requirement and is described in the Political Party Registration Rules (S.R.O. No. 25/2008) and as an amendment in the RPO³. Other improvements are obligatory and extensive financial disclosure for the candidate nomination process. Campaign spending is regulated and both contesting candidates and political parties have to declare campaign expenditures within a stipulated timeframe.

There are still shortcomings in areas such as election media coverage, which is largely unregulated, and ambiguity exists with regard to disqualification criteria for candidates, as well as in the procedures for allocating political party symbols to candidates.

The election commission's rigorous adherence to the amended procedures for nomination of candidates resulted in a process that was lengthy, demanding and had a considerable impact on other elements of the election process. In many cases candidates rejected by the ROs and the BEC filed a writ petition at the Supreme Court which, at a late stage, reinstated some candidates. The timing of these decisions were highly disruptive to the election process as ballots had to be reprinted a short time before Election Day. Nomination procedures should be amended to ensure there is sufficient time for the entire process to conclude well in advance of the elections, including any appeals to the Supreme Court.

The Supreme Court⁴ had a significant role in the electoral process as Article 102 of the Constitution gives the right to any person to file a writ petition⁵ to the High Court challenging any decision by any authority. This possibility was frequently used by candidates during the nomination process.

The process of candidate nomination was conducted in a transparent way and there was no apparent favour given to any of the candidates. However, the transparency does not extend to the documentation of the process. The BEC has not been forthcoming in providing information with regard to the number of appeals against rejections, the content of the appeals or the decisions made by the BEC.

B. Other Legal Issues

Bangladesh has acceded to and is legally bound by the most important election-related treaties, such as the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all forms of Racial Discrimination (CERD) and Convention on the Elimination Of all Forms of Discrimination against Women (CEDAW).

³ RPO Article 12-23.

⁴ The Supreme Court of Bangladesh is the highest court of law. It is composed of a High Court division and an Appellate division. The High Court division hears appeals from lower courts and tribunals and also has original jurisdiction in some cases. The Appellate division hears appeals from the High Court division.

⁵ A legal instrument in order to protect the fundamental rights and also other procedural rights of the citizens, as well as to ensure checks and balances of powers by the executive.

The state of emergency suspended the basic fundamental rights described in the above mentioned treaties. During this period the Caretaker Government took steps to enhance participation, transparency and accountability of the election process. New election legal acts were adopted and amendments to existing acts were promulgated. The current legislation fulfills the basic requirements as described in the treaties.

Notably, the creation of a new voters list improved voter's confidence in the process and added to the high turnout. Minority groups previously not registered as voters were included and efforts made to protect minorities from intimidation and harassments that were commonplace in past elections. As well as the inclusive voters list, general policies introduced to improve the participation of women in public life, also contributed to the unprecedented high turnout of female voters.

Requirements for candidates to present financial disclosure documents during the nomination process and thorough scrutiny by the BEC of the documents added to the transparency and accountability of the process.

A legislative shortcoming in a society with a fast growing media industry is the absence of regulatory legislation to guarantee a plurality of voices in the media and the possibility to challenge distorted or partial reporting.

C. The Electoral System

The Bangladesh National Parliament consists of a single legislative chamber with 300 members directly elected by simple majority vote in single-member constituencies to serve 5-year terms. Additionally, 45 reserved seats are allocated to women in proportion to the parties' overall share of the votes.

The President must be at least thirty five years of age and is elected by parliament to serve a 5-year term. A member of the Parliament is appointed by the President as Prime Minister. The Prime Minister selects the ministers to serve in the government.

The Constitution of Bangladesh states that to be qualified to vote you must be a citizen of Bangladesh and not less than 18 years of age.

To be qualified to stand for election one must be a citizen of Bangladesh and at least twenty five years of age.

V. ELECTION ADMINISTRATION

A. Structure and composition of the Election Administration

Article 118 of the Constitution lays down that *“the Election Commission shall be independent in the exercise of its functions and subject only to this Constitution. The Election Commission is mandated to hold Presidential, Parliamentary Elections and local elections, to delimit constituencies and to prepare voter lists.”* The Constitution does not require consultation on the appointment of Election Commissioners with political parties or other

election stakeholders. Commissioners are appointed by the President for a five-year term and can only be removed according to the procedures for removal of Supreme Court judges. The BEC was reconstituted in February 2007 by the Caretaker Government.

The BEC has extensive responsibilities and powers. As well as managing polling and the results process, it is mandated to conduct voter education, voter registration, party and candidate registration, constituency delimitations and is responsible for managing election-related complaints, including those related to campaign and media regulations.

The BEC has a permanent Secretariat. Before January 2007 the Election Commission Secretariat was staffed and financed by the Prime Minister's Office but since that date the Secretariat has been linked to the Ministry of Law and Parliamentary Affairs, with financial and administrative autonomy. The Secretariat has permanent representation across Bangladesh. The country's administrative organisation is used as a basis, but there is some variation; the BEC has nine regional offices, each headed by a Deputy Election Commissioner (DEC). It also has 83 District Offices, headed by District Election Officers (DEOs). This means that some of the country's 64 districts have more than one District Office.

Permanent sub-district election offices have been established, called in metropolitan areas "Thana Election Offices" (26) and in rural areas "Upazila Election Offices" (481). As there are 300 constituencies, many will have more than one Upazila or Thana Election Office. During the election period other local government structures become responsible for administering the election and aggregating the results. In particular, Deputy Commissioners (DCs) become Returning Officers (ROs) and therefore responsible for candidate nomination, election administration and the results process. During this period they also retain responsibility for their other duties, including control of magistrates and therefore law-enforcing agencies. There are 66 DCs/ROs (at least one for each district). Under the ROs, there are Upazila Nirbahi Officers (UNOs) in rural areas, and Thana Nirbahi Officers (TNOs) in metropolitan locations, who serve as Assistant Returning Officers (AROs).

The BEC has stated that the final number of polling centres (PCs) was 35,368 and there were 177,836 polling booths (PBs) open to serve 81,058,698 voters in 300 constituencies. However, due to the death of one candidate⁶ the election in one constituency was postponed and only 35,263 PCs and 177,277 PBs were open on Election Day to serve 80,811,291 voters in 299 constituencies with on average 5 PBs per PC. On 12 January, 105 PCs grouping 559 PBs were opened to process the 247,407 voters of the Noakhali 1 constituency.

The PCs were staffed by one Presiding Officer (PrO) responsible for the whole PC, with one Assistant Presiding Officer (APO) and two Polling Officers (POs) for each PB in a PC. Altogether, the BEC hired over 700,000 temporary staff for the 29 December elections; most of whom were teachers and civil servants with previous electoral experience whenever possible. On average PCs accommodated 2,500 voters with 600 voters per male PB and 500 voters per female PB.

⁶ Elections did not take place on Election Day in one of the 300 constituencies (Noakhali 1), due to the death of a candidate. The new election was held on 12 January 2009 in Noakhali 1 constituency.

B. Training of Electoral Personnel

The Electoral Training Institute (ETI), under the supervision of the BEC Secretariat, had the specific task of increasing skills and awareness among the personnel involved in the electoral process. The ETI is responsible for capacity-building in electoral administration and for training of all the personnel involved in the election.

The ETI provided training for an initial core of 1,068 Core Trainers and Master Trainers and for 160 Joint District Judges, who headed the Electoral Enquiry Committees (EECs), the bodies which dealt with pre-election offences and breaches of the code of conduct. Subsequently, the polling staff of all the upazilas (sub-districts) underwent training that consisted of three levels of cascade training and which was finalised by 26 December, with a total target of 40,200 PrOs responsible for PCs, 221,701 APOs in charge of PBs and 443,402 POs to man the PBs. These figures include a 10% strategic reserve of polling staff to cover possible absences on Election Day. This body of polling staff managed the parliamentary election and the subsequent Upazila (sub-district) polls. The training was performed with *ad hoc* training material produced by the ETI. EU observers assessed the training they observed as generally adequate, taking into account that a sizable proportion of the polling staff had previous electoral experience.

Overall, EU observers evaluated the performance of polling staff as good or very good in 97.4 per cent of the cases observed.

C. Administration of the Elections

There has been a greater degree of confidence in the current BEC than there was in its predecessor. The BEC undertook dialogue and consultation with most political parties and civil society on reform of the electoral process and this process was positively assessed by most stakeholders. However, BEC meetings were not open to observers or to the media, minutes of meetings were not made public and the instructions issued to the electoral personnel were generally not made available to the EU EOM.

Prior to the 2008 elections there had been a large variation in the sizes of constituencies, ranging from approximately 100,000 to more than 600,000 voters. In the 2001 election AL and BNP secured a very similar number of votes, but gained very different seat allocations. This resulted in calls for a review of constituency delimitations as well as the electoral system in use. By 10 July 2008 the BEC had successfully carried out and completed the review of constituency delimitations which affected 133 out of 300 constituencies. The Commission adopted a figure of approximately 267,000 voters per constituency and re-allocated parliamentary seats between districts and divisions to the satisfaction of the main stakeholders.

The BEC discharged most of its responsibilities in a transparent and responsible manner and in general the planning and execution of most electoral activities was timely and well-conducted. However, efficiency was hampered by overreaching and the BEC appears to have regulated beyond its practical capacity to implement, which overwhelmed the system. The BEC became overwhelmed by candidate nomination, scrutiny and the hundreds of resulting appeals, the adjudication of which by the courts ran past the deadline of 11 December. As a

result, the BEC did not have either the time or staff resources for other electoral matters which had to wait until the candidates related matters were finalised and left some areas such as the postal ballot system and the regulation of the consolidation process poorly-addressed.

Postal voting is available for Bangladeshi diplomats serving abroad, officials and security agents working on Election Day away from their area of residence and registration, together with their families if also away from their residence, and persons detained in legal custody. Polling Staff is covered by this provision.

The request for a postal ballot had to be presented to ROs in the period starting from the date of declaration of the electoral schedule on 2 November through to 17 November, with the exception of Polling Staff who could request a postal ballot as soon as appointed, even if later than 17 November.

The Prisons Administration, under the Ministry of Home Affairs, did not enable prisoners to request postal ballots and missed the 17 November deadline. However, after discussions with the BEC, the Prisons Administration sought to implement the enfranchisement of prisoners as provided for by law and presented the BEC with a full list of prisoners registered whilst in prison and entitled to a postal ballot.⁷ However, the BEC explained that it was unable to accommodate the voting rights of prisoners due to the resources spent on dealing with the changes of a few candidates reinstated by the courts in certain constituencies. As a result, no prisoner was able to vote.

The postal voting process has proved to be totally dysfunctional, and of nearly 1 million voters entitled to use this voting modality⁸, only a minimal number managed to request the postal ballot before the final deadline of 27 November. Although the BEC extended the deadline for the request, the reception and the use of postal ballots, the extension proved irrelevant in practical terms, and no further postal ballots were either requested or issued.

VI. VOTER REGISTRATION

A. The right to vote

Under Article 122 of the Constitution, there are four criteria for voter eligibility: (i) Bangladeshi citizenship; (ii) being not less than 18 years of age; (iii) not being declared to be of unsound mind by a competent court; (iv) being or being deemed by law to be a resident of the constituency in question. A resident is simply defined as someone who “ordinarily” resides in that electoral area.

B. Voter List

For the cancelled election of January 2007, the BEC had compiled an entirely new voter list containing 91.4 million voters. This resulted in widespread allegations of inflation and substantial omissions (including selective omissions of opposition supporters and minorities)

⁷ The list named some 67,000 prisoners.

⁸ Security agents displaced for elections polling staff, prisoners, other electoral personnel.

and also deeply weakened the credibility and public and political confidence in the BEC and led to boycotting of the elections by AL in 2006/07)

A new voter registration process, based on a door-to-door enumeration campaign, was designed and carried out from August 2007 to early July 2008. It was a largely successful exercise, leading to the production of a high-quality voter list with photographs with 81,058,698 voters, of which 41,236,149 are female (50.9 per cent) and 39,822,549 male (49.1 per cent).

The new Final Voter List (FVL) was much more accurate and inclusive than the 2001 and 2006 voter lists thanks to the absence of millions of duplicates or erroneous entries, as well as the registration of young voters and some marginalized segments of society. The data collected for the voter list was used to institute a national identity card scheme. The voter registration exercise ended in October 2008, with the delivery of the last ID cards to eligible voters, 17 months after the design of the campaign started in May 2007 and 11 months since its inception.

Political parties and candidates standing for election obtained an electronic copy of the FVL without the photographs and were allowed to print the list for the use of their agents on Election Day.

The registration cut-off date was 1 January 2008. Considering the date of elections at the end of the year, and that those reaching the age of 18 between 2 January and Election Day were not registered, this resulted in some 3 million 18-year olds being unable to vote in this election. The BEC did not facilitate any provision for overcoming this problem.

The BEC included a Supplementary Voter List (SVL) appended to the end of the regular electoral register to which, at the discretion of the BEC, those who were not included in the FVL could be added upon their written request. Awareness of the existence of this SVL was limited and nationwide, according to Preparation of Electoral Roll with Photographs (PERP), only 631 of voters actually registered on the supplementary list.

The organisation of the FVL by Voter Serial Number (VSN)⁹ and the allocation of voters to PBs according to that numerical order rather than alphabetically, made it impossible for voters to know their PB without the help of electoral officials or party activists in possession of the FVL. Eventually, the BEC decided to delegate the task of informing voters of their registration number and PB to the political parties, as has been the practice in previous elections. The BEC allowed political parties to establish bases next to the PCs where voters received the information necessary for them to know in which PB they could vote. The BEC's reliance on party representatives to inform voters of their VSNs and PB was unfortunate and arguably enabled campaign activities, through the use of slips of paper containing party symbols and pictures of candidates, to continue on Election Day.

⁹ Each voter's VSN comprises 13 digits.

VII. PARTY AND CANDIDATE REGISTRATION

A: Registration procedures

Political parties

The RPO made registration of political parties taking part in the election compulsory for the first time in Bangladesh.¹⁰ Registration was subject to either having achieved previous electoral results¹¹ or to the existence of party offices in a specific number of districts and sub-districts.¹² These criteria sought to exclude “sign-board” parties with little if any electoral weight or presence around the country. In addition, the RPO contained provisions aimed at promoting parties’ internal democracy and financial transparency. Party constitutions must provide for elections to party posts and the selection of parliamentary candidates on the basis of suggestions from local party committees. By 2020, one third of committee positions should be reserved for women. Within three months of an election, parties have to submit an expenditure statement to the BEC. Party constitutions may not have objectives contrary to the country’s constitution or contain any discrimination regarding religion, race, caste, language, or sex.

The deadline set for registration applications was 20 October 2008, by which time 107 political parties had applied. The BEC approved 39 of these parties for registration, representing a spectrum of political ideologies from secular and socialist orientations to Islamic conservatism or fundamentalism.¹³ Fewer parties could contest than in the 2001 elections, when 54 parties fielded candidates.

The BEC managed the registration in an equitable manner, offering parties that initially failed to meet the requirements the opportunity to resubmit their application having made necessary changes. The BEC verified the information provided by parties and many applications were rejected on the basis that purported party offices existed on paper, but not in reality.

One consequence of the registration requirements was that very small or geographically concentrated parties could not qualify. This affected parties representing minority religious and tribal communities such as Bangladesh Hindu League, PCJSS, and UDPF.¹⁴

The RPO provided that parties cannot be registered under the same name.¹⁵ However, the official party names were in several cases almost identical which made it difficult to distinguish between certain parties, despite their each being allocated a specific electoral symbol. By way of example, there were four registered factions of the Jatiya Party (National Party) and two of the Jatiya Somojtontrik Dal (National Socialist Party).

¹⁰ Art 90A RPO.

¹¹ To have secured either one constituency in any previous parliamentary election or five percent of the total votes cast in the constituencies in which its candidates took part.

¹² At least ten out of 64 districts and 50 out of 464 sub-districts.

¹³ One of these parties, Khelafat Majlish, ultimately did not present any candidates, hence there were only 38 parties taking part in the election.

¹⁴ PCJSS – Parbatya Chatagram Jano Sanghati Samiti; UDPF – United People’s Democratic Front.

¹⁵ Art 90C (2) RPO.

Candidates

The RPO¹⁶ listed candidate disqualification criteria which include defaulting on bank loan or failure to pay utility bills until fifteen days before the submission of nomination. A person who had been in government or army service could not be a candidate unless three years had passed since his or her resignation or retirement. A candidate must either be nominated by a political party or run as an independent. Independent candidates were required to submit a list of signatures representing one percent of constituency voters, a rule which did not apply to candidates who had been elected to Parliament in previous elections. All candidates were required to produce an affidavit with information regarding their educational qualifications, wealth, criminal record or pending charges against them, if any, and election promises made in past elections and how many of these had been fulfilled. After the final list of candidates was ready, the BEC published the information on its website, which must be described as a commendable transparency measure.

According to the election schedule announced by the BEC the deadline for submitting nomination papers was on 30 November. ROs scrutinized the nominations on 3 and 4 December. The BEC heard appeals of both rejected and accepted nominations from 6 to 10 December. The deadline for withdrawing candidatures was set for 11 December, after which the list of candidates per constituency would be considered as final. The timetable appeared too tight as the BEC came under significant pressure, in particular in terms of processing appeals and finalizing the list of candidates.

One of the recent amendments to the RPO provided that parties should choose a candidate from a list of names proposed by members of local party committees in the constituency concerned.¹⁷ This provision was inconsistently complied with. Among the main parties, AL seemed to be the most ambitious in terms of seeking to reflect the preferences of its local members, although the party overruled the latter's choices in a few constituencies, causing sharp protest. It appeared that BNP disregarded the provision altogether. The BEC indicated that it would not insist on the implementation of the provision in this particular election.

Seemingly clear RPO provisions with regard to candidate nomination became subject to questionable interpretation. The RPO allowed parties to nominate more than one candidate in a given constituency on condition that the RO was informed of the final candidate before scrutiny of the nomination papers.¹⁸ The larger political parties in particular took advantage of this provision, with both AL and BNP initially nominating multiple candidates in 30-40 constituencies. Depending on the case this seemed to be due either to indecision about who should represent the party or as a safeguard in case the preferred candidate was rejected on scrutiny. However, the BEC did not insist that parties withdraw multiple candidates before scrutiny, thus favouring parties with several nominees since these could fall back on their second or third choice should the preferred candidate be rejected.

The RPO stipulated that validly nominated candidates should personally sign a withdrawal form, to be submitted before the last day of withdrawal, if they wish to step down.¹⁹ As parties and party alliances struggled to persuade candidates to withdraw in many

¹⁶ Art 12 RPO.

¹⁷ Art 90B RPO.

¹⁸ Art 3 RPO.

¹⁹ Art 16 RPO

constituencies, the BEC determined that a candidate would be retained on the final list only if their party agreed. This amounted to giving parties the right to de-select nominated candidates, which would appear to be in conflict with the spirit of the RPO. It would be desirable to clarify in the RPO whether the party or the candidate has the final say about withdrawal.

There were 2,454 nominated candidates at the outset. The ROs rejected some 560 candidates who had submitted incomplete application forms or otherwise failed to meet the eligibility requirements. Following scrutiny and withdrawals, 1,538 candidates, including 141 independents, remained on the final candidate list. Subsequently, the BEC reinstated a number of candidates who had gained right of cause in the Supreme Court on appealing the rejection of their nomination. As a result, 1,552 candidates, including 148 independents, appeared on the ballot papers. On average, for 299 constituencies, there were 5.2 candidates per constituency. AL and BNP presented by far the greatest number of candidates, 263 and 259 respectively. All the other parties, with one exception, had less than hundred candidates each.²⁰

The RPO allowed candidates to stand simultaneously in a maximum of three constituencies, compared to five constituencies in the past.²¹ If a candidate was elected in several constituencies he or she had to decide which one to represent in Parliament,²² with by-elections being organized in the others within a period of three months from the declaration of the election result. There were 33 candidates who stood in multiple constituencies,²³ but only three were successful in winning more than one: the party leaders Khaleda Zia, Sheikh Hasina, and Hussain Muhammed Ershad. By-elections for these six seats are thus due to take place. AL only allowed Sheikh Hasina to be a candidate in multiple constituencies; in BNP three candidates enjoyed this privilege. The Constitution presently guarantees the right of candidates to stand in two or more constituencies.

B. Complaints Relating to Registration

Any decision of BEC with regard to the registration of a political party is final. However, if the registration of a party is challenged the BEC can give the party an opportunity to be heard. JeI, the major ally of BNP in the four-party alliance was one of the parties heard after being challenged by different civil society organisations. The party was eventually certified by the BEC.

If an already registered party has its registration cancelled it can appeal to the High Court.

Appeals and petitions related to candidate nominations had a significant impact on the election process in the month prior to Election Day.

Previously untested amendments to the RPO²⁴ and the election commissions' determination to rigorously follow the rules resulted in many candidates being rejected by the ROs.

²⁰ Islami Andolon Bangladesh presented 166 candidates. JI had 39 candidates and JP 46.

²¹ Art 13A RPO

²² Art 72 Constitution of the People's Republic of Bangladesh

²³ Just as many as in 2001, when candidates could stand in up to five constituencies.

²⁴ RPO Article 12-24.

Rejected candidates could appeal to the BEC and almost four hundred (388)²⁵ appeals were received. Hearings started on 6 December and the last case was heard late evening on 10 December. During the entire period the BEC was represented by all three Commissioners and leading officials of the Secretariat. The actual hearings were held in a transparent way and the decisions seem to be made in an unbiased manner.

The transparency did not however extend to the documentation of the hearings. BEC has not provided a reliable account on the number of appeals or the character of the appeals.

Many candidates rejected by the BEC filed writ petitions at the Supreme Court. A number of these petitions were accepted either by the High Court or later by the Appellate Division. The BEC was directed to reinstate candidates, decisions that disrupted the election process as ballots had to be reprinted a short time before Election Day.

The Supreme Court decision to direct the BEC to reinstate candidates was only temporary and hearings were expected to resume in January 2009. The BEC has informed that it is respondent in thirty six cases, with two cases involving candidates that obtained a seat in the elections. New elections must take place if the candidate's petition is finally rejected.

The Bangladesh Bank periodically investigated and charged loan defaulters. Many loan defaulters have filed writ petitions against the Bank's decisions and several were granted a postponement of their case. As a consequence of these postponements, at least thirteen candidates were able to contest the elections and four are known to have gained a seat. If eventually proved to be loan defaulters, these newly-elected parliamentarians, should, according to the law, not have been accepted as candidates and will thus lose their seats. This would then be followed by new elections in their respective constituencies.

VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A. Overview of the Election Campaign

The official campaign period lasted two weeks, from 12 December to midnight on 27 December. The BEC decided at a late stage that the campaign-free period before Election Day would be 32 hours, rather than the 48 hours specified in the RPO.²⁶ The code of conduct prohibited campaigning before and after the campaign period, a rule which was generally respected although the BEC did issue warnings to political parties that breached it in a few cases. In previous elections the campaign period was usually of three weeks. Some political parties welcomed a shorter and less expensive campaign, while others, primarily smaller parties, felt that they did not have sufficient time to reach voters.

The campaign was generally conducted in an open and free environment with parties and candidates not reporting any obstacles to holding meetings and rallies. Although the State of Emergency was lifted five days into the official campaign period, on 17 December, it did not stand in the way of the campaign as the government had relaxed the restrictions on election-

²⁵ Figures not confirmed by the BEC.

²⁶ Art 78 RPO

related political meetings and rallies as of 3 November. On the same day, the government had repealed the emergency provisions restricting freedom of expression and association.

Overall the campaign was peaceful but isolated violent incidents occurred between supporters of rival candidates. Police and security personnel discharged their duties appropriately on the whole. The army was deployed to ensure additional security from 20 to 31 December.

Campaigning methods included processions, speeches, door-to-door visits,²⁷ and ‘miking’ – playing messages from loudspeakers on moving vehicles. Most candidates campaigned in their own constituency although the party leaders, especially in the case of the main parties, toured the country in support of their candidates. Campaign speeches often focused on local development issues such as the construction of a bridge or hospital in the locality. While political opponents tended to be virulently criticised, the messages could generally not be characterised as inflammatory.

Parties did not appear to organize exchange of view meetings or similar events to give voters an opportunity to ask questions.

Most political parties’ election manifestos included promises to control food prices, energy production, employment, economic development, corruption eradication, law and order also featured prominently. As far as the major parties’ manifestos were concerned, the similarities were more striking than the differences, suggesting a basic policy consensus. There was a tendency in the manifestos to focus more on promises than on the means of realizing these. A positive feature, especially noticeable in AL’s manifesto,²⁸ was the effort of parties to specify timelines for the implementation of their promises, facilitating accountability.

Both AL and BNP made commitments to strengthen the rights and influence of the opposition in the Parliament. The Deputy Speaker would be appointed from the opposition bench and members of the opposition would also be assigned the chairmanship of certain parliamentary committees.

The code of conduct aimed to reduce disparities between candidates’ campaigning resources and limited campaign expenses to Tk 1.5 million²⁹ per candidate. Other measures included a ban on colour posters, the use of motor vehicles in rallies, and the offering of food and drinks to voters. Many interlocutors claimed that candidates with the financial means spent above the prescribed limit. The RPO included provisions for control of election expenditure post-facto: a candidate shall submit to the RO a return of his/her election expenses within thirty days of the publication of the election results.³⁰ Parties are bound to submit an expenditure statement to the BEC after ninety days of the completion of election in all constituencies.³¹

Support from party headquarters to candidates was very limited. Campaign financing remained the candidate’s own responsibility. It appeared that candidates in most cases relied

²⁷ It was common for parties to distribute voter list serial numbers on such visits, to help voters find the right polling centre and booth.

²⁸ It includes targets for power production, food security, primary school enrolment, and availability of pure drinking water.

²⁹ Approx. 19,000 Euro.

³⁰ Art 44C RPO.

³¹ Art 44CCC RPO.

on their own resources or contributions from family and friends to fund the campaign. More than half of the elected candidates had indeed declared business as their profession, suggesting that access to financial resources were an important factor in the election.

B. Complaints during the Campaign Period

EECs³² are established by the BEC and have the mandate to investigate irregularities during the campaign period as described in the Code of Conduct for the Political Parties and the Candidates (S.R.O. No.269/2008). These irregularities carry a maximum sentence of six months in jail or a fine of 50,000 taka³³.

Eighty-three EECs were established across the country to investigate alleged irregularities based on their own findings or complaints from the general public. EECs have no decision-making power with regard to these irregularities. After a concluded investigation the EEC submits its finding as a recommendation to the BEC, which is the body deciding on any legal action.

The BEC claims to only have acted on approximately 30 received cases and all were resolved through negotiations without any legal action. EU EOM observers reported that the EECs indeed had an overall policy to resolve the matter through negotiations and mediation and very few cases were actually filed. Alleged offenders were asked to rectify their action and were told that a second instance of misconduct would be punished.

The observers also reported that the establishment of the EECs and their flexible approach to the offenders had a positive effect on the campaign period. The EECs effectiveness can also be attributed to the fact that EECs were composed of experienced district judges who had received a two day briefing well in advance and with a well defined task as described in the Code of Conduct.

The RPO³⁴ has a chapter describing major offences such as bribery, fraud and undue influence, with sentences of up to seven years imprisonment. These offences are regarded as serious crimes which are to be adjudicated in temporary courts by magistrates appointed by the BEC. The BEC initially engaged executive magistrates for the task but on 18 December the Supreme Court ruled in favour of judicial magistrates. The BEC appointed 286 judicial magistrates on 24 December to be stationed in a fixed location. On 28 December the BEC ordered the magistrate courts to be mobile. Uncertainty and late decisions caused ambiguity with regard to procedures and in some instances, also friction between judicial and executive magistrates.

Long Term Observers (LTOs) reported that many magistrates complained of a lack of information and resources. The temporary magistrate courts have significant power and are entitled to pass severe sentences in summary trials. EU EOM observers reported three prison sentences and approximately ten cases where the accused was on bail pending court hearings.

³² RPO Article 91.

³³ Approximately 550 Euros.

³⁴ RPO Article 73-90.

One maximum sentence of seven years was handed down on 30 December to a BNP activist and former MP who had been campaigning on his wife's behalf. The former MP could not himself run for a seat as he was already sentenced to ten years imprisonment. The indictment includes threats to a minority community, obstructing law enforcement agencies on duty and leaking information regarding a polling centre. The convicted man was imprisoned and, through his lawyer, started the process of filing a writ petition at the High Court.

C. Voter Education

The BEC is legally responsible for voter information (VI) and civic education (CE). The BEC published a Manual for Voters, with detailed information on voting rights and civic responsibilities. The BEC also designed CE and VI messages that were published and broadcast periodically by state owned and private television channels, radio stations and newspapers. However, it delegated the rest of its CE and VI activities to civil society organisations which conducted them with funding from the international community. Despite the fact that the EU EOM observers positively assessed the voters' understanding of the Election Day procedures, voter information on the option to vote for 'None of the Above' was generally inconsistent and insufficient.

The Citizen's Alliance for Promoting Transparency and Accountability (CAPTA), under the umbrella of Election Working Group (EWG) carried out an ambitious country-wide programme of civic education, targeting women, youth and minorities. There was a particular emphasis on prevention of election violence, democratic representation and accountability, first time voters, women participation in elections and political affairs and the electoral rights of persons with disabilities as well as ethnic and religious minorities.

IX. MEDIA AND THE ELECTIONS

A. Media Environment

The media landscape in Bangladesh is a combination of state and private entities. The main broadcasters are Radio Bangladesh and Bangladesh Television (BTV) which are both state-owned and favourable to the government. The state has retained a significant position in the broadcast sector and it owns the only national terrestrial television channel and 12 regional radio stations.

The most notable recent development is the rapid increase in the number of satellite television channels: there are now 15 commercial cable television channels operating alongside the state owned television channel. Television is the main source of news and information particularly in the main urban areas. The private audiovisual media, whose owners are closely involved in the determination of editorial policy, are perceived to be of higher quality than the state-owned media.

There are four private and one state owned radio stations. The state-owned radio station has 12 substations (relay stations) throughout the country.

The readership³⁵ and influence of the written press is more limited than for electronic media. According to the Ministry of Information, there are 243 daily/weekly newspapers in Bangladesh, 73 of them based in Dhaka and a number of which are published in English.

There are also a number of media associations such as the National Press Club and Bangladesh Federal Union of Journalists (BFUJ) actively engaged in journalistic issues but with clear and strong internal divisions on political grounds. The EU EOM was informed by numerous media interlocutors that the general perception is that the media is taking advantage of a weak legal framework, is organised on partisan lines and is divided and biased. Newspaper ownership and content are not subject to direct government restrictions. However, if the Government chooses, it can influence and exert indirect control on the press through the placement of official advertisements, which is a major part of newspapers' revenue.

B. Legal Framework for the Media

Bangladesh's media landscape during the election period was characterized by an unregulated environment. There is a lack of procedures, rules and regulations established by the relevant bodies to provide a clear set of parameters for the media's coverage of the elections. There is also a perception that there is an inadequate process for resolving media-related complaints. In this respect, the legal framework for the media is unsatisfactory.

In the absence of any other effective authority the Ministry of Information deals with electronic media-related complaints and the Press Council deals with print media-related complaints.

The Constitution guarantees freedom of thought and expression under Article 39(1) the freedom of the press under Article 39(2)b.

On 3 November 2008, Rule 5 and 6 of Emergency Power Rules restricting freedoms of expression were repealed and on 17 December the State of Emergency was fully lifted. As a result, the media enjoyed a reasonable degree of freedom of expression,³⁶ with no reported instances of intimidation or violence against journalists during the campaign.

For the first time in Bangladesh, a draft a Code of Conduct for the Mass Media was made public on 11 November by the Chief Election Commissioner. Following discussion, a special committee was formed to finalise the Draft Code of Conduct for the Media. However, the committee failed to give its report on time. On 5 December 2008, after a discussion with the committee, the Chief Election Commissioner announced that there would be no Code of Conduct for the Media in time for the 29 December Parliamentary elections. He considered media policy to be a politically sensitive matter and determined that decisions regarding a Code of Conduct for the mass media should be made by the elected government.

³⁵ According to the World Association of Newspapers' report the readership in Bangladesh was estimated at 20 million, less than 15 per cent of the population.

³⁶ Emergency Power Ordinance, 2007 was introduced on 12 January 2008 under the Article 141A(1) of the Constitution. The issuance of proclamation of emergency automatically limited the operation of the fundamental rights to freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience, and of speech, freedom of profession and occupation and rights to property.

On 11 December the Ministry of Information issued guidelines³⁷ for state-owned television and radio to provide equitable free air time to the political parties contesting the elections. The guidelines provided for all registered political parties to be entitled to broadcasting and telecasting facilities in the state-owned media during the general elections according to the principles and guidelines prescribed by the BEC.

On 18 December the BEC barred cable television distributors from marketing, circulating and broadcasting their own electioneering programmes through video, VCD or DVD. The government imposed restrictions under the Cable Television Network Operation Act 2006 3(2)³⁸ on the cable operators through an official announcement³⁹ to prevent cable operators from any election campaigning.

C. Monitoring of Media Coverage of the Elections

From 14 November until the end of the campaign, the EU EOM conducted qualitative and quantitative analyses of six hours of primetime broadcast each day on four TV channels,⁴⁰ two radio stations⁴¹ and ten privately-owned newspapers.⁴² The programmes were timed by the monitors in order to measure the access received by the parties contesting the elections. The tone of the coverage, based on a scale of negative, neutral and positive was also assessed.

Television channels intensified political coverage during the last two weeks of the campaign, devoting an average of 40 minutes a day to elections. Talk shows and special election programmes were aired mainly by private media. However, only a few representatives of the two major political parties took part in political debate programmes and there was no debate or interviews with the leaders of BNP and AL.

The monitoring results indicate that the media coverage of the elections was dominated by the two main political parties and their respective leaders, while other registered political parties received negligible coverage (see Chart 1 – TV Channels: Allocation of airtime among parties in all programmes in Annex 1).

State-owned media gave BTV extensive news coverage of the activities and statements of the Caretaker Government's advisors (45 per cent), while AL and BNP received 19 per cent each of overall coverage of political actors, and the other 37 registered parties combined received 17 per cent.

³⁷ The guideline was introduced under the provision of Section 90F(1)(d) of the Representation of People Order 1972 (Amended up to October 2008).

³⁸ Section 3(2) of Cable Television Network Operation Act 2006 -Any distributor or service provider will not be allowed to do marketing, circulating or broadcasting of any programme of its own except than the programmes of government accredited channels.

³⁹ The announcement said, if any cable operators conduct any election campaign for or against any candidate violating the Cable Television Network Operation Act 2006 3(2) and the Election Commission directive, the transgressors will be imprisoned for maximum two years, fined 50,000 taka to 1,00,000 taka, or punished in both terms along with cancellation of the license, the government warned.

⁴⁰ BTV State owned, ATN Bangla, Channel -i, NTV (from 18.00 to 22.00 hours)

⁴¹ Bangladesh Betar Radio and Radio Today (from 7.00 to 13.00 hours)

⁴² The Daily Prothom Alo, The Daily Jugantor, The Daily Shamokal, The Daily Ittefaq, The Daily Amar Des, The Daily Janakantha, The Daily Star, The Daily Jajidin, The Daily Sangbad, The Daily New Age.

On 19 December, Bangladesh Television and Bangladesh Radio complied with their obligation to provide equitable time to the political parties contesting the elections during prime-time hours.

The schedule of free airtime prepared by the Ministry of Information and the allocation of time was decided according to the number of constituencies political parties contested.⁴³ However the EU EOM Media Unit noted a few irregularities⁴⁴ in the schedule and the allocation of time to some political parties. EU EOM requests for explanations on these and other irregularities to the Ministry of information remained unsatisfactorily answered.

A similar trend in the coverage of the contestants and their campaign has been noted on radio. State-owned Betar Radio afforded more than a half of political coverage (57 per cent) to the Caretaker Government, AL and BNP received almost the same coverage at 9 per cent and 10 per cent respectively and the other registered parties combined received 24 per cent of the news coverage (see Chart 2 – Radio Stations: Allocation of airtime among Political Parties in Annex 1). However the election campaign reporting was very limited and voters received election-related information only through news bulletins.

The three private television channels monitored also devoted the largest share of coverage to the main political parties. ATN Bangla provided almost equal coverage of AL and BNP with the parties receiving 34 per cent and 36 per cent respectively while all the other parties combined received 13 per cent. Channel-i dedicated equal coverage (36 per cent) of its political reporting to AL and BNP and all the other parties combined received 11 per cent. NTV follow the same trend focusing on BNP and AL, devoting respectively 44 per cent and 35 per cent of total time dedicated to politics and elections, while all other political parties combined received negligible attention (8 per cent).

Overall, the audiovisual media covered political reporting in a neutral and moderate manner (see Chart 3 – TV Channels: Tone of the coverage devoted to Political Parties in Annex 1).

Among the monitored private television channels ATN Bangla devoted more electoral campaign coverage to JeI (4 per cent). However, almost half of the coverage was negative in tone. On 23 December 2008 JeI filed a written media complaint to the BEC under Article 78⁴⁵ of the RPO. In response to the complaint the BEC sent a ‘show cause’ notice to ATN Bangla. On the same day JeI also filed a case against ATN Bangla in Sylhet Magistrate

⁴³ Registered political parties/alliances who have nominated candidates in 30 to 50 constituencies, may be provided with up to a maximum of 10 minutes; those who have nominated candidates in 51 to 70 constituencies, may be provided with up to a maximum of 15 minutes; those who have nominated candidates in 71 to 100 constituencies, may be provided with up to a maximum 20 minutes and those who have nominated candidates in 101 to 300 constituencies, may be provided with up to a maximum 40 minutes time to give speech for one time only on Bangladesh Television and Bangladesh Radio.

⁴⁴ According to the guidelines JeI was scheduled to broadcast the party leader’s speech on 19 December but BTV broadcast the speech on 23 December. The party was allowed 3 minutes and 32 seconds extra time (according to the guideline JeI was entitled up to 10 minutes). Similar irregularity was noted for Jatiya Party which received 4 minutes extra time to broadcast its speech (according to the guideline it was entitled to up to 10 minutes).

⁴⁵ Article 78.(1A) No person shall-

(a) resort to an act of violence or unruly behavior,

(b) hold threats or intimidate voters or persons connected with election activities or duties,

(c) Show or use any arms or force.

(2) Any person who contravenes the provisions of clause (1) shall be punishable with imprisonment for a term which may extend to seven years and shall not be less than two years and also with fine.

Court⁴⁶ for broadcasting a news report which JeI claimed defamed its leaders (see Chart 4 – ATN Bangla: Tone of the coverage devoted to Political Parties in Annex 1).

All monitored newspapers published a wide range of articles covering the campaign, although they allocated most of their political coverage to the BNP (35 per cent) and AL (35 per cent) and their respective leaders with all other registered parties combined receiving 10 per cent of the space (see Chart 5 – Press: Allocation of space among Political Parties I Annex 1). While the overall tone of coverage in the print media remained predominately neutral, JeI received 6 per cent of the coverage, which was generally negative in tone (see Chart 6 – Press: Tone of the coverage in Annex 1).

Although candidates and political parties are not prevented from advertising in private media, no paid spot was seen until the last week of the campaign. Only AL, which bought some 44 per cent and BNP, which bought 48 per cent of total paid for advertising, launched campaigns in private television channels ATN Bangla and NTV. According to the television channels representatives all contestants were offered the same commercial and technical conditions for paid advertisements. A limited number of paid campaign advertisements were placed in print media outlets by candidates of the two major political parties.

Voter information and civic education features sponsored by the BEC and the Ministry of Information were aired mainly on state-owned television and radio.

According to Article 78 of the RPO all kinds of electoral propaganda are prohibited in the press and electronic media during the last 48 hours before Election Day. On 23 December the BEC extended the time limit for electioneering by 16 hours and the EU EOM did not note any direct campaigning in the media during the revised 32 hour campaign silence period.

X. PARTICIPATION OF CIVIL SOCIETY

Participation of civil society organisations and a large number of accredited domestic observers were among the positive features of this electoral process. There was a number of election activities carried out by civil society organisations, including election observation, civic education, political party development and efforts to increase women's participation.

There was strong, country-wide domestic observer coverage of these elections, with a total of 96 national election observation organisations accredited by the BEC. This coverage was internationally funded and managed by the Asia Foundation, with the intention of strengthening observation coverage and depth.

The biggest umbrella organization for domestic observation was the Election Working Group (EWG). It comprised 32 civil society organizations and deployed some 100,000 static observers plus approximately 1,500 mobile observers on Election Day. In addition to election observation, EWG engaged in voter and civic education activities, with special emphasis on prevention of election violence, democratic representation and accountability, first time voters, women's participation in elections and political affairs and the electoral rights of persons with disabilities as well as ethnic and religious minorities.

⁴⁶ The case was filed under sections 500 and 504 of the Penal Code.

In an exercise of transparency the list of domestic observer organisations was published in the media by the BEC for public knowledge and potential objection. AL objected to 20 and BNP to 4 organisations on grounds of ‘partisanship’ by the organisations themselves or their leaders. The BEC conducted a hearing where the organisations presented their arguments to counter the objections and a favourable decision resulted in 23 of the 24 cases. The single exception was that of the Free Elections Monitoring Alliance (FEMA), accused of partisanship by the AL, an accusation that was later withdrawn.

FEMA presented a writ petition to the High Court. Following a hearing, the court requested the BEC to reconsider its decision, but the BEC did not react to this request. FEMA observers were not accredited and could not observe on Election Day. FEMA claimed however that it deployed some 5,000 observers outside the PCs.

BROTEE, a veteran domestic observer organisation accredited by the BEC, failed to collect the accreditation identification badges that were necessary for their observers to enter the PCs on Election Day. Some 80 BROTEE observers apparently engaged in informal contacts with minority and vulnerable voters in 11 constituencies, without undertaking any election observation.

EWG and other organizations expressed concern that the BEC required domestic observers to be aged 25 or over. Domestic observer organisations tried to negotiate a lowering of the required age for domestic observers to 21, but the BEC remained firm in its requirement not to allow election observers under 25, thus eliminating the possibility to recruit university students and other suitably qualified young volunteers who are the usual main source of domestic observers.

Although not specified in the law, regulations or procedures or guidelines for domestic observers, the BEC firmly requested as an unwritten rule that the observer organisations deploy their individual observers in unions that are not their unions of residence and registration. Although it was an improvement from the previous BEC imposition to observe in a different upazila, the two to three km distance between unions nonetheless effectively prevented domestic observers from exercising their right to vote on Election Day.

XI. PARTICIPATION OF WOMEN

A. Overview of the Participation of Women

The participation of women in political and state institutions in Bangladesh is still very limited. There was only one woman adviser in the ten-member council of advisers to the Caretaker Government. In the Judiciary, there is no woman judge on the Appellate Division of the Supreme Court. Only four judges out of a total of 63 on the High Court Division and seventy of the 742 lower court judges are women.

The main reasons for the low number of women in the political process are the lower educational achievements of women, the patriarchal social system of and particularly the influence of wealth in Bangladesh politics, which is a constraint on women's political participation since very few women have independent access to financial resources. Every

big party has separate women's sections and student fronts. Student fronts also have separate women's wings, but women rarely get opportunities to exercise any decision-making power.⁴⁷

In order to guarantee female representation in Parliament, Bangladesh introduced reserved seats for women. Through a constitutional amendment in 2004, parliament increased the number of reserved seats for women from 30 to 45. These reserved seats are allocated to parties on the basis of their proportional representation in parliament. These women are neither elected nor appointed by voters. They have no grassroots connection and they do not represent any constituency. This results in them having no meaningful voice in parliament and serving basically as a vote bank of the party that secured the majority in parliament.

For the 2008 Parliamentary election the number of women candidates exceeded previous records,⁴⁸ but women still participated in modest numbers: 56 women among the 1,552 candidates for 299 seats, representing only the 3.6 per cent of total candidates. A considerable number of them were considered proxy candidates.⁴⁹ JeI, the country's largest Islamist party, did not nominate a single female candidate. Of the 56 female candidates 19 won 23 seats. Sheikh Hasina and Khaleda Zia won in all three seats in which they stood as a candidate, while Raowshan Ershad lost both seats in which she stood. The 64 women who will be sitting in the ninth parliament represent 18.55 per cent of the total number of seats in parliament.⁵⁰ The new cabinet formed by Sheikh Hasina includes three female ministers with important portfolios and one woman as state minister.⁵¹

B. Women Voters

On 2 March 2008 the Caretaker Government issued a Statement on the National Women Development Policy 2008 (NWDP) intended to create an appropriate political and socioeconomic structure for the development of women's empowerment. The Statement suggested enshrining in law equal rights for women, including property rights, as well as a 40 percent quota for women on the government's high Executive, Judiciary and Legislative

⁴⁷ Women's representation in the policymaking body of the AL is the highest at 11%, compared with 6% in the BNP, 3% in the Communist Party of Bangladesh and 3% in the Jatiya Party. There is no female member on the central executive committee of Jamaat-e-Islami.

⁴⁸ Elected Women's Members to the Bangladesh Parliament (1973-2008) - BEC/EU EOM Bangladesh.

Year of election	% of Women candidates	Won in Direct seats and by-elections	Total elected women	Reserved Seats	% of women in the parliament
1973	0.3	0	0	15	4.8 (out of 315 seats)
1979	0.9	0+2	2	30	9.69 (out of 330 seats)
1986	1.3	5+2	7	30	11.21(out of 330 seats)
1988	0.7	4	4	0	1.33(out of 300 seats)
1991	1.5	8 +1	9	30	11.81(out of 330 seats)
1996	1.36	13+2	15	30	13.03(out of 330 seats)
2001	1.79	6	6	0	2.00
2008	3.6	19	19	45	18.55(out of 345 seats)

⁴⁹ Thirteen female candidates were nominated candidates as their relatives were prevented for running, of whom three were from AL, eight from BMP and two were independent candidates.

⁵⁰ This number, although inferior to the 30 per cent assessed by the UN as the percentage that enables women as a group to exert a meaningful influence in legislative bodies, remains in the middle of the percentage for the neighbouring countries: 33,2% in Nepal, 22,5% in Pakistan, 9,1 in India and 5,7% in Sri Lanka.

⁵¹ Ministers of Foreign Affairs, Home Affairs and Agriculture.

branches. The National Development Policy also provided for the allocation of one third of parliamentary seats for women (suggesting 2020 as the final date for achieving this), as well as arranging direct election to the reserved seats, appointing women to the government's Cabinet Division and other policy-making positions. The NWDP received strong criticism from Islamic groups.

During the pre-election period, most of the parties' manifestos contained commitments regarding women's empowerment, but without stating categorically how these would be ensured with concrete strategies.⁵² Women's organizations and civil society were very active during the pre-election period in promoting gender equality and women's involvement in politics.

On Election Day, women and men voted at separate PBs in order to facilitate women's vote. Women voters had an overwhelming presence in the PCs contributing to a very high turnout. EU EOM observers noted that the presence of female party agents and domestic observers was lower than male party agents and domestic observers.

C. Women and the Election Administration

Despite the fact that women represent nearly 51 percent of the total registered electorate they continue to be under-represented, and rarely hold decision-making positions within the election administration. There was no female representation in BEC, DECs or DEOs⁵³ and only one female member held a management position at the Secretariat of the BEC. At RO and ARO level, women stood at three per cent and six per cent respectively. The number of female Presiding Officers was reported in only some 2% of cases, and the presence of women among polling staff was also low.

XII. PARTICIPATION OF MINORITIES

A. Overview of the Participation of Minorities

While Bangladesh has ratified the ILO Convention 107 concerning *the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, it still has not ratified the ILO Convention 169 concerning *Indigenous and Tribal Peoples Independent Countries* and has abstained on the *UN Declaration on the Indigenous People* adopted in 2007. The original 1972 Constitution of Bangladesh, which ensured a secular government, was amended in 1988, establishing Islam as the state religion, but allowing the practice of any religion, subject to law, public order, and morality. According to the population census of 1991, Muslims formed 89 percent, Hindus 8 percent, Buddhists 0.59 percent, Christians 0.5 percent and other communities 0.26 percent of the population.

⁵² Only AL mentioned the intention of increasing the number of reserved seats for women by direct election in the Parliament from 45 to 100.

⁵³ No female among the three BEC Commissioners or the nine Deputies Election Commissioners. All 83 District Election Officers were male. There was one female member with a management position on the Secretariat of the BEC. Only 2 out of 66 Returning Officers were women. Similarly, there were only 29 women among the 483 Assistant Returning Officers.

The political party's registration requirements in the RPO adversely affected the ability of national or ethnic minorities to form political parties, especially for those concentrated in particular areas.⁵⁴ Of all the political parties registered, there were only two political parties (not minority parties) with a non-Muslim Secretary General: the Bangladesh Sammyobadi Dal (ML) and the Bangladesh Worker Party. From a total of 100 candidates belonging to minority groups who filed nomination papers, only 63 were finally accepted. Of these, 14 candidates, all of whom stood for the AL won a seat. Three members of Sheikh Hasina's new cabinet belong to minority groups: one Hindu, one Buddhist and one person of tribal origin from the CHT.

Issues relating to national minorities did not feature in the campaign, with none of the candidates making contentious comments about ethnic relations in the country.

B. Minorities as Voters

The 2008 parliamentary elections showed an unprecedented high participation of minority communities. The polarized state of Bangladesh politics in past polls turned minorities into victims of political violence due to political parties and their supporters seeking to win their vote or to stop them from exercising their voting rights.⁵⁵ However, the Caretaker Government made efforts to act in an effective manner to protect minorities and freedom of religion, calling for inter-ethnic harmony.

Among the many comprehensive electoral reforms undertaken by the Caretaker Government, the preparation of a new voter list and identity cards stood out. In general, representatives of ethnic and religious minorities seemed satisfied with their inclusion in the electoral process. The Voter registration process was perceived by the minority groups as an improvement compared to previous elections. Following a High Court decision the Caretaker Government granted the Bihari population living in camps the right to be registered as voters and to receive national identity cards.⁵⁶

No intimidation, incidents of violence, discrimination or major campaign messages raising religious or ethnic issues against religious or tribal minorities was observed during the campaign, on Election Day or in the post-election period.

Two political parties with significant influence, JeI and Islami Okiya Jote (both in alliance with BNP), adopted Islamist platforms. JeI declared in its manifesto its intention to enact a blasphemy law.

⁵⁴ No political party belonging to ethnic or religious minority was registered for this election.

⁵⁵ There were 850 centres where voter turnout in 2001 was less than half of total registered voters. Of these, 87 centres were in Cox's Bazaar, (Ctg) 49 in Bandarban (CHT), 67 in Rangamati (CHT), and 36 in Khagrachari (CHT). In addition, around 87 centres with less than 50 per cent turnout were in Cox's Bazaar-3. There were 35 polling centres where voter turnout was as low as or lower than 10 %. Of these, 18 were in Rangamati, 8 in Khagrachari, 5 in Cox's Bazaar-3, and 2 in Bandarban (all minority's areas).

⁵⁶ Those called "Stranded Biharis" who in 1971 expressed their wish to return to Pakistan, were housed in 116 temporary camps and considered stateless since then by both Bangladesh and Pakistan. The Bihari population living in camps in Bangladesh is 185,795. The estimated number of voters (55% of total population) is 102,187. Estimated number of Biharis registered in the camps: 22,154. (Source UNDP 2008).

The turnout in Chittagong Hill Tracts (CHT) was extraordinarily high⁵⁷ compared to the 2001 elections but was still below the national average. In this area the Bengali population tended to support the major political parties and the indigenous population was divided between JSS (pro-1997-CHT Peace Accord) and UPDF (anti-1997-CHT Peace Accord). JSS and UPDF, having failed to achieve registration as political parties, fielded a number of candidates as independent candidates. However, in this election in CHT both AL and BNP nominated indigenous candidates, and for the first time 14 out of the total 18 candidates were tribal people. All three winning candidates in the three CHT constituencies were from a tribal group and contesting the elections for AL.

C. Minorities and the Election Administration

There are no legal obstacles to the participation of national minorities in the election process, However there is a limited representation of minorities among electoral officers and the election administration. There was no presence of minorities among the members of BEC, DEC, DEOs and a low number as ROs and AROs.⁵⁸ In the Chittagong Hill Tracts (CHT), home to 13 ethnic tribes, and despite 50 per cent of the population being indigenous, all election officials were Bengali (non-tribal).

XIII. ELECTION DAY

A. Polling

The EU EOM observed in some 800 PBs and PCs on Election Day. Opening, voting and counting were conducted in a calm and orderly atmosphere, with procedures generally being implemented appropriately with only 2.8 per cent of cases being assessed as poor or very poor. PB staff was observed as always present at the opening but in 3 per cent of PBs visited not all polling staff was present during the day. Women were found to be presiding officers in only 2.3 per cent of PCs visited.

At all PBs visited by EU observers all essential materials required for the conduct of the poll were available and polling was generally conducted in a peaceful manner. The BEC polling staff proved to be committed and generally well-trained.

Campaign material or campaigning activities were observed inside 2.6 per cent of PBs visited. Additionally, outside 80 per cent of PCs observed political parties were informing voters of their VSN and their PBs. This was allowed by the BEC, but information was provided on party and candidate leaflets, which amounted to campaign activity.

EU EOM observers reported instances of intimidation in 2.8 per cent of PCs observed, but otherwise assessed the general environment as fair, good or very good in 98.1 per cent of the PBs visited. Party agents were present in 99.4 per cent and domestic observers in 64.6 per

⁵⁷ Turnout in the Chittagong Hill Tracts for this parliamentary election 2008: 79.18 per cent in Rangamati, 80.18 per cent in Bandarban and 84.24 per cent in Khagrachari.

⁵⁸ Three out of 64 Returning Officers were Hindu and one was Christian (6%) and 39 out of 483 Assistant Returning Officers belonged to a minority group (8%): 34 Hindus, four Buddhist and one Christian.

cent of visited polling booths. The largest domestic observer group EWG was present in some 60 per cent of PBs.

In the PBs visited members of the polling staff were applying procedures in an appropriate and consistent manner except for the stamping and signing of the back of the ballots, which was omitted in 2.3 per cent of PBs observed.

Overall, EU observers evaluated the performance of polling staff as good or very good in 97.4 per cent and the polling process as good or very good in 97.3 per cent of the visited PBs.

B. Closing and Counting

The closure of PBs took place in a quiet and peaceful atmosphere; no cases of intimidation or disruption were observed at closing time. The overall turnout of voters was high at 86.3 per cent. In half the centres/booths observed voters were queuing at closing time and allowed to vote, according to procedure. Party agents were present for the closing and counting in all the PBs visited and the main domestic observer group EWG was present in 69 per cent of these.

The closing and counting procedures were implemented appropriately in 86 per cent of cases observed, with some minor technical exceptions. Despite these minor procedural lapses, the observers noted that the Statements of the Count accurately reflected the results.

Counting was assessed positively in the vast majority of centres observed (90 per cent). Polling agents were present at all of the observed counting processes. In 10 per cent of observed PCs, the Statement of the Count was not requested by the party agents present. The public display of the Statements of the Count is a crucial transparency measure that was not fully implemented in 44 per cent of the PCs observed.

C. Collection and Consolidation of Results

The consolidation process, although transparent overall, was marred by a significant number of procedural and technical irregularities in its implementation. These put into question the adherence to law and procedure of both the BEC at Dhaka HQ and the intermediate election administration bodies⁵⁹ but did not appear to impact on the results.

The official consolidation process was supposed to be performed exclusively by the ROs.⁶⁰ At the same time the AROs were engaged in a parallel exercise of collecting unofficial results to be transmitted to the ROs and to the BEC HQ for the declaration of preliminary results, by means of telephone, fax and email. This exercise was not supposed to interfere with the official consolidation process, conducted on official forms and exclusively the responsibility of the 66 ROs.

⁵⁹ Assistant Returning Officers and Returning Officers.

⁶⁰ RPO Art. 37 *‘[(1) the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place for the consolidation of results and, in the presence of such as the contesting candidates and election agents as may be present, consolidate in the prescribed manner the results of the count furnished by the Presiding Officers...]*

Both the informative network and the official consolidation process became entangled in a disorderly manner in 29 of the 38 consolidations observed. Thus AROs conducted the unofficial gathering of results on the official forms that were meant to be completed exclusively by the ROs and passed this data on as consolidations which were later validated by the ROs. Only in nine of the 38 consolidations observed were law and procedures correctly followed.

Of the 38 consolidations observed, there were no postal ballots whatsoever. In 22 per cent of cases the consolidated results were not publicly announced and in 58 per cent of consolidations observed, the consolidated results were not publicly displayed on the Notice Board as required by law and procedures.

XIV. RESULTS

A. Announcement of Results

The first partial unofficial results were progressively announced, by constituency, on election night by the BEC. The next day, 30 December, the BEC announced unofficial preliminary results based on all of the 299 constituencies' results.

B. Publication of Results

The returns of the elections per constituency were gazetted in the official Gazette on 1 January 2009 without the number of votes obtained by candidates. The final results had still not been published at the time of the EOM departure from Bangladesh.

C. Complaints Relating to Election Results

Election results can be challenged through an election petition.⁶¹ Only a contesting candidate can file an election petition within forty five days⁶² of the publication of the results. The election petition is submitted to the High Court and any trial should follow the Code of Civil Procedure, 1908.

At the end of EU EOM's deployment in Bangladesh only one election petition contesting the election results in the constituency of Sirajganj-5 had been filed at the High Court with a court hearing still pending.

D. Political Overview of the Election Result

The Grand Alliance led by AL won in 262 constituencies against 33 for the BNP's alliance. AL alone won in 230 constituencies, JP in 27, National Socialist Party (NSP) in three, and Workers Party (WP) in two. BNP secured 29 constituencies with JeI and Bangladesh Jatiya Party (BJP) securing two and one, respectively. The only party which won a constituency without being aligned with one of the main alliances was the Liberal Democratic Party (LDP). There were four successful independent candidates.

⁶¹ RPO Article 49-72.

⁶² The Code of Election Rules, Article 33.

As the leaders of AL, BNP, and JP each won in three constituencies, by-elections will be held in a total of six constituencies.

The result was a reversal of the 2001 election with the difference that the gap between majority and opposition increased further: the AL alliance will hold an 87 per cent majority in Parliament against 72 per cent for the past BNP-led government.

In terms of votes, AL captured almost fifty percent and BNP one third of the nationwide vote. JP received a 7 per cent share of the vote, somewhat less than in the 2001 election. JeI, on the contrary, increased its vote share to 4.6 per cent but lost all but two of the 17 seats that it held in 2001-2006. Strikingly, BNP failed to win a single seat in two of the country's six divisions – Dhaka and Sylhet. Most of its victories came in Chittagong division, which was also the only area where the JeI candidates met with success.

The BNP-led alliance has not accepted the validity of the election result in as many words, but has implicitly recognized the result by attending the new government's swearing-in ceremony on 6 January. Its MPs were sworn in on 15 January and were expected to take part in Parliament when it was convened on 25 January.

Explanations of the election result have ranged from claims of electoral fraud, albeit with scarce evidence, to a poorly-managed election campaign from the BNP's side. The uncertainty which lingered until a late stage about whether BNP would contest the election at all arguably did not help the party in getting ready for the polls. However, a commonly-held view was that the vote reflected the electorate's judgment of the past BNP-led government's record in office 2001-2006 and the reputation of mal-governance and nepotism that it suffered from. AL, untainted by such mistakes, offered a more credible alternative which included an appealing promise to reduce food prices, a pressing concern for the majority of households in the light of recent years' spiraling prices. It should be recalled that there is a strong pattern of voting against the last government in Bangladesh, 2008 being the fourth election in a row where the roles of majority and opposition have been reversed.⁶³

The election was an important step towards re-establishing democratic governance of the country. The high turnout and the remarkably peaceful environment which prevailed up until Election Day showed the determination of the people of Bangladesh to return to democracy. Unfortunately, a number of violent incidents involving rival party supporters took place in the post-election phase which to a certain extent marred the general impression of a highly successful and credible election.

⁶³ The two years of caretaker government did not appear to have reduced the anti-incumbent tendency, contrary to what many had expected.

XV. RECOMMENDATIONS

A. Essential recommendations

Election Administration

1. The BEC should undergo a review of its activities during the 2008 elections with a particular view to maintaining/increasing confidence in its activities. It should review the structure of its organization in order to strengthen and develop the capacity of its middle management and its secretariat. Consideration should be given to developing the field office structure of the BEC, so that permanent staff fulfil the lead role for elections, rather than local civil administration staff. A dedicated cadre of BEC staff falling under the responsibility of the Election Commission could be envisaged. In due course, appointment of Returning Officers and Assistant Returning Offices from among the senior ranks of such a cadre should be considered.
2. The BEC should issue detailed regulations and procedures for the conduct of the entire election at every single stage and level of the process (i.e. polling centre, constituency level and national level) and provide for full transparency of BEC work at every level. Moreover, the BEC should (i) enforce the stipulation that result forms should be publicly displayed at every level of the election administration, and (ii) ensure that results are immediately published by polling centre at the constituency level and on the BEC website.
3. In view of the total dysfunction of the postal ballot, the BEC is advised to remove it as a polling option for security agents, displaced electoral personnel, polling staff and persons in legal detention. The postal ballot should be replaced by other different voting options: the BEC is advised to facilitate the voting of all the Security agents by a special voting day for the security forces at least ten days prior to the scheduled Election Day; for polling staff the BEC is advised to facilitate the use of an additional or supplementary voter list in each PC/PB that would include all the electoral/polling staff present at the PC/PB so as to permit them to vote; for prisoners the BEC is advised to consider holding elections inside the 67 prisons of the country by designating all prisons as ‘special polling centres’ for the elections.
4. The BEC is advised to permit domestic observers to observe in their areas of registration and residence, so as to allow them to vote without lengthy travel to their respective Unions, which prevented them from exercising their right to vote in the December 2008 election. The current restrictions on the age for observers should be eliminated or at least be lowered to 21 years.
5. The Voter List should be organised in alphabetical order at the PCs and PBs so as to facilitate the information to voters for them to know in which PB they should vote. A second copy of the VL should be available at the PC for voters to check by themselves or with the help of some BEC official which is their PB.

6. In the case of a party nominating multiple candidates in a constituency, the BEC should, in fairness to all parties, insist that only one be retained prior to the scrutiny of nomination papers, in accordance with the RPO.

Legal Framework

7. The RPO should be thoroughly revised and modified into a uniform language and uniform level of detail. There should also be a revision of the RPO subsidiary electoral acts and regulations with the aim of ensuring coherent language and clear references to other relevant acts and regulations.
8. The provisions of Article 91E of the RPO do not deviate from international standards per se and it should therefore be retained.
9. Legal provisions should be reviewed to ensure a consistent and comprehensive framework for elections. Particular attention should be paid to introducing essential transparency requirements to ensure public accountability of all components of the election administration. This process should include a stipulation that the work and all meetings of the BEC are public and accessible to accredited observers, media and party or candidate representatives, with publication of the minutes of the meetings as well as the elaboration of clear regulations and procedures which should be published in a timely manner so as to ensure a clear and consistent procedural framework.
10. Candidate nomination procedures should be amended to ensure there is sufficient time for the entire process to conclude well in advance of the elections, including any appeals to the Supreme Court.
11. The RPO provision regarding withdrawal of candidature should be clarified as to whether the party or the nominated candidate has the final say over withdrawal in particular where several candidates from one party have been nominated prior to scrutiny.

Voter Registration

12. The annual update of voter registration conducted in the month of January should include the citizens of 17 years of age but who will become 18 years of age before the next annual update, to ensure that those turning 18 between the registration cut-off date and the date of elections will be registered and allowed to vote.

Media

13. A Broadcasting Law should be drafted to ensure clear legal provisions for the media sector. Furthermore, a new instrument should be introduced setting out the mandate and responsibilities of state owned broadcasters, and guaranteeing their independence from the authorities.
14. The Supervisory Board to monitor the conduct of the media, political parties, candidates and other participants in the electoral process needs to be established or designated. The body should be responsible for allocating time to political parties or candidates. It should

also hear and take action on complaints concerning violations by the media during the election period.

15. The Press Council should be transformed into a self regulatory body for the print media particularly with the aim to draft a code of conduct for journalists that should be in force not only during the electoral period. Media representatives and civil society organizations should also be included in the process.

Political Parties

16. Parties should adopt internal rules setting out how they will ensure the influence of their local party structures in nominating candidates, in compliance with the RPO.

Complaints and Appeals

17. There should be appropriate and full training of all personnel involved in any of the complaints and appeals processes conducted during an election period to ensure that all those involved are better informed and prepared.
18. More resources should be provided to the BEC and courts during the election period to ensure that disputes can be handled swiftly and efficiently.

Women and Minorities

19. Political Parties and the BEC should achieve a minimum of one third of their leadership and decision making positions occupied by women by 2020, meeting the targets set in the 2008 National Women Development Policy. Furthermore, the Bangladesh authorities should take the necessary steps to encourage greater participation of women in elections by increasing the participation of women in the whole electoral process, particularly at all levels within the election administration and as candidates.
20. Consideration should be given to changing the system for allocating the reserved seats for women so that they are not appointed but are directly elected by voters and have the same direct accountability as other members of the parliament through having a constituency to respond to. This could be achieved by establishing a separate layer of larger constituencies for this purpose. Eligibility criteria and nomination procedures for the reserved seats should be the same as that of the non-reserved seats. This will require a Constitutional amendment.

B. Desirable improvements

Election Administration

21. BEC regulations should stipulate counting the voters' signatures on the ballot paper counterfoils or counting the names ticked in the voter list and reconciling the resulting total with the number of ballot papers in the ballot boxes.

22. In order to guarantee transparency legal and procedural stipulations should be enforced during the consolidation process, keeping totally separate the informative channel for provisional results and the official consolidation that provides final official results. All those involved in the consolidation process must be provided with clear, timely and transparent information on the time and place where consolidations take place.

Legal Framework

23. To ensure a more level playing-field among candidates and to save the expense of holding by-elections, consideration should be given to a constitutional amendment which bars candidates from seeking election in more than one constituency at a time.

Media

24. Public media should be required to provide voters, through a variety of formats, with comprehensive information on all aspects of the electoral process, including voter information and civic education features.
25. When a candidate owns a media outlet a blind trust system should be established guaranteeing editorial autonomy. Failing this an internal agreement guaranteeing editorial decisions remain impartial should be signed between staff and proprietors.

Civic and Voter Education

26. The BEC which is legally responsible for civic and voter education should consider making a greater investment in voter and civic education to ensure voters are fully aware of their rights and informed about all components of the democratic and electoral process.

Political Parties

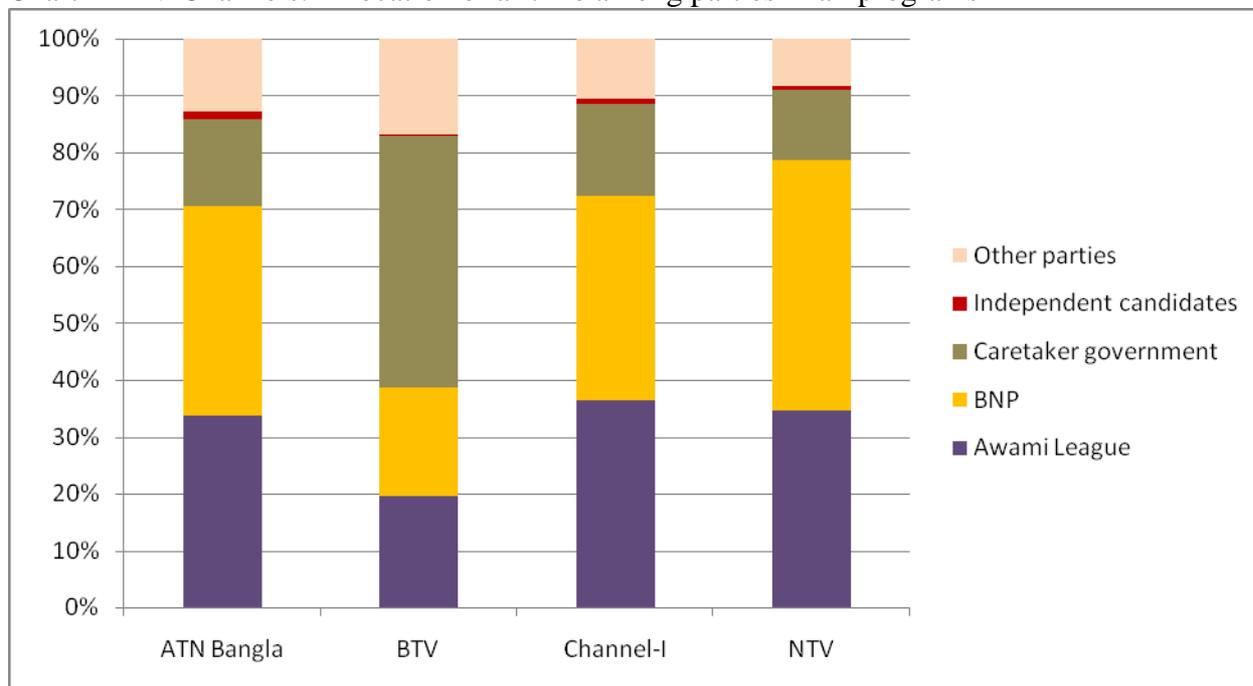
27. Selecting more easily distinguishable names for the political parties would be a helpful measure toward transparency.
28. Parties might complement their campaign methods with a more interactive mode of communication (e.g. question-answer sessions) in order to enhance accountability to voters and help the latter make an informed choice.

Women and Minorities

29. The BEC should make serious efforts to ensure that more women and minorities are represented at all levels of the election administration.

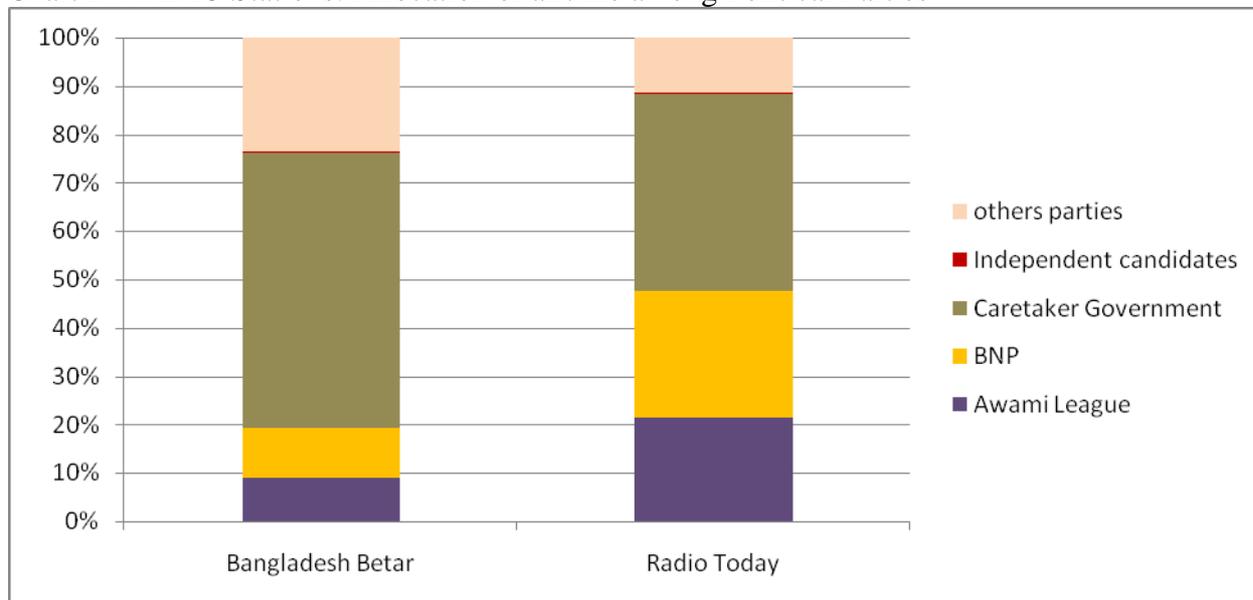
XV. ANNEXES

Chart 1 - TV Channels: Allocation of airtime among parties in all programs



Base: 126 hours

Chart 2 -RADIO Stations: Allocation of airtime among Political Parties



Base: 24 hours

Chart 3 - TV Channels: Tone of the coverage devoted to Political Parties

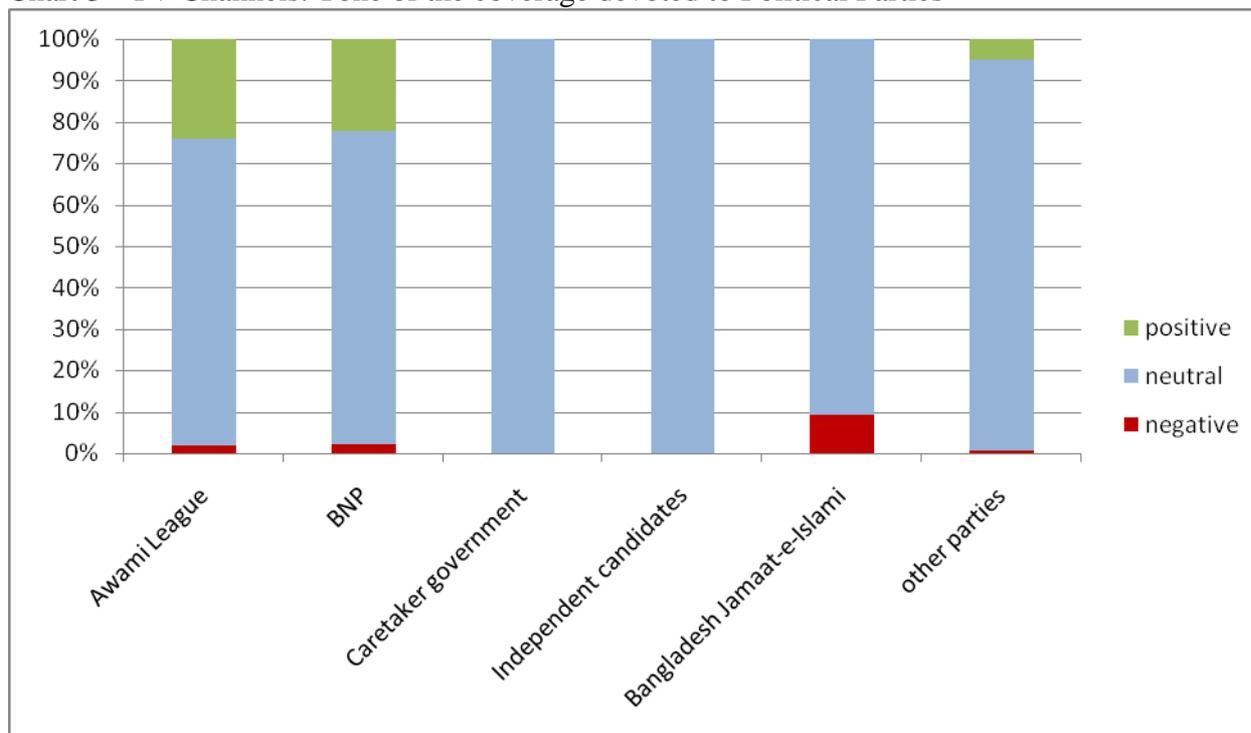
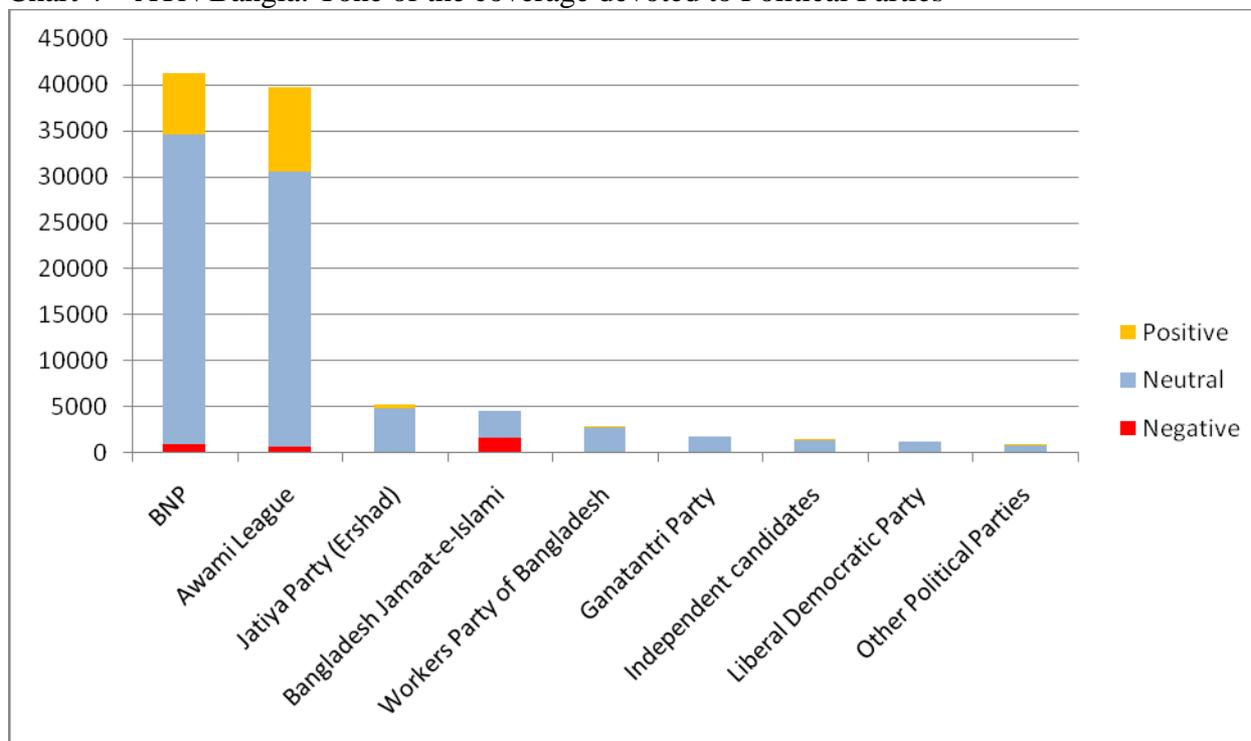


Chart 4 – ATN Bangla: Tone of the coverage devoted to Political Parties⁶⁴



⁶⁴ Time calculated by stopwatches is reported in seconds

Chart 5 – PRESS: Allocation of space among Political Parties

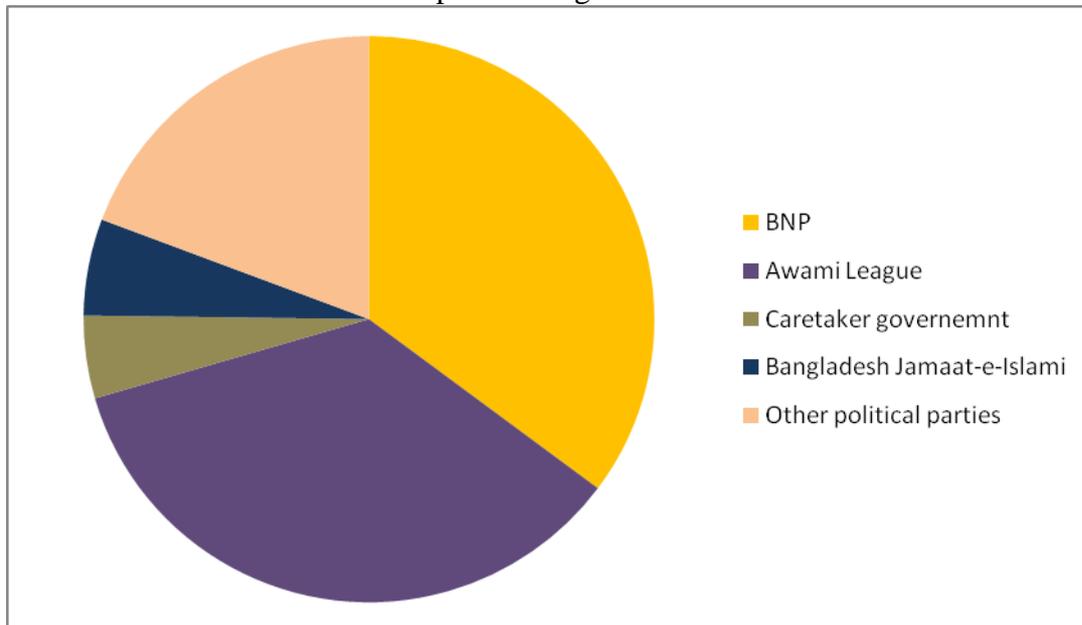
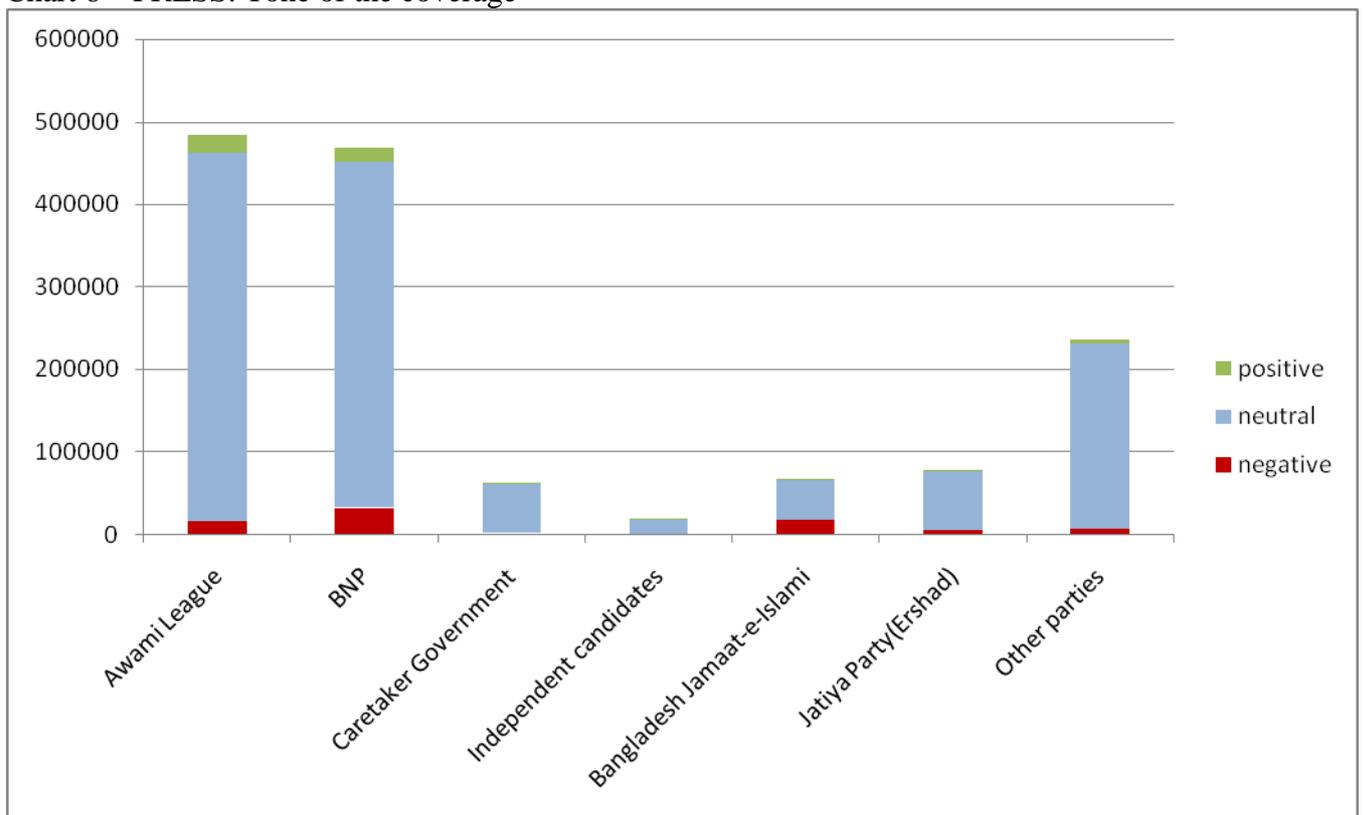


Chart 6 – PRESS: Tone of the coverage⁶⁵



⁶⁵ The space is calculated in square centimeters