

BANGLADESH: BACK TO THE FUTURE

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BANGLADESH: BACK TO THE FUTURE

EXECUTIVE SUMMARY

Bangladesh could face a protracted political crisis in the lead-up to the 2013 elections unless Prime Minister Sheikh Hasina's government changes course and takes a more conciliatory approach towards the political opposition and the military. In December 2008, following two years of a military-backed caretaker government, the Awami League (AL) secured a landslide victory in what were widely acknowledged to be the fairest elections in the country's history. The hope, both at home and abroad, was that Sheikh Hasina would use her mandate to revitalise democratic institutions and pursue national reconciliation, ending the pernicious cycle of zero-sum politics between her AL and its rival, the Bangladesh Nationalist Party (BNP). Three and a half years on, hope has been replaced by deep disillusionment, as two familiar threats to Bangladesh's democracy have returned: the prospect of election-related violence and the risks stemming from an unstable and hostile military.

Instead of changing the old pattern of politics, the AL government has systematically used parliament, the executive and the courts to reinforce it, including by filing corruption cases against Khaleda Zia, the BNP chairperson, and employing security agencies to curb opposition activities. Most worrying, however, is the AL-dominated parliament's adoption of the fifteenth amendment to the constitution, which scraps a provision mandating the formation of a neutral caretaker administration to oversee general elections. The caretaker system was a major practical and psychological barrier to election-rigging by the party in power. Removing it has undermined opposition parties' confidence in the electoral system.

The fifteenth amendment carries other dangers as well. For example, anyone who criticises the constitution may now be prosecuted for sedition; new procedures have rendered further amendments virtually impossible; and the death penalty is prescribed for plotting to overthrow an elected government – a thinly veiled warning to the military, which has done so four times in as many decades.

The fallout from these changes is already clear. The BNP gave an ultimatum to the government to reinstate the caretaker system by 10 June 2012 or face battles in the streets. To this end, it rallied 100,000 supporters in Dhaka in March for a protest that turned violent. With the deadline passed

and no action from the government, it is now calling for nationwide political agitation. A BNP-led boycott of the 2013 general elections may be in the offing.

Meanwhile, the military is visibly restive. On 19 January, it announced it had foiled a coup by mid-level and retired officers who sought to install an Islamist government. This followed an assassination attempt on an AL member of parliament in October 2009 by mid-level officers seething over the deaths of 57 officers in a mutiny by their subordinate paramilitary border guards the previous February. Large-scale dismissals, forced retirements, deepening politicisation and a heavy-handed approach to curb dissent and root out militants have created an unstable and undisciplined force. While a top-level coup is unlikely, the prospect of mid-level officers resorting to violence to express their suppressed anger is increasingly high.

Should the situation deteriorate to the point that the army again decides to intervene, it is unlikely to be content to prop up civilian caretakers and map a course to fresh elections as it did in 2007. This time the generals could be expected to have more staying power, not to mention less reluctance to carry out “minus two” – their previous plan to remove Sheikh Hasina and Khaleda Zia from politics.

Even if such a worst-case scenario seems remote, it is clear that a new electoral stalemate threatens to erode Bangladesh's democratic foundations.

Dhaka/Brussels, 13 June 2012

BANGLADESH: BACK TO THE FUTURE

I. INTRODUCTION

On 29 December 2008, the Awami League (AL), led by Sheikh Hasina, swept to power in a landslide, winning 229 of 300 seats and putting an end to a two-year military-backed caretaker government. The enthusiasm that greeted the restoration of democracy has since been replaced by a familiar fear over its future. The country faces two potentially destabilising challenges: protracted political violence and a restive military hostile towards the government. In June 2011, the AL government abolished a key safeguard against electoral fraud – a constitutional provision mandating a neutral caretaker government to oversee general elections. If the AL does not reverse course and accept such a caretaker, the chances of an opposition boycott of the 2013 elections are high and with it a return to the depressingly familiar pattern of zero-sum political competition between the AL and the Bangladesh National Party (BNP) that led to violence in the streets and military intervention in 2007.

Three and a half years ago there was palpable hope for change. It has now been emphatically crushed. Since taking office on 3 January 2009, Prime Minister Sheikh Hasina's government has been marked by the usual poor governance indicators: high levels of corruption, a partisan judiciary and bureaucracy and worsening human rights violations. Sheikh Hasina has used her mandate to restrict democratic space, prevent constitutional change and stack state organs with party sympathisers. She has also alienated the military.

It is no surprise that the public has now slowly turned against the government or that the BNP has regained much of its strength. In a major show of force on 12 March 2012, 100,000 people attended a BNP rally in Dhaka, even though the government virtually cut nationwide transport links to prevent supporters from joining. But more violent political confrontations loom if no accommodation between the two parties is reached. The military is also showing signs of frustration. It is not clear how serious the coup plans it alleges were being made at the beginning of the year were in fact, but senior officers say disaffection and anger are widespread and rising.

Based on extensive interviews and other sources, this report looks at why public trust in the AL government de-

clined and examines the risks another prolonged electoral deadlock in 2013 would pose.

II. THE LEGACY OF THE CARETAKER GOVERNMENT

The AL's antipathy to a caretaker government – and much of the current political deadlock – stems from the actions of the military-backed government that was in power from January 2007 to December 2008.¹ On 11 January 2007, the military intervened to put an end to months of violence over an electoral deadlock between the then ruling BNP, under Khaleda Zia, and the AL, under Sheikh Hasina. In doing so, its leaders invoked Article 58B of the constitution (since revoked), which authorised a caretaker government to run the state “from the date on which Parliament is dissolved or stands dissolved” until “a new Prime Minister enters office after the constitution of Parliament”. The new government was headed by a chief adviser, with ten other non-party advisers appointed by the president.²

As a non-party administration, the caretaker's primary function was to create an environment in which a general election could be held “peacefully, fairly and impartially”. It was also responsible for exercising the “routine functions of government with the aid and assistance of persons in the services of the Republic”, and “except in the case of necessity ... shall not make any policy decision”.³ The constitution did not specify its time limits, duties or activities. Article 58B gave a constitutional façade to what was in effect a coup, but most observers agreed that the political situation had deteriorated to the point that had the military not intervened, the violence would have grown worse.⁴

The five-year-old BNP government that was thus brought to an end had been marked by the rise of violent Islamist militancy, unprecedented levels of corruption and election

rigging.⁵ The caretaker government led by Fakhruddin Ahmed promised to restore democratic rule through free and fair elections by the end of 2008 but also to use its nearly two years to launch sweeping political reforms. Central to this was the “minus two” project, aimed at sidelining from politics Khaleda Zia and Sheikh Hasina, the women who lead the BNP and AL respectively. By removing the pair, the caretakers and their military backers believed they would be able to reverse the corrosive, corrupt and confrontational pattern of party politics and fundamentally reform the BNP and AL.

Initially, they sought to achieve this by offering a clean and iconic alternative in the form of Nobel Peace Prize winner Mohammad Yunus, head of the microfinance institution the Grameen Bank. He set up a political party, Nagarik Shakti, with military and civil society support, but it died in infancy due to lack of direction, the reluctance of politicians to abandon their old parties and the resilience of those parties. The caretakers then tried to exile the two party leaders but failed, due to domestic and international pressure. Both women were then arrested and imprisoned on corruption charges.

Simultaneously, the caretaker government attempted to undermine the women's authority by pressuring powerful senior leaders, under threat of arrest, to break away from their parties under a reformist banner. Four of the AL's most senior leaders – the late Abdur Razzak, Tofail Ahmed, Amir Hossain Amu and Suranjit Sengupta – led a reform wing, but the AL officially remained united. The BNP's then secretary general, Abdul Mannan Bhuiyan, and several other senior leaders broke ranks with the party mainstream to form a reformist BNP for a time, but ultimately both efforts to split the parties were unsuccessful.

By the second year of the caretaker government's tenure, it was clear that the jailed former prime ministers remained the unifying figures in their parties, and neither the AL nor BNP would agree to undertake reforms or participate in the elections without them. Faced with a failing reform agenda and declining popular support, the caretaker government was forced to abandon “minus two” and release the women. Although in the end it came to an agreement with the political parties through peaceful dialogue and oversaw a fair election, the “minus two” project left Sheikh Hasina bitter at the institution that proposed it and the disloyal members of her own party that supported it.

The weaknesses of the caretaker system were clear. In addition to the lack of clear term limits, it allowed the

¹ For earlier analyses of Bangladeshi politics, including the caretaker government's strengths and weaknesses, see Crisis Group Asia Reports N°121, *Bangladesh Today*, 23 October 2006, and N°151, *Restoring Democracy in Bangladesh*, 28 April 2008, and Asia Briefing N°84, *Bangladesh: Elections And Beyond*, 11 December 2008.

² The president is elected by parliament and plays a largely ceremonial role as head of state. Under the caretaker government system, the president is fifth in line to become chief adviser; the last serving chief justice is supposed to be first. In 2007, however, the chief justice was considered too close to the BNP and so was not acceptable to the AL. As a result, then-President Iajuddin Ahmed jumped over four others and took on the position. The current president, Zillur Rahman, is a former AL general secretary.

³ Article 58, Constitution of the People's Republic of Bangladesh, www.pmo.gov.bd/constitution/index.htm.

⁴ For a full analysis of the lead-up to the coup, see Crisis Group Report, *Restoring Democracy in Bangladesh*, op. cit.

⁵ Under the BNP-led coalition government, police reportedly worked in partnership with at least one militant group. See Crisis Group Asia Report N°187, *The Threat from Jamaat-ul Mujahideen Bangladesh*, 1 March 2010, pp. 10-11.

president to promulgate ordinances and the government to declare and oversee a state of emergency. It did not spell out relations between the executive, election commission and the military and had a contentious method of choosing the chief adviser and his council.⁶ Moreover, a former election commissioner said, elections under a caretaker government could not be completely impartial, because “the reality is that there are hardcore partisan supporters in the bureaucracy”, and “they will always have some say in the elections in whichever system that is put in place”.⁷ Nevertheless, the caretaker system seemed preferable to the alternative, which was to let the dominant party control the election process.

On 10 May 2011, the Supreme Court handed down an advisory opinion that the caretaker government system was unconstitutional but should nevertheless be retained for the next two elections for the “safety of the people and the state”.⁸ The AL, and specifically Sheikh Hasina, decided, however, not to accept the ruling, despite fears within the party and among its coalition partners that this would provoke an increasingly disgruntled public.⁹ On 30 June 2011, the parliament, without the BNP’s participation, amended the constitution to remove the most salient provisions of Article 58.¹⁰

Sheikh Hasina and her supporters within the AL were reluctant to retain a system of government that nearly banished her from politics in 2007 and in their view had allowed bureaucrats and the military to defeat them in the general election in 2001. “The system has been tainted forever. How can we allow such a system to come to power

again?”, asked a senior AL leader.¹¹ The AL also argued that Bangladeshi democracy was strong enough to hold elections without a group of unelected supervisors. “Having a caretaker government to oversee elections makes us look like an uncivilised country that is not mature enough to hold elections. They have been holding free and fair elections in India for over 60 years; we can hold one too”, said a senior AL leader close to Sheikh Hasina.¹²

The BNP immediately announced it would boycott any election without a caretaker in place, raising the spectre of a return to violent deadlock of the kind that occurred in 2006. Its reaction was predictable, but the fears of potential election fraud are more widely shared, especially given how much Sheikh Hasina has dashed hopes that she would use her mandate to strengthen democratic reforms.¹³

⁶ Crisis Group interviews, senior leaders of AL and its coalition partners, BNP, election experts, and journalists, Dhaka, January-February 2012.

⁷ Crisis Group interview, former Chief Election Commissioner Shamsul Huda, Dhaka, January 2012.

⁸ “Supreme Court Short Order in connection to Civil Petition for Leave to Appeal No. 596 of 2005”, 10 May 2011. Other principles cited by the court to support its seemingly contradictory conclusion included “that which is otherwise not lawful, necessity makes lawful”; “safety of the people is the supreme law”; and “safety of the State is the Supreme law”. The full judgment for the verdict has not been released. See Shakhawat Liton and Ashutosh Sarkar, “Caretaker system can still be legal”, *Daily Star*, 12 February 2012.

⁹ The Parliamentary Special Standing Committee on Constitutional Affairs, led by an AL coalition partner and including senior AL leaders, publicly supported the Supreme Court advisory opinion. See “JSD for Caretaker in next 2 Polls”, *Daily Star*, 17 June 2011. Several AL leaders said most senior party figures were not consulted before Hasina proposed scrapping the caretaker government system entirely through the fifteenth amendment. None dared to criticise her decision publicly, however, for fear of being sidelined. Crisis Group interviews, Dhaka, January and February 2012.

¹⁰ These were 58B, 58C, 58D and 58E.

¹¹ Crisis Group interview, senior AL Leader, Dhaka January 2012.

¹² Crisis Group interviews, Dhaka, November and January 2012.

¹³ All non-AL supporters interviewed by Crisis Group for this report expressed concern about fraud.

III. SHATTERED HOPES UNDER THE AWAMI LEAGUE

Whatever its flaws, the caretaker government in 2008 left the AL government with a strong foundation to build on: a powerful Anti-Corruption Commission (ACC), reformed Public Service Commission and a judiciary separated from the executive. In three and a half years, however, most of these achievements have been reversed, weakened or placed under threat, eroding public confidence in the government's ability to conduct free and fair elections.

Sheikh Hasina had an unparalleled opportunity. With a two-thirds majority in parliament, she was arguably the most powerful prime minister since the restoration of democracy in 1991. The massive mandate was achieved largely off the AL's election manifesto – a “Charter for Change” – containing a pledge to reform the pre-2007 confrontational political culture. To do so, she needed to strengthen democratic institutions in her party and in government and reconcile with the opposition, especially the BNP, to build a functional multi-party system. The mandate also gave her a chance to address demands for justice for war crimes that occurred during Bangladesh's 1971 Liberation War.¹⁴

By 2012, expectations have been replaced by a sense that the AL failed to deliver.¹⁵ Promises of an end to confrontational politics came to naught when both parties reverted to form almost immediately after the 2008 election, with the BNP boycotting parliament over the relatively trivial issue of seating arrangements and the AL evicting Khaleda Zia from her government-allotted house and cracking down on various BNP activities.

Within the AL, Sheikh Hasina purged those she saw as disloyal and made fidelity to her leadership during the caretaker government the sole criterion for leadership positions. To that end, the AL, at its national council on 25 July 2009, voted to give her unlimited powers to change its constitution and personnel as she wished. As a result, a senior AL leader said, “after 1/11 [the day of the 2007 coup] and especially after the election victory, the party

and the government have become even more centred around the cult of the leader”.¹⁶

A. THE FIFTEENTH AMENDMENT

The fifteenth amendment to the constitution has been AL's most controversial political act, not just because it abolished the caretaker government, but also because it contained a wide range of other measures. Article 7A, aimed at the military, made any attempt to abrogate or suspend the constitution an act of sedition, punishable by death. Article 7B prohibited any further amendments to much of the constitution, including to a new clause giving Sheikh Mujibur Rahman, the country's founding president and Sheikh Hasina's father, the title of “Father of the Nation to Bangladesh”, a provision the BNP termed “partisan”.¹⁷

A prominent legal scholar observed:

This is the worst amendment imaginable. Through Article 7B, the amendment has made half the constitution unamendable. So if future Parliaments need to amend a section, they will have to scrap the whole constitution. The most dangerous part is [that] I cannot say this in public, because Article 7A means it could be considered as sedition, and I would be sentenced to death!¹⁸

The amendment restored key elements from the original 1972 constitution by reintroducing secularism and socialism as fundamental principles, causing violent protests led by a coalition of Islamist parties.¹⁹ A senior member of the Parliament's Constitution Amendment Committee and an AL coalition partner said that violence was “the necessary pain of pulling the communal thorn out of the country's body politic”.²⁰ At the same time, the amendment lifted a ban on religion-based politics, reinserted the phrase “In the name of Allah, the Merciful, the Compassionate” before the preamble and designated Bengali as the country's singular ethnic identity. These moves prompted

¹⁴ The AL, particularly Sheikh Hasina, did use the mandate to move boldly in order to resolve longstanding disputes with India. Relations reached their highest peak in over 30 years in a process that was expected to culminate in signature of several agreements during Prime Minister Manmohan Singh's visit in September 2011. But the failure to conclude a landmark river-sharing deal due to Indian domestic political constraints triggered a popular backlash and, according to diplomats from both sides, set back relations by “decades”. Crisis Group interviews, Dhaka, March 2012.

¹⁵ “Govt's three year performance rating”, *Daily Star*, 6 January 2012.

¹⁶ Crisis Group interview, Dhaka, January 2012.

¹⁷ Crisis Group interview, BNP leader, Dhaka, January 2012.

¹⁸ Crisis Group interview, Dhaka, January 2012; Article 7A envisages a death sentence for a person who suspends the constitution or “subverts or attempts or conspires to subvert the confidence, belief or reliance of the citizens to this Constitution or any of its articles”.

¹⁹ See “Islamists clash with riot police after Bangladesh backs secularism”, Associated Press, 11 July 2011.

²⁰ Crisis Group interview, Hasanul Haq Inu, president, Jatiya Samajtantrik Dal, Dhaka, January 2012.

protests from non-Muslims, including the mostly Buddhist people of the Chittagong Hill Tracts.²¹

The adoption of the fifteenth amendment, by a vote in which the BNP did not participate, follows a history of tinkering with the constitution that, according to a constitutional expert, “has made the country’s most sacred document into a casual plaything for partisan interest”.²²

B. CRACKDOWN ON THE OPPOSITION

The large trust deficit between the AL and the BNP, so long the source of political confrontation, is widening. Initially, signs were positive that Sheikh Hasina would reach out to the BNP. In a press conference immediately after winning the 2008 elections, she said, “we want to put an end to the politics of confrontation and present the nation with a new political culture” and pledged to replace political confrontation with “tolerance and decency” towards the opposition.²³ The BNP responded by joining parliament and promising to be a “constructive” partner.

The mutual tolerance and respect lasted less than a month. By 28 January 2009, the BNP had boycotted parliament over the issue of seating arrangements, and it has attended only 51 of the 254 parliamentary sessions since that year.²⁴ Any remaining hope of reconciliation died on 8 April 2009, when in retaliation for a similar action against Sheikh Hasina in 2001, the government issued an eviction notice to Khaleda Zia to force her to vacate her government housing.

The government then began to take more ominous measures. Over the last three years, it has tried to weaken opposition parties by pressing charges against almost all senior BNP leaders and restricting or banning their activities. “They did not allow us to hold rallies or processions. If they gave us permission to hold a rally, they would impose a state of emergency on that area the night before to prevent us from meeting at the spot”, said a regional BNP leader.²⁵ The BNP’s coalition partner, Jamaat-e-Islami, was in effect decapitated, as its top three leaders were arrested in 2010 and charged with war crimes. The remain-

ing leaders went on the run, and its party headquarters in the two biggest metropolitan centres – Dhaka and Chittagong – were shut down. The human rights monitoring group Odhikar reported that 3,215 people were arrested ahead of the 12 March 2012 BNP “grand rally” in Dhaka.²⁶

The government has also cracked down on media coverage of the BNP. It ordered cable operators to close three TV stations during live coverage of the 12 March rally. Although the crackdown on dissent is far below that undertaken by the last caretaker government, a senior TV journalist said, “there is a widely acknowledged but unofficial ban on live broadcast of Khaleda Zia’s speeches. If some TV channels do carry her speeches live, they get phone calls from either the intelligence agencies or the prime minister’s office itself”.²⁷ Several laws are also being drafted that would bring NGOs, the internet and media activities under tight government control.²⁸

On 17 April 2012, Ilyas (also seen as Elias) Ali, secretary of the BNP in Sylhet, “disappeared” along with his driver. Although facts surrounding the disappearance remain unclear, and the BNP did not publicly blame the AL, the incident prompted several weeks of BNP-led violence followed by a massive government crackdown on BNP leaders that forced many into hiding.²⁹ Sheikh Hasina has likewise sought to put pressure on leaders of the last caretaker government and of civil society organisations who publicly supported the “minus two” project. Among the former, Chief Adviser Fakhruddin Ahmed, former army chief Moeen U Ahmed and two leading intelligence officers who ran the project are in exile.³⁰ In addition to removing Mohammad Yunus as head of the Grameen Bank, the AL government also charged Matiur Rahman, editor of Bangladesh’s biggest daily newspaper, *Prothom Alo*, who supported the caretaker government, with conspiring with militants to assassinate Sheikh Hasina.³¹

²¹ See “Bangladesh: Letter from Chittagong Hill Tracts Commission to Prime Minister Concerning 15th Amendment of the Constitution”, 12 July 2011, www.indigenouspeoplesissues.com.

²² Crisis Group interview, Dhaka, January 2012.

²³ See “Charter for Change”, AL election manifesto, at www.albd.org/english/.

²⁴ Bangladesh opposition parties have a history of poor parliamentary attendance. In the last parliament [2001–2006], the AL attended 135 of 400 sessions; in the previous parliament [1996–2001], the BNP attended only 163 of 382. Shakhawat Liton, “BNP Walks Away from Sangsad”, *Daily Star*, 25 January 2012.

²⁵ Crisis Group interview, Rajshahi Division, March 2012.

²⁶ “Quarterly Report”, Odhikar, April 2012, www.odhikar.org/documents/2012/.

²⁷ Crisis Group interview, news editor, private television channel, Dhaka, March 2012.

²⁸ “Draft Broadcasting Policy Submitted to JS”, *Daily Star*, 1 August 2011; Rifat Munim, “Press Freedom at Stake”, *Daily Star Magazine*, 23 September 2011; “No foreign funds for MPs, civic body heads”, *Independent*, 20 February 2012.

²⁹ “BNP senior leaders go into hiding”, *Daily Star*, 3 May 2012.

³⁰ Brigadier General A.T.M. Amin and Brigadier General A. Bari, both directors at the powerful Directorate General of Forces Intelligence, went abroad and have not returned. Brigadier Amin has been charged with conspiring with BNP leaders and militants to assassinate Hasina in the 21 August 2004 grenade attacks; Brigadier Bari has gone AWOL from the military.

³¹ Crisis Group interviews, Dhaka, February and March 2012.

C. POLITICISATION OF THE SECURITY FORCES AND JUDICIARY

Keys to the public's loss of trust in the government are the AL's continuation of its predecessor's practice of politicising the executive, judiciary and security agencies – critical to conducting elections – and a rise in political violence.

On 15 January 2012, Sheikh Hasina stated that there were no human rights violations in Bangladesh. Odhikar asserts, however, that 330 people have died in extrajudicial killings, officially termed “crossfire” encounters, since 2009.³² Since 2010, abductions and disappearances have replaced crossfire deaths as the primary concern, with 81 cases reported in the media in 2011 alone.³³ The real number is believed to be far higher.³⁴ Both domestic and international human rights organisations report that many of the extrajudicial killings are committed by the military-police hybrid force, the Rapid Action Battalion (RAB), which military officials say is the most politically influenced it has ever been.³⁵ The police force, whose leadership is crammed with party loyalists, has fared no better; the deputy home minister publicly rejected a law drafted by the caretaker government that would have created an independent national police commission and lessened government influence in the recruitment of high officials.³⁶

Despite the caretaker government's achievement of separating the judiciary from the executive in 2007, the AL government has returned to the old practice of rewarding or punishing judges based on their decisions. Political loyalties apparently led to the passing over of a senior appellate division justice twice for the post of chief justice; they also are believed to have influenced the appointments of a substantial number of assistant attorneys general and high court judges. An AL leader, himself a lawyer, said, “most of these judges aren't worthy of being law clerks”.³⁷ This partisanship has resulted in over 7,000 cases suspected of having been dismissed under political pressure; 22 AL members, sympathisers, or sons of ministers and leaders

have been pardoned in political murder cases.³⁸ An academic said partisanship was also evident in the denial of bail to 45 top leaders of the opposition alliance accused in an ongoing politically-charged arson case (five were later granted “ad-interim bail” in view of their parliamentary privileges).³⁹

This politicisation of the courts is complemented by widespread witness harassment.⁴⁰ A prominent lawyer said, “corruption cases against ruling party leaders don't stand because suddenly all witnesses against them decide that they have nothing to say or some of them disappear”.⁴¹

One of the most politically sensitive trials in years involves some 6,000 members of the Bangladesh Rifles (BDR), now the Border Guard Bangladesh, who are being prosecuted in civilian and military tribunals for their role in the February 2009 mutiny. A Bangladeshi human rights researcher said that as many as 72, many of whom could be key witnesses, have died in custody.⁴² International human rights groups say the military courts, which sentenced 1,000 men in 2011, did not meet fair trial standards, because the prosecution failed to provide individual evidence against the defendants.⁴³

³² “Crossfire Statistics”, Odhikar, www.odhikar.org.

³³ Crisis Group interview, human rights investigator, Dhaka, February 2012.

³⁴ Crisis Group interview, human rights activist, Dhaka, January 2012.

³⁵ Crisis Group interviews, military officers and human rights activists, Dhaka, January and February 2012. Amnesty International says the RAB is suspected of 54 such killings in 2011. “Bangladesh”, Amnesty International Report, 2012, pp. 75-76.

³⁶ M. Rahman, “Police reform goes nowhere”, *Daily Star*, 1 October 2011.

³⁷ Crisis Group interview, Dhaka, February 2012.

³⁸ Kailash Sarkar, “President pardons 20”, *Daily Star*, 7 September 2010; Kailash Sarkar and Ashutosh Sarkar, “Wholesale pardons under question”, *Daily Star*, 8 September 2010; Kailash Sarkar, “Political killings on the rise”, *Daily Star*, 5 November 2011. For a broad overview, see Shakahawat Liton, “Controversies can be costly”, *Daily Star*, 28 February 2012.

³⁹ Crisis Group email correspondence with an expert on Bangladesh, May 2012. BNP members, including Acting Secretary General Mirza Fakhrul Islam Alamgir, were among the 45 accused of ordering the torching of a bus in front of the prime minister's office on 29 April during a political demonstration. They were jailed on 16 May, and denial of bail was upheld five days later. On 27 May, 34 of the accused petitioned the High Court, which granted bail to the five parliamentarians among them. See “5 Opposition MPs Get Bail”, *Daily Star*, 28 May 2012.

⁴⁰ Crisis Group interviews, legal scholar, court correspondent and senior lawyer, all Dhaka, January 2012.

⁴¹ Crisis Group interview, lawyer, Dhaka, January 2012.

⁴² A Bangladeshi human rights investigator closely following the trials said that there is a high public and military demand to see the mutineers punished. Crisis Group interview, Dhaka, January 2012; “World Report 2012: Bangladesh”, Human Rights Watch.

⁴³ “World Report 2012”, op. cit. In one of the trials that finished on 27 June 2011, 657 of 666 defendants were sentenced to prison terms. An international human rights activist said, “it is impossible to try hundreds of people at the same time and expect anything resembling a fair trial”. “Ensure Fair Trial of Mutiny Defendants”, Human Rights Watch, press release, 26 July 2011.

D. WAR CRIMES TRIALS

One of the most controversial accusations by Jamaat-e-Islami is that the government has sought to dismantle the party by eliminating its leadership under charges of having committed war crimes during Bangladesh's 1971 Liberation War. In March of that year, the Pakistani government started a brutal nine-month suppression of Bengalis seeking independence for the then East Pakistan. Bangladesh was created as a result, but at the price of at least hundreds of thousands of civilian deaths and untold thousands of women raped.⁴⁴ At the time, Jamaat supported the Pakistan government.

In March 2010, the AL government established the International Crimes Tribunal, a national court for prosecuting Bangladeshis suspected of the 1971 atrocities, under the country's International Crimes (Tribunals) Act 1973. Since June 2010, six Jamaat and two BNP leaders have been arrested for their alleged involvement, and on 28 May 2012, two Jamaat leaders, Motiur Rahman Nizami and Abdul Quader Mollah, were formally indicted for crimes against humanity, including genocide. The first trial is to start on 20 June.⁴⁵ The Jamaat says that the tribunal has selectively charged only members of the opposition,⁴⁶ though prosecutors, historians and researchers say that the defendants had a public and well-documented role in the crimes.⁴⁷

Critics question the tribunal's independence, citing its creation of its own rules of procedure that cannot be chal-

lenged before the Supreme Court.⁴⁸ They also cite the government's efforts to stifle criticism of the tribunal and failure to respect the presumption of innocence, with ministers making statements assuming the defendants' guilt.⁴⁹ BNP leaders suggest that Sheikh Hasina has also rhetorically used the trials to justify actions against their party and will continue to do so ahead of the elections. The AL and its partners argue that one reason the opposition wants a caretaker government is to protect war criminals and hamper the trials.⁵⁰

Supporters of the tribunal fear that the politicisation of the trials could make it easier for the opposition to suspend them if it came to power.⁵¹ A Western legal expert, however, said that it is still too early to judge the tribunal's fairness, adding: "We will have to wait until the first verdicts to see whether the judges have deliberated on credible evidence".⁵²

Regardless of these differing assessments, all agree that the tribunal's existence depends on the survival of the AL government and that, therefore, there is a risk the government may try to push judgments through before the end of its term.

⁴⁴ Officially, 3,000,000 civilians died and 200,000 women were raped in the war. There was a government probe into the number of deaths in 1972, but the committee never published its report. These numbers are disputed by scholars, who say the number of civilian deaths ranged between 250,000 and 1.5 million to 3 million. Detailed private studies done by the War Crimes Fact Finding Committee, a private Bangladesh research initiative, put the number at 1.2 million; the Liberation War Museum uses the three million figure; but there is no conclusive study on either civilian deaths or rapes. For more detail, see Leo Rose and Richard Sisson, *War and Secession: Pakistan, India and the Creation of Bangladesh* (Berkeley, 1990); "Fifty Years of Violent War Deaths from Vietnam to Bosnia", Institute of Health Metrics and Evaluation, *British Medical Journal*, 26 June 2008.

⁴⁵ Nizami faces charges of genocide, murder, conspiracy, planning, incitement and complicity; his trial is to start on 1 July 2012. Mollah is additionally charged with aiding the Pakistani occupation forces. His trial is to start on 20 June. See "Nizami, Mollah indicted for war crimes", *Daily Star*, 28 May 2012.

⁴⁶ For example, the Jamaat said Delwar Hossain Sayedee has been charged because he has now risen to the upper rungs of its leadership, though he was only a minor local figure in 1971.

⁴⁷ Crisis Group interviews, independent researcher, January 2012; Mofidul Hoque, director, Liberation War Museum, Dhaka, February 2012; International War Crimes Tribunal prosecutor, Dhaka, March 2012.

⁴⁸ The tribunal has decided not to use the Criminal Procedure Code and the Evidence Act. The latter would require, for example, a death certificate and an autopsy report as prerequisites for a murder trial, and these would not be available for most of the 1971 cases. A legal expert criticised the wholesale rejection of these laws, saying a tailored version of them could have been used. Crisis Group interview, Dhaka, February 2012.

⁴⁹ Parliament passed a private members resolution on 16 February 2012 recommending that legal provisions be enacted to prohibit "obstruction" of the tribunal. "Govt to act against obstructors", *BdNews24*, 16 February 2012. See also Shakhawat Liton, "Govt not bound to enact law", *Daily Star*, 20 February 2012. A UN Working Group on Arbitrary Detention concluded in November 2011 that the detentions breached international law, www.internationallawbureau.com/blog/wp-content/uploads/2012/02/UN-Working-Group-ICT-Opinion.pdf. Due to time restrictions on its work, however, it did not consider evidence from the prosecution. An informed debate can be found at <http://bangladeshwarcrimes.blogspot.com.au/2012/02/govt-pr-debate-on-un-detention-ruling.html>. The U.S. ambassador-at-large for war crimes, Stephen Rapp, has prominently criticised the tribunal as not meeting Western standards; "Bangladesh International Crimes Tribunal", *Voice of America*, 6 December 2011.

⁵⁰ "Govt not bound to enact law", *op. cit.*

⁵¹ Crisis Group interview, Mofidul Hoque, director, Liberation War Museum, Dhaka, 8 February 2012.

⁵² Crisis Group interview, Dhaka, March 2012.

E. CORRUPTION

Sheikh Hasina has not fulfilled her campaign pledge to run a corruption-free administration.⁵³ Numerous high-profile corruption cases have damaged confidence in the government. The most damning emerged in April 2012 when Railways Minister Suranjit Sengupta was retained in the cabinet after a scandal involving bribes worth Tk 70 lakh (\$90,000 – the equivalent of nearly seven years of ministerial wages).⁵⁴ ACC Chairman Ghulam Rahman says the commission has been turned into a “toothless tiger” by requiring it to obtain the government’s permission before investigating officials. This increases the possibility that corruption suspects might be able to keep subordinates from giving evidence or otherwise cooperating with the investigation.⁵⁵ AL leaders have continued the practice of exploiting loopholes in the judicial process with the help of the National Committee on Withdrawal of Politically-Motivated Cases, which has recommended the dismissal of 315 corruption cases against senior party figures through February 2012.⁵⁶

F. THE AWAMI LEAGUE IN POWER

Freedom of expression has declined also within the AL. Purging party stalwarts perceived as traitors and rewarding loyalists led to the formation of a new central working committee on 10 August 2009, more than half of whose 73 members were either new entrants or previously inexperienced in national politics.⁵⁷ Sheikh Hasina has surrounded herself with an inner circle comprising her sister, son, daughter and a group of close unofficial advisers. “A fly couldn’t enter through the bubble that surrounds her; how

can we be expected to speak to her?”, asked a central AL leader.⁵⁸

A veteran leader said that the AL’s position on national and government policies is no longer decided by relevant party working groups and cells but by Sheikh Hasina and her advisers. He called the scrapping of the caretaker government requirement a case in point: even though most of her central committee and the parliamentary special committee on the constitution were against it, nobody dared protest for fear of reprisals.⁵⁹

With both senior cabinet and party figures bent on self-censorship, AL leaders argue that the capacity for self-correction has narrowed. An AL leader close to Sheikh Hasina said that she is often left to deal with trivial decisions at the last moment because no one is willing to bring her bad news before it becomes public.⁶⁰ Another senior member of the party central working committee said:

No one dares to speak up, because they know it will be fatal for their political career. Why would I say anything and lose my position? We may lose the next election as a result of not criticising and fixing what is wrong, but at least I’ll have another chance five years after that. If I dare criticise the leader now, I know I’ll be finished in the AL forever.⁶¹

Hopes of a reformed AL have all but disappeared. The party’s wings, including its student wing, the Bangladesh Chatra League, have returned to the violence and criminality that have been the traditional hallmarks of political incumbents.⁶² According to a leading Dhaka-based human rights group, a majority of the 135 political killings in 2011 involved AL members killing internal rivals for party nom-

⁵³ According to Transparency International’s Corruption Perception Index 2011, Bangladesh ranks 120 out of 182 countries, though this is an improvement from the previous decade, when it was routinely perceived as one of the most corrupt countries in the world.

⁵⁴ On 9 April 2012, the minister’s driver drove into the headquarters of the Border Guards Bangladesh, with the money stashed in the car and three men close to the minister as passengers. He claimed the money had been collected as part of a bribe deal and was angry because he did not receive his cut. He has been missing since that day. The minister has insisted he had no “direct or indirect” link with the money. He resigned but was retained in the cabinet without portfolio. “Suranjit Resigns”, *The Daily Star*, 16 April 2012.

⁵⁵ Crisis Group interview, Dhaka, 24 January 2012.

⁵⁶ Ibid. See also “Govt to drop 68 more cases against AL men”, *Daily Star*, 21 December 2011.

⁵⁷ A veteran AL leader said the decision also reflected the wishes of the U.S. and UK, which had pushed hard before the 2008 elections to encourage Sheikh Hasina to promote a new generation of leaders. Crisis Group interview, Dhaka, February 2012.

⁵⁸ Crisis Group interview, Chittagong, February 2012.

⁵⁹ Crisis Group interview, Dhaka, February 2012.

⁶⁰ Crisis Group interview, Dhaka, January 2012.

⁶¹ Crisis Group interview, March 2012.

⁶² A prominent student leader said, “usually the best student doesn’t lead the organisation, because a student needs to pay off ... political patrons to rise through the ranks”. These payments range from \$5,000 to \$25,000, which start a cycle of corruption between political patrons, student leaders and business partners who loan them the initial payment. Crisis Group interviews, Dhaka, January-February 2012. Cabinet members or party leaders who refuse to reward party members or loyalists have become the target of hate campaigns. Agriculture Minister Matia Chowdhury is widely reputed to be a rare clean and effective minister and to be viewed negatively by party loyalists to whom she reportedly refuses to dole out government contracts. One such AL party worker said, “she needs to be dragged out of the cabinet by her hair! We spent months and years on the street working and fighting for this party, and now that we got her into power she has forgotten who got her there”, Crisis Group interview, Dhaka, January 2012.

inations, lucrative state contracts or territory.⁶³ This trend was brought under a harsh public spotlight after the murder of Lokman Hossain, the popular mayor of Narsingdi, on 1 November.⁶⁴ The family publicly accused the brother of Posts and Telecommunications Minister Rajiuddin Ahmed Raju and some ten others of involvement in the murder, which they allege was motivated by a clash over government contracts and drug dealing.⁶⁵

Despite several verbal warnings from Sheikh Hasina, the AL has made little progress in stopping this kind of criminal behaviour.⁶⁶

IV. THE OTHER PARTIES

Three parties in addition to the AL are important as elections draw closer: the centre-right BNP and its Islamist ally, the Jamaat-e-Islami, and the Jatiya Party, the AL's principal ally. The BNP-Jamaat alliance was left in disarray after the 2008 elections, with only 32 of the 300 seats in parliament between them, but the AL's actions and unpopularity have caused the opposition's prospects to surge.

A. THE BNP

The BNP has regained its strength. After near electoral annihilation in 2008, it was demoralised, disorganised and riven by internal divisions. Khaleda Zia, much like her rival Sheikh Hasina, took advantage of the situation to consolidate control at the party's 2009 national council by banning all major decisions taken in her absence and making it impossible to remove her as its chief. But the party remained weak, with its student and labour wings suffocated by government arrests and pressure. The death of its secretary general, Khandaker Delwar Hossain, opened further fissures among leaders fighting to replace several seasoned veterans who had sided against Khaleda during the caretaker government. Unlike Hasina, Khaleda allowed reformists to return, even as she assured loyalists "the traitors will pay the price when we return to government".⁶⁷

The AL's decisions to scrap the caretaker system swung public support towards the BNP.⁶⁸ "It was a gift from Sheikh Hasina", said a BNP leader. The result was a fresh infusion of funds from party backers and the business community. Khaleda used the money to exploit anti-AL sentiment by launching four "road marches" in late 2011 and early 2012, travelling to over 50 of Bangladesh's 64 districts to rejuvenate party workers and strengthen the organisational structure.

Increasingly, the BNP is demonstrating that it has regained enough strength to sustain a prolonged fight with the government. On 29 January 2012, it held countrywide protests that left seven people dead in clashes with police and AL activists. As already noted, in an even bigger show of force, it brought 100,000 supporters to Dhaka on 12 March despite mass arrests and efforts to shut-down the country's transport links for three days. At the rally, Khaleda Zia demanded that Sheikh Hasina announce a road-map to reinstate the caretaker system by 10 June. Party leaders said the deadline was an attempt to force a political

⁶³ "Human Rights Report 2011", Odhikar, p. 46.

⁶⁴ Rashidul Hasan, "Focus on conflicts within AL", *Daily Star*, 3 November 2011.

⁶⁵ Rashidul Hasan, "It was a league of foes", *Daily Star*, 19 November 2011. The article noted that Lokman himself was "smeared" with the accusation of murdering a former municipal commissioner in 2001 and that the commissioner's allies might also be involved in Lokman's murder.

⁶⁶ Hasan Jahid Tusher, "Hasina warns, MPs ignore", *Daily Star*, 7 May 2010; and "PM warns BCL men of wrongdoings", *Daily Star*, 10 July 2011.

⁶⁷ Crisis Group interview, BNP leader, Dhaka, 25 January 2012.

⁶⁸ See *Daily Star*/Nielsen Poll in "Govt's 3-year performance rating", www.thedailystar.net/suppliments/2012/Govt.%20Three-Year%20Performance%20Rating/index.html.

resolution of the issue and avoid a violent confrontation that they feared would scare away middle-class voters or, worse, invite military interference. When the deadline passed, Khaleda called for mass political demonstrations across the country but did not call a mass strike (*hartal*) which some saw as leaving open room for compromise.⁶⁹

But even if the government reinstates the caretaker system, the AL could potentially introduce another obstacle to smooth elections by blocking Khaleda Zia from standing. If found guilty of the corruption charges brought against her on 19 January, she could be imprisoned for seven years, which would rule her out of the contest. Her younger son, Arafat Rahman Koko, has already been sentenced to six years for corruption, and a second son, Tarique Rahman, is on trial for conspiring to assassinate Sheikh Hasina in 2004. BNP leaders say that convicting Khaleda would be a major provocation and ensure an election boycott. Although Tarique is still perceived as the leader-in-waiting, his conviction would not be seen as such a deal-breaker.

B. JAMAAT-E-ISLAMI

The Jamaat emerged virtually unscathed from the two years of caretaker government, only to find itself under attack by the AL. Said a party leader:

Our current preoccupation is self-preservation. Our existence is under threat. Our offices have been shut in most cities and towns. Our leaders and workers are arrested for simply being at our office or just being a member. Our leaders have been driven underground and even our two MPs [members of parliament] are regularly harassed. We are a registered democratic party, yet we are not being allowed to function.⁷⁰

The party, as noted above, was badly hurt by the arrests of its top leaders for war crimes, but other leaders in Dhaka and in the Jamaat strongholds of Rajshahi and Chittagong said that although some political activities have been damaged, its ability to organise rallies and processions remain: “The AL underestimates our resilience. Any other party would have folded under the pressure that we have faced in the last three years. Yet, we have provided the most activists for the alliance rallies and road marches”.⁷¹

Jamaat’s main concern is the war crimes trials. It would like its ally to threaten an election boycott unless charges are dropped, but this is not BNP’s priority. One scenario being discussed is to strike a deal with the AL to obtain

reduced sentences for the leaders in exchange for ending the alliance with the BNP. This is unlikely, however, and there is some concern Jamaat supporters will intensify political violence to disturb the trials. On 21 February, a senior party leader publicly warned the government that if the trials went forward, “no one on the soil of Bengal will be safe if any harm happens to [Ghulam Azam, the Jamaat’s former chief]”.⁷² But analysts suggested that Jamaat does not have the numerical strength to bring the country to a halt; at worst it could explode some home-made bombs or cause a few deaths through street protests.⁷³

Borrowing a page out of the caretaker regime’s handbook, the AL government, some in the Western diplomatic community and even some in the BNP are discussing the rehabilitation of Jamaat by splitting the party and isolating its old guard. A prominent analyst said conversations were taking place in political circles about a decapitated Jamaat that would renounce radical Islam, remove anyone linked to war crimes and mould itself into a mainstream party akin to the Turkish Justice Party.⁷⁴ On 11 February, AL’s joint general secretary, Mahbub-ul Alam Hanif, publicly called on Jamaat leaders under 50 to “form a new Jamaat excluding the war criminals. If you were barely ten years old in 1971, you were not a war criminal, so why should you carry that stigma?”⁷⁵ But leaders of Jamaat and its student wing, the Islami Chatra Shibir, both rule out the possibility of a split. “We are a disciplined party who believe none of our leaders did anything wrong in 1971. This war crimes trial is a lie to crush our party. The reformists do not stand a chance”, said a young Jamaat leader.⁷⁶

During the BNP coalition government, Jamaat was seen as helping protect radical groups such as the Jamaat-ul Mujahideen Bangladesh (JMB) by denying their existence.⁷⁷ In 2008, in an effort to broaden its appeal, it amended its constitution, acknowledging that what took place in 1971 was a war of liberation rather than a civil war. It also allowed non-Muslims to become members.⁷⁸ It has not been able to shake its image as an Islamist party, however.

Politically, Jamaat remains dependent on the BNP; it could not hope to win many seats or have policy influence without the alliance, and though some BNP leaders dislike

⁶⁹ “The opposition’s sensible programmes”, *Daily Star*, 12 June 2012.

⁷⁰ Crisis Group interview, Dhaka, 9 February 2012.

⁷¹ Crisis Group interview, Jamaat leader, Rajshahi Division, 2 March 2012.

⁷² “Jamaat’s threat over Ghulam Azam’s trial”, *Daily Star*, 22 February 2012.

⁷³ Crisis Group interview, Dhaka, 21 January 2012.

⁷⁴ Crisis Group interviews, analyst, Dhaka, 21 January 2012; newspaper editor, Dhaka, 17 January 2012.

⁷⁵ “Form a new Jamaat excluding war criminals: Hanif”, *BDNews24*, 11 February 2012.

⁷⁶ Crisis Group interview, Chittagong, February 2012.

⁷⁷ Crisis Group Report, *The Threat from Jamaat-ul Mujahideen Bangladesh*, op. cit., pp. 10-11.

⁷⁸ Crisis Group Briefing, *Bangladesh: Elections and Beyond*, op. cit., p. 3.

Jamaat because of its opposition to Bangladesh's creation in 1971, the parties share a commitment to Bangladesh's Islamic identity and a hostile view of India.

C. JATIYA PARTY

Wedged between the opposition and the AL is the Jatiya Party (JP), led by former military dictator Hussain Mohammad Ershad. As the third largest party and with 27 seats in parliament (only three less than the BNP), it is set to play a pivotal role in the next eighteen months.

JP has been in alliance with the AL since December 2008, but all is not well. Ershad has publicly criticised the government's decision to scrap the caretaker government system, raised questions about the credibility of the election commission and asked JP workers to prepare to contest the election outside the alliance.⁷⁹ Party leaders publicly and privately complain that the AL routinely neglects to consult or coordinate on major policy decisions. Privately, however, they say there is little chance of the alliance falling apart and support holding elections even with the threat of a BNP boycott. "One party cannot hold the country hostage every time it disagrees with the government", said one.⁸⁰

JP's role in an electoral deadlock would be critical. With its strong representation in parliament and iron grip on the Rangpur administrative region (one of the country's seven), it might be able to name its price to whichever party most needs a partner in order to govern.

V. ELECTORAL DEADLOCK

The looming electoral impasse among the four parties could turn into a full-blown political crisis, putting the 2013 vote at risk unless the AL is willing to take the highly unlikely step of bringing back the caretaker government system in some form.⁸¹ The BNP wants restoration of the constitution's Article 58B through E, as well as removal of Article 123(3), incorporated through the fifteenth amendment, that provides for elections to be held under the incumbent government, including the prime minister, without dissolving the parliament or cabinet. The new rules, according to a senior BNP leader, "guarantee that the ruling party will win, because they will control the administration and security agencies who oversee polling centres".⁸²

The AL's position is that a strong Election Commission (EC) will guard against fraud. "They [the commissioners] have demonstrated their impartiality and they were selected under the fairest process in Bangladeshi history. The public are now confident of fair elections", said an adviser, who cited several by-elections that were accepted as free and fair by the media and international observers.⁸³ But former election commissioners, election experts and the opposition disagree. The last chief election commissioner, Shamsul Huda, called a strong EC inadequate to ensure free, fair and credible national elections. "We mobilise around a million bureaucrats, private sector employees and security officials to administer elections: how can a small election secretariat in Dhaka monitor all of them?"⁸⁴

The EC, as reconstituted in February, consists of only AL-recommended members and is not acceptable to either the main opposition parties or the JP. However, a senior BNP leader said, a new EC is not the core priority, because "if an impartial caretaker government is constituted, then everything else will fall into place".⁸⁵

A. SCENARIOS AND OPTIONS

The lack of a caretaker government system is not the BNP's only issue; it is also angry over the possible conviction of Khaleda Zia or her son, Tarique, in their ongoing court cases, which would bar them from the elections. Such a judgment could only be designed to cripple the BNP, one

⁷⁹ "Ershad fears chaos over CG issue", *Daily Star*, 23 February 2012; and "Ershad blasts govt for power, water crises", *Daily Star*, 3 April 2012.

⁸⁰ Crisis Group interview, Dhaka, March 2012.

⁸¹ Under the constitution, the next general elections must be held in the 90 days before 24 January 2014.

⁸² Crisis Group interview, Dhaka, March 2012.

⁸³ Crisis Group interview, adviser to the prime minister, Dhaka, March 2012.

⁸⁴ Crisis Group interview, Dhaka, January 2012.

⁸⁵ Crisis Group interview, Dhaka, March 2012.

of its leaders said.⁸⁶ A Western diplomat said that any attempt to force the courts to convict would be a “serious miscalculation” on AL’s part.⁸⁷

If the two main parties fail to reach a compromise on all these issues, there are several possible options. The AL could go ahead with elections without BNP and Jamaat participation. “If one or two of the opposition parties do not participate in the elections, that’s their problem”, said an adviser to the prime minister.⁸⁸ But many fear that this could lead to violent confrontation and provoke military intervention.⁸⁹

A more remote possibility is that the AL would hold the elections without the BNP but encourage the JP to stand as an opposition party for the sake of credibility and invite its own and Jamaat breakaway sections to take part. While unlikely, a diplomat said, this cannot be completely ruled out.⁹⁰ Most analysts, however, fear it could lead to a repeat of events in 1996, when the then BNP government was forced to implement the caretaker system and hold fresh polls in May, after the AL-boycotted vote in February was deemed not credible.

Two other possibilities are appointment of an all-party or “national unity” government that would ease fears of possible AL rigging. AL and JP leaders are favourable towards the former, which would consist of a ten- to twenty-member cabinet nominated by those parties and including parliamentary representation. However, the BNP is opposed, as the AL is proposing that the number of members from each party should be determined by its proportion of seats in parliament giving a massive advantage to the AL alliance, which controls 87 per cent. Moreover, it argues, having either the prime minister or the president as the head of such an interim government would undermine its impartiality.

A variant might be an all-party government composed of eleven cabinet members, five each from the AL and BNP, with the incumbent prime minister as its head.⁹¹ A West-

ern diplomat said that Sheikh Hasina had even agreed to step down as prime minister if the BNP would accept this model. Nevertheless, informal negotiations in early 2012 had broken down by March, when the AL cracked down on the BNP rally. A BNP negotiator said the AL would still be able to influence the key levers of electoral control, such as the EC, which was unacceptable,⁹² and the party has since returned to its demand for a caretaker government.

The “national unity” models proposed in 1996 and 2007 would consist of members of the executive, judiciary, military and legislature, along with prominent civil society figures. This is favoured by smaller parties, civil society leaders and some diplomats but opposed by the two main parties. It could realistically only come into effect after some form of military intervention.

B. DEADLOCK TO VIOLENCE

The good news is that the political parties have at least eighteen months to reach an agreement on an acceptable electoral mechanism. An accommodation seemed to be on track in late February 2012, when leaders from both sides were confident of an understanding to install an interim government that would be trusted by all registered parties. At the time, the AL set two pre-conditions for negotiations: that any interim government must consist only of elected parliamentarians, and the BNP must introduce its proposals for electoral arrangements in parliament.⁹³ Although the BNP rejoined parliament on 18 March, one of its leaders close to the negotiations said a government cannot be both impartial and composed of members of parliament.⁹⁴ After the crackdown in connection with the party’s 12 March rally, a quick resolution is unlikely. BNP leaders say they cannot accept the AL’s good faith in proposing an interim government “when they are arresting, harassing and beating us on the streets or falsely charging our leaders”.⁹⁵

If the AL continues to refuse the reinstatement of a caretaker government system, political violence is likely. As an AL leader said, “the signs are already there that the two parties are preparing for a long battle. Activists have started to die in pitched battles, and schools and universities are shutting down for political programs. The pre-election violent confrontations have come early”.⁹⁶ This is evident from the protests in the aftermath of Ilyas Ali’s disappear-

⁸⁶ Crisis Group interview, senior BNP leader, Dhaka, March 2012.

⁸⁷ Crisis Group interview, Dhaka, March 2012.

⁸⁸ Crisis Group interview, Dhaka, November 2012.

⁸⁹ Crisis Group interview, South Asian diplomat, Dhaka, March 2012.

⁹⁰ Crisis Group interview, Dhaka, February 2012. Many analysts fear this could lead to a repeat of events in 1996, when the BNP government was forced to implement the caretaker system and hold fresh polls in May after AL-boycotted polls the previous February were not deemed credible by the AL, most other political parties, and the international community.

⁹¹ This formula was proposed in 1996 by Sir Ninan Stephen, special envoy of the Commonwealth secretary general. Under the model, the incumbent prime minister would be retained as

head of government. See Shakhawat Liton, “Rejected then, reviewed now”, *Daily Star*, 19 February 2012.

⁹² Crisis Group interview, Dhaka, March 2012.

⁹³ Ibid.

⁹⁴ Crisis Group interview, Dhaka, March 2012.

⁹⁵ Crisis Group interview, Dhaka, March 2012.

⁹⁶ Crisis Group interview, Dhaka, March 2012.

ance in April and the arrests of senior opposition leaders in May.

Though the international community, which has had significant influence over Bangladeshi politics in the past, has had little success in pushing for negotiations this year,⁹⁷ many AL and BNP members would like a negotiated solution. A BNP member said, “almost all of the Awami League party leaders are reasonable about our demands and [agree on] what is needed for an acceptable election. The problem lies with Hasina”.⁹⁸ Mutual suspicions, however, remain high. A member of Sheikh Hasina’s inner circle said, “we cannot trust the BNP’s word, because they have never been committed to democracy. They want to come to power on the back of a military intervention”.⁹⁹ A BNP leader commented in kind: “Hasina dislikes the BNP and Khaleda Zia so much that she would rather see the military than us back in power”. Mutual fear of military intervention might be the only catalyst to an agreement. A senior AL leader said, “an acceptable caretaker government is the only alternative, because even our leader [Sheikh Hasina] must be loath to provide an opening to the military”.¹⁰⁰

⁹⁷ India has had the most outside influence over the AL government, which has consistently resisted pressure from the U.S., including Secretary of State Hillary Clinton who, during a May 2012 visit, unsuccessfully raised the issues of re-instating Muhammad Yunus as the managing director of the Grameen Bank, starting political negotiations with the BNP, and pushing through the Chittagong Hill Tracts Peace Accord. The accord, signed in 1997 between the government and the United People’s Party of the Chittagong Hill Tracts (Parbatya Chattagram Jana Sanghati Samiti), ended the insurgency led by the party’s armed force, the Shanti Bahini. See comments by AL General Secretary Syed Ashraf Islam in “Syed Ashraf takes swipe at Yunus, Clinton”, *The Daily Star*, 10 May 2012.

⁹⁸ Crisis Group interview, Dhaka, March 2012.

⁹⁹ Crisis Group interview, Dhaka, March 2012.

¹⁰⁰ Crisis Group interview, February 2012.

VI. THE MILITARY VIEW

The military will play a pivotal role in the outcome of any electoral deadlock. It has never been shy about intervening in politics. Informally it is sometimes called the third party – after the AL and BNP – since it has ruled the country for half its existence. “The public perceives the army to be an instrument of change, either directly or as the power behind the throne”, said an analyst.¹⁰¹ Less than four years ago, the military was lauded for voluntarily returning power to a civilian government, and as frustrations grow with the AL government, it is being mentioned in private as a plausible alternative.¹⁰²

“Next time, if the army intervenes, there will be no back-seat driving for the army. ‘Minus two’ won’t be gentle”, said a retired officer.¹⁰³ The question is whether a visibly restive military would wait to act until the next elections. The answer could depend on the government’s ability to address its grievances left over from the 2009 mutiny and a possible 2012 coup attempt.

A. THE BDR MUTINY

On the morning of 25 February 2009, barely 50 days into the AL government, large sections of the paramilitary border force, the Bangladesh Rifles (BDR), rebelled against mostly mid-level officers at its Dhaka headquarters, killing 57 and allegedly sexually assaulting several wives and daughters. A government inquiry into the mutiny, from which the sole military officer resigned due to disagreements with the findings, concluded there were no “genuine” motives but said it suspected the primary causes to have been the BDR’s longstanding discontent and demand for pay and facilities equal to those of the military.¹⁰⁴

¹⁰¹ Crisis Group interview, London, November 2011.

¹⁰² Several students, professionals and businessmen, as well as an opposition member of parliament, all from Dhaka or Chittagong, have told Crisis Group they would rather see a military government in power than the AL or BNP. “They provide stability and predictability for business and our daily lives. With political parties, you don’t know what political crisis will happen next”, said a businessman in Dhaka. Crisis Group interviews, January-February 2012.

¹⁰³ Crisis Group interview, Dhaka, November 2011.

¹⁰⁴ The sources of resentment included commanding army officers’ attitude towards border guards and their “luxurious lifestyle”. The mutineers demanded an increase in border and ration allowances, participation in UN peacekeeping missions and the same salary structure as the military. The probe also revealed the mutineers had unsuccessfully pressed their demands on political leaders two months before the mutiny. See “Mutiny followed failure in getting political response”, *Daily Star*, 28 May 2009. The committee, however, never released its

Despite intense pressure from the military to assault the border guard headquarters, in the middle of one of Dhaka's most densely populated suburbs, Sheikh Hasina opted to negotiate with the mutineers, resulting in a resolution by day's end.¹⁰⁵ Some in the military saw her choice of negotiation over force as having contributed directly to the deaths of fellow officers and rapes and directed their fury towards the newly elected AL government. In a meeting with Sheikh Hasina immediately after the mutiny, several launched into verbal attacks against the government and were subsequently dismissed.¹⁰⁶ In all, dozens of officers, including some who were prominent and highly decorated, were reportedly dismissed or forced into retirement for their vocal criticism of the government's actions, which increased resentment.¹⁰⁷ Five junior officers were convicted in 2010 for trying to assassinate Fazle Nur Taposh, an AL member of parliament and nephew of Sheikh Hasina, for his involvement in negotiating with the mutineers.¹⁰⁸

full findings, which, along with the resignation of its sole military representative and the knowledge some AL leaders had of the mutineers demands, encouraged suspicions within the military of "foul play". Crisis Group interview, retired military officer, Dhaka, January 2012.

¹⁰⁵ According to senior military officers close to the decision-making process that day, no detailed military operation plan was proposed to the government; allegedly the army, navy and air force chiefs were made to wait an hour before they met with Sheikh Hasina, who prioritised consultations with her cabinet. Crisis Group interview, military officers, Dhaka, January 2012. However, other officers suggested that "assaulting the BDR headquarters" would not necessarily mean using tanks or air power, but rather a commando force specifically to rescue officers who were using their mobile phones to report their situation. Crisis Group interviews, Dhaka, January 2012. An assault with heavy weapons "in the middle of Dhaka would have caused serious insecurity among the people, risked civilian casualties and, politically, could have led to regime change and a possible military takeover". Crisis Group interview, retired military officer, Dhaka, February 2012.

¹⁰⁶ The contents of an audio recording of the meeting that emerged on YouTube have been confirmed by serving and retired military officers. Crisis Group interviews, Dhaka, January and February 2012

¹⁰⁷ Ibid. There is no agreement on the number of dismissals, but serving and recently retired officers estimate that at least 25 officers have been dismissed and another 40 to 50 may have been forcibly retired. One of the dismissed officers, Lt. Colonel Hasinur, is a decorated officer considered a "legend" in the army. A leading counter-terrorism commander, he is now allegedly being court-martialed for links to militants.

¹⁰⁸ "AL lawmaker Taposh escapes bomb attack", *Daily Star*, 22 October 2009. Julfikar Ali Manik, "It was a bid to avenge BDR carnage", *Daily Star*, 7 November 2010.

B. THE FAILED COUP

In more evidence of deep-seated grievances, the military announced on 19 January 2012 that it had foiled a coup by several mid-level and retired officers, supported by the Islamist movement Hizb ut-Tahrir and "political groups".¹⁰⁹ It remains unclear whether there was in fact a serious threat, especially given several dubious aspects.

Two retired officers were arrested on 15 and 31 December.¹¹⁰ According to their court statements, they had planned to overthrow the government, then appoint a civilian, Ishraq Jahan, currently living in Hong Kong as the head of a government that would install an Islamist state.¹¹¹ Ishraq stated that although he knew those arrested, he was not an Islamist and denied involvement in the plot.¹¹² The role of Hizb ut-Tahrir, an international movement working for the restoration of the Islamic caliphate that is banned in Bangladesh, was also unclear. Serving and former military officers said that it was unlikely to have been involved in a coup attempt but did try to take advantage of the military's instability by distributing leaflets to instigate officers to rise up against the AL government.¹¹³

The alleged plotters had reached out to several officers, insisting the army must take revenge for the BDR mutiny and resist the government's plan to destroy the military. Among those apparently contacted were a major general who commanded an important cantonment and a brigadier general who led a tactically critical brigade on the outskirts of Dhaka. Both were placed under house arrest for

¹⁰⁹ "Army foils bid to topple govt", *Daily Star*, 20 January 2012.

¹¹⁰ Another alleged key coup-plotter, Major Ziaul Haq, has fled. The military claims sixteen officers, retired and serving, were involved.

¹¹¹ Journalists and analysts who said the court statements were likely given under duress from intelligence agencies raised significant questions about the details. See "Ishraq was to head the new regime", *Daily Star*, 5 February 2012.

¹¹² "Politics in Bangladesh: Turbulent House", *Economist*, 28 January 2012.

¹¹³ Analysts suspect that the military sought to put an Islamist spin on the coup by blaming Hizb ut-Tahrir and describing the plotters as Islamist extremists to cover deeper discontent surrounding the BDR mutiny, among other reasons. Crisis Group interviews, Dhaka, January-February 2012. The court statements include details about a seminar in London in November 2011 supposedly intended to gain support of Western countries for the coup. In fact, the seminar was organised by the School of Oriental and African Studies on Bangladeshi politics and was attended by Crisis Group, as well as Human Rights Watch, prominent Bangladeshi human rights lawyers and representatives from the U.S. and Indian governments. There was no discussion related to a coup. See "Ishraq was to head the new regime", op. cit.

failing to report the communication to their superiors.¹¹⁴ Several officers interviewed said the attempted coup was blown out of proportion. “It was nothing but a handful of retired and mid-level officers. When military intelligence found their plan on a laptop, it was immediately clear that it was poorly planned and unrealistic”, said a retired intelligence officer.¹¹⁵

A military analyst said, “this [coup attempt] may have been unsuccessful, but it shows how angry mid-level officers are and the effects of not being able to vent their frustration. There are hundreds of others like them”.¹¹⁶

C. SOURCES OF GRIEVANCE

There are many sources of military frustration. One is politicisation of the top echelons. It has been common practice for governments to install preferred officers in key positions and forcibly retire or stall the careers of those suspected of having links with the opposition.¹¹⁷ But officers interviewed said that the current government has carried this to unprecedented depths.

“Previous administrations would only change down to brigadier generals, but under this government, even the recruitment process has been politicised”, said a senior officer. This undermined professionalism and put the chain of command under stress, he added. “Once you realise that your commander is not the one who decides your promotion or assesses your capabilities, then you lose your motivation to perform”.¹¹⁸ A junior officer said that working under a politically-affiliated commander carries a stigma for life, because one is perceived ever after to be under that commander’s influence. “This is why so many officers leave the military early, because the motivation to defend your country has been replaced by fear of being punished for no reason”, said another.¹¹⁹

The prime minister’s defence adviser, retired Major General Tarique Ahmed Siddique, is said to have added to the stress on the chain of command by bypassing it to contact

officers directly, an approach that has made him “one of the most hated men in the defence establishment”.¹²⁰ It has also lessened the respect of mid-level officers for their superiors.

Secularisation has been another source of irritation. In June 2010, the Parliamentary Defence Committee unsuccessfully sought to create a defence policy document that would enshrine the military’s allegiance to the constitution. This was out of a fear that the military had become too “Islamised” and therefore vulnerable to radicalism. Officers deemed “too Islamic”, allegedly identified by their beards and whether their wives wore headscarves, were reportedly profiled, and some forcibly retired, by the military leadership under government instructions to identify those who might themselves be or have links with Islamist extremists.¹²¹ The practice could create a serious backlash. “If they are trying to uproot deep beliefs, then they are likely to meet deep resistance”, a retired major general said. “Our battle cry is ‘Allahu Akbar’, because we would fight to protect our faith over our institution. You cannot motivate someone to die based on something as abstract as the constitution!”¹²² he added.

The AL’s poor governance and its overtures to India have weakened the government’s already precarious hold on the army. The strategic community in particular is furious with “AL’s sacrifice of strategic assets”, by agreeing that India could have certain land and maritime transit facilities and cracking down on north-east Indian insurgents. A retired senior military officer said this “concedes Bangladesh’s sovereignty to the arch enemy”. The military, he continued, was unhappy with all these “free gifts to India” and believed India had given nothing in return.¹²³

Some officers wonder why they supported the last caretaker government if the country is sliding back towards violent stalemate.¹²⁴ There are other issues as well. The military resents the government’s failure to punish AL

¹¹⁴ Crisis Group interviews, retired and serving military officers, Dhaka, January and February 2012.

¹¹⁵ Crisis Group interview, Dhaka, February 2012.

¹¹⁶ Crisis Group interview, Dhaka, January 2012.

¹¹⁷ A retired lieutenant-general said that politicisation started in 1972. “Mujib promoted those who had fought in the Liberation War, then Zia promoted those who he thought were deprived under Mujib, Ershad promoted officers who were in West Pakistan during the War, and then when the BNP took over, it became a clear case of whether you belonged to the Awami League or not”. Crisis Group interview, December 2011.

¹¹⁸ Crisis Group interview, Dhaka, February 2012.

¹¹⁹ Crisis Group interview, retired military officer, Dhaka, February 2012.

¹²⁰ Crisis Group interview, Dhaka, February 2012.

¹²¹ Some retired generals said this campaign was part of the politicisation of the military and intended to eliminate officers who were not only Islamist but presumed to be anti-AL as well. Crisis Group interviews, Dhaka, January 2012. An AL parliamentarian who serves as one of Hasina’s informal advisers on defence issues, said “it was necessary to identify a sample of individuals which needed to be under greater scrutiny [in order] to find possible extremists in the military”. Crisis Group interview, Dhaka, January 2012.

¹²² Crisis Group interview, Dhaka, January 2012.

¹²³ Crisis Group interview, January 2012.

¹²⁴ According to a senior army general, “there is an anger among mid-level officers about the purpose of supporting the last caretaker government if they allowed the country to return to its current state. This has eroded their trust in their superiors”, Crisis Group interview, February 2012.

leaders associated with the 2011 stock market crash, in which thousands of officers and common soldiers lost large amounts that they had saved from well-paid UN peace-keeping missions and had heavily invested in the stock market.¹²⁵ The government has sought to allay immediate concerns by increasing the military budget eleven per cent – relatively, the fourth largest growth in military spending in Asia – and by building several housing complexes, but the anger remains.

D. RISKS OF MILITARY INTERVENTION

In the short term, these grievances coupled with the strain on the chain of command, could trigger violent acts. Bangladesh has a long history of assassinations and has lost two serving presidents to military coups. Sheikh Hasina herself has been the target of several attempts, including on 21 August 2004 when thirteen grenades were hurled at her during a rally. Although the probability is low, the impact of such an act would be devastating.

Other forms of violence are also possible. “The nightmare scenario is of two army units facing off in the cantonment, or worse, on the streets”, said a Western diplomat.¹²⁶ However, the likelihood of a full-scale coup is not high. There is no constitutional cover in the form of a caretaker government as the military had in 2007; nor would international support be likely. A coup would also require backing from commanders at key installations close to Dhaka and around the country, which in the military’s current fractured state would be difficult to achieve.

Nevertheless, if the electoral deadlock continues or an election takes place without the BNP, leading to a breakdown of the political system, all bets are off. The military would have greater public acceptance, and it would not have to rule directly but could set up a form of national unity government.¹²⁷ This would not be the soldiers’ choice, however. “Intervention is difficult, bad for morale, and frankly, it is not our job. So the political parties should not create the sort of chaotic political situation that com-

pels us to intervene for the sake of the country”, said a former army chief.¹²⁸

¹²⁵ Crisis Group interview, newspaper editor, 17 January 2012; and retired military officer, 28 January 2012.

¹²⁶ Crisis Group interview, Dhaka, February 2012.

¹²⁷ Crisis Group interview, analyst, Dhaka, January 2012. Models of national unity government or a national consensus government comprising politicians, the military and eminent citizens were proposed by smaller parties in both 1996 and 2007 but were rejected by both major parties. The concept is reportedly slowly gathering speed in political circles again. Crisis Group interview, journalist, Dhaka, January 2012. On 15 March, a law professor was summoned before the High Court for mentioning the possibility of such a “third force” coming to power. See “HC summons Prof Asif Nazrul”, *Daily Star*, 16 March 2012.

¹²⁸ Crisis Group interview, February 2012.

VII. CONCLUSION

The capacity to forge a compromise across the parties has not been completely destroyed. Both main parties have capable and committed leaders who may not be as short-sighted as their provocative rhetoric suggests. Both also know that elections are the best way to prevent military intervention. Given the heightened level of mistrust, confrontation and violence, however, it was almost inevitable that agreement on a non-party caretaker government model would not be forged before the BNP's 10 June deadline. With a disillusioned public and a restive military, the costs of such failure have undoubtedly increased. More importantly, even if the parties agreed to hold credible elections, it would do little to allay concerns that the same political system would yield the same result in the next election cycle. Without a broad-based reconciliation process to achieve consensus on the constitution and rules of the game, there is little chance Bangladesh can escape this vicious and violent political cycle.

In the short term, if the reconciliation process does include returning to a non-political caretaker government to conduct elections, that government must address its predecessor's loopholes, producing clear guidelines to select or elect the prime minister and the cabinet, precise limits on its powers and duration and a clear relationship with the military. And in the long term, the four major parties, in consultation with smaller parties, civil society and the military, must agree on acceptable, necessarily multi-phase, electoral machinery that ensures peaceful, credible and regular transfers of power without resort to partisan constitutional amendments.

The odds are high against this. The business community has tried and failed to bring the parties together. Neither the BNP nor AL trust any civil society groups to mediate. There may be limited scope for outside players, particularly India, the U.S. and UK, to lay down a set of benchmarks for both short-term negotiations and a longer-term reconciliation process, but they would need to coordinate among themselves and act with sensitivity and discretion.

The only solution rests with Sheikh Hasina and Khaleda Zia. They retain a level of popularity and authority in their parties and with the electorate that makes them essential to any reconciliation process. As the incumbent, Sheikh Hasina has the chance to create an historic legacy by jump-starting the process, and she could begin by releasing detained BNP leaders and refraining from efforts to curb opposition political activities. If she does not make these moves and offer Khaleda Zia a chance to respond in kind, Bangladeshi democracy is probably doomed to more of the same.

Dhaka/Brussels, 13 June 2012

APPENDIX A

MAP OF BANGLADESH



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Undersecretary of State and Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

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APPENDIX C

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