

Nagorik Coalition's 7+2 Demands for Constitutional Reform

Section 1: Preamble

Bangladesh is currently at a critical juncture as the July Uprising has forcefully opened a window of opportunity to build the foundation of a durable, democratic political structure. The expectation is that this structure will be effective enough to thwart the possible re-emergence of authoritarian rule. Since our democratic transition in 1991, 'democracy' had always been narrowly focused on elections that would simply ensure the alternation of power. As our historical experience shows, the country's constitution did not establish the separation of power among the three branches of the state, offered no incentives for the political parties to participate and negotiate in between elections, and did not provide effective barriers to concentration of power by one branch, party, or even an individual. The effort to consolidate power reached its peak (and remained there) in the last 16 years, when the 'rules of the game' were changed, and the democratic institutions were systematically weakened. The time and the need of the hours is to revise and redesign the 'rules of the game' to establish a democratic power structure.

The Interim Government has acknowledged the necessity of bringing about fundamental change within the existing political structure and formed several reform commissions. Six of them were considered to be the most critical (the Constitutional Reform Commission, the Electoral Reform Commission, The ACC Reform Commission, the Judiciary Reform Commission, the Public Administration Reform Commission and the Police Reform Commission) and based on the reform proposal submitted by these commissions, a Consensus Commission has been formed which is trying to persuade the political parties to reach an agreement on key reform areas. Unfortunately, 'reaching a consensus' is proving to be extremely difficult. We are close to a deadlock, which we cannot afford at this critical juncture.

Within this context, we strongly believe that the Civil Society of this country needs to step up and share its vision for a Democratic Bangladesh. We are also of the opinion that in redesigning Bangladesh's democratic political framework, the Consensus Commission should sit with and consider the opinions of the Civil Society. Furthermore, we believe that the Civil Society can play a pivotal role in bridging the divide that exists among the political forces and persuade them to compromise based on shared principles to which the parties themselves have proclaimed they subscribe, to agree on a political structure that will lay the foundation of a liberal democratic framework.

Nagorik Coalition is a broad umbrella of several Civil Society Organizations and individuals, and we believe that the time has come to redefine democracy from a broader perspective (and beyond a narrow electoral democracy) which would focus on designing and nurturing political institutions to ensure democratic consolidation. While this civil society platform believes reform must be an ongoing process, given the opportunity and constraints of the current juncture, it considers the urgent need to prioritize and focus on reaching agreement on some key reform areas as a precursor to holding free and fair election. Going forward, even after a political settlement is achieved and elections held, the the Nagorik Coalition will continue to lobby for further systemic reforms in issues related with human rights, minority rights, bureaucracy, police, judiciary etc. The platform will aim to perform as a watchdog over the ongoing implementation of the reform activities while ensuring that certain democratic values are embedded within the country's political and policy processes. The work toward establishing a just and fair political and social order must be ongoing.

Section 2: Core Objectives of Nagorik Coalition

The Values That the Coalition Embraces

Nagorik Coalition argues that to institutionalize democratic practices within the political structure and to empower citizens, it is essential that the state embraces some **core democratic values**. The Coalition aims at advocating and promoting these core values and to that end,

- The coalition aims to promote diversity and ensure equal rights for all and believes that the state must take all necessary actions to promote and protect fundamental rights of all citizens irrespective of their class, caste, gender, ethnicity and religious identity. The political parties must take every possible action to ensure proper representation and participation of women at their highest decision-making bodies.
- We believe that freedom of opinion, expression and mobilization must be protected at all costs.
- The Coalition strongly believes that the views, opinions, and concerns of our indigenous population groups (living in the CHT and the Plain Land) are not being properly reflected in the socio-economic and political process of the country. The Coalition will continue raising voices about this issue and will create pressure on the political parties and the government so that the voices and concerns of the indigenous population groups are heard and addressed.
- The Nagorik Coalition strongly believes that all the political parties should take definitive action to promote and practice internal democracy. The grassroots voices must be reflected in selecting the leaders and candidates for the parliament. The platform also believes that the political parties must ensure transparency in case of financial transactions; their income and expenditure must be audited; and the audit report must be made public. The Coalition strongly endorses the recommendations made by the electoral commissions and will keep on creating pressure on the parties so that these recommendations are implemented.
- The Platform is of the opinion that for a well-functioning democracy, both the government and the opposition must play a responsible role. The Coalition will continue advocating for fundamental change in our political culture.
- The Coalition believes that Citizens' role in the political process should not be limited to participating in the electoral process. Instead, efforts must be taken to design tools and mechanisms that would create collective opportunities for the citizens to participate at all levels of policy making- be it central or local.

The Principles for Designing a New Power Structure

Nagorik Coalition believes that for these values to have a place in our political structure, we need to focus on some fundamental design changes to create a state structure that offers **checks and balances to ensure separation of power**, encourages the political parties to engage in **democratic bargaining through negotiation**, ensures that the power structure is **inclusive enough to allow participation of different citizen groups**, and allows the **institutions of accountability to be independent yet accountable** to check executive dominance. **To attain these specific objectives, the Platform has identified Seven Key reform areas that it considers as 'essential non-negotiable demands'**. These seven key reform areas are guided by three core design principles-

- Integrity of constitutional amendment process to reflect consensus.
- Accountability and Oversight of Executive through ensuring neutral and non-partisan appointment to the Independent Institutions of Accountability.
- Checks and balances within the constitution to prevent concentration of power.

Section 3: 7 Key Reform Areas

We propose that at a minimum, the current reform initiative should focus on the following key areas-

A. An Upper Chamber with PR: to ensure checks and balances (specifically to deal with executive dominance), It is necessary to have an upper chamber where members will be elected through Proportional Representation (i.e., seats will be allocated based on the percentage of vote gained in the general election). There should be 100 seats in the upper chamber. Introducing Proportional Representation is necessary as it will allow participation of most of the political parties in the legislative process, ensure representation of different interests, and prevent the dominance of one party, encouraging them to negotiate with each other. The members of the lower chamber should be elected through First-Past-The-Post (FPTP), and this chamber will be responsible for conducting and controlling the day-to-day business of government. Since the lower chamber will have the final say on legislative issues, there will be no possibility of political instability. However, there is no point in having an upper chamber if we don't allow it to play any role in the legislative or governing process. This upper chamber should have the ability to provide inputs, suggestions, and to have discussions on legislation. It should play a role in determining the fate of constitutional amendments, discuss international treaties that may influence the country's national security and must play a role in case of declaration of war. At the same time, the upper chamber must have a strong oversight role. To ensure this oversight role, it is necessary that we introduce several Standing Committees that will hold regular public hearings on key governing issues and review the performance of the executive and independent institutions. Having an upper chamber with PR fulfills all the prerequisites necessary for establishing a liberal democracy as it will provide a check on the executive, facilitate the culture and practice of democratic bargaining, ensure inclusivity and allow the independent institutions to be autonomous yet accountable for their performances.

Proposal: -

- There must be an Upper House with PR (where 100 members will be selected by the political parties based on percentage of vote received at the General Election) with a strong oversight role which will also be able to review and advise on all legislative matters initiated at the lower chamber, except for the money bill. At the same time, the upper house will play a role in determining the fate of constitutional amendments, declaration of war and international treaties that may affect national security. In all these cases, both the chambers have to come to an agreement.
- Upper Chamber will also play a role in appointing the chairs and members of the Constitutional Bodies (i.e., Election Commission (EC), Public Service Commission (PSC), and Office of the Comptroller & Auditor General (OCA&G)) and Institutions of Accountability (Anti-Corruption Commission (ACC), Human Rights Commission (HRC), Local Government Commission (LGC), and Information Commission (IC)). Whereas the Chairs and Members of the Constitutional Bodies and Institutions of Accountability will be proposed by the Government or as per the provisions stipulated in law, all of these nominations have to be approved by the Upper Chamber. There will be a specific Standing Committee on these oversight institutions (including the constitutional bodies) that will review the performance of these institutions, and the upper chamber will have the authority to terminate the Chairs and Members of the Commissions after following due process.
- We also recommend that there should be several Standing Committees at the upper chamber to conduct oversight functions including but not limited to-
 - Review the performance of independent constitutional bodies.
 - Initiate and conduct public hearings on issues of national interest.
 - Scrutinize executive actions.

B. Independent Institutions of Accountability: The success of a democratic republic largely relies on the presence and performance of the institutions of accountability that remain outside the control of the executive machinery, reflect the voice of citizens and different interest groups, and provide an outside check on the executive. Furthermore, the independent institutions can play an instrumental role in supporting the legislative function especially through providing necessary information, data and expertise, while helping the organ in performing the oversight role. At this critical juncture, it is important that we not only focus on ensuring the independence and relevance of the existing Institutions of Accountability (e.g., the Election Commission, the Office of the Comptroller and Auditor General, Public Service Commission, the Human Rights Commission, the Anti-Corruption Commission, the Information Commission) but also design new institutions like Local Government Commission, Police Commission, Public Administration Commission, Labor Commission, Women Commission and grant them constitutional status. At the same time, efforts should be taken for ensuring the accountability of these independent institutions so that their performance can be reviewed, limitations can be identified and discussed, and their relevance in the governing process can be guaranteed. However, to ensure the autonomy of these institutions of accountability, it is important to ensure that appointment of the Chairs and Members of these Commissions are not being solely controlled by the executive branch or the ruling party. Instead, the focus should be on developing a procedure where the major political parties will negotiate and reach a consensus while appointing the members of these commissions.

Proposals: -

1. **Preferred Option:** Appointment of the Chairs and Members of the Institutions of the Accountability through the upper chamber where the Government, as per the law, would recommend the names but it must be approved through a robust majority at the Upper Chamber. These Commissions will remain accountable to a specific Standing Committee which will be in charge of reviewing the performance of these institutions. To that end, we propose that-
 - A special standing committee should be set up at the upper chamber. In this standing committee, political parties will be represented in proportion to their seats in the upper chamber and this will be led by a member of the opposition. This Standing Committee will serve two purposes: a. It will organize public hearings (open to all) to vet the individuals recommended by the Government or as per law. Once the hearing is done, the standing committee will forward the name of the candidates to the upper chamber where the chamber will vote on the candidates. If the Upper Chamber rejects the candidate, the Government has to propose a new name. Secondly, the standing committee will be in charge of reviewing the performance of the institutions of accountability.
 - We also propose that in the case of Higher Judiciary, all appointments must be made through the proposed Judicial Appointments Commission (JAC), as suggested by the Constitutional Reform Commission. Whereas the upper chamber will have no role in appointing the Judges, we propose to set up a special Standing Committee in the upper chamber which will be responsible only to vet the candidates suggested by the JAC.
 - We also propose that the Executive Positions, e.g., Defense Chiefs and Attorney General will be appointed by the Government and the upper chamber will have no role in this.
2. **Alternative Option:** Recommendation of the Constitutional Reform Commission, i.e., appointment of Commission Heads and Members through the NCC. However, we suggest that the NCC should be responsible only for appointing the Chairs and Members of the Institutions of Accountability and the Constitutional Bodies and should not play any role in appointing the Chiefs of Defense Services.

Even if the political parties agree on establishing the National Constitutional Council, we suggest that a special standing committee should be set up at the upper chamber to ensure the accountability and relevance of the constitutional bodies and the institutions of accountability.

We also propose that there should be a standing committee at the upper chamber to vet the candidates suggested by the JAC to be appointed in the Higher judiciary.

C. Caretaker Government: To the extent the NCC is in charge of selecting the Chairs and Members of the Independent Oversight Institutions, this Council should not be held responsible for selecting the Head of the Caretaker Government (CTG), i.e., the Chief Advisor). Instead, we propose the followings-

- Two months prior to the scheduled dissolution of the Parliament, an All Party Parliamentary Committee (APPC) with 10 members will be set up. Of these 10 members, 5 will come from the Ruling Party, and the remaining five will come from the opposition parties in proportion to seats held at the upper chamber.
- The ruling and the opposition parties will each propose three candidates, who are acceptable to everyone. The APPC will choose one from the list of names and within the APPC, at least 8 members have to agree with the choice.
- If the APPC fails to agree on selecting an individual acceptable to all, the Committee will send the 6 (six) names to the upper chamber. The Upper Chamber will then vote on these candidates following the ranked choice method and will agree on one candidate who will be sworn in as the Chief Advisor of the Caretaker Government.

D. Term Limit: We agree with the recommendations of the Constitutional Reform Commission and propose that an individual will not be considered for the PM position after serving for two terms.

E. Chair of the Standing Committees and The Appointment of Deputy Speaker: The Coalition proposes that key powerful standing committees should be headed by members of the opposition party. We propose that the name of 4 standing committees, namely Public Accounts Committee, Committee of Privileges, Select Committee on Bills, and Standing Committee on oversight institutions should be incorporated within the Constitution and of these four, two (Public Accounts Committee and Standing Committee on Oversight Institutions) must be headed by the Members of the Opposition parties. At the same time, other Standing Committees may also be headed by the Members of the opposition parties.

We also propose that in each Chamber, the Deputy Speaker must be selected from the Members of the Opposition parties, and s/he will receive at least 40% of total floor time during each parliamentary session. Furthermore, the Prime Minister shall be required to appear before Parliament and respond directly to questions during a dedicated session.

F. Direct Election for Women Members of the Parliament: For a well-functioning democracy, it is necessary that we move away from the process of 'selecting' women members of the Parliament for reserved seats and instead focus on introducing a provision where they will be directly elected by the citizens. The role of the women members should be instrumental, and it is difficult to achieve that if they are not directly accountable to the citizens and are not given the opportunity to have and serve their constituencies. Direct election will politically empower the women, create an opportunity for women leadership to emerge in every political party, and ensure the representation of women's voice in the parliament in an effective and efficient way.

Proposal: -

The Coalition endorses the recommendation of the Constitutional Reform Commission, i.e., additional 100 seats to be directly elected by the citizens. At the same time, we propose to amend the RPO so that the political parties nominate at least 20% women candidates in the general election.

G. The July Charter: If and once the political parties agree on the key reform areas (mentioned above), the parties must sign a July Charter to reflect their commitment to change. The July Charter will include the principles and options they have agreed on to ensure checks and balances, power sharing, reducing the power of the PM, and facilitating women's representation in the parliament. The Charter will be signed with the understanding that the party that will come into power must implement these reform initiatives as codified in the July Charter. This charter will guarantee immunity from future prosecution for individuals, groups and institutions that participated in the July Revolution. The Charter will be incorporated as an addendum to the Constitution, with an explicit reference incorporated in the Constitution's Preamble.

Section 4: Possible Pathways to Incorporate Changes

Option 1- Implementing the Reforms through Constituent Assembly: In the context of Bangladesh, amendments passed through the Parliament (following regular process) were challenged at the Court in the past and the court's decision eventually resulted in a political crisis. There is a possibility that history will repeat itself and to prevent that, one option is to implement the reforms through a constituent assembly. In this case, there will be only one election where the citizens will vote to elect a 300-member constituent assembly. However, this constituent assembly will have limited power as it will get 90 days to implement the reforms to be codified in the July Charter (and based on the principles outlined in the Constitutional Reform Commission). The July Charter will reflect the consensus on reforms about political structure and may include other issues to be discussed in the constituent assembly. Issues or proposals not included within the July Charter will not be discussed and after 90 days, the constituent assembly will transform itself into a bicameral parliament. As long as the constituent assembly will be in session, the majority party will form the government to run the state affairs. Furthermore, an Independent Constitutional Reform Implementation Body will be established to implement the non-legislative reform recommendations of the CA, reporting to the Parliament.

Option 2- Implementing Reforms through All Party Consensus: In this case, like the previous one, the July Charter, signed by all political parties, shall serve as the foundation for constitutional reform. Before the election, a draft constitutional amendment bill shall be developed through an all-party consensus process, drawing from the July Charter and outcomes of the Consensus Commission. Participating political parties and independent candidates will sign a voluntary Pre-Election Accord, committing to ratify the draft bill and incorporate the July Charter into the Constitution if elected. After that, a general election shall be held to constitute a 300-seat Parliament, which will function solely as a Parliamentary Assembly. A referendum, held alongside the election, shall seek the consent of the electorate for the incorporation of the July Charter and the agreed constitutional amendments into the Constitution. After the election, the newly elected Parliamentary Assembly shall ratify the draft constitutional amendment bill, enshrining it into the Constitution. An Independent Constitutional Reform Implementation Body will be established to oversee the implementation of non-legislative reform recommendations, reporting directly to Parliament.

Section 5: Conclusion

The coalition demands:

1. The Consensus Commission must explain how the proposals that the parties agree and the ones that the parties fail to agree will be dealt with and/ or implemented under the two proposed reform execution pathways.
2. Political parties must commit to seven key constitutional amendments and choose one of the two reform execution pathways aligned with the above principles (to be discussed in the next section).
3. The interim administration must commit to an election timeline, based on the reform execution pathway that the political parties have committed to.