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Bangladesh Review Report

by Transparency International Bangladesh

in support of the UNCAC Implementation Review Mechanism, 1st year of review of UNCAC chapters III and IV

-Executive summary-

This is the executive summary of a Transparency International Bangladesh report¹ that reviews Bangladesh's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Bangladesh covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

The overall findings of this report indicate that Bangladesh's legal regime can be said to be largely compatible with standards and principles of the UNCAC. It has also been found in the Bangladesh Action Plan for Compliance (2009) that existing laws of Bangladesh are largely in compliance with UNCAC requirements on criminalisation. The Bangladesh Compliance and Gap Analysis (BCGA) of 2008 states that "[t]he overall findings of the report indicate that in terms of legal regime, Bangladesh appears to be largely compatible with the standards and principles of the UNCAC".² However, this report identifies a number of weaknesses with regard to gaps in both law and practice. There are also areas in which further clarification and modification of existing legislation are necessary, particularly laws related to international cooperation. This report also notes that while a few important positive legal changes have been introduced following Bangladesh's accession to the UNCAC in 2007, in some other instances steps have been taken that could weaken the capacity to control corruption. The initiative to amend the Anti-corruption Act is a case in point which, if enacted, may adversely affect the independence and effectiveness of the Anti-Corruption Commission.

Assessment of the review process

Conduct of process

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report	No

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Iftekhar Zaman, Shadhan Kumar Das and Shammi Laila Islam, Transparency International Bangladesh. A draft of the report was shared with the government and the visiting peer review team for comments prior to finalizing it. The full report was also sent to the government focal point for information. The final report will be used for continuing the dialogue and engagement with the stakeholders including the Government beyond the first round country review process.

Availability of information

The availability of information has been limited, due to poor information management systems in relevant agencies, as well as an apparent culture of secrecy in the government, particularly among senior officials.

Findings on implementation and enforcement

Bangladesh has well-defined and elaborate domestic laws intended to combat corruption, but in reality these laws are not always enforced without fear or favour. Political considerations often play a crucial role in the anti-corruption agenda. Nevertheless, the government formulated an Action Plan, which was published in November 2009.³

Between October 2007 and December 2008, the government and legislature took a number of steps, including passing the Right to Information Ordinance, measures to strengthen the Anti-Corruption Commission, completing and submitting the UNCAC self-assessment checklist, forming a research team, and holding an orientation and methodology workshop, as well as conducting desk-based research, focus group discussions, and interviews with technical specialists in various government ministries and departments.

After the elected government was restored in January 2009, the government adopted the Right to Information Act in the very first session of parliament, with active contributions from civil society. This was followed in June 2011 by the Whistleblower Protection Act – on both of which the government worked closely with TIB and other civil society organisations. The Money Laundering Prevention Act was also adopted in the parliament. The new government also adopted an UNCAC Implementation Plan, formed an expert group, decided to host a country visit for the peer-review team, drafted the Civil Service Act 2010 and entered into Mutual Legal Assistance (MLA) agreements with more than 10 countries. In addition, the government submitted its responses to the UNCAC self-assessment checklist in 2011 and cooperated with TIB in the preparation of this complementary report. The parliamentary committees began relatively well, but they have yet to deliver fully. Concerns have been raised about conflicts of interests among some members of some of the committees.⁴

The Right to Information Act 2009 was adopted following which the Information Commission has been set up. A whistleblower protection act titled "Public Interest Related Information Disclosure (Protection) Act 2011".has been enacted. In both cases the Government worked closely with civil society, which should be regarded as a good practice. The Money Laundering Prevention Act 2009 has been adopted, and at least 10 MLAs have been reached.

However, there are significant inadequacies in the enforcement system for UNCAC-related offences in the country, including the following:

- Partisan political considerations often seem to influence the anti-corruption agenda, which often appears to target the political opponent and in turn sustains corruption and promotes a culture of impunity. Political and electoral commitments to fight corruption are not always followed up by enforcement without fear or favour. In many instances, laws such as the Money Laundering Prevention Act apparently have been used against political opponents.

² UNCAC: A Bangladesh Compliance & Gap Analysis, Second Edition, July 2008, published by the Government of Bangladesh, July 2008, p. 9,

http://www.baselgovernance.org/fileadmin/docs/pdfs/Publications/GOB_UNCAC_Part1.pdf

³http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/UNCAC%20Book-%20Action%20Plan%20for%20Compliance.pdf

⁴ According to the rules of procedure of the parliament, no member shall be appointed to a committee who has a personal, pecuniary or direct interest in any matter which may be considered by that committee. However, this rule was seemingly not followed when some committees were formed. Some members with alleged "conflicts of interest" were believed to have been included in parliamentary committees on finance, housing & public works, textile & jute, communication, shipping, and commerce.

The judicial process is often bypassed in corruption cases.⁵ All of this undermines the effectiveness of domestic law.

- The government has proposed a set of amendments to the Anti-Corruption Commission Act that may curtail the independence and effectiveness of the commission. One proposed amendment states that the commission must secure prior government approval before taking any action against any judge, magistrate or public official. It also provides that the secretary of the commission would be appointed by the government. If these amendments are passed, the commission would become dependent upon bureaucratic and political authority.

- There are concerns regarding the credibility of some of the Anti-Corruption Commission staff, a lack of due diligence and the absence of a code of conduct, as well as the balance of positive and negative incentives. These issues are believed to have caused the ineffectiveness of the ACC and its investigative capacity.⁶

- Successive governments have failed to implement the constitutional provision to establish the Office of the Ombudsman. In a related move, the Office of the Tax Ombudsman was abolished by a law that repealed the Tax Ombudsman Act. That act was intended to create an institution to promote transparency and accountability in tax administration. The government has also been criticized for deliberately delaying provision of the necessary capacity, especially human resources, to the Human Rights Commission and Information Commission.⁷ A recent amendment has disempowered the Bangladesh Telecommunication Regulatory Commission and empowered the Ministry of Post and Telecommunication, which is likely to promote political influence in the flourishing private sector.

- There are inadequate resources, a shortage of staff and a lack of technical capacity in various watchdog and oversight bodies, ministries and departments of the government. This weakens the government's capacity to enforce laws and control corruption.

- The government used an act of parliament to grant immunity to any decision taken in connection with the production, sale or distribution of electricity, which is likely to jeopardise transparency and accountability in the sector.

- There is a lack of knowledge and awareness of the UNCAC among public officials at various levels. Public officials who are supposed to play important roles in enforcement are not aware enough of the UNCAC, and there is hardly any ownership of the convention in public offices. There is also a lack of inter- and intra-ministerial co-ordination.

- There is a lack of assessment of the effectiveness of measures adopted for implementing the UNCAC.

Recommendations for priority actions

Laws on bribery of foreign officials, money laundering, protection of witnesses and mutual legal assistance should be enacted or amended in Bangladesh to comply with the UNCAC. In this respect, technical assistance such as model legislation, legislative drafting, support and legal advice should be sought from countries with good UNCAC practices for adopting and implementing the provisions.

The Anti-Corruption Commission should be further strengthened and its independence ensured. Proposed amendments to the Anti-corruption Act that may curtail the Commission's

⁵ The government constituted a committee to review cases of corruption and other crimes. Almost all the 6,665 cases that were recommended for withdrawal in this administrative (extra-judicial) process were those against people having linkage with the ruling political party. See for details, Transparency International Bangladesh, *Tracking the Electoral Commitment on promoting Good Governance and Controlling Corruption*, A research report (in Bangla) http://www.ti-bangladesh.org/research/Electoral%20Commitment%20Tracking_Full%20Report.pdf.

⁶ *The Daily Star*, February 23, 2010

⁷ The Chairmen of the both Commissions have been publicly expressing grievances about the bureaucratic delay in ensuring the necessary human resources.

independence and effectiveness should not be enacted.⁸ The rule of law must be ensured without any form of influence on or intervention into the judicial process, including partisan political bias.

The technical and human resource capacity of the focal point for implementing the UNCAC in the Ministry of Law, Justice and Parliamentary Affairs must be strengthened. There must be regular monitoring and evaluation of implementation of UNCAC provisions. Mechanisms for inter- and intra-ministerial coordination should be established and strengthened.

The full TI Bangladesh review report can be found at
<http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>

⁸ See, for detail, Transparency International Bangladesh, Position Paper – *Call to Reconsider Proposed Amendments to the Anti-corruption Act*, March 1, 2011. <http://www.ti-bangladesh.org/research/PositionPap010311.pdf> The Chairman of the Anti-corruption reacted to the proposed amendments by saying that these would convert the ACC into a “toothless tiger”, *The Daily Star*, January 8, 2011. <http://www.thedailystar.net/newDesign/news-details.php?nid=169203>