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Agenda item 2

Executive summary

Note by the Secretariat

Contents

	<i>Page</i>
II. Executive summary.....	2
Bangladesh.....	2



II. Executive summary

Bangladesh

1. Introduction

1.1. Legal system of Bangladesh

The Bangladeshi legal system is based on English common law.

Bangladesh acceded to the United Nations Convention against Corruption (the “Convention” or “UNCAC”) on 27 February 2007 and deposited its instrument of ratification with the United Nations Secretary-General on 28 February 2007.

1.2. Overview of the anti-corruption legal and institutional framework of Bangladesh

The Anti-Corruption Commission (“ACC”) is the body that specializes in combating corruption through law enforcement. It comprises of three Commissioners whose independence stems from the fact that they are appointed by the President and that they are not eligible for re-appointment. Also, no Commissioner shall be removed from office except on grounds and in accordance with procedures similar to those applied to the removal of Supreme Court judges.

Another body that performs key functions in the anti-corruption field is the Bangladesh Bank, which also houses the country’s Financial Intelligence Unit (“FIU”).

The Ministry of Public Administration is responsible for implementing a Conduct and Special Rules on national public officials, with the aim of addressing not only bribery, but also embezzlement.

Statistics on corruption-related cases were collected by the ACC, Cabinet Division and Ministry of Public Administration. The responsibility of collecting statistics on money-laundering related cases falls under the Bangladesh Bank.

2. Implementation of Chapters III and IV

2.1. Criminalization and law enforcement (Chapter III)

2.1.1. Main findings and observations

Bribery offences; trading in influence (art. 15, 16, 18, 21)

Pursuant to the Penal Code, 1860 (“PC”), the Bangladeshi legal system covers active bribery through the act of “abetment”.

The PC also provides for punishment for undue influence or personation during an election, the offering of a gift or restoration of property in consideration of a screening offence where it is a capital offence, and abetment of offences.

The PC provides for definitions of bribery, public servant candidate and electoral right. However, the definition of “public servant” has not been addressed by enumerating the various types of officials which fall under this notion. Although an interpretation of public servant is provided for in the Prevention of Corruption Act, 1947 (“POCA 1947”), it remains unclear to what extent this concept includes members of Parliament.

Concerning passive bribery, the PC punishes a public servant who “accepts, obtains, or agrees to accept, or attempts to obtain any gratification or valuable thing”. Although the word “solicitation” is omitted, it was confirmed that “attempts to obtain” would be considered to cover “solicitation”.

Under section 165 of the PC, the offence must cover instances where “any valuable thing” is accepted or obtained, which raises doubts as to whether this expression also covers instances where no gift or other tangible item is offered.

Bangladesh has not criminalized the offence of bribery of foreign public officials and officials of public international organizations.

Passive trading in influence is criminalized, but not the active form of such conduct.

The intention was expressed by the Government to criminalize bribery in the private sector.

Laundering of proceeds of crime; concealment (art. 23, 24)

The Money Laundering Prevention Act (“MLPA”), originally adopted in 2002, was revised in 2009 and again, in 2012. The MLPA is only partially in compliance with the Convention as the list of predicate offences listed does not include all conducts established under the Convention. At the time of the country visit, it was reported that 222 people had been investigated under money-laundering related legislation.

The FIU had received around 600 suspicious transaction reports. Of these, 200 were transferred to the ACC and 125 cases had been filed, with no convictions to date.

The offence of concealment is covered through the offences of stolen property, dishonestly receiving it, assisting in concealing it, and dishonestly or fraudulently removing or concealing property.

Embezzlement; abuse of functions; illicit enrichment (art. 17, 19, 20, 22)

The PC criminalizes embezzlement through the conducts of “misappropriation” and “conversion”, for the offender’s “own use”, and not for “the benefit of another person”, as required by the Convention. Moreover, the scope of application of the offence is limited to “moveable property”. The intention to amend section 403 of the PC was expressed in order to take into account the above remarks.

The offence of embezzlement of property in the private sector appears to be adequately criminalized as “criminal breach of trust”, in general, and is based on the specific hypothesis of breach of trust (by carriers, clerks, bankers, merchants and agents).

The offence of the abuse of functions appears to be substantially covered in the POCA 1947 through the offence of “criminal misconduct”.

Regarding illicit enrichment, the Anti-Corruption Commission Act, 2004 (“ACC Act”) criminalizes the possession of “moveable or immoveable property” in excess of the known sources of income. Possession of property disproportionate to known sources of income by a public servant or any of his dependents, for which no reasonable explanation is offered, is a criminal misconduct. The onus is on the person to prove that he had acquired the property through legitimate means. It was

reported that there has been some success in prosecuting persons under this provision.

Obstruction of justice (art. 25)

The applicable provisions of the PC are limited to criminal intimidation and therefore do not appear to take into account broader concepts required by subparagraph (a) of UNCAC article 25, namely the use of corrupt means and coercive means.

The PC criminalizes the intentional insult or interruption to public servant sitting in judicial proceedings and assault or criminal force to deter a public servant from the discharge of his or her duty.

Liability of legal persons (art. 26)

Under the PC, legal persons are, in principle, amenable to criminal punishment for offences punishable with a fine.

The MLPA provides for fines or the cancellation of the registration of legal entities accused of having committed money-laundering offences. However, the liability of legal persons accused of other Convention related offences has not been addressed.

Participation and attempt (art. 27)

The PC provides for the definitions of: acts done by several persons in furtherance of a common intention; abetment of a thing; abettor; abetment in Bangladesh, of offences outside it; and punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Attempts to commit an offence of passive bribery are specifically criminalized. However, there is no provision on “attempt” or “preparation” to commit offences, in general.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (art. 30, 37)

In most cases, offenders liable for offences relating to bribery, trading in influence, embezzlement, misappropriation or other diversion of property can be punished with imprisonment up to three years and/or a fine. In the case of public servants, the term of imprisonment may extend to imprisonment for life or imprisonment of up to ten years. In the case of money-laundering, the fine should be double the amount of the laundered money. In all other corruption cases, the amount of fine imposed on an offender shall not be less than the gain illegally derived. These punishments do not affect the initiation or continuation of any disciplinary proceeding against a public servant.

In general, corruption related offences, are bailable. Nonetheless, offences falling under the ACC Act are to be tried before a Special Judge and, consequently, shall be deemed to be non-bailable except in exceptional circumstances. Offences under the MLPA are non-bailable.

As a matter of principle, individuals convicted of corruption-related offences cannot be released before the sentence has been entirely served. Only the Appellate Court can grant an interlocutory/ interim bail.

Government servants can be suspended for their alleged involvement in any offence and the start of a criminal proceeding automatically suspends the public official from service. Moreover, a public servant convicted of any offence punishable beyond a certain threshold would be dismissed from service after the date of judgment. The Constitution also disqualifies a person convicted of an offence involving moral turpitude and sentenced to imprisonment for a term of two years and/or above from participating in a Parliamentary election for a term of five years after release.

Protection of witnesses and reporting persons (art. 32, 33)

There is no legal arrangement for the protection of witnesses, experts, victims and reporting persons. According to the Chief Justice, the lack of witness protection has prevented the prosecution of certain cases as witnesses were not prepared to testify, especially when the accused persons were politically, financially or otherwise influential. Nevertheless, representatives of the ACC reported that the powers of the ACC to issue warrants for the interrogation of witnesses means that, in practice, a means of protection is provided.

Bangladeshi authorities mentioned the need to amend the Evidence Act, 1872, so as to extend the manner in which evidence can be provided (i.e. via video conference) as a means to ensure witness protection.

Concerning the protection of whistle-blowers, in 2011, Bangladesh adopted the Disclosure of Public Interest Information (Protection) Act. This provides measures for disclosing information and the protection that will be afforded such a person (i.e. non-disclosure of identity without consent).

Freezing, seizing and confiscation; bank secrecy (art. 31, 40)

Confiscation of property is possible under several laws: the ACC Act; Criminal Law Amendment Act, 1958; and MLPA. The MLPA includes a provision for the return of confiscated property. Confiscation can also be ordered under the Code of Criminal Procedure (“CCP”) when an inquiry, criminal proceeding or trial in any criminal court is concluded.

With regard to provisional measures, the Criminal Law Amendment Ordinance, 1944 (“CLAO 1944”) allow for the interim attachment of property. The Courts are also enabled to order the freezing or attachment of property wherever situated. Also, the Bangladesh Bank is able to freeze an account for 30 days without warning, which can be extended for a further 30 days.

The CLAO 1944 provides the District Judge with the discretion to make orders with respect to the administration of attached property. Under the MLPA, the Court may appoint a manager or caretaker of the property that is frozen, attached or forfeited. Intermingled property is liable to confiscation up to the assessed value of the intermingled proceeds.

Concerning bank secrecy, in general, the CPC and ACC 2004 contain provisions upon which judicial authorities may issue a summon requiring a person to provide a specified document or given information.

Statute of limitation; criminal record (art. 29, 41)

In Bangladesh, no statute of limitations exists, prescribing a time limit for the beginning of criminal proceedings.

According to the Evidence Act, a conviction by a foreign court is not ipso facto admissible in any judicial proceeding in Bangladesh.

Jurisdiction (art. 42)

Bangladesh has established the territoriality principle under its criminal legislation. Only the MLPA does not contain any explicit provision. However, in practice, this ground for jurisdiction is implicitly recognized. Within the PC, an extension of the territoriality principle is provided for regarding offences committed on board a vessel or aircraft registered in Bangladesh.

Pursuant to both the PC and POCA, jurisdiction can be exercised over offences committed by Bangladeshi citizens.

Other grounds for jurisdiction mentioned in the Convention are not embodied in Bangladesh's domestic laws. In particular, it has not implemented the *aut dedere aut prosecute* principle.

Consequences of acts of corruption; compensation of damage (art. 34, 35)

Domestic laws contain provisions to address the consequences of corruption. The Contract Act, 1872 provides that an agreement is void if one or more of its objects is unlawful. As corruption is unlawful, it renders such contracts null and void.

By filing a civil suit, any aggrieved person can claim compensation for any damage. Victims of corruption are no exception and they could also be awarded compensation in criminal proceedings.

Specialized authorities and inter-agency coordination (art. 36, 38, 39)

The ACC has the power to investigate and prosecute corruption-related offences. The Commission can receive anonymous complaints and also check media reports for potential corruption-related matters that might be considered. If the ACC determines that an investigation is worth pursuing, the file is transmitted to the Police, pursuant to its own Rules. A report is then to be produced as to whether the matter should be taken to the Special Judge. The ACC avails itself over 100 investigators.

Since its restructuring in 2007, the ACC has shown unprecedented activism and increasingly gaining public confidence. In 2007, the ACC filed 132 criminal cases of corruption. Of them, 64 are under investigation, 50 on trial and judgments have been received in 18 cases, with a total conviction of 25. Additionally 88 cases are under enquiry. To capitalize on its positive image and effectiveness, the work of the ACC needs to be backed by an independent Judiciary. In this regard, it was noted that in 2007, the Judiciary was completely separated from the Executive.

The Commissioners are supported by over a thousand staff. However, the fact that contractors and even staff members are allowed to hold other jobs (including secondment to other ministries and institutions) raises concerns about their independence. Matters pertaining to conflict of interest may arise, and it was noted that no conflict of law exists.

Section 36 of the ACC Act provides that “[i]f any difficulty arises in implementing any power and responsibility of the Commission for having any ambiguity in any provision of this Act, the Government may, by notification of the official Gazette and subject to consistency with the provisions of this Act, give direction towards the Commissions for the implementation of the Act by giving the clarification or explanation”. This may also be a potential danger for the independence of the ACC.

On the issue of cooperation between national authorities, there is no obligation for public authorities to inform *suo motu* investigating or prosecuting authorities. However, the ACC is making efforts to encourage the general public to come forward with any specific allegations of corruption.

2.1.2. Successes and good practices

In relation to Chapter III of the Convention, the reviewing experts observed the following good practices:

- The Bangladesh Bank Circulars allow banks and financial institutions to be kept informed about developments in the area of money-laundering. The efforts made by Bangladesh’s FIU to sign memoranda of understanding (“MOUs”) with 11 FIUs of other countries are also commendable;
- The Ministry of Public Administration has received income and asset declarations from over 1 million public officials within 5 years (95 per cent of all public officials). Although these have not been validated yet, a Working Group has been established to analyse such information on a pilot basis;
- The “Explanations” and “Illustrations” which complement several articles of the Penal Code are useful means to clarify the scope of the offences; and
- The adoption of the Whistleblowers Protection Act in 2012 opens new grounds for the protection of reporting people.

2.1.3. Challenges and recommendations

A number of concrete steps could be taken in order to facilitate the full implementation of Chapter III. In particular, it was recommended that Bangladesh:

- Amend section 165 of the PC, dealing with passive bribery, to ensure that the term “any valuable thing” has the same scope of application as “undue advantage”, pursuant to article 15 of the Convention;
- Ensure that sections 161 and 165 of the PC, which refer to “any other person”, cover “another entity” as mentioned in the Convention;
- Extend the definition of “public servant” to include foreign public officials and officials of public international organizations;
- Consider adopting measures to criminalize active trading in influence, as well as - active and passive bribery in the private sector;

- Extend the list of predicate offences set forth in the MLPA to include all the offences established under the Convention;
- Consider streamlining the process of income and asset declarations, whereby only one institution would be responsible for this task;
- Consider expanding the scope of section 405 of the PC (Criminal breach of trust), to include “any property, private funds or securities or any other thing of value”;
- Expand the scope of sections 193, 200, 201 and 204 of the PC to criminalize the use of both corrupt means and coercive means, as well as remove from the offence set forth in Section 503 the requirement that there should be an “interest” for that offence to be committed;
- Extend the reach of sections 228 and 353 of the PC to cover the use of physical force, threat or intimidation;
- Establish the liability of legal persons for participation in all UNCAC-related offences and provide for sanctions beyond pecuniary sanctions;
- Refrain from amending the ACC Act 2004 to the extent that this would undermine the investigation of corruption related offences because of immunities granted to its officials;
- Consider measures to implement article 30(7)(b) of the Convention (“holding office in an enterprise owned in whole or in part by the State”);
- Seek to promote the reintegration into society of persons convicted of UNCAC-related offences;
- Ensure that confiscation is possible with respect to equipment, instrumentalities used or destined for use to commit an offence;
- Consider other appropriate measures to encourage persons involved in the commission of an UNCAC-related offence to provide substantial cooperation to the competent authorities (i.e. the possibility of mitigating punishment);
- Consider entering into agreements or arrangements with other States parties where necessary cooperation between their law enforcement authorities would be beneficial to protecting persons, pursuant to UNCAC articles 32 and 37(5);
- In order to simplify the process, allow for bank secrecy to be lifted upon a Court or other order;
- Ensure that proceeds of crime transformed into other property shall also be liable to freezing and confiscation measures, and that the same measures can be taken with regards to intermingled proceeds and income or other benefits derived from such proceeds;
- Consider legislative measures to allow for the reversal of the burden of the proof in confiscation matters;
- Consider establishing the additional grounds for jurisdiction mentioned in article 41 of the Convention;

- Consider amending the ACC Act 2004 in order to safeguard the ACC's independence. In particular:
 - Review the proposal whereby the ACC would need permission from the Government to take action against offences involving public officials;
 - Review the proposal whereby the Secretary of the ACC would be appointed by the Government;
 - Ensure that officials exercising functions within the ACC enjoy the necessary independence to perform their duties effectively and without undue pressures, and that such officials be provided with adequate training and sufficient resources; and
- Consider adopting a law regulating conflict of interest.

2.2. International cooperation (Chapter IV)

2.2.1. Main findings and observations

Extradition; transfer of sentenced persons; transfer of criminal proceedings (art. 44, 45, 47)

Extradition in Bangladesh is governed by the Extradition Act, 1974. The Schedule of this Act lists, among the extraditable offences, bribery and embezzlement. In 2010, the Schedule was amended to include the offence of money-laundering.

The Act regulates procedures and conditions for surrendering suspected offenders abroad. It requires that the principle of dual criminality be fulfilled and contains an exhaustive list of grounds for refusal. It places no restrictions on the extradition of Bangladeshi nationals. Despite its applicability to some of the conducts set forth in the Convention, so far the Act has not been applied to cases involving corruption-related offences.

Although normally Bangladesh requires the existence of a treaty as a condition to extradite, by notification in the official Gazette, the Government may decide that the Act have effect in relation to “non-treaty States” (States that are not listed in the Schedule to the Extradition Act).

Despite Thailand being the only State with which Bangladesh has an extradition treaty, under the London Scheme, the extradition of fugitives has taken place with Australia, Fiji, India, Malaysia, Papua new Guinea, Samoa, Singapore, Sri Lanka and Vanuatu.

Bangladesh is yet to conclude any international agreement for the purpose of transferring sentenced persons to their own territory in order to complete their sentences. In addition, the Extradition Act appears to bar such transfer. Likewise, there is no legal framework for the transfer of legal proceedings to another State.

Mutual legal assistance (art. 46)

Until 2012, domestic provisions covering Mutual Legal Assistance (MLA) were contained exclusively in the CCP and MLPA.

The CPP, in particular, enables the Bangladeshi authorities to examine witnesses residing in the United Kingdom or other Commonwealth countries with which an agreement is in place. However, the CCP does not outline the procedure to be followed when foreign countries request assistance from Bangladesh.

The MLAP empowers the Bangladesh Bank to conclude international agreements based on which the Government (or the Bank itself) may provide money-laundering-related information to foreign States. Such agreements will also be recognized as the basis for the forfeiture or release of property in executing the order of a foreign court.

MOUs were signed with the following countries: Malaysia; Nepal; Philippines; Indonesia; South Korea; Afghanistan; Cambodia; Thailand; Sri Lanka; and the United Kingdom. While such arrangements may facilitate the exchange of information for MLA purposes, their scope appears to be limited to cooperation on money-laundering.

Despite the absence of a dedicated legal framework until 2012, the Ministry of Home Affairs and Attorney General's Office acted as central authorities and around 20 requests, both incoming and outgoing, were handled by them.

In 2012, of significance was that the Parliament passed the Legal Assistance in Criminal Matters Act. To date, the Act is only in Bengali/Bangla language and is yet to be translated in its entirety into English. Therefore, although the governmental experts were not in a position to analyse the content of the Act, they recognized that a detailed and dedicated legal framework has now been put in place.

Law enforcement cooperation; joint investigations; special investigative techniques (art.48, 49, 50)

Bangladesh's ability to cooperate internationally in the area of law enforcement is constrained by difficulties in inter-agency coordination, as well as limited human resources, and technological and institutional capacity.

The main channel for law enforcement cooperation is Interpol, through which the Government claims to be in a position to locate offenders, including those suspected of corruption-related offences.

To a limited extent, information with other States can be exchanged through the South Asian Association for Regional Cooperation ("SAARC") Drug Offence Monitoring Desk.

Also, the FIU can provide intelligence to other States, spontaneously and on the basis of reciprocity, under MOUs signed with 10 countries. 3 further MOUs are currently being negotiated.

Although there are no domestic provisions in place for setting up joint investigative bodies, the Government argues that such bodies could be created on an ad hoc basis.

On the use of special investigative techniques, Bangladesh reported a lack of compliance with the Convention.

2.2.2. Successes and good practices

In relation to Chapter IV of the Convention, the governmental experts observed the following good practices:

- In principle, there are no obstacles to using the Convention as a legal basis for extradition;
- The adoption of an MLA dedicated legal framework confirms the commitment by Bangladesh to regulate the matter in a comprehensive and homogeneous manner; and
- During the country visit, the review team was informed that the Bangladesh Bank has applied to become a member to the Egmont Group of FIUs.

2.2.3. Challenges and recommendations

A number of concrete steps could be taken in order to facilitate the full implementation of Chapter IV of the Convention. In particular:

- Expand the list of extraditable offences in the Schedule of the Extradition Act to include, as a minimum, those conducts where criminalization is required under the Convention;
- Ensure that the UNCAC-related offences fall within the scope of application of future extradition treaties;
- Noting the need for requesting States to establish a prima facie case as a condition to surrender the sought person, consider lowering the evidentiary threshold to limit the scope for refusals;
- Eliminate the requirement of submitting a certified copy of the arrest warrant in “urgent circumstances” in order to arrest the sought person;
- Initiate legislative reform to ensure that cases where extradition would be refused on grounds of nationality be promptly submitted to the competent authorities for the purpose of prosecution;
- Ensure compliance with the Convention by carrying out consultations with the requesting State before refusing extradition;
- Continue to actively engage in negotiations with neighbouring and other States for the purpose of concluding extradition arrangements fully covering UNCAC-related offences;
- Take steps to adopt an appropriate legal framework covering article 45 (Transfer of sentenced persons) and article 47 (Transfer of criminal proceedings) of the Convention;
- Explore the possibility of concluding additional MLA related agreements as a means to give practical effect to the Convention in this area;
- If not already included in the Legal Assistance in Criminal Matters Act, adopt legislation to cover the following items: form and timelines of processing requests; use of the principle of reciprocity; pre-requisites of a request; matters concerning confidentiality; grounds for refusal; *non bis in idem* principle; and the use of new technologies;

- Ensure that MLA can extend to cases involving legal persons;
- Ensure that bank secrecy can be lifted upon the request of a foreign State;
- Continue to engage in regional and bilateral dialogue, if appropriate, by signing additional agreements to facilitate the exchange of information on law enforcement cooperation;
- Consider using the Convention as the legal basis for law enforcement cooperation;
- Study the feasibility of setting up joint investigative bodies; and
- Explore ways to improve the detection of corruption-related offences, including upon the request of foreign States, through the use of special investigative techniques.

3. Technical assistance needs

Bangladesh has indicated the need to receive technical assistance as a means to achieving full implementation of the Convention. The following table summarizes the types and forms of technical assistance requested in relation to specific articles.

UNCAC Article	Legislative drafting/advice	Model legislation	Development of an action plan	Summary of good practices/ lessons learned	Model treaties/ agreements	Capacity-building programmes	Technological assistance	Other
15	X							
16	X							
17	X							
22	X							
23	X	X						
24								
25	X	X						
26	X	X						
27	X							
30			X					
31	X							
32		X	X	X	X	X		
33								
36	X		X				X	Knowledge-sharing from other specialized authorities
37								
38			X					Database to link information between national agencies
39						X		
42	X	X						
43								
44	X	X		X				
45	X	X						
46	X				X			
47								
48						X	X	
49				X	X	X		
50	X	X		X				