

**UN CONVENTION  
AGAINST CORRUPTION  
CIVIL SOCIETY REVIEW:  
BANGLADESH 2011**

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## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a "Conference of the States Parties to the Convention" (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on Chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on Chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June-July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10).; Article 63 (4) (c) requires the Conference of the States Parties to agree on procedures and methods of work, including cooperation with relevant non-governmental organizations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the Conference secretariat on their compliance with the Convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the Convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review and finalize it upon agreement. The result is a full review report and an Executive Summary, the latter of which is required to be published. The Secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organized by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The Terms of Reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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# Introduction

Bangladesh acceded to the United Nations Convention against Corruption (UNCAC) on 27 February 2007, following a campaign led by Transparency International Bangladesh (TIB) that began in December 2004.

This report reviews Bangladesh's implementation and enforcement of selected articles in Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation) of the UNCAC. The report is intended as a contribution to the UNCAC peer review process covering those two chapters. Bangladesh was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. An earlier draft of this report was provided to the government of Bangladesh.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), statute of limitations (Article 29), freezing, seizure and confiscation (Article 31), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damages (Article 35), bank secrecy (Article 40), jurisdiction (Article 42) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an executive summary with condensed findings, conclusions and recommendations about the review process and the availability of information, as well as the implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Bangladesh and issues of access to information. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

**Methodology.** The report was prepared by TIB with funding from the UN Democracy Fund (UNDEF). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was supplied to government officials.

The report was prepared using a questionnaire and report template designed by Transparency International (TI) for the use of civil society organisations. These tools reflected but simplified the checklist from the United Nations Office on Drugs and Crime (UNODC) and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b)&(c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert identified by TI.

The draft report was shared with the government and the visiting peer review team for comments before it was finalized. This final report will be used to continue the dialogue and engagement with the stakeholders, including the government, beyond the first round of the country review process.

In preparing this report, the authors took into account the recent review of Bangladesh carried out as part of the thematic review on the criminalisation of bribery published in 2010 by the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.<sup>1</sup>

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<sup>1</sup> The Criminalisation of Bribery in Asia and the Pacific. Framework and Practices in 28 Asian and Pacific jurisdictions - Thematic Review and Final Report, pp. 97-112, <http://www.oecd.org/dataoecd/2/27/46485272.pdf>

# I. Executive summary

The overall findings of this report indicate that Bangladesh's legal regime largely complies with the standards and principles of the UNCAC. The Bangladesh Action Plan for Compliance (2009) also found existing laws of Bangladesh to be largely in compliance with the 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",<sup>2</sup> but this report does identify a number of 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 were introduced after Bangladesh's accession to the UNCAC in 2007, in some other instances steps were taken that could weaken the capacity to control corruption. The government's 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

### Availability of information

Poor information management systems in relevant agencies have severely limited the availability of information, as has an apparent culture of secrecy in the government, particularly among senior officials.

## 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, but the government did formulate an action plan that was published in November 2009.<sup>3</sup>

## Recommendations for priority actions

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

<sup>2</sup> 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](http://www.baselgovernance.org/fileadmin/docs/pdfs/Publications/GOB_UNCAC_Part1.pdf)  
<sup>3</sup>[http://www.igs-bracu.ac.bd/UserFiles/File/archive\\_file/UNCAC%20Book-%20Action%20Plan%20for%20Compliance.pdf](http://www.igs-bracu.ac.bd/UserFiles/File/archive_file/UNCAC%20Book-%20Action%20Plan%20for%20Compliance.pdf)

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 independence and effectiveness should not be enacted.<sup>4</sup> The rule of law must be ensured without influencing or intervening in the judicial process in any way, including through 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 the implementation of UNCAC provisions. Mechanisms for inter- and intra-ministerial coordination should be established and strengthened.

## **II. Assessment of the review process for Bangladesh**

### **A. Conduct of Process**

While the basic documents of the UNCAC Implementation Review Mechanism provide for consultation with stakeholders in connection with the government's self-assessment review process, this provision is not mandatory and consequently the government did not seem to feel obliged to consult with civil society. For a period of time, the government also treated the self-assessment document as "confidential", although it eventually agreed for the document to be published on the UNODC website, which is to be commended.

An UNCAC peer review team, comprising members from Iran and Paraguay and accompanied by representatives from the UNODC, visited Bangladesh from 8-14 April 2011 to assess the country's progress in implementing the UNCAC and to exchange views on Bangladesh's self-assessment.

They met with relevant stakeholders, particularly including the Governmental Expert Group (GEG); the state minister and secretaries from the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA); the attorney general, the chief justice, the finance minister, and finance secretary; the governor of the Bangladesh Bank; the executive director and other concerned officials of the Anti-Money Laundering Division (AML); the chairman and commissioners, along with the prosecution unit, of the Anti-Corruption Commission; the principal secretary of the prime minister's office; the secretary and director-general (UN) of the Ministry of Foreign Affairs; the secretary of the Ministry of Establishment; the secretary of the Ministry of Home Affairs; the cabinet secretary of the Cabinet Division; and representatives of civil society (TIB and the Institute of Governance Studies).

On 13 April 2011, TIB arranged a meeting at its premises and invited the UNCAC focal point and other government stakeholders, visiting review team members and UNODC representatives, the GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit or German International Cooperation) and representatives from the Institute of Governance Studies. Based on its own review, TIB presented the country context and main findings to the audience, which actively participated in a discussion about TIB's findings and recommendations. The Bangladesh UNCAC focal point welcomed the initiative to provide civil-society feedback and accepted the findings presented at the meeting. She also mentioned that the current government is committed to creating a favourable environment for optimum compliance with the UNCAC.

Earlier, on 12 April 2011, TIB was also given the opportunity to host a dinner to introduce the peer review team to a cross-section of stakeholders, including the government, media, civil society and the TIB Board of Trustees. TIB was also invited by the government, along with other stakeholders, to a presentation of the self-assessment made by the government. It was a well-attended meeting in which the peer-review team and other participants had the opportunity to make comments to and/or seek clarifications from the government.

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<sup>4</sup> 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>

Overall, in spite of some initial reluctance, the government did eventually engage with civil society quite closely, which is to be commended and should also be sustained in the future.

## **B. Availability of information**

This UNCAC civil-society review was carried out in several steps. During this process we contacted various government agencies such as the Anti-Corruption Commission, the Bangladesh Bank, the Ministry of Law, Justice and Parliamentary Affairs, and the Ministry of Foreign Affairs. Renowned legal experts were also interviewed in order to obtain knowledge about legal issues related to UNCAC implementation.

Responsible officials from government agencies were contacted on several occasions to obtain information on overall compliance, gaps, deficiencies, challenges and successes in the implementation of the UNCAC. Most of the requested information, especially regarding statistics and case studies, was difficult to obtain.

The following additional points should be noted:

The availability of information was limited because of deficient information management systems in relevant agencies. The documentation and information management system of the government lacks proper organisation and requires modernisation, including the application of the relevant information technology. The problem is therefore often one of capacity.

The limit on the availability of information may be even more due to the perceived culture of secrecy that prevails in the government. Government officials often do not formally refuse to provide information, but they avoid sharing it. When we approached government officials (including the relevant minister), their initial informal responses were positive, but in most cases we were later denied the information. Officials often promised to provide the information at a later date but in the end did not deliver. These kinds of practices appear to exist even in the Anti-Corruption Commission, which committed to provide detailed information about cases of corruption but eventually failed to provide these.

As a result, no specific information could be provided in this report on the number of prosecutions, settlements, convictions, acquittals, dismissals, pending cases and so forth – nor was there information on the scope of specific case studies and other issues.

Information on corruption remains a taboo, and there exists a sense of insecurity about disclosure. In this context the newly enacted Whistleblower Protection Act,<sup>5</sup> coupled with the Right to Information Act, is likely to promote transparency and disclosure in the future.

The self-assessment checklist was not provided to us on grounds of confidentiality, although it was eventually published on the UNODC website.

We had relatively easy access to legal experts, but they were not able to provide most of the relevant data, particularly data related to cases according to categories of corruption and their status, because these experts did not have the information that is recorded in different public offices and the Anti-Corruption Commission.

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<sup>5</sup> The act is titled "Public Interest Related Information Disclosure Act 2011.

### III. Implementation and enforcement of the UNCAC

TIB spearheaded the demand for acceding to the UNCAC, beginning in December 2004. After over two years of campaigning, the government acceded to the UNCAC on 27 February 2007. The government took notable measures towards implementing the convention soon afterward. Indeed, Bangladesh was one of the first of a few states parties to complete a gap analysis. In April 2007, within three months of accession, the Government formed an inter-ministerial committee, led by the secretary of the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), to conduct the Bangladesh Compliance and Gap Analysis (BCGA). The committee was responsible for coordinating with relevant ministries and other stakeholders and had technical support from the civil society organisation and the Institute of Governance Studies of BRAC University. A joint secretary (drafting) for the MoLJPA was designated as the focal point for the exercise.

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.<sup>6</sup>

Ever since Bangladesh acceded to the Convention, side-by-side with TIB, the Institute of Governance Studies and the media, there have been a number of civil society organisations working in varying ways to catalyse the implementation of the UNCAC. Apart from TIB, the Bangladesh NGO Network for Radio and Communication (BNNRC), Rights Jessore and VOICE have become members of the UNCAC Coalition. Some donors are also providing financial and technical assistance. For example, the Bangladesh Compliance and Gap Analysis on the UNCAC was carried out in partnership with the Institute of Governance Studies, and with financial and technical support from GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit (German International Cooperation) ), as well as with expert advice from the Basel Institute on Governance, UNODC and the UN Development Programme (UNDP). GIZ was also involved in the process that led to the adoption of the action plan for implementation. TIB's work on the UNCAC is supported by the UK Department for International Development (DFID), the Danish International Development Agency (DANIDA), the Swedish International Development Agency (SIDA) and the Swiss Agency for Development and Cooperation (SDC).

Earlier, the Right to Information Act was enacted with active contributions from civil society subsequent to Bangladesh's accession to the UNCAC. Bangladesh has also established a Human

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<sup>6</sup> 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.

Rights Commission and Information Commission. These are expected to increase the transparency and accountability of the government as well as of non-governmental organisations.

## A. Key issues related to the legal framework

The Code of Criminal Procedure (Amendment) Act 2009, the Money Laundering Prevention Act 2009, and the Public Interest Related Information Disclosure (Protection) Act 2011 were major steps forward in strengthening Bangladesh's anti-corruption legal framework and ensuring UNCAC compliance.

### 1. Areas Showing Good Practice

**UNCAC Articles 15, 17 and 20: Bribery of national public officials, embezzlement and illicit enrichment.** The laws in Bangladesh are consistent with these articles. Numerous charges of bribery have been filed against public officials.

**UNCAC Article 23: Laundering of proceeds of crime.** Domestic standards are compatible with UNCAC requirements. The Money Laundering Prevention Act (MLPA) 2009 is broadly defined. It recognises money laundering as a criminal offence and includes 22 predicate offences, making it possible to address laundering issues. This law has created an opportunity to prevent money laundering. The government has set up an anti-money laundering unit in the Bangladesh Bank (the country's central bank) to facilitate the effective application of the law. Additionally, Bangladesh has taken more steps to strengthen the act to further comply with the UNCAC and make it more functional and effective.

**UNCAC Article 31: Freezing, seizure and confiscation.** Domestic laws reasonably comply with the UNCAC. There are specific provisions to confiscate property that has been acquired by illegal means or is disproportionate to legal sources of income.

**UNCAC Article 33: Protection of reporting persons.** To comply with the UNCAC, Parliament has passed a law on whistleblower protection: the Public Interest Related Information Disclosure (Protection) Act 2011. While drafting the law, the government received comments and input from TIB and the Institute of Governance Studies of BRAC University. The law will provide safeguards to officials who report information and evidence on corruption.

**UNCAC Article 46: Mutual legal assistance.** The government (through Gazette Notification UN-SOC-6027/07 of 27 April 2008) nominated the Ministry of Home Affairs and the Office of the Attorney General as the designated central authorities to receive and execute requests for mutual legal assistance (MLA). The UN Secretary-General has been notified of these matters. Bangladesh can now respond to any request for MLA from an UNCAC State Party that is made through the central authority; domestic law does not ban such cooperation from being provided. Section 26 of the Money Laundering Prevention Act 2009 provides that the government, or in some cases the Bangladesh Bank, may sign a memorandum of understanding (MOU) or bilateral or multilateral agreements with foreign countries and organisations to prevent money laundering. When such agreements are signed, the government or Bangladesh Bank can request and provide information in response to requests from other countries as long as this does not affect national security. Moreover, Section 503(2B) of the Criminal Procedure Code provides limited allowances for seeking assistance to gather evidence through the commission, which can examine witnesses abroad. Bangladesh recently entered into MLA agreements with ten countries.

### 2. Areas with Deficiencies

**UNCAC Article 16: Bribery of foreign public officials and officials of public international organizations.** Bangladesh has no specific domestic law that categorically criminalises bribery of such officials. Section 2 of the Penal Code 1860 provides for criminalising any offence committed in Bangladesh by any person. This could be extended to include a limited number of cases of bribing foreign public officials and officials of public international organisations, but the law is not directly or

specifically related to the UNCAC article. In order to ensure compatibility with the UNCAC's mandatory obligations, BCGA has recommended that active bribery of foreign public officials be criminalised. Accordingly, enacting new legislation or amending existing laws is recommended.

**UNCAC Article 23: Laundering of proceeds of crime.** This UNCAC offence includes the act of conversion or transfer for the purpose of concealing or disguising the illicit origin of any proceeds of crime; the act of concealment or disguise of the true nature, source, location, disposition, movement or ownership of, or rights with respect to, any such property; and the act of acquisition, possession or use of any such property. The adoption of the Money Laundering Prevention Act 2009 made domestic standards quite compatible with the UNCAC requirement.

**UNCAC Article 26: Liability of legal persons.** This article requires the establishment of criminal, civil or administrative liability for legal entities for UNCAC offences. This obligation is mandatory, to the extent that it is consistent with domestic legal principles. According to BCGA, the domestic standards in Bangladesh comply with the UNCAC requirement. The definition of the term "person," as provided by the Penal Code, 1860, includes legal persons (Section 11). Accordingly, in Bangladesh, legal persons are subject to criminal punishment for offences punishable with fines only. Additionally, civil and administrative liability of legal persons is acknowledged by the domestic legal regime. However, provisions of Articles 26(2) and 26(4) should be better specified in existing laws.

**UNCAC Article 32: Protection of witnesses, experts and victims.** In order to comply with the UNCAC, a law on witness protection is being discussed, according to government sources.

**UNCAC Article 33: Protection of reporting persons.** The Public Interest Related Information Disclosure (Protection) Act, 2011 was passed by the parliament after it was presented by the government in September 2010 in compliance with UNCAC. The Government involved TIB in the drafting process of this act, which should be recognised as a good practice. If duly enforced, the law should provide safeguards to the officials who disclose information on corruption.

**UNCAC Article 42: Jurisdiction.** Bangladesh laws comply in part with the mandatory and non-mandatory Article 42 obligations of the UNCAC. According to the Penal Code of 1860, the jurisdiction of the criminal courts of Bangladesh is very extensive. Every person is liable for punishment if s/he commits any offence within the territory of Bangladesh (Section 2). So are Bangladeshi citizens and persons on any ship or aircraft registered in Bangladesh, who are liable to be tried and punished by Bangladeshi courts even for offences committed beyond the territory of Bangladesh (Sections 3 and 4). But the domestic laws of Bangladesh do not establish jurisdiction in cases where a fugitive offender is not extradited. In practice, the extra-territorial jurisdiction of the criminal courts of Bangladesh is hardly exercised, because of an inadequate domestic regime on mutual legal assistance and other forms of international cooperation. The inadequacy of existing normative measures means that existing domestic laws do not fully comply with the provisions of this article.

## **B. Key issues related to enforcement**

Bangladesh has well-defined and broad domestic laws and standards intended to prevent corruption, but in reality they are not always enforced without fear or favour. Political and electoral commitments to fight corruption are often not followed by actual delivery. This is reflected in a series of government initiatives to amend the Anti-Corruption Act, which may curtail the independence of the Anti-Corruption Commission despite a campaign by TIB and other civil society organisations, the media, and donors, as well as the tacit resistance of the Commission and a section of the government including the finance minister.

### **1. Statistics**

A lack of proper documentation of corruption cases, the non-availability of information, and a lack of regular updating of information create significant inadequacies in the enforcement of UNCAC-related legal provisions.

### ***Bribery of national public officials (active and passive) (UNCAC Article 15 (a) (b))***

**Table 3: Cases related to corruption in various Special Judge Courts, 2004-10 (cases derived from the abolished Bureau of Anti-Corruption)**

Trial continued	Stayed	Conviction	Acquittal
1,007	357	451	536

\* Information collected from the Anti-Corruption Commission (incomplete)

**Table 4: Cases related to corruption in various Special Judge Courts, 2004-10 (after establishment of the Anti-Corruption Commission)**

Number of charge sheets submitted by Commission	Number of First Information Reports (FiRs) submitted by commission	Statistics for commission cases under trial			
		Trial continued	Stayed	Conviction	Acquittal
1,508	855	936	260	237	100

\* Information collected from the Anti-Corruption Commission (incomplete)

**Table 5: Departmental proceedings for corruption against officials belonging to the BCS Administration Cadre and personnel controlled by the Ministry of Establishment, 2003-10**

Total number of departmental proceeding cases on corruption charges	Decisions on departmental proceeding cases			Total number of disposed departmental proceeding cases	Total number of pending cases
	Convicted	Other penalty	Acquittal		
134	5	8	48	61	73

\* Information collected from the Ministry of Establishment; total information not available

**Table 6: Enlisted corruption cases against public servants under the Ministry of Establishment, 2003-10**

No. of bribery cases/complaints	No. of illicit enrichment cases/complaints	No. of misuse of power cases/complaints	Others	Investigation held	No. of charge sheets	Conviction	Acquittal
45	94	28	231	287	106	05	70

\* Information collected from the Ministry of Establishment; total information not available

### ***Embezzlement, misappropriation or other diversion by a public official (UNCAC Article 17)***

**Table 7: Convictions under Section 409 of the Penal Code and Section 5 of the Prevention of Corruption Act, 1947 (only in Special Judge Court, Dhaka)**

Year	2004	2005	2006	2007	2008	2009	2010
No. of persons	3	4	0	1	3	5	8

\* Information collected from the Anti-Corruption Commission (incomplete)

### ***Illicit enrichment (UNCAC Article 20)***

**Table 8: Cases related to Section 27 of the Anti-Corruption Commission Act, 2004 (only in Special Judge Court, Dhaka)**

Year	2004	2005	2006	2007	2008	2009	2010
			6				

No. of FIR	0	0	0	100	70	35	30
No. of Charge Sheet	0	0	0	93	54	35	10
No. of Conviction	0	0	0	51	6	0	0

\* Information collected from the Anti-Corruption Commission and Ministry of Establishment; total information not available

### **Money laundering, corruption related (UNCAC Article 23)**

**Table 9: The Bangladesh Bank Financial Intelligence Unit (FIU) to date has received about 600 suspicious transaction reports (STRs), Of these, 115 cases have been sent to various investigative (police) agencies, and FIU has sent about 200 cases to the Anti-Corruption Commission to investigate. The following are statistics on these 115 cases:**

Trial	102 cases
Quashed	3 cases
Dismissed	10 cases

\* Information from Bangladesh Bank; total information not available

**Table 10: Cases related to Sections 2(k), (o) and (q) and 4 of the Money Laundering Prevention Act, 2009**

Year	2007-10
No. of cases	18
No. of charge sheet	5

\* Information from the Anti-Corruption Commission; total information not available

## **2. Areas showing good practice**

There have been several notable examples of progress and good practice in Bangladesh.

Soon after being elected, the government adopted the implementation strategy for the UNCAC. This should be commended, though much remains to be done in terms of follow-up.

Some cases have already been filed under the Money Laundering Prevention Act 2009, including one against the son of a former prime minister, filed by the Anti-Corruption Commission,<sup>7</sup> which has prosecuting authority under the law. A number of enquiries were initiated by the interim caretaker government, and much progress was achieved in tracing ill-gotten funds in a number of jurisdictions. By the time the elections were held in December 2008, leading political figures had been identified by the Anti-Corruption Commission under the Money Laundering Prevention Act.<sup>8</sup> The Army-backed caretaker government had filed a number of cases against some high-profile politicians and businesspeople who were allegedly involved in corruption. This process was interrupted when the new government took office, however, partly because the cases conducted under the cover of the emergency rules were perceived to have violated due judicial process, including the right to bail. With the restoration of democracy after the election, the role of the commission was heavily criticised inside and outside of the parliament. The commission was reconstituted and is now perceived to be much less active than it could be, the main reason being a sense of uncertainty created in the commission in view of the proposed amendments.<sup>9</sup>

Many businesspeople, public officials and politicians were reportedly convicted under this provision during the anti-corruption drive of 2007-08, but there is no specific information on the exact number of cases and their status. Many convictions handed down by the Special Courts during the interim caretaker government were subsequently challenged, and many have been overturned by the High Court Division of the Supreme Court of Bangladesh. A few cases are still on appeal, mainly against individuals linked to the opposition political party.

<sup>7</sup> *The Daily Star*, September 3, 2011

<sup>8</sup> *The Daily Star*, January 1, 2008

<sup>9</sup> Chairman of the Anti-corruption Commission, in consultation with TIB.

### 3. Areas with deficiencies

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. This in turn 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 appear to have been used against political opponents. The judicial process is often bypassed in corruption cases.<sup>10</sup> 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 for the secretary of the commission to 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 absence of a code of conduct for the Anti-Corruption Commission, the credibility of some staff, a lack of due diligence and the balance of positive and negative incentives. These issues are believed to have caused the ineffectiveness of the ACC and its investigative capacity.<sup>11</sup>

- 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 institution was intended to promote transparency and accountability in tax administration. The government has also been criticized for delays in the provision of the necessary capacity, especially human resources, to the Human Rights Commission and Information Commission.<sup>12</sup> A recent amendment has disempowered the Bangladesh Telecommunication Regulatory Commission and empowered the Ministry of Post and Telecommunication, raises concerns about political influence.

- 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 that 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.

In the area of preventive measures, the following should be noted:

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<sup>10</sup> 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](http://www.ti-bangladesh.org/research/Electoral%20Commitment%20Tracking_Full%20Report.pdf),

<sup>11</sup> *The Daily Star*, February 23, 2010

<sup>12</sup> The Chairmen of the both Commissions have been publicly expressing grievances about the bureaucratic delay in ensuring the necessary human resources.

- Although policy initiatives such as the Right to Information Act have been implemented, measures with the opposite effect have undermined the institutional capacity to control corruption. For example, the public service is said to have been subjected to political influence, particularly in terms of appointments, promotions, postings and transfers. Many senior officials have been made “Officer on Special Duty”<sup>13</sup> under a process that is tantamount to partisanship.

- The government has taken steps to weaken the public procurement policy by withdrawing the requirement of expertise and experience up to a certain threshold, on grounds that the rigorous process of scrutiny of expertise and experience delays project implementation. However, the amendment has been widely viewed by the media, civil society and donor organizations as a provision to allow partisan political favour to determine awards of public contracts.

- Instead of facilitating a greater role for civil society in preventing corruption, the government often tends to demonstrate intolerance to critical voices, which reduces the space for civil society.

## IV. Recent developments

The government has nominated the Ministry of Home Affairs and the Attorney General’s Office as the “Central Authorities” to provide mutual legal assistance (MLA) under the UNCAC (see page 14 of the action plan, under “Legislative changes”). To make MLA more functional and effective, Bangladesh has taken steps to strengthen international cooperation by signing bilateral and multilateral agreements including extradition laws. A number of MLA requests have also been initiated. Thanks to the enactment of the Money Laundering Prevention Act 2009, Bangladesh has obtained mutual legal assistance on money laundering issues from other countries. Bangladesh is in the process of becoming a member of the Egmont Group.

The Parliament has passed the Public Interest Related Information Disclosure (Protection) Act 2011, which is the equivalent of the Whistleblower Protection Act. If properly enforced this law will protect whistleblowers and encourage officials to disclose information.

After a delay of more than two years, specific measures have been taken recently to implement the election pledge by which public representatives and high officials will submit their wealth statements. This is viewed as a positive development, though it is not clear whether the statements will be disclosed to the public or what steps will be taken after they are submitted. The submissions will be made to the prime minister, who will decide whether to disclose them to the public or not. Another weakness is that members of parliament are exempt from making the disclosures.

## V. Recommendations for priority actions

Political commitment is the key, supported by the capacity to enforce the law without fear or favour. It is often argued that strong political commitment is an essential precondition for the effective implementation of the UNCAC. Political consensus across the political spectrum in general, and in the two major parties in particular, is also mandatory for better implementation of laws.

The government’s action plan identifies a series of activities that include a specified timeline for each action point. The government needs to implement the action points more vigorously according to the suggested timelines.

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<sup>13</sup> A government official may be posted as Officer on Special Duty (OSD) for up to three months by an administrative order on such grounds as public interest, waiting to be promoted to higher posts, trainings and corruption charges. During such status the officers are entitled to salary and benefits, but do not have any office of assigned duty. In practice officials are made OSD under partisan political consideration while the tenure can last many years. This has been the case under successive governments. Under the present government until March 2011, 600 officials have made OSD. TIB, *Tracking Electoral Commitment*, *ibid*.

New and specific laws should be enacted to comply with the UNCAC regarding Articles 16, 23(1)(b)(i), 23(2)(c), 23(2)(e), 26(2), 26(4), 31(5), 31(8), 32(1), 32(2)(b), 32(3), 32(4), 32(5), 42(2)(a), 42(2)(c), 42(2)(d), 42(3), 42(4) and 46. Technical assistance such as model legislation, legislative drafting and legal advice should be sought from countries with good UNCAC practices for implementing the provisions. More important are issues of capacity building, implementation and monitoring of the effectiveness of existing laws. If and when necessary, new laws should be enacted.

Corruption must be punished, and the law must be permitted to take its own course without any political or other form of influence or intervention. Corruption cases must be handled according to due judicial process. Any attempt to influence the judicial process by partisan politics or other means is counterproductive. In most cases, Bangladesh's domestic laws are compatible with the UNCAC, but effective enforcement remains to be improved and is indispensable for curbing corruption.

The Anti-Corruption Commission should be further strengthened, and its independence must be ensured. The proposed amendments that may curtail the independence and effectiveness of the commission should be abandoned. Key institutions of democratic governance – particularly public service, law-enforcement institutions and the judiciary – must be allowed to function independently and professionally with the highest standards of integrity, free from partisan political influence.

Parliament, especially the parliamentary committees, must function effectively. Committees must be reformed to avoid conflict of interest where applicable.

Initiatives and actions taken in compliance with the UNCAC provisions should be made available in the public domain. The effectiveness of measures adopted for implementing the UNCAC must be periodically assessed. Regular monitoring and evaluation of implementation of UNCAC provisions is therefore indispensable. According to the action plan, the focal point at the MoLJPA will monitor the implementation of the action plan and report to the Advisory Committee. Bangladesh will also welcome external agencies assigned by the UN to undertake an independent review of the state of implementation every two years. Bangladesh will share progress reports with the UN and other stakeholders abroad. Bangladesh will also share information on the progress of UNCAC implementation with stakeholders, including civil society, and involve them in the review process. These pledges in the action plan should be strictly upheld.

Capacity-building initiatives should be taken to strengthen the investigation and prosecution capacity of concerned agencies, particularly the Anti-Corruption Commission.

Actions should be taken to raise the awareness of public officials of the UNCAC and its enforcement. Human resources and IT support should be enhanced in all government agencies. Inter-ministerial and intra-ministerial coordination should be established and strengthened.

Coordination among various law enforcement agencies should also be strengthened.

The advantages of mutual legal assistance should be more proactively explored. Some problems also lie outside the jurisdiction of the government. In the absence of a specific time limit to respond to requests for assistance, potential partner countries often do not promptly respond to requests for mutual legal assistance. UNCAC states parties need to develop a common understanding of mutual legal assistance issues. They should take early steps to make their domestic laws compatible with the UNCAC, in order for requests from other Member States to be honoured.

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