
PARTICIPANTS' PAPERS

THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION – BANGLADESH PERSPECTIVE –

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I. INTRODUCTION

Corruption is a global problem. It exists to a greater or lesser degree in all countries; irrespective of political and economic systems, size, or state of development.

Bangladesh is a densely populated country. The pressure of population, terrorism, poverty, illiteracy, natural disasters and corruption are some of the problems facing the country which seriously hamper its growth. Corruption in particular has made this nation unstable. However, the people of Bangladesh fight corruption continuously.

The role of the criminal justice system is crucial in the fight against corruption. Successful detection, investigation, prosecution, adjudication and punishment of corrupt offenders contribute greatly to the prevention and eradication of corruption. But these are not easy tasks to accomplish. To successfully overcome the challenges, the criminal justice authorities need to use innovative legal means, both domestically and internationally. In addition, it is of the utmost importance to ensure and maintain the integrity and necessary independence of criminal justice personnel, as a prerequisite to fulfilling their great responsibilities.

In a democratic system, the government has three wings, the executive, the legislative and the judiciary. The Bangladesh constitution ensures these three wings act separately and independently. According to constitutional obligation the judiciary has been separated. The Code of Criminal Procedure 1989 has been amended. Since 11 January 2007, there has been great attention to controlling corruption at different levels. The government of Bangladesh has taken adequate measures to curb different aspects of corruption.

II. BANGLADESH: A PARTY TO THE UNCAC

The UNCAC is the first global, legally binding instrument on corruption and a comprehensive document that includes measures on prevention, criminalization and international co-operation. Bangladesh acceded to the UNCAC on 27 February 2007. That has been a significant and symbolic step toward great reforms for good governance and is consistent with its commitment and declared strategy to fighting corruption and complying with international standards. Bangladesh acceded to the UNCAC because, together with other States Parties to the convention, it is convinced and concerned about the objectives it expects to achieve by acceding to the UNCAC. The report "UNCAC- a Bangladesh Compliance and Gap Analysis" is the result of this initiative. To convey the nation's progress in implementing the UNCAC the report was presented by the government of Bangladesh at the second conference of States Parties in Bali, Indonesia, in January 2008. The second edition of the report has already been published. Bangladesh's existing legislation covers most of the requirements for the criminalization of corruption offences and even goes beyond that, covering some elements of the offence in the non-mandatory clauses and others.

III. CURRENT SITUATION IN BANGLADESH OF CORRUPTION AND RELATED ACTS

The criminal justice system of Bangladesh is based on common law. The purpose of criminal justice is punitive. The law and justice are quite essential for keeping peace, order and civilization of the state. Prevention and eradication of corruption require a comprehensive and multidisciplinary approach.

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Established in 2004, the ACC was re-constituted in 2007. Already, the Anti-Corruption Commission Rule, 2007 has been promulgated and the commission has succeeded in establishing itself as an independent body. Since then it has been working with tremendous enthusiasm, showing unprecedented activism and increasingly gaining public confidence. As of 31 August 2008, the ACC filed 1,150 criminal cases of corruption. Of those, 190 have been sent to trial and judgments have been received in 87 cases with 11 total convictions. The remainder are under inquiry and investigation. Three hundred and eighty are wealth statements asked for. However, to institutionalize this current image and effectiveness of the ACC along with the continued political will and commitment to combat corruption, an independent judiciary and other watchdog institutions are essential. In 2007, the judiciary of Bangladesh was completely separated from the executive. This is a historical achievement.

A. Bribery of National Public Officials

Chapter III of the UNCAC obligates States Parties to criminalize a wide range of acts of corruption (Articles 15-27) and to establish a series of procedural measures and mechanisms that support such criminalization (Articles 28-41).

The UNCAC obligates the States Parties to criminalize certain acts of bribery. These are active bribery of national public officials (Article 15), and passive bribery of national public officials (Article 15.b).

In Bangladesh, the Penal Code, 1860 criminalizes the act of taking by a public servant of any gratification other than legal remuneration in respect of an official act (Section 161); the act of obtaining by a public servant of any valuable thing without consideration from a person concerned in proceedings or business transacted by such public servant (Section 165); and any abetment, i.e., instigating or aiding, by any person of any such taking or obtaining (Section 165A). Moreover, according to the Prevention of Corruption Act, 1947, the act of accepting or obtaining by a public servant of any gratification other than legal remuneration in respect of an official act (Section 5(1) (a)), and the act of accepting or obtaining by a public servant of any valuable thing without consideration from person concerned in the proceedings or business transacted by such public servant (Section 5(1) (b)) amount to punishable criminal misconduct. These penal provisions adequately address the UNCAC requirements regarding active and passive bribery of national public officials.

B. Embezzlement, Misappropriation or Other Diversion of Property by a Public Official

States Parties have a mandatory obligation to criminalize embezzlement, misappropriation or other diversion of property by a public official (Article 17). Regarding embezzlement, misappropriation or other diversion of property by a public official (Article 17), the domestic standard is quite compatible with the UNCAC standard. The Penal Code criminalizes the act of dishonest misappropriation of property (Section 403) and criminal breach of trust by a public servant (Section 409). These offences, as their definitions indicate, include embezzlement, misappropriation or other diversion of property by a public official. Moreover, according to the Prevention of Corruption Act, 1947, the act of dishonest or fraudulent misappropriation or conversion by a public servant for his or her own use of any property entrusted to him or her or under his or her control as a public servant or allowing any other person so to do is punishable, criminal, misconduct (Section 5(1) (c)); on the other hand, definitions of the offences of dishonest misappropriation of property (Section 403) and criminal breach of trust (Section 406) are criminalized by the Penal Code, 1860.

IV. CORRUPTION OFFENCES AND CORRUPTION-RELATED OFFENCES IN BANGLADESH

A. Offences under the Anti Corruption Commission Act, 2004

1. Section 19: Special Powers of the Commission in Respect of Inquiry or Investigation

- (i) Any person obstructing an official legally empowered by the commission, or a commissioner in the exercise of his or her powers under this sub-section (1), or any person deliberately violating any order given under that sub-section commits a punishable offence is liable to a term of imprisonment of not more than three years or a fine or both.

2. Section 26: Declaration of Properties

- (i) If the commission is satisfied on the basis of its own information and after necessary investigation that any person or any other person on his or her behalf is in possession or has obtained ownership of property not consistent with his or her legal/known sources of income then the commission through an order in writing shall ask that person to submit a statement of assets and liabilities in the

manner determined by the commission and to furnish any other information mentioned in that order.

(ii) If any person

(a) After having received an order mentioned in sub-section (1) fails to submit the written statement or furnish the information accordingly or submits any written statement or provides any information that is false or baseless or there are sufficient grounds to doubt their veracity; or

(b) Submits any book, account, record, declaration, return or any document under sub-section (1) or gives any statement that is false or baseless or there are sufficient grounds to doubt its veracity, then that person will be sentenced to a prison term of up to three years or a fine or both.

3. Section 27: Possession of Property in Excess of Known Sources of Income

(i) If there are sufficient and reasonable grounds to believe that a person in his/her own name or any other person on his/her behalf is in possession and has obtained ownership of moveable or immovable property through dishonest means and the property is not consistent with the known sources of his/her income and if he/she fails to submit to the court during trial a satisfactory explanation for possessing that property, then that person shall be sentenced to a prison terms ranging from a minimum of three years to a maximum of ten years' imprisonment, and these properties shall be confiscated.

B. Offences under the Prevention of Corruption Act, 1947

1. Section 5, Subsection (2)

Any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years, or with fine or with both.

C. Offences under Sections 161-169, 217, 218, 408, 409, 477A and Sections 109, 120(B) & 511 of the Penal Code, 1860 (Act XLV of 1860)

(a) Sec 161: Being or expecting to be a public servant and taking a gratification other than legal remuneration in respect of an official act. Imprisonment of either description for three years, or fine, or both;

(b) Sec 162: Taking a gratification in order by corrupt or illegal means to influence a public servant. Imprisonment of either description for three years, or fine, or both;

(c) Sec 163: Taking a gratification for the exercise of personal influence with a public servant. Simple imprisonment for 1 year or fine, or both;

(d) Sec 164: Abetment by public servant of the offence defined in the last two preceding clauses with reference to himself. Imprisonment of either description for three years, or fine, or both;

(e) Sec 165: Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant. Imprisonment of either description for three years, or fine, or both;

(f) Sec 165A: Abetment of offences under Section 161 and 165. Imprisonment of either description for three years, or fine, or both;

(g) Sec 166: Public servant disobeying a direction of the law with intent to cause injury to any person. Simple imprisonment for one year, or fine, or both;

(h) Sec 167: Public servant framing an incorrect document with intent to cause injury. Imprisonment of either description for three years, or fine, or both;

(i) Sec 168: Public servant unlawfully engaging in trade. Simple imprisonment for one year of fine, or both;

(j) Sec 169: Public servant unlawfully buying or bidding for property Simple imprisonment for three years, or fine, or both and confiscation of property, if purchased;

(k) Sec 217: Public servant disobeying a direction of law with intent to save a person from punishment,

or property from forfeiture. Imprisonment of either description for two years, or fine, or both;

- (l) Sec 218: Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture. Imprisonment of either description for three years or fine, or both;
- (m) Sec 408: Criminal breach of trust by a clerk or servant. Imprisonment of either description for seven years and fine;
- (n) Sec 409: Criminal breach of trust by public servant or by banker, merchant or agent, etc. Imprisonment for life or imprisonment of either description for ten years, and fine;
- (o) Sec 477A: Falsification of accounts. Imprisonment of either description for seven years, or fine, or both;
- (p) Sec 109: Abetment of any offence if the act abetted is committed in consequence, and where no express provision is made for its punishment The same punishment as for the offence abetted;
- (q) Sec 120B: Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards. The same punishment as that provided for the abetment of the offence, which is the object of the conspiracy.
- (r) Sec 511: Attempting to commit an offence punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence. Transportation or imprisonment not exceeding half of the longest term, and of any description provided for the offence, or fine, or both.

D. Offences under the Money Laundering Prevention Ordinance, 2008

1. Section 4: The Offence of Money Laundering and Punishment

- (1) For the purpose of this Ordinance, money laundering shall be deemed to be an offence.
- (2) Any person who commits or attempts to commit the offence of money laundering or abets or conspires in the commission of such offence shall be punished with imprisonment for a term which may extend to seven years but not less than six months and the money or property derived from the commission of such offence shall also be forfeited to the state.

2. Section 5: Punishment for Violation of Freezing or Attachment Order

Any person who contravenes an order of attachment or freezing and account made under this Ordinance shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand taka, or with both.

3. Section 6: Punishment for Divulging of Information

- (1) No person shall, for the purpose of frustrating the investigation or making adverse influence over the investigation, divulge any information relating to investigation or other related information to any person, organization or news media.
- (2) Every person, organization or agent authorized under this Ordinance during the period of his service or appointment or on the expiry of term of service or contract of appointment shall, except for the purpose of this Ordinance, abstain from using, publishing or divulging information collected, received, retrieved and known to him.
- (3) Any person who contrivances the provisions of sub-section (1) and (2), shall be punished with imprisonment for a term, which may extend to two years, or to fine which may extend to ten thousand taka, or with both.

4. Section 7: Punishment for Obstruction or Non-co-operation in Investigation, Failure to Report or Provide Information

- (1) Any person who-
 - (i) Obstructs or refuses to assist the concerned officer engaged in investigation under this

Ordinance; or

(ii) Without reasonable ground, refuses to furnish or provide report or information required under this Ordinance shall be deemed to have committed an offence under this Ordinance.

(2) Any person who contravenes the provisions of sub-section (1), shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand taka, or with both.

5. Section 8: Punishment for Providing False Information

(1) Nobody shall knowingly provide false information relating to the source of money or the identity of any account holder or the beneficiary or nominee of the account.

(2) Any person who contravenes the provision of sub-section (1), shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to 50,000 thousand taka, or with both.

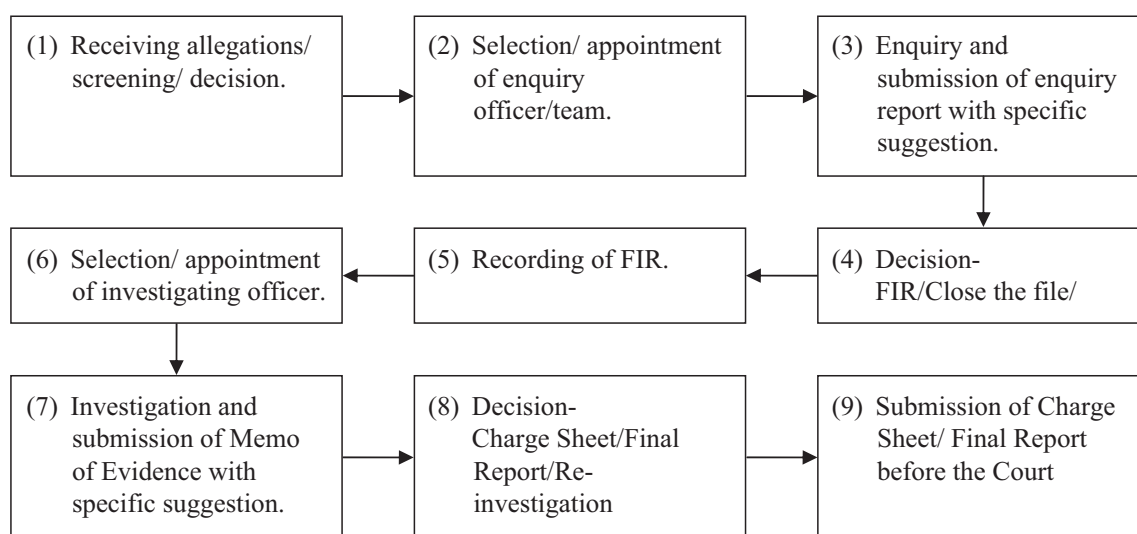
V. COMPETENT AUTHORITIES FOR INVESTIGATION, PROSECUTION AND ADJUDICATION

A. Relevant Investigating, Prosecuting and Adjudicating Authorities or Agencies of Corruption Offences and Corruption-Related Offences

The relevant laws on investigation, prosecution and adjudication of corruption cases are the Criminal Procedure Code (CrPC) 1898, the Anti-Corruption Commission Act, 2004 and the Anti-Corruption Law, 2007. The former is the general procedural law for investigation and trial of criminal cases. The latter is the special law against corruption. As far as investigations of corruption cases are concerned, if any conflict between the provisions of the aforesaid Acts is found, the provision of the latter Act will prevail. The CrPC describes under Sections 154 to 173 how offences are registered with police stations: investigations are made and the reports of investigations are submitted before the court for trial. The Anti-Corruption Commission Act dictates an investigator to conduct an enquiry before lodging/registering a First Information Report (FIR) stating the offence(s) committed. If *prima facie* evidence is established in an enquiry, an FIR is lodged with the police station and thereafter the formal investigation starts under the provisions of the CrPC. An investigation ends with submission of Investigation Report before the court. The provision of Section 20 sub-section (1) of the Anti-Corruption Commission Act, 2004 has made the commission the only investigating authority having jurisdiction all over Bangladesh to investigate the offences of corruption.

B. The Sequence of Investigation

The sequence of investigation is depicted below through a diagrammatic flow chart:

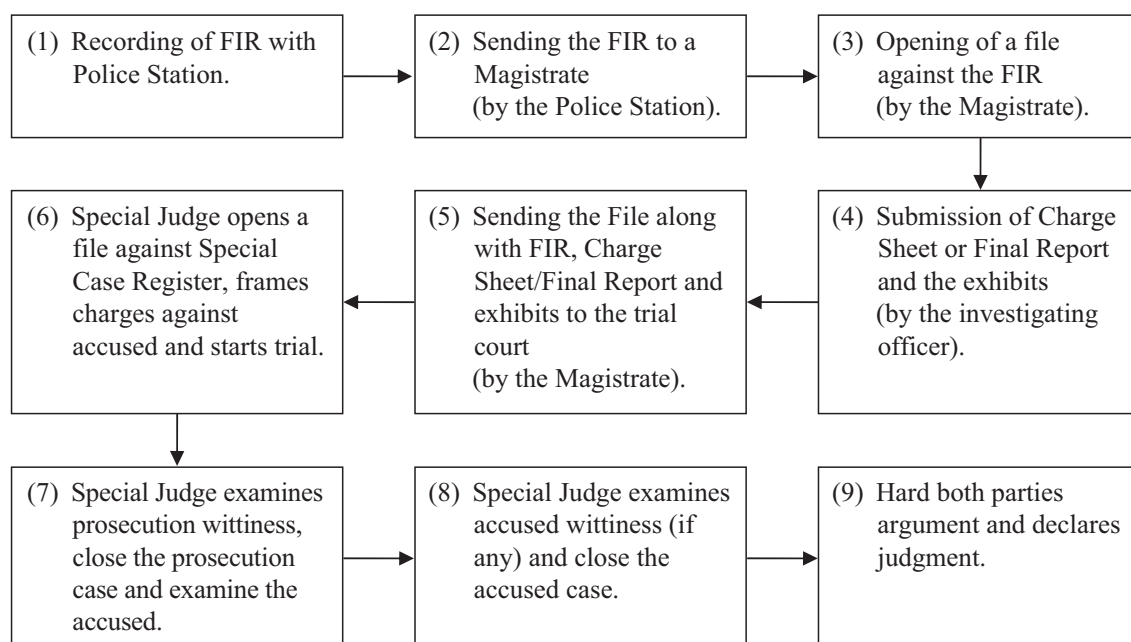


1. Any person may lodge a complaint in respect of an offence mentioned in the schedule of the Act to the commission or a police station. After receiving the complaint the screening committee will make the report and send it to the commission.
2. Then the commission will give a decision as to an enquiry and appoint an enquiry officer or a team.
3. The enquiry officer or team shall complete the enquiry within the time limit as per the Act and Rule and submit a report with specific suggestions to the commission.
4. After receiving the enquiry report the commission gives a decision to lodge the FIR or close the file.
5. According to the commission's decision the enquiry officer lodges the FIR to the respective police station.
6. The commission appoints an investigation officer.
7. After completing the investigation the officer shall submit a Memo of Evidence and draft a charge sheet or final report with specific suggestions to the commission.
8. The commission will go through the report and take a decision to accept the charge sheet or the final report or order re-investigation.
9. According to the commission's decision, the investigating officer submits a charge sheet or final report before the court.

C. Special Judges/Courts to Try Corruption Cases

Under the provision of the Criminal Law Amendment Act, 1958 and the Anti-Corruption Commission Act, 2004, corruption cases are triable by Special Judges only. A Session Judge, an Additional Session Judge and an Assistant Session Judge can be appointed as Special Judges. The Session Judges, the Additional Session Judges and the Assistant Session Judge of all districts and metropolitan areas have the authority to try corruption cases within their territorial jurisdictions, in addition to their original jurisdictions as Judges of Civil Courts and Criminal Courts. Besides, there are 21 Special Courts established exclusively for trial of corruption cases at District level and ten special courts established at Dhaka.

D. The Sequence of Prosecution and Trial



1. FIR lodged by the enquiry officer to the respective police station.
2. The police officer sends the FIR to the respective magistrate court.
3. The magistrate opens a file against the FIR.
4. The investigation officer after completing the investigation submits a charge sheet or final report with the exhibits and sanction order of the commission to the court.
5. The magistrate sends the file along with FIR and CS/FR etc. to the trial court.
6. A Special Judge (trial court) opens a file against the special case register and accepts CS.
7. If the case is ready for trial after hearing both parties it frames charges against the accused.

8. The court examines the prosecution's witnesses, closes the prosecution's case and examines the accused.
9. The court examines the accused's witnesses (if any) and closes the accused's case.
10. Having heard both parties' arguments, the judge renders a decision.

VI. PROBLEMS AND CHALLENGES IN STRENGTHENING THE CAPACITY AND ABILITY OF CRIMINAL JUSTICE AUTHORITIES AND THEIR PERSONNEL

On 11 February 2007 the Judiciary was separated from the Executive and the Code of Criminal Procedure, 1898 (Act V of 1898) was amended. The Bangladesh Judicial Service Commission Rule, 2007 and the Judicial Service (formation, appointment and suspension, dismissal and removal) Rule and (Pay Commission) Rule, 2007 were passed by the government. The Judicial Service Commission is the appointing authority of judges. They will be directly recruited by the Commission and their service will be ruled by the Commission with the consultation of Supreme Court. Now the criminal justice authorities and their personnel are independent.

A. Problems and Challenges

- (a) Lack of proper training facilities for the investigators in different investigating agencies.
- (b) Lack of adequate logistics support for investigating agencies.
- (c) Inadequate promotional opportunities for the investigating officers.
- (d) Overburdened investigating duty.
- (e) Time limit for the investigation period.
- (f) Lack of proper training for judges, magistrates and prosecutors.
- (g) Inadequate co-ordination between witnesses and prosecutors.
- (h) Taking longer to complete trials.

VII. CONCLUSION

It is expected that with the sincere co-operation of the people of Bangladesh, the recently adopted pragmatic policies and measures taken by the present government will be successfully implemented. This requires absolute separation of the judicial system from other organs of the government. Only raising a sense of moral values and integrity can lead to success and that requires both intensive and extensive mass awareness programmes. In this context, adoption of UNCAC would be a greater guideline for developing anti-corruption policies and mechanisms, public sector integrity, prevention of money laundering, controlling crimes, developing law enforcing measures and effective management of public finances. The recent changing in Bangladesh's position in the corruption scale is a good sign and a source of hope for our economy and we are to be more careful and vigilant so as to prevent the tendencies for corruption instead of waiting to resolve post corruption activities.

The government has taken initiatives to reform the legal and institutional structures to strengthen some of the key institutions of democracy and the national integrity system. The institutions that have already undergone substantive reforms include independence of the judiciary, reconstitution of the Election Commission, and establishment of the Anti-Corruption Commission and the Public Service Commission, which followed the Government's prompt decision to accede to the UN Convention against Corruption on 27 February 2007, within six weeks of taking power. A series of high profile initiatives have been taken by the caretaker government to criminalize corruption by prosecuting the allegedly corrupt individuals, irrespective of their political and other status in society. While the fate of the cases will depend on the courts, the on-going anti-corruption drive could be the strongest ever signal in Bangladesh's history that corruption is a punishable offence.

Critical to any effective anti-corruption strategy is systemic transformation. But the ultimate source of strength in the anti-corruption movement is the people: their awareness, voice raising and participation in the form of a social movement with the active support of all stakeholders, including the media. The main challenge is to create an environment in which corruption is hated and rejected by every one and pressures will come from all levels to generate the will and commitment of the leadership to strengthen the effectiveness of the key institutions.