

# CRIMINAL JUSTICE RESPONSE TO CORRUPTION

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## I. GENERATING LEADS

### A. 24-Hour Telephone Hotlines for Public Complaints and Reports

Sections 17(c) and (k) facilitated receiving complaints. The Anti Corruption Commission (ACC) has an arrangement receiving complaints over telephones for 24 hours.

### B. Information about Suspected Transaction Reports (STR) from the Bangladesh Financial Intelligence Unit (BFIU)

The reporting organization under the Money Laundering Prevention Act (MLPA) 2012 includes concepts of unusual transactions and suspicious transactions. Section 2(n) of MLPA 2012 defines “suspicious financial transactions” as:

- A transaction that substantially deviates from the usual norm by which that transaction is usually conducted, or
- There is reasonable cause to believe that the transaction is related to any proceeds of crime.

The MLPA is inconsistent on the meaning of “suspicious transaction” as one definition relates to “any proceeds of crime”, while another ties the concept to be “related to money laundering”. Section 2 of the MLPA defines a suspicious transaction as when “there is reasonable cause to believe that the transaction is related to any proceeds of crime”; section 25(1)(d) of the MLPA states that a reporting organization shall “inform proactively and immediately Bangladesh Bank, [of suspicious, unusual, or doubtful facts] or transactions likely to be related to money laundering”.

The obligation to report terrorist-financing-related transactions is included in section 15 of the Anti Terrorism Act (ATA) 2009 and applies to banks, insurance companies, money changers and remittance companies. The provision states: Bangladesh Bank shall have the power and authority to take necessary measures to prevent and detect transactions intended to commit offences under this Act through any banking channel, and for that matter is empowered and authorized to call for reports about suspicious transactions from a bank and shall keep such report confidential if law does not allow disclosure.

The Anti-Money-Laundering (AML) Circular provides a direct obligation on banks and financial institutions if there is any reasonable ground to suspect that a transaction or an attempted transaction has a connection to financing terrorist activities, and as per ATA 2009 shall have to be reported, with comments of the branch compliance officer, to the BFIU no later than three days from the date of the receipt from the branch. The obligations of sending STR on terrorist financing is indirectly laid out in law with supporting details set out in other enforceable means. In the case of the Terrorism Financing (TF)-related STR obligation on banks in the ATA 2009 and its extension to non-bank financial institutions in the Circular, the limitations with the scope of the TF offence in the ATA undermines the range of TF that would form the basis for suspicion. This results in a gap regarding suspicion of funds provided for a terrorist organizations or an individual terrorist. Financial institutions are required to report to the BFIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal acts that would constitute predicate offences for money laundering.

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### **C. Protection of Whistleblowers**

The Govt. enacted Public Interest Information Disclosure Act (Provide Protection), 2011; this legislation protects the witnesses and informants and describes the procedure elaborately.

## **II. ACQUIRING AND ANALYZING OBJECTIVE EVIDENCE**

### **A. Documents and Bank Records**

Sections 19 and 23 of the ACC Act 2004 empower authorities to compel a suspect or any other person to submit a statement of assets of liabilities and a suspect or any other person who may be holding property on his or her behalf to submit a statement of assets and liabilities and to furnish any other information; summons witnesses, interrogate them under oath and take evidence under oath; request discovery of any document; call for public records; issue warrants for examination of documents; require any person to furnish information in matters relating to any inquiry or investigation; call for any information from the government or any authority or organization under the government; and require the co-operation of the government or any authority or organization under the government in the manner determined by the ACC.

Section 23, 24 and 25 of MLPA 2012 provided BFIU as a unit of Bangladesh Bank, and Bangladesh Bank is able to order schedule banks, financial institutions and reporting organizations to freeze accounts to allow a period for investigation where it is suspected that a transaction involves proceeds of crime. Under section 24(4), the BFIU is able to seek information regarding suspected money laundering from another country on the basis of “any contract signed or arrangements”. On demand from Bangladesh Bank, reporting institutions must provide (in the case of open accounts) identification information and (in the case of closed accounts) previous transaction records.

### **B. Data Stored on Personal Computers or Cell Phones and Videotapes of Security Cameras**

Data collected from computers or cell phones cannot be used as evidence under the existing law of evidence. The videotapes also cannot be used under the present Evidence Act 1872 but our Court of Record, i.e., the High Court Division of the Supreme Court of Bangladesh, has given a sanction in a case decided by it.

### **C. Handwriting Analysis**

Sections 45, 46 and 47 of the Evidence Act of 1872 facilitated the handwriting expert opinion as evidence to prove the case before the Court. The Criminal Investigation Department (CID), a unit of the Police, is assigned to give reports on handwriting.

## **III. ACQUIRING SUSPECTS**

### **A. Electronic Surveillance**

In Bangladesh, recent legislation has expanded the scope of electronic surveillance:

- (i) Money Laundering Prevention Act (MLPA) 2012,
- (ii) Anti Terrorism Act (ATA) 2009,
- (iii) The Code of Criminal Procedure (Cr PC) 1898 (as amendment up to 2009),
- (iv) The Public Interest Related Information Disclosure (Protection) Act 2011 (The Whistle Blower Protection Act), and
- (v) The Mutual Legal Assistance Act, 2012 (MLAA).

The provisions of these laws enhance the scope of acquiring electronic evidence of suspected persons. Nevertheless, the concerned ministry, i.e., Ministry of law, justice and Parliamentary affairs are working for relevant amendments of the Evidence Act 1872, Anti Corruption Commission Act 2004 and the Code of Criminal Procedure 1898, with a view to use evidence collected electronically to ensure justice.

### **B. Undercover Operations**

The Law enforcing agencies, e.g., the Police Department, Rapid Action Battalion (RAB), National Security Intelligence (NSI), Detective Branch (DB), Director General Forces Intelligence (DGFI), Criminal Investigation Department (CID), Special Branch (SB) have frequent undercover operation activities in Bangladesh. The Anti Corruption Commission has a team, formed in the year 2009, to operate undercover operations.

### **C. Immunity**

Section 31 of ACC Act 2004 indemnified the actions performed in good faith. If any person is affected or is likely to be affected by any action taken in good faith in the discharge of duties under this Act, then neither the commission nor any commissioner, officer or employee thereof shall be liable to action under civil or penal codes or otherwise. Moreover, the other members of law enforcement agencies are indemnified for actions performed in good faith in general law that is under the Penal Code, 1860.

### **D. Plea Bargaining**

In our legal system there is no scope for plea bargaining. The Ministry of Law Justice and Parliamentary Affairs (MOLJPA) (The Drafting Wing) is working to develop the scope of plea bargaining through amendment of relevant law.

### **E. Protection of Witnesses**

Section 5 of the Public Interest Related Information Disclosure (Protection) Act, 2011 protects the witnesses, experts, victims, reporting persons and whistleblowers. Section 9 and 10 provides the penalty of violating those provisions. (Maximum 5 yrs and minimum 2 yrs with or without fine)

### **F. Compulsory Systems to Testify under Subpoena**

Section 19 and 20 of ACC Act 2004 empowered the Commission, inquiring or investigating officers to obtain the testimony of suspects and witnesses under compulsory subpoena.

### **G. Penalties for Perjury and Obstruction of Justice**

Chapter X and XI (sec 172 — 229) of the Penal Code 1860, protects public servants and public justice. These provisions described the nature of offences of perjury, contemptuous offences against lawful authority of public servants and offences against public justice and the penalties for those offences. Section 13 of Contempt of Court Act, 2013 provides penalties for contempt of court.

## **IV. IDENTIFICATION, TRACING, FREEZING AND CONFISCATION OF PROCEEDS AND RETURN AND DISPOSAL OF CONFISCATED ASSETS**

### **A. Identification and Tracing of Property**

#### **1. The ACC Act, 2004**

The ACC Act confers strong powers upon the ACC for the identification and tracing of property in corruption investigations. These include powers under sections 19 and 23 to compel a suspect or any other person who may be holding property on his or her behalf to submit a statement of assets and liabilities and to furnish any other information; summon witnesses, interrogate them under oath and take evidence under oath:

- Request discovery of any document
- Call for public records
- Issue warrants for examination of documents
- Require any person to furnish information in matters relating to any inquiry or investigation
- Call for any information from the government or any authority or organization under the government
- Require the cooperation of the government or any authority or organization under the

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government in the manner determined by the ACC.

**B. The MLPA, 2012 Confers Only the Following Investigative Powers**

Under section 24, BFIU is working as a unit of Bangladesh Bank (The Central Bank of Bangladesh). Under section 23(1)(c), Bangladesh Bank is able to order schedule banks, financial institutions and reporting organizations to freeze accounts to allow a period for investigation where it is suspected that a transaction involves proceeds of crime. Under section 23(2), Bangladesh Bank shall share information with the designated investigative agency. Under section 24(2) the Government organization, semi govt. organization, autonomous body on their own motion will inform BFIU to fulfill the object of the Act. Under section 24(3), BFIU will inform the law enforcing agency about ML and TF. Under section 24(4), the BFIU is able to seek information regarding suspected money laundering from another country on the basis of “any contract signed or arrangements”. Under section 25(1)(c), on demand from Bangladesh Bank, reporting institutions must provide (in the case of open accounts) identification information and (in the case of closed accounts) previous transaction records.

**C. Relevant Provisions within the CrPC, 1898**

- The power to summon persons to produce documents or things which are considered necessary for investigation or prosecution (but not documents or things in the custody of banks or bankers unless it is for the purpose of investigating certain offences such as theft, breach of trust, fraud and forgery: section 94(1)
- The power to search pursuant to a search warrant: section 96(1)
- The power to search premises suspected of containing stolen property, forged documents or counterfeit material: section 165
- The power to compel the attendance of witnesses and to examine them: sections 160 and 161.

**D. Confiscation, Freezing and Seizing of Proceeds of Crime**

Bangladesh has legislation for the confiscation, freezing and seizing of criminal proceeds and instruments. Various procedures are available under the following Acts:

- The Money Laundering and Prevention Act, 2012
- The Anti Terrorism Act, 2009
- The Code of Criminal Procedure (CrPC), 1898
- The Anti-Corruption Act, 2004.

Collectively the relevant provisions within the above acts provide a basis for confiscation and freezing action in relation to money laundering (ML), terrorist financing (TF) and other serious offences.

**E. The Anti Corruption Act**

Forfeiture measures in the ACC Act, 2004 are found at section 27(1), as follows: 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 term ranging from a minimum of 3 years to a maximum of 10 years, and these properties shall be forfeited. The ACC relies upon the general power conferred upon it by section 19(1)(f), to take action in relation to any other matter required for realizing and fulfilling the aims and objectives of the ACC Act, 2004.

#### **F. The Money Laundering and Prevention Act**

Section 17(1) of the MLPA appears to permit forfeiture of both proceeds and instruments of money laundering, since it applies to property “involved with the offence”. As noted “property” is broadly defined within the MLPA. In addition section 17(1) specifically applies to property within and outside Bangladesh. Section 17(3) authorizes forfeiture of indirect proceeds to a limited degree, in that it permits forfeiture of property which has been converted and which is in that way indirect proceeds of crime. Section 14(1) of MLPA 2012 empowers the court, upon application of the investigating organization, to make an order for freezing or attachment of property wherever situated within or outside Bangladesh in which the State has interest under this Act. The MLPA also empowers the Bangladesh Bank to issue orders to banks and financial institutions to suspend a transaction or freeze an account “where Bangladesh Bank has reasonable grounds to suspect that the transaction involves proceeds of crime”.

#### **G. The Criminal Procedure Code (CrPC)**

The CrPC contains a general provision for forfeiture of property upon conclusion of an inquiry or investigation. Section 517(1) is as follows:

When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

It is clear from the terms of section 517 that both proceeds and instruments of crime can be forfeited, as well as property of corresponding value. A forfeiture order pursuant to section 517 of the CrPC can apply to property held in the names of third parties, as well as to the indirect proceeds of crime. Provisional measures include freezing and or seizing.

The CrPC confers a power upon police officers to seize property pursuant to section 98. However the context indicates that the power is restricted to seizure of physical objects. The CrPC does not contain any provisions for freezing of property.

#### **H. Initial Freezing or Seizing Application to Be Made *Ex Parte* or without Prior Notice**

The MLPA is silent as to whether the initial freezing application under section 14(1) may be made *ex parte* or without prior notice. One of the grounds upon which a freezing order can be made, is that there is a substantial likelihood the property will become unavailable before the conclusion of the criminal proceedings (refer section 14(2)(d)), suggesting that the initial application is intended to be made without notice.

The MLPA 2012:

- Sections 14(3), 17(4) and 18 make provision for bona fide third parties to seek return of property which is liable to forfeiture.

Section 517(4) of the CrPC enables a person to claim entitlement to property which is subject to forfeiture. Neither the MLPA and the ACC Act, nor the CrPC contains any provisions to take steps to prevent or avoid actions.

#### **I. ATA 2009**

Section 36 makes provision for bona fide third parties to seek return of property which is liable to forfeiture. Any person “aggrieved” by an order for forfeiture may lodge an appeal in the High Court against the forfeiture decision: section 37(1). In case of acquittal confiscated property will be returned, or if not possible to return the value of property will be returned including reasonable interest of the value, according to Section 37(2).

## V. PREVENTION

### A. Prevention Legislation

Relevant legislation includes the ACC Act, 2004; the ACC Rules, 2007; Prevention of Corruption Act, 1947 (which was the first of its kind in South Asia); the Penal Code, 1860; the MLPA, 2012; the ATA, 2009; Public Procurement Act, 2006; Public Procurement Rules, 2008; Government Servant (Conduct) Rules, 1979; Government Servant (Discipline and Appeal) Rules, 1985; the Competition Act, 2012. These laws contain various provisions to prevent, punish and investigate acts of corruption.

### B. Procurement Management

The *Public Procurement Act (PPA), 2006* came into force on 31 January 2008 along with the *Public Procurement Rules (PPR), 2008* which consolidated the whole regime. PPR, 2008 consolidated the lessons learned under PPR, 2003 moving one step forward with the aim of enhancing the capacity of the stakeholders. Moreover, PPR, 2008 criminalizes corruption in procurement processes by public officials and other relevant parties as a means to address some of the existing maladies. Section 3 of the PPA, 2006 provides that the act will extend to the whole of Bangladesh and shall apply to procurement of goods, works or services by any procuring entity (including registered company) using public funds and procurement by any government, semi-government or any statutory body. Further, PPA, 2008 has been amended by the *Public Procurement (Amendment) Ordinance, 2007* adding the provision to the scope and application of the PPA, 2006 in relation to procurement in foreign aided projects providing that the provisions of the act will be applicable in such cases unless there is any thing contrary in the loan, credit or grant agreement with a development partner or a foreign state or an organization. The Government also approved the implementation of the “Public Procurement Reform Project” (PPRP) with WB assistance for improving governance in public procurement. A Central Procurement Technical Unit (CPTU) within the IMED was established under the Ministry of Planning, which is in charge of monitoring the procurement process. The CPTU assists procuring entities in implementing the act and rules and monitors the functioning of the public procurement system. Through its website the CPTU provides information on procurement laws, tender invitations of public entities of certain threshold values of procurement and its monitoring activities. Other components of the project include implementation of public procurement reforms and improvement of procurement management capacity. The PPR, 2008 (rules 13-18, 47-49, 56-60) has specified the basic procurement guidelines, including public accessibility of tendering rules, eligibility and non-discrimination criteria regarding the selection of tender, and the required qualifications of tenderers. Furthermore, section 40 of the act and rule 90 (through rules 61, 62) state that an open national tendering system is the preferred system for procurements in the public sector. These rules also include provisions for the organization of any public procurement, including policy formulation, coordination, and monitoring of the procurement procedure. A detailed legal framework for complaints and appeals to ensure legal recourse and remedies incorporates both administrative and independent review mechanisms (rules 56-60). The PPR, 2008 also provides detailed guidelines for international procurement (rules 83-87). In addition PPR, 2008 requires the establishment of a Tender Opening Committee (TOC) and Tender Evaluation Committee (TEC)/Proposal Evaluation Committee (PEC) for goods, works and services procurement. TECs are in charge of evaluating bids and are required to furnish detailed reports for awards to the approving authority (rules 101-102). The PPA, 2006 and the PPR, 2008 aim to provide a legal framework for governing public sector procurement.

#### 1. Distribution of Procurement Information

Rule 14 of the PPR, 2008 require that procuring entities make publicly accessible in paper and in e-format all relevant information pertaining to any specific tenders, specifically records relating to the tender, information concerning the award of contracts, and legal texts. Further, PPR, 2008 directs procurement entities to furnish, upon request from any concerned person, all documentation relating to the proceedings of an award or termination of any contract. A number of issues continue to exist in relation to advertisement of procurement notices, specifically poor advertisement, i.e., advertisements in “less circulated” newspapers, non-compliance with time requirements, and fraudulent practices relating to the posting of notices. These issues of transparency were raised in a legal action, where it was decided that procuring entities would be responsible for the dissemination of information relating to procurements and that all advertisements must be circulated in government listed newspapers that are “well circulated.” Additionally, efforts are also underway to demystify the language of advertise-

ments. Section 40 of the recently effective *Public Procurement Act, 2006* expressly mentions the necessity of distributing information about invitations to tender and other pertinent information required in the provisions of the UNCAC. Moreover, the CPTU has established a website (www.cptu.gov.bd) to provide diversified information on establishing and maintaining databases on prices, quality, volumes, performance of suppliers, and the like that are simple and easy to use. These may help to reduce opportunities for corruption and make the whole process cost effective for its beneficiaries.

## 2. Predetermined Criteria for Public Procurement Decisions

Rule 8 of the PPR, 2008 requires procuring entities to appoint a TEC at the appropriate level to examine, evaluate and prepare a report with recommendations for the award. The TEC should consist of 5-7 members of which two must be experienced in procurement and from outside the procuring entity in certain threshold value. In accordance with rule 100, TECs are required to determine, on the basis of criteria set out for post qualification in the tender document, whether the tenderer with the lowest evaluated cost has the capability and resources to effectively carry out the contracts. Should the tenderer not meet the criteria, the tender is liable to be rejected. Section 13 of chapter 3 (part 1) of the *Public Procurement Act, 2006* sets out the obligation of procuring entities for formulating criteria for tenderer qualification assessment and evaluation, which should be stated in the tender or proposal document. These provisions are very important in establishing a proper framework for choosing appropriate actors for procurement purposes and ensuring that the Government and society gets the full benefit of such arrangements. Bangladesh has not only taken significant steps toward meeting the UNCAC demands of transparency in procurement procedures, but has heeded the Convention's encouragement of effectiveness in establishing criteria for public procurement decisions through implementation of the relevant national legislation. Indeed, the current legal discourse has shown the GoB's enthusiasm to achieve the recommended international standard.

## C. The Code of Conduct for Public Officials

The codes of conduct for civil servants set out the main principles which govern the behavior of staff in a modernized civil service. Articles 5 to 33 of the *Government Servants (Conduct) Rules, 1979* provide guidelines for the behavior and conduct of public officials in the civil service. They address issues like acceptance of awards and gifts, public demonstration of honor to the Government, raising of funds on behalf of the Government, disclosure of assets and speculation of investment, lending, borrowing buying or selling valuable properties, private trade, and employment. Contraventions of the Rules are dealt with by the provisions of the *Government Servants (Discipline and Appeal) Rules, 1985*, which makes violations liable to inquiry and punishment if proved. The detailed *Rules of Business, 1996* regulates government business transactions and the allocation of functions among different ministries/divisions.

### 1. Asset Declaration

In accordance with rule 13 of the *Government Servants (Conduct) Rules, 1979*, public officials are required to provide statements of wealth at the time of recruitment, which would include any moveable and/or immovable assets. Public officials must also provide an annual update of such assets. By implication, this would include assets located in Bangladesh and/or abroad. Furthermore, the Government can also ask for a statement of liquid assets from any public official under rule 14 of the same Rules. Moreover, sections 168 and 169 of the *Penal Code, 1860* provide criminal liability for public officials engaging in unlawful trade, bidding or buying of any property. Both of the sections strictly recommend imprisonment for violation of the law. To strengthen compliance, by a recent administrative order, the Ministry of Finance has asked public officials to submit and update wealth statements in a prescribed format. Comprehensive Civil Service Rules are in the process of being drafted, and they are expected to modify the relevant rules, thus making the domestic legal regime compliant in regard to this provision.

### 2. Violation of Conduct in Public Service

The *Government Servants (Discipline and Appeal) Rules, 1985* makes a government servant liable to inquiry for the contravention of the provisions stated in the *Government Servants (Conduct) Rules, 1979*, and recommends measures for punishment when proved. Part II of the Rules describes the issue of discipline in civil service with procedures of inquiry in cases of major and minor penalties. Moreover, part III provides for an appeal procedure against any government order. Overseeing this

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issue are the Ministry of Establishment and the Cabinet Division. Disciplinary measures are quite regularly taken against those officers who had been accused of violating the law. However, discipline in itself is likely not sufficient to encourage adherence to codes and standards; if there is no incentive or reward for better performance, then there may be less motivation to uphold codes of conduct.

3. Preventive Measures — Legal and Regulatory Framework

AML preventative measures are set out in the MLPA 2012 and various Bangladesh Bank AML Circulars and in AML Guidance Notes. For CFT, limited preventative measures are set out in the ATA 2009. Section 21 the MLPA 2012 gave the power to make rules to implement the Act. Section 29 of the MLPA 2012 provides the power to make rules to implement the Ordinance. Section 43 of the ATA 2009 provides the power to make rules to implement the Ordinance. Bangladesh Bank has issued a number of Anti Money Laundering Circulars to instruct banks and financial institutions on AML/CFT requirements.

4. Status of Circulars

The Circulars listed above are issued under rule making powers in the MLPA, the Banking Companies Act and the Financial Institutions Act 1993. The Circulars use obligatory language, and while they do not mention sanctions, they reference the previously mentioned statutes which provide for sanctions. Additionally, the regulator checks reporting entities for compliance against obligations in the Circulars and sanctions non-compliance with such circulars.

5. Code of Conduct of Business

In 2012, the government enacted a law to control monopoly and unethical practices in doing business, i.e. The Competition Act 2012.

6. Conditions for Participation

Under PPR, 2008 any government agency who uses public funds is authorized to make decisions and take action as a procuring entity. According to rule 130, the CPTU is vested with the responsibility of providing guidance for setting up an enabling environment and conditions for participation. Rule 47 provides for non-discrimination, while rule 48 sets out criteria for the qualification of tenderers. These criteria include the possession of necessary technical and professional qualifications, legal capacity to enter into contract, and meeting tax and social security payment obligations. Rules 48-49 require any procurement process to stipulate technical specifications for the award of any contract. Rules 56-60 provide for a Review Panel that is responsible for reviewing a tenderer's complaint and recommending corrective action to a procuring entity, with respect to any breach of its obligations under these Rules. From the 31 cases brought before the Review Panel between the years 2003-2007, it is clear issues still exist with regard to setting up transparent and objective selection criteria as the Committee found four instances where the procuring entities did not stipulate clear criteria on the basis of which contractors were selected. The current legal instrument, after its effectiveness in 2008, has sufficiently achieved this aim in line with the provisions of the UNCAC.

**D. Anti-Corruption Campaigns**

Section 17(g) of the ACC Act, 2004 declared campaigning against corruption as its important object. The Commission has taken steps to promote the value of honesty and integrity in order to prevent corruption and take measures to build up much awareness against corruption. It arranges seminars, symposiums, and workshops. The ACC has formed a strategic planning working group on prevention to work on a specific field. The prevention unit of the commission formed the Prevention Committee in May 2010, and it has formed 492 Committees in 421 *upajila* (Police Stations), 62 Districts, 8 Metropolitan Cities. The committees are working to promote values of honesty and integrity in order to prevent corruption and take measures to build up mass awareness against corruption. The Committee has responsibility to build integrity units in schools, colleges and religious institutes. The Committee has already formed more than 19,000 integrity units all over the country. From 2009 to April 2013, the prevention unit has conducted general discussion over corruption about 5,492 times, debate 594, essay writing competition on corruption 786, rally 376, human wall 170, seminar 475, open discussion 1,980, street show 2,844, work shop 45, speech of personnel of civil society 204, drama 28 and others 1,534. The Committee has also conducted as international Anti-Corruption Day on 9<sup>th</sup> December in every year through different ways. That the Prevention Unit of ACC is observing "Anti Corruption



week” since 2011 starting from 26<sup>th</sup> March (Independence of Bangladesh) till 1st April under different activities. The Commission has started to celebrate its establishment day every year, i.e. 21st November, in different ways since 2012.

The prevention unit has been working since 2009 with the Islamic Foundation Bangladesh to promote the values of honesty and integrity in order to prevent and take measures to build up mass awareness against corruption. The ACC is working with electronic media, e.g. Bangladesh Television (Govt.), Channel I (private) to promote the values of honesty and integrity in order to prevent and take measures to build up mass awareness against corruption. The Commission conducted a round table meeting on the “Whistle Blowers” (Protection) Act, 2011 on 13 August 2011 with Joint Collaboration of USAID. It also conducted a round table conference on the “Role of Information and Communication Technology in Combating Corruption” on 4th September 2012. At present the Commission is working with USAID, PROGATI and GIZ, and those NGO’S are helping in different ways. That the ACC has awarded 3 journalists of print media and 2 electronic medias for their courageous reporting on corruption in this year.

## VI. INTERNATIONAL COOPERATION

### A. Ratification of AML Related UN Conventions

Bangladesh became a signatory to the Vienna Convention on 14 April 1989 without Reservation. Ratification occurred on 11 October 1990. Bangladesh has implemented the provisions of the Vienna Convention. Bangladesh is not yet a party to the Palermo Convention on Transnational Organized Crime. Delays with joining the convention derive from concerns over issues related to the UN Convention on the Rights of Migrant Workers. Bangladesh has adopted some of the language and coverage of a number of offences required in the Palermo Convention, but has not yet comprehensively implemented the requirements of the Palermo Convention. Bangladesh became a member of the Egmont Group on 3rd August 2013.

### B. Ratification of the UN TF Conventions

Bangladesh acceded to the UN TF Convention on 26 August 2005, which took effect from 25 September 2005. Bangladesh joined the Convention with a Reservation as follows: “Pursuant to Article 24, paragraph 2 of the Convention [the] Government of the People’s Republic of Bangladesh does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention.” Article 24(1) relates to parties submitting to arbitration if any dispute on implementation of the Convention cannot be settled through negotiation within a reasonable time period. Full implementation of the TF Convention has not yet been achieved.

### C. Other Forms of International Cooperation

Bangladesh Bank has taken the lead and is working with other agencies to pursue international cooperation through various multilateral bodies related to AML/CFT. Bangladesh is a member of the APG and has served as South Asia’s representative on the APG Steering Group. Bangladesh FIU is now actively pursuing international cooperation. Under the MLPA 2012, Section 18 provides general powers for the government to enter into an agreement with any foreign state for carrying out the purposes of the Act. Few steps were taken to implement that provision. With the passage of the MLPA in 2012, greater powers were given to share information and enter into agreements with foreign states.

Exchange of information between the Bangladesh FIU and other FIUs is not subject to disproportionate or unduly restrictive conditions. Section 24 of MLPA permits the FIU to share STRs and other data with foreign FIUs “on the basis of any contract signed or arrangements”. This enables the FIU to share information in a rapid manner. The FIU is able to cooperate by searching other databases to which the FIU may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases. Section 26 of the MLPA provides for contracts with foreign countries and allows the FIU or the Government to sign MOUs, bilateral or multilateral contracts or conventions to prevent ML. This provision does not extend to sharing information in relation to terrorist financing. At the time of the onsite visit, the BFIU had signed an MOU with the FIU of Malaysia and was pursuing other MOUs. As of September 2013 Bangladesh has signed MOUs with 15 countries including Malaysia, Philippines, Nepal and Indonesia

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and is working toward signing MOUs with South Korea, U.A.E. Myanmar, and Sri Lanka.

List of Countries with which BFIU signed MOUs

SL. No	Country	Date of Signing	Place of Signing
1	United Kingdom	29.11.2011	UK
2	Singapore	14.12.2011	Dhaka
3	Mongolia	10.07.2012	Russia
4	South Africa	10.07.2012	Russia
5	Japan	31.01.2013	Japan
6	Myanmar	07.03.2013	Dhaka, Bangladesh
7	Philippines	02.12.2008	Manila, Philippines
8	Malaysia	12.08.2008	Kuala Lumpur, Malaysia
9	Indonesia	16.03.2009	Jakarta, Indonesia
10	Korea	13.07.2009	Seoul, Korea
11	Afghanistan	07.07.2009	Brisbane, Australia
12	Cambodia	26.10.2009	Siam Reap, Cambodia
13	Thailand	21.09.2010	Dhaka, Bangladesh
14	Sri Lanka	23.10.2010	Dhaka, Bangladesh
15	Nepal	21.10.2008	Dhaka, Bangladesh

The Bangladesh police make use of INTERPOL for sharing intelligence and to support police-to-police cooperation. No statistics were available to show that INTERPOL channels have been used in relation to ML or TF investigations by the police.

The ACC has established international cooperation with other anti-corruption bodies, but this is limited to investigations of predicate offences and the laundering of proceeds of corruption. The ACC is working closely with the BFIU to pursue the proceeds of corruption, and together with other agencies, the ACC has been active in cooperating with other countries under the umbrella of the UN/World Bank Stolen Assets Recovery (StAR) Initiative. The ACC is trying to establish a regular channel for cooperation with the designated International Criminal Police Organization (INTERPOL) contact in Bangladesh police to support the ACC's role of ML investigation agency, including pursuing international cooperation through INTERPOL channels.

In relation to cooperation between insurance regulators, Bangladesh is not yet a member of the IAIS, so it is limited in sharing regulatory information relating to insurance. The NGO Affairs Bureau is the recognized point of contact for international cooperation and information sharing in relation to NPOs operating in Bangladesh. There are no statutes in Bangladesh that would bar agency-to-agency cooperation solely on the grounds that they may involve fiscal matters.

#### **D. Mutual Legal Assistance**

Bangladesh has legislation to provide for the giving and receiving of mutual legal assistance (MLA) under the Mutual Legal Assistance Act 2012 and under the Mutual Legal Assistance Rules 2013 (8 September 2013). Some offence-creating statutes, such as the MLPA 2012 and the ATA 2009, include MLA 2012 provisions. Bangladeshi laws now make wide provisions for giving and requesting mutual legal assistance. The ACC Act does not make any provision for international cooperation.

Bangladesh ratified the SAARC Convention on Mutual Assistance in Criminal Matters on 9 March

2009. The SAARC Convention requires member states to provide a wide range of mutual assistance to fellow member States. In addition Article 3 of the SAARC Convention expressly requires member States Parties to assist whether or not the conduct the subject of the investigation or proceeding is an offence under the laws of the requested State Party. (As ratification of the SAARC Convention occurred outside of the cutoff date for this assessment, it has to been considered when finalizing the compliance rating).

### **E. Extradition**

The government (through Gazette Notification UNSOC-(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 a State Party which is made through the central authority; domestic law does not ban such cooperation from being provided. Section 26 of the Money Laundering Prevention Act (MLPA) 2012 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 organizations 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 it 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. Bangladesh ratified the SAARC Convention on Mutual Assistance in Criminal Matters on 9 March 2009. The SAARC Convention requires member states to provide a wide range of mutual assistance to fellow member States. In addition Article 3 of the SAARC Convention expressly requires member States Parties to assist whether or not the conduct the subject of the investigation or proceeding is an offence under the laws of the requested State Party.

To make MLA more functional and effective, Bangladesh has taken steps to strengthen international cooperation by signing bilateral and multilateral agreements including extradition laws. In Bangladesh, the extradition regime is governed by the Extradition Act (EA), 1974. Bangladesh has opted for compliance of the UNCAC through the formulation of treaties as the legal basis for extradition. The EA, 1974 spells out a list of extraditable offences. Bribery and embezzlement are the only extraditable offences under the UNCAC that have been listed. Consequently, there is a gap in this area as the remaining UNCAC offences are not recognized by the domestic law as extraditable offences. Recognizing Convention offences universally across all States Parties is an important step to full implementation of the UNCAC provisions and is essential for bringing an offender to justice. Accordingly, the list of extraditable offences would need to be amended to include all of the UNCAC offences. One aspect of the domestic law of Bangladesh that complies with the requirements of the UNCAC is that Bangladesh does not allow refusal of extradition on the sole ground that the offence is considered to involve fiscal matters.

According to the EA, 1974, both national and alien fugitive offenders can be extradited. However, to conduct such extradition, the EA, 1974 requires that there be an extradition treaty in place between Bangladesh and the country requesting said extradition. So far, Thailand is the only country with which Bangladesh has an extradition treaty. Nevertheless, the provision for extradition is currently being negotiated in several agreements for mutual legal assistance. Provisions for extradition have been included in two of the three money-laundering prevention agreements currently under process/ recently negotiated with India and countries of the South Asian Association for Regional Cooperation (SAARC) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation.

### **F. Information Exchange between Law Enforcement Authorities**

#### **1. Measures to Prevent Corruption Involving the Private Sector and to Enhance Accounting and Auditing Standards**

The Government has taken an initiative to frame a guideline for private sector accounting and auditing firms for the purpose of framing standards to exchange information with law enforcement authorities. The framing process is passing a hurdle.

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2. Measures to Promote the Active Participation of Individuals and Groups Outside of the Public Sector, Such as Civil Society, Non-Governmental Organizations and Community-Based Organizations

*(a) Civil Society Organizations (CSO)*

The GoB has made tremendous efforts to restrain the level of corruption in the public sector, along with encouraging the private sector to be more effective and responsive to integrity. The response from the private sector, civil society and the general population has been remarkable. The Government's effort to incorporate people into the process of preventing corruption has had an impact on the expansion and consolidation of democracy. Undoubtedly, sustenance of the anti-corruption mechanism significantly depends upon the participation of civil society and other non-governmental actors, of which raising awareness of the mass drive against corruption plays an important role. The legal anti-corruption framework of Bangladesh, particularly, the *Anti-Corruption Commission (ACC) Act, 2004* supports popular participation in the prevention of corruption. Section 17 of the Act (Functions of the Commission) explains the role of the Commission in research and promotion of anti-corruption ideas through awareness campaigns, along with its legal and prosecutorial activities.

One of the significant activities of the ACC is to promote the values of honesty and integrity in order to prevent corruption and take measures to build up mass awareness against corruption (section 17g). It can also arrange seminars, symposiums and workshops on the subjects falling within the jurisdiction of the Commission (section 17h). These functions of the ACC encourage mass participation by all sectors of society. Moreover, the Commission, under the purview of this Act, can carry out research on the issues of prevention of corruption and prepare recommendations for the President regarding actions which should be taken on the basis of their research findings (section 17f). Their empirical research is likely to incorporate and reflect the demands of the population as part of its methodology. Additionally, there is a provision for the publication of an Annual Report by the ACC. Moreover, section 29 of the ACC Act ensures people's access to information about anti-corruption activities undertaken by the Government. To promote a successful anti-corruption strategy where the voice of public opinion could be an effective and politically neutral mechanism to combat corruption, the ACC has taken steps to raise public awareness. In the past, it was a rare occurrence to find such activities in Bangladesh. The purpose of these efforts is to make the public aware about the impact of corruption on social, political and economic life. In particular, the Government endeavors to spread a message that will foster transparency and accountability which is essential to curb malfeasance by those in the public sphere. To that end, the ACC aims to promote the role of civil society organizations to advocate for such reform initiatives.

As part of this effort, the ACC launched a consciousness-raising campaign against corruption on April 2007, in association with Transparency International Bangladesh. The ACC is also interested in establishing citizens' anti-corruption committees at the district level. This is an exemplary effort in which the Government, with the assistance of civil society, is attempting to involve people in the overall anti-corruption drive. Under this campaign, the Chairman of the ACC has commenced a national tour to meet stakeholders such as civil society groups, local administrations, journalists, students and field-level ACC officials. Moreover, the Chairman and co-organizers visited many places within the country and arranged consultation meetings, colorful rallies, and events led by the young people, along with giving public service announcements for media, organizing debates and dialogues, in addition to other awareness campaign tools, for the purposes of accelerating mass participation in the anti-corruption battle. The architects of the campaign believe that the ongoing drive against corruption will be a comprehensive long-term effort which demands the participation of people from all levels of society in order to be successful. Participation of society and a public-private partnership are critical to the success of any anti-corruption mechanism as such activities promote a sustainable development process of the state by curbing levels of corruption. As a first step, the Government of Bangladesh has approached the issue by incorporating societal participation through the formal legal document of the Anti-Corruption Commission.

Bangladesh has some of the world's best-known civil society organizations namely the Grameen Bank run by the Nobel Peace winner Mohammed Yunus. CSOs have an important watchdog role to play; CSOs act as watchdogs and representatives of the citizenry and keep a constant check on the activities of the government.

*(b) Media*

Media in Bangladesh has played a leading role in informing, educating, and entertaining the masses and is seen as a potential ally. Since the last Care Taker Government, the standard and frequency of the anti-corruption debate on the electronic media has improved to some extent. Print media allocates a huge part of the media and has been performing its watchdog function by publishing the high profile prosecutions, investigative stories, articles and editorials on issues related to governance and anti-corruption.

*(c) International Organization and Donors*

International organization and donors are contributing to the reform process. They are helping in translating the ideal of governance and anti-corruption reforms into reality by providing financial and technical assistance. In the area of anti-corruption, ADB is the leading donor. DANIDA and DFID support the project with a technical support component worth \$2 1/2 million. DFID is also supporting the MATT programme while UNDP is supporting ethics and integrity through the Public Service Change Management programme and the recently completed ACAC. JICA, KOICA, GIZ, USAID, UNODC and WORLD BANK are also providing technical assistance.

3. Measures to Encourage Cooperation between National Investigating and Prosecuting Authorities and Private-Sector Entities, in Particular Financial Institutions

*(a) Self-Regulatory Organizations (SROs)*

● The Institute of Chartered Accountants of Bangladesh (ICAB)

The Institute of Chartered Accountants of Bangladesh (ICAB) is the National Professional Accounting Body of Bangladesh established under the Bangladesh Chartered Accountants Order 1973 (Presidential Order No. 2 of 1973). The Ministry of Commerce administers ICAB. ICAB's role is to regulate the accountancy profession; ensure professional ethics and codes of conduct and to provide specialized training. As of 1 July 2007, the Institute had 868 members of whom 730 were resident in Bangladesh. 288 are practicing as public accountants, with the balance serving in public and private sector organizations. The ICAB has an Investigation and Disciplinary Committee. The ICAB has not yet issued any rules related to AML/CFT.

● The Institute of Cost and Management Accountants of Bangladesh

The Institute of Cost and Management Accountants of Bangladesh is an autonomous professional body under the Ministry of Commerce. As of 30 June 2006, membership was 745, excluding 42 members whose names have been removed from the register.

Cost & Management Accountants Ordinance 1977; and Cost & Management Accountants Regulations 1980.

● Bangladesh Bar Council

The Bangladesh Bar Council is constituted under the President's Order No. 46/1972. The Bar Council Rules, 1972 make detailed provisions for disciplinary proceedings, enrolment of advocates, etc. The Bangladesh Bar Council has framed rules of professional conduct to be followed by advocates with regard to other advocates, clients and the public in general, and their duty to the court. The Bar Council has not yet issued any rules related to AML/CFT.

## VI. CONCLUSION

Bangladesh became independent by dint of huge sacrifice of life of millions of people. They are a peace-loving people. The people want to live in a corruption-free society, so they support eradicating and preventing corruption in all sectors. ACC is established with these intentions. Effective government commitment is needed here. All other political parties, civil society, and all other people should come forward and work accordingly.