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Institutions of Accountability

Anti-Corruption Commission

Background paper

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Preface

This document is the first step in a policy development process. Its purpose is to identify some of the issues that need to be addressed in order for the Anti-Corruption Commission (ACC) to play its role as an institution of accountability.

The issues raised in this discussion draft will be considered at a workshop to be held in Dhaka on 13-14 May 13-14. For convenience, we will propose to the workshop that the issues raised in the Discussion Paper be grouped as follows and addressed in order. For each section, we have proposed a number of questions to be addressed. Participants will of course have their own questions to add to our lists. After each segment, a summary of the analysis and recommendations discussed will be prepared.

The CGS will then prepare a policy paper on the ACC. It will make clear that the final product represents the findings and recommendations of the CGS and not of any particular individual or organization that may have been consulted.

SEGMENT 1: INDEPENDENCE

The ACC should be independent. As an institution, it should discharge its mandate without improper influence from Government, complainants, suspects or others. Its individual officers should act without fear and without expectation of benefit, discharging their duties honestly at all times.

1. Is the ACC currently independent?
2. If not, what are the principal impediments to independence?
3. If not, what steps should be taken to remove the impediments and provide the ACC with an appropriate level of independence?
4. Which steps should be given top priority? Short-term? Long-term?

Possible Issue to Discuss

- the constitutional position of the ACC
- profiles of its leaders
- the method of their appointment
- secure financing
- vetting of existing employees
- recruitment of new employees
- secure compensation
- personal security

SEGMENT 2: ACCOUNTABILITY

The ACC should be accountable. As an institution, it should lead by example in the battle for transparency in government. Its individual officers should be held to account for any failures to discharge their duties honestly.

5. Is the current ACC accountable?
6. If not, what are the principal impediments to accountability?
7. What steps should be taken to remove the impediments and provide for an appropriate level of accountability of the ACC – externally and internally?
8. Which measures should be given top priority? Short-term? Long-term?

Possible Issues to Discuss

- relationship to Parliament
- annual reports
- public engagement
- access to information
- oversight by the Courts
- special Courts
- judicial warrants
- internal disciplinary proceedings
- a formal role for civil society

SEGMENT 3: EFFECTIVENESS

The ACC should be effective. It should discharge its functions in accordance with the law, to the level of good practice in comparable institutions. Where it requires the support of other policy initiatives or of institutions, it should be provided.

9. Is the ACC currently effective?
10. If not, what are the principal impediments to effectiveness?
11. What steps should be taken to remove the impediments and provide for an appropriate level of effectiveness at the ACC?
12. Which measures should be given top priority? Short-term? Long-term?

Possible Issues to Discuss

- scope of mandate
- role in the prevention of corruption
- effective remedies including interim freeze orders
- developing a strategic plan
- developing policies on priorities for investigation and prosecution
- rules
- staff training and capacity building for new roles
- specialized financial expertise
- public awareness

SEGMENT 4: EFFICIENCY

The ACC should be efficient. It should resolve cases without undue delay, at a reasonable cost, while providing an acceptable standard of customer service.

13. Is the ACC currently efficient?
14. If not, what are the principal impediments to efficiency?
15. What measures should be taken to improve efficiency at the ACC?
16. Which measures should be given top priority? Short-term? Long-term?

Possible Issues to Discuss

- security of evidence
- case management
- backlog reduction
- quotas
- performance management

SEGMENT 5: RELATED INSTITUTIONS

The ACC can never be the only actor in the effort to reduce corruption. Other institutions must play their roles.

17. What are the institutions that must join the effort to eliminate corruption?
18. Are they currently effective in this task?
19. If not, what are the principal barriers to their effectiveness?
20. What measures should be taken to improve their effectiveness?
21. Which measures should be given top priority? Short-term? Long-term?

Possible Issues to Discuss

- National Integrity Strategy
- Courts and prosecutors
- Prevention measures in the public and private sectors
- The role of civil society
- Corruption in donor funded activity
- International cooperation and enforcement

SEGMENT 6: POLICY DIALOGUE

22. Policy – how should it be developed and finalized?
23. Transition – how to manage the transition from the current state to the future?
24. Expectations – how to manage expectations?
25. Technical assistance – is it required?

Introduction

The Bureau of Anti-Corruption (BAC) was established in 1957 in what was then East Pakistan as the first formal institution to fight corruption. Criminalization of corruption dates back to 1898 (The Code of Criminal Procedure), followed by the more targeted Prevention of Corruption Act of 1947 and the Anti-Corruption Act of 1958. But neither the criminalization of corruption nor the efforts of the Bureau were particularly effective, and corruption in Bangladesh slowly worsened over time, only to explode in the 1990s and 2000s. The reasons for it are multiple, but are primarily due to a slow but steady capture of the state by unrestrained and criminal political elites who, in sixteen years since the return to democracy, managed to gain control over virtually all aspects of public life, public institutions and the bureaucracy. The Bureau of Anti-Corruption did not escape this partisan capture and by the early 2000s was deemed to be ineffective and so problem-ridden that a new institution was put in its place, the Anti-Corruption Commission (2004).

The record of the first two-plus years of the ACC shows that the institution has been as ineffective as its predecessor. Lack of organizational rules and clarity of its functions, weak and divided leadership, weak investigative capacity, and most of all, a hostile political environment affected the ACC's independence and its ability to function. The political crisis of late 2006 that culminated in the declaration of the State of Emergency on 11 January 2007, cancellation of scheduled elections, and formation of the military-backed government under the leadership of Fakhruddin Ahmed have radically altered the political environment of Bangladesh. Having declared corruption, especially among the political classes, a primary culprit of the near state failure and the crisis that paralyzed Bangladesh in the fall 2006, the new government has taken action against it at an unprecedented scale. Top politicians have been put in custody, names of suspected offenders have been published in the media, first investigation reports are being completed, and trials under special courts are starting.

The Anti-Corruption Commission, not surprisingly, has been in the spotlight as the chief government agency responsible for investigating cases of corruption. New responsibilities, such as the prosecutorial function, were added to the ACC. Activities under the previously underdeveloped function of preventing corruption are yet to gain momentum, but the public awareness and information campaign has already started. New leadership of the ACC was recruited, demonstrating the government's commitment to the institution and the work the ACC needs to perform. The commitment and political will to make the ACC a successful, high-quality, professional and independent body do exist. However, the challenge of the ACC is to overcome the legacy of the BAC and the pre-11 January 2007 ACC. It also has to reconcile its most recent reforms, put in place under the Special Powers Act that empowers the ACC to operate with lesser regard to due process, with building a strong agency capable of having real impact on changing the country's pro-corruption environment.

The objective of the paper is to facilitate discussion on the policies - in the short and long-term - that are necessary to overcome the challenges facing the Anti-Corruption Commission¹. The paper is divided into two sections. Section I presents the story of anti-corruption institutions of Bangladesh since 1957. The narrative provides a glimpse into a process that was somewhat chaotic, ad-hoc, ineffective, ridden with uncertainties, and at times with confusion. The story also reflects the institutional cultures of the BAC and ACC – poor communication, lack of transparency, in-fighting, and susceptibility to political influence. Section II discusses the comparative, international perspective and presents lessons that can be applied to Bangladesh. It describes the general environment necessary for an anti-corruption agency to function: complementary state agencies; resources; political commitment; and state of governance. Supplementing each sub-section is a review of current conditions in Bangladesh. Throughout the paper questions are asked to guide the discussion. The research team responsible for drafting the paper refrained from answering them as we want to solicit the views of experts and practitioners. To aid our research efforts, we have created a database of information extracted from public sources. We expect further research to involve a wide range of sources, including personal interviews and this workshop.

¹ Institute of Governance Studies will hold an international policy formulation workshop in Dhaka on 13-14 May 2007.

SECTION ONE

ANTI-CORRUPTION INSTIUTIONS OF BANGLADESH

I. The Bureau of Anti-Corruption

The Bureau of Anti-Corruption (BAC) was initially set up as an ad-hoc organisation in East Pakistan in 1957 and was subject to review and renewal on an annual basis. Around the same time, the Anti-Corruption Act was passed in 1958. The Bureau became a permanent organisation in 1967. After the liberation of Bangladesh in 1971, the organisation was reformed to include the duties of the Special Police, after the Special Police was abolished. The next administrative changes were made in 1988 when the divisional anti-corruption offices were transformed into regional offices. With the return to democracy in 1991, the BAC came under the auspices of the Prime Minister's Office (PMO).

The BAC was initially divided into a Head Office (HO), Regional Offices (RO), and District Offices (DO). When the public sector was reorganised with the introduction of sixty-four districts in 1984, the BAC remained centralised. This curtailed the authority of the subsidiary bodies within the BAC as the Director General oversaw all inquiries, investigation, and prosecution.

The BAC defined corruption very broadly as *"Everything unlawful is corruption! It can also be defined as abuse of power for private advantage in ways which transgress some form of rule and law"* (TIB, 2001). The Bureau received complaints of corruption through a number of conduits, including public petitions, media reports, audit inspections, internal departmental inspection, and information from the Bureau's secret sources. Article 25 of the Anti-Corruption Manual rendered oral complaints inoperative. Seventy-five percent of complaints came as a result of public petitions, ten percent from published reports in the media, five percent from audit inspections by the Comptroller Auditor General (CAG), and five percent from internal audit inspections (TIB 2001).

The cases of the Bureau were tried in the courts by district judges who were addressed as Special Judges (TIB 2001). The trials had to be completed within 180 days until the Criminal Law Amendment Act 1990 withdrew the time limit for completion of the cases. The result was a backlog of cases pending with the courts (TIB 2001).

The investigation of gazetted officers was somewhat limited prior to the introduction of Circular No. 223 in 1969. The Director General had the authority to investigate only up to Class Two Gazetted officers, but required permission from the PMO to investigate Class One officers. After the introduction of the circular, the DG had the authority to

summon investigations on all officers. Once the Anti-Corruption Council was formed in 1976, all investigations had to go through this body for approval.

The Anti-Corruption Council was established to ensure the Bureau's effective performance and speedy resolution of cases. Its stated intention was to ensure that no victim or accused suspect was harassed during the investigation process. The Cabinet Division that held control over the Anti-Corruption Council was deeply politicised and, contrary to its objectives, the Council actually contributed further to the ineffectiveness of the Bureau. Control was later transferred from the Cabinet Division to the non-partisan Presidential Secretary but this did not solve the problems.

By the late 1980s, corruption had spread to the lowest levels of civil administration. An introduction of the Upazilla Parishad (UP) into the local government structure added a layer of bureaucracy from which corruption cases originated, thus adding to the workload of the Anti-Corruption Council. The members of the Council were more concerned with national issues and tended to ignore the more nascent local issues. The Anti-Corruption Council was eventually abolished in 1987.

A significant amendment was made in November 1999 when the government amended the authority for inquiries and filing of cases on corruption and asked for statements of wealth by public servants and important personalities per the Criminal Law (amendment) Act and Anti-Corruption Act 1957. The jurisdiction for these functions was transferred from the DG's office to the Prime Minister's Office (FFR 24).

In the meantime, the BAC backlog continued to grow. First, insufficient information upon filing of a complaint was common, and the validity of complaints could not always be verified. Second, inquiry officers were influenced by the people who promoted the interests of the accused. Additionally, the number of Investigating Officers (IO) was inadequate. Other reasons included negligence of the inquiry officer, unnecessary delays in inquiry, lack of proper planning on the part of inquiry officer, transfer of officers engaged in inquiry, and delay in getting permission from higher authority to investigate. Finally, often thought to be the most important factor, the investigations required official permission from the PMO, therefore raising questions of partisan interests.

Two of the most significant failures of the BAC were its low conviction rate and the high number of pending cases. Weak charge-sheets, weak prosecution, stays and delays granted by the courts, absconding suspects, lack of preservation of evidence, and the unwillingness of witnesses to testify all led to a growing backlog. These factors, along with the influence of politicians and influence peddlers, often made cases difficult to prosecute (TIB 2001).

Limitations of the BAC²

Although an unwritten rule, the Bureau in practice could not investigate sitting Members of Parliament (MPs) or Ministers because its position under the PMO gave the Executive the authority to use discretion over which cases to investigate and prosecute. The Awami League (AL) government (1996-2001) proposed the establishment of an Independent Anti-Corruption Commission (IACC) during its term; however, once the PMO received the report, the idea was abandoned. An independent commission would have threatened individual interests and government influence.

Although the PMO maintained authority over the BAC's investigations, the BAC was ultimately responsible to the Cabinet Division Secretaries which consisted of the Ministries of Home, Establishment, Law, Finance and the concerned Ministry of enquiry. Expertise was sought during investigations from other government departments. This would sometimes slow down the investigation process because the BAC staff would have to wait for the report from the respective department. Also, it was not always possible for other government departments to provide the necessary resources to aid the BAC's investigation team.

The prosecution of corruption cases compiled by the BAC was undertaken by the Public Prosecutors (PP). However, they were not always interested in taking the BAC cases, and there were allegations of bribery to delay the hearings. The government paid prosecutors only a nominal fee and they claimed that they had to somehow supplement their income.

The budget for the BAC was formulated with direct consultation of the concerned officials from the organisation, which was then sent to the PMO for further consultation. The DG was present during the budget meetings; however, the final decision came from the Ministry of Finance.

The lack of independence within the staff of the BAC was manifested at the central and local levels. The local level staff patronised either the local party or MP for career progression. Cases were created against local opposition party leaders and prominent figures. To garner favour for the respective Investigative Officer, cases against opposition MPs were often taken directly to the Minister concerned rather than directly to the DG for approval.

The BAC was not equipped to distribute news and information to the public. A significant conduit for accountability and transparency, the media wing of the BAC was non-existent which further shrouded the organisation in mystery.

² Much of the information for this section was gathered from an interview conducted with a former senior official of the BAC (23 April 2007, Dhaka).

Weaknesses of the BAC

- Status under the Prime Minister's Office led to lack of independence and vulnerability to political influence
- Regional and district offices were constrained by the DG's (located at the Head Office in Dhaka) oversight of the entire process
- Broad range of offences under its jurisdiction
- Limited timeframe for processing cases created a backlog
- Infiltration of corruption at the local government level
- Administrative hurdles in processing cases
- Corruptibility of the judicial and prosecutorial system
- Lack of transparency

Questions to Consider for the ACC

- Do the ACC district and regional offices have the necessary powers to perform their duties without creating a bureaucratic blockage?
- How sound are the ACC accountability mechanisms?
- What can cause a backlog of cases? How can it be avoided?
- How can the ACC avoid the pitfalls of the BAC's inability to prosecute cases?
- How can the budgetary independence of ACC be guaranteed?
- How can the ACC maintain transparency? Are there sufficient resources to provide some sort of interface (e.g., newsletter, website, media cell, annual report, etc.) with the public?

II. Anti-Corruption Commission

Phase 1: Inception (2004) to 2007³

On 17 February 2004, the *Jatiya Sangsad* (Bangladesh Parliament) enacted the Anti-Corruption Commission Act (ACC Act). It came into effect on 9 May 2004. From its inception, the bill generated controversy between various political parties and government officials as they failed to reach a consensus regarding the proper way to form the organisation.⁴ One of the major concerns involved the application of the Criminal Law Amendment Act 1958 to the ACC Act. This amendment required the organisation to seek government approval to investigate and prosecute any case, thus limiting the operational capacity of the future Anti-Corruption Commission (ACC).⁵ Lawmakers from all sides voiced their concern over the organisation's lack of autonomy imposed by the amendment, arguing that it violated the original intent of dismantling

³ The following section is a summary of accounts based on articles from *The New Age* and *The Daily Star*. The research team created a database of articles to track the events as they unfolded.

⁴ *The Daily Star*, 'AL Rejects Anti-Graft Body,' 20 February 2004

⁵ *The Daily Star*, 'Govt's Case Withdrawal Power May Be Amended,' 23 February 2004

the BAC and institutionalizing a fully independent anti-corruption agency. Responding to this concern, lawmakers introduced the Criminal Law Amendment Bill 2004 which allowed the ACC to bypass government approval for prosecuting cases and appointing lawyers. The bill was quickly passed, allowing politicians and civil society to turn their attention to the selection committee to determine the leadership of the ACC.

In November 2004 the President, acting on the recommendation of the selection committee, officially appointed Justice Sultan Hossain Khan, a former High Court judge, as Chairman of the ACC and assigned two additional commissioners, Monir Uddin Ahmed and Prof. Maniruzzaman Miah. The personnel choices were greeted with mixed reactions by politicians and civil society, many citing concerns about the political connections and past performances of the three.⁶

Almost immediately, controversies arose over the now defunct BAC and conditions built into the ACC Act to thwart the progress of the Commission. A major source of concern was the absorption of portions of the BAC into the ACC. Once the BAC was dissolved, the ACC took in thirty-three First Class and fifty-two Second Class Officers, and 658 Class III and IV employees.⁷ The Commission stated that a review committee was needed to filter through the employees who would ultimately continue their jobs under the new organisation. Although the ACC Act allowed for the absorption of the BAC into the ACC, it did not allow for the formation of a review committee. The Act further stated that an organogram as well as rules and regulations must be ratified by the government⁸ and implemented before the ACC could begin executing essential functions such as hiring prosecutors and prosecuting cases.

The beginning days of the ACC were marred by political and logistical obstacles. Besides determining the fate of the BAC staff, the Commission also inherited approximately 20,000 pending cases, some of which were outside the BAC's jurisdiction. To exacerbate matters, the ACC met political resistance as the Awami League (AL) leaders announced their disapproval of the ACC and declared it inherently biased.⁹ Furthermore, citizen and interest groups immediately began submitting new complaints against officials suspected of corruption, demanding immediate action.

As it sorted out the administrative hurdles of developing a brand new commission, the ACC began its work in the fight against corruption by filing charges against Barisal officials in early December 2004 on charges of misappropriation of funds. However, these charges, like many to come, made very little ground in the courts. Within a month, local and federal officials on separate charges openly rejected the ACC's demand for information, citing the legal requirement of approved rules and organogram before it could function. Until these were implemented, any actions taken by the ACC were

⁶ *The Daily Star*, 'Anticorruption Body Comes into Being,' 22 November 2004

⁷ *The Daily Star*, 'Recommendation for Wholesale ACC Recast,' February 5th, 2007

⁸ Section 34 of the ACC ACT

⁹ *The Daily Star*, 'AL Terms Anti-Graft Body Partisan,' 25 November 2004

branded illegitimate. This argument, according to many government officials, had solid legal backing.¹⁰

Matters were further complicated when the BNP-led government attempted to appoint AMM Reza-E-Rabbi as Secretary of the ACC without consulting the Commissioners. This conflicted with the ACC's desire to appoint Major General (ret'd) Abdul Matin, former BAC Director General (DG) and interim DG and ACC Secretary, to the post. He had been brought out of retirement at the end of the life of the BAC. As a person of high integrity, he was involved in the creation of the ACC. Eventually, the government agreed to withdraw its appointment of Reza-E-Rabbi but asked the Commission to offer alternative candidates.¹¹ To exasperate the political complications facing the ACC, the government reiterated that all former staff of the BAC could not conduct any business as ACC staff until the Commission enacted its rules.

While external factors greatly contributed to the initial dysfunction of the ACC, internal complications and disagreements among the three Commissioners intensified the situation. Commissioner Miah proposed an organogram of nine hundred (900) staff and supported the government's stance on the illegality of hiring former BAC staff before the rules of practice were in place. Chairman Sultan and Commissioner Ahmed, on the other hand, rejected Commissioner Miah's projected organogram as well as his position on the issue of BAC employees.

Provoked by Chairman Sultan's request to the government to hire an additional one hundred BAC employees, Commissioner Miah sent a letter to him describing the current legal violations of the ACC and how to rectify such infractions. During this time, Chairman Sultan increasingly executed orders and issued public statements without consulting Commissioner Miah. In early February 2005, the tensions between the two culminated in Chairman Sultan stripping Commissioner Miah of virtually all administrative powers. Not knowing the specific reasons for the actions, Miah publicly stated that he would be forced to resign if he remained powerless.¹² Despite the ongoing struggle between the two, Commissioner Miah decided not to quit even though he held virtually no power because he felt that his remaining responsibilities at the ACC were too important to abandon.

Despite government orders, Chairman Sultan instated the former BAC staff into the ACC. At the same time, the ACC took on the responsibility of vetting for corruption all government officials with pending promotions. While this was largely seen as the Commission's first constructive action since inception three months prior, some accused the organisation of conspiring with the Ministry of Establishment to certify the promotions in return for endorsement of bringing the BAC staff into its fold.¹³ Publicly

¹⁰ *New Age*, 'Secretaries Likely to Defy ACC Notices,' 3 January 2005

¹¹ *The Daily Star*, 'Talks Fail to Resolve Govt-ACC Standoff,' 9 January 2005

¹² *The Daily Star*, 'ACC In Crisis as Miah Ponders Quitting,' 8 February 2005

¹³ *New Age*, 'Certificate Row Hits ACC,' 23 February 2005

defending his actions, Chairman Sultan stated that the employment of all BAC staff was on a temporary basis and that a screening process for permanent hire would shortly follow.

Even with no ratified organogram or rules, the ACC considered ways to expand its power and scope of investigation. First, Chairman Sultan asked the government to approve his proposal for an ACC counterintelligence unit consisting entirely of army personnel. This suggestion received adverse reactions from members of the government and military, as well as Commissioner Miah. He again reiterated that the rules of practice for the ACC had not yet been promulgated; therefore the establishment of a counterintelligence unit would be illegal. Moreover, he questioned the wisdom of selecting members solely from the military to provide the makeup of the counterintelligence unit. Second, the Commission sought legal counsel as to whether they had the authority to investigate alleged money laundering. Money laundering cases initiated by the Bangladesh Bank were previously handled by the BAC until they requested that the Central Intelligence Department (CID) handle the cases. However, the ACC had no provision in its Act to investigate offences under the Anti-Money Laundering Act. Ultimately, neither proposal was implemented.

Tension surrounding Chairman Sultan continued to escalate throughout his tenure at the ACC. In a public statement, Chairman Sultan decried the government's interference in ACC operations as detrimental to the image of the Commission's independence.¹⁴ Within the organisation itself, Commissioner Miah's disagreements with Chairman Sultan culminated in increased exchanges of contradictory public announcements. Ultimately, the ACC declared all further public statements would come in press releases, not from the Commissioners.¹⁵

To mitigate the complications facing the ACC, external organisations began to offer assistance. Asian Development Bank (ADB), on behalf of multiple international organisations, volunteered fully-funded consultants to investigate alleged crimes so that the Commission could concentrate on resolving the administrative issues. A group of high level legal and professional advisers offered to create and administer a process for screening former BAC staff. Following a request by the ACC itself, experts at the University of Dhaka drafted an organogram for the organisation. In all instances, however, Chairman Sultan stated that the proposals were either inappropriate or insufficient for the purposes of the ACC.¹⁶

The ACC's troubles continued when a series of petitions were filed with the High Court that challenged the appointment of certain staff and portions of the ACC Act as illegal or vague. The majority of these petitions were partially successful and the High Court issued orders for the ACC to explain why certain actions, selected members, and

¹⁴ *New Age*, 'ACC to Ask Cabinet Div to Stop Interference,' 24 March 2005

¹⁵ *New Age*, 'ACC Not to Talk to Media,' 7 April 2005

¹⁶ *The Daily Star*, 'ACC Rejects Advisory Body's Suggestions, 10 April 2005

portions of the ACC Act should not be declared illegal. These rulings, in addition to the mounting problems that led to the ACC's inability to fully function, caused international organisations to voice concern. Transparency International, ADB, and multiple embassies expressed disappointment in the Commission's ineffectiveness.¹⁷

At the end of April 2005 the ACC submitted the proposed organogram and rules to the President's Office for approval and embarked on a series of public awareness campaigns to promote their anti-corruption prevention agenda. In May 2005, Chairman Sultan and Commissioner Miah presided over a seminar aptly titled *Corruption: Nature and Causes and its Remedies*. The Commissioners then made a surprise visit to the Chittagong Port where ACC officers successfully conducted a sting operation catching port authorities taking bribes. This series of incidents, combined with the Commission successfully proving a portion of its legality to the High Court, produced a sense of hope amongst Bangladeshis that the organisation may finally be functional.

However, as the one year anniversary of the ACC's creation arrived, it had yet to successfully prosecute any cases, new or old. In the meantime, the Commission received over 7,000 new complaints in addition to the BAC cases. While it continued high profile surprise inspections at institutions such as America-Bangladesh University and lodged complaints against senior level government employees, both domestic and international organisations began to question the functionality of the organisation.¹⁸ As 2005 came to a close, the ACC continued to face legal battles at the High Court, constantly having to prove various components of the organisation as legal. While it did receive official approval of its organogram, it came on the condition that the Commission hire half of the staff originally proposed.

In the first weeks of 2006 the Commission filed its first corruption case against officials of the Power Development Board and Ashuganj Power Station. Around the same time, Chairman Sultan held a forum with port officials and trade industry leaders to discuss which methods would be most effective in the ACC's drive against corruption. These actions, however, did nothing to appease organisations as they continued to criticize the Commission for its inability to function. In response to the criticisms, Chairman Sultan claimed that dozens of new charge sheets would be issued the following week and that he would resign if he could not curb the nation's corruption problems. However, the ACC failed to produce any major charge sheets, even as the ACC announced a nationwide "trap case drive" against corruption. To add to the growing dilemma, statements by the Chairman were openly contradicted by other government organisations. For instance, when he stated that the Commission would team up with the Rapid Action Battalion (RAB) to conduct surprise raids at government offices, the

¹⁷ *New Age*, 'ACC Capability Questioned,' 21 April 2005; *New Age* 'ADB Wants Effective Anti-Graft Commission,' 21 April 2005; *New Age*, 'German Envoy Offers Dialogue On Poll Method,' 12 March 2005

¹⁸ *The Daily Star*, 'ACC Becoming Inactive Body,' 10 November 2005

RAB director claimed to be unaware of and unwilling to commit his forces to any such cooperation.¹⁹

Even as it struggled to develop its organisational capacity, the ACC continued to file charge sheets and First Information Reports (FIR) against suspected corrupt officials. Failing to ratify any rules or regulations for the administration of the ACC, the Commission's momentum quickly diminished as dozens of petitions were filed with the High Court questioning the legality of its actions. Nonetheless, the ACC carried on with its trap case drive, attempted to deputize low level officials, filed charge sheets, and sued corporations for extortion. To combat its legal troubles, the ACC again raised the issue of its organogram and rules with the government. Months after receiving an approved organogram from the Cabinet Division, the ACC officially rejected it, citing the plan insufficient for the organisation's needs. Consequently, the government attempted to impose the organogram upon the ACC before the two entities eventually compromised on a structure, a move which many ACC officials saw as a further encroachment on the independence and functionality of the organisation.²⁰ Although this portion of the structural set-up was now settled, the ACC still lacked ratified rules and regulations.

Towards the end of Chairman Sultan's tenure at the ACC, only sporadic legal actions were taken by the ACC. Furthermore, a dispute with the National Board of Revenue (NBR) arose over who had legal jurisdiction for money-laundering offenses. The NBR claimed that the ACC's investigations into tax evasion violated the Customs Act and was beyond the ACC's jurisdiction.²¹ In addition to meeting with various representatives from these government organisations, Chairman Sultan also met with government officials in an attempt to have rules ratified. When asked why the process was still underway nearly two years into the creation of the ACC, Sultan blamed the bureaucracy of the government.

¹⁹ *The Daily Star*, 'ACC's Anti-Graft Blitz,' 7 April 2005

²⁰ *The Daily Star*, 'New Organogram Makes ACC Dysfunctional,' 15 July 2006

²¹ *The Daily Star*, 'ACC, NBR Lock Horns over Jurisdiction,' 19 August 2006

Barriers to the functionality of the ACC

- Legacy of the BAC: staff and workload
- Weak leadership
- Lack of political will
- Lack of ratified rules and organogram
- Internal conflicts
- Lack of coordination with other anti-corruption institutions

Questions to Consider

- Should the ACC Act allow for participation of members from civil society to participate in the selection process of both the selection committee and the organization's leadership?
- How does the ACC plan to rectify the workforce inherited from the BAC?
- Should citizens be involved in the formulation of prevention policies?

Phase 2: 11 January 2007 to Present

Although corruption is widely understood to be a serious problem in Bangladesh, anti-corruption did not receive any type of real priority on the national agenda as illustrated by, for example, poor performance of the institutions set up to fight it. A change in the attitude and commitment to fighting corruption occurred after 11 January 2007 as the State of Emergency was declared to resolve the ongoing political crisis.

The 2007 State of Emergency

On 11 January 2007 a State of Emergency was declared by the President just before he stepped down as Chief Adviser and handed power over to Fakhruddin Ahmed, a former governor of Bangladesh Bank. The State of Emergency suspended the fundamental rights normally guaranteed by the Constitution as stated in Article 141B:

While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall, to the extent of the incompetence, cease to have effect as soon as the Proclamation ceases to

*operate, except as respects things done or omitted to be done before the law so ceases to have effect.*²²

Articles 36, 37, 38, 39, 40 and 42 of the Constitution are those that collectively guarantee freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience, freedom of speech, freedom of procession or occupation, and the right to property.

The State of Emergency cannot be declared without the consent of the Prime Minister and it must be approved by the Parliament. Under the Caretaker Government, article 58E of the Constitution gives the authority to the President to declare a State of Emergency for 120 days. The duration may be extended.

Recognising that past efforts to curb corruption had been docile, ineffective, and highly politicized, Fakhruddin Ahmed's military-backed caretaker government pushed the ACC to the forefront of nationwide dialogue on anti-corruption after coming into power on 12 January 2007. The government pledged to make the ACC pro-active and one of the most powerful institutions for fighting corruption in the history of Bangladesh.²³ On 22 January 2007 in his national address to the nation, Chief Adviser Fakhruddin Ahmed vowed that tough, methodical action would be taken to curb the vice of corruption. He stated that the people demanded stern action against corrupt individuals and that the ACC and related government institutions would be restructured to make them action-oriented and free from influence. In reference to the upcoming elections, he asserted that the present caretaker government was determined to reform the electoral process characterized by the "the politics of the three Ms: money, muscle, and misuse of power." The Chief Adviser further emphasized that pervasive corruption and the plundering of national wealth by a handful of dishonest people had pushed the national economy, society, and politics backward into a disastrous state.²⁴

The actions against corrupt officials followed almost immediately: three officials of Oriental Bank were arrested in a case filed by the ACC just hours after the Chief Adviser's speech. These arrests were first filed by the Commission since its formation on 21 November 2004. To date, the ACC brought cases against top business leaders, local and national political leaders, former Members of Parliament (MPs), and former Awami League (AL) and the Bangladesh National Party (BNP) Ministers and their coalition partners.

Since January 2007, the Commission has underscored its commitment to fighting corruption by undergoing a change in leadership and by taking highly publicized actions against those who are perceived to be corrupt. At the same time, because of its high

²² The Constitution of Bangladesh

²³ *New Age*, 'Fakhruddin Promises Sweeping Reforms,' 23 January 2007

²⁴ *Ibid.*

visibility in the media and in civil society discussions, the ACC has been put under close scrutiny. The expectations for its success are high.

Question to Consider

What would be the consequences of failure of the ACC?

In February 2007 Communications Adviser Major General (retd) MA Matin recommended that the Commission undergo drastic reforms and changes to its leadership.²⁵ A seven-member advisory council committee on anti-corruption formed on 24 January recommended the following measures:²⁶

- Reconstitute the ACC by re-screening the former BAC staff;
- Amend the ACC Act to ensure speedy disposal of corruption cases by setting up special courts, and fixing a 45-day time limit for submitting charge sheets and a 60-day deadline for the completion of trials;
- Alter the ACC organogram to increase the manpower of the Commission from its current cadre of around 700 staff members to approximately 1,200; and
- Empower the ACC rather than the government under the Emergency Power Rules to freeze the assets of those who fail to submit their wealth statement.

On 7 February, Chairman of the ACC Judge Sultan and the two other Commissioners resigned at the request of President Iajuddin Ahmed. Since the ACC does not permit the government to remove its Commissioners from their posts, they were requested to resign voluntarily. Before stepping down, Chairman Sultan admitted to the weaknesses that lead to the failure of the ACC under his leadership, citing the shortage of manpower and various court injunctions as impediments to their legal proceedings. He suggested that the ACC frame its own rules and organogram and that the ACC Act be amended to make it more effective.²⁷

After more than a week of the leadership vacuum, the government appointed former adviser to the caretaker government and Chief of Army Lt. General (retired) Hasan Mashhud Chowdhury as the ACC Chairman on 23 February. The government also appointed two other commissioners -retired District Judge M Habibur Rahman and retired member of the National Board of Revenue (NBR) Abul Hasan Manjur Mannan.

As the leadership changes were taking place at the ACC, twenty different task forces began to compile evidence of corruption against political leaders in preparation for legal action against them. These teams consisted of one member each from the ACC, Directorate General of Forces Intelligence (DGFI), National Security Intelligence (NSI),

²⁵ *The Daily Star*, 'ACC High Ups Urged to Quit,' 2 February 2007

²⁶ *New Age*, 'ACC to Have Arrest Authority without Warrant,' 15 March 2007

²⁷ *The Daily Star*, 'ACC Chief Sultan, Miah resign,' 8 February 2007

National Board of Revenue (NBR), Rapid Action Battalion (RAB), the army, and the Special Branch (SB) of police. The teams were formed just prior to the 'midnight crackdown' arrest drive launched on 4 February. Each team had been given separate assignments to avoid duplication of work and produce one well-coordinated campaign.²⁸ However, it was not until 12 March that the task forces actually received legal authority. By 14 March, one central, seven regional and sixty-four district-based task forces had been established that had up to seven days to complete their investigations after filing a case.²⁹

In addition to the task forces, the National Coordination Committee (NCC) was set up on 8 March as a support body for the ACC. The NCC is headed by Communications Adviser Major General (retired) M A Matin and includes senior military officials and others.

The task forces, under the direction of the NCC, can confiscate assets of corruption suspects, seize documents for investigation, conduct raids, issue arrest warrants, and recover illegal funds deposited in foreign banks. When asked about the relationship between the NCC and the ACC, General Matin vowed there would be no conflict between the work of the two commissions and stated that the NCC's job was to assist the ACC which was "struggling to cope with its enormous task."³⁰

The anti-corruption drive gained momentum when on 12 February the media published a list of fifty individuals alleged to be the 'most corrupt' in the nation. The list, including three dozen former ministers and other top politicians and businessmen, initiated the first phase of the government's scrutiny of 420 individuals.³¹ The second list of individuals suspected of being 'most corrupt' was published by the media on 8 March. The list included the BNP's Senior Joint Secretary General and eldest son of former Prime Minister Khaleda Zia, Tarique Rahman, who was later arrested.

Those whose names appeared on the lists were asked to appear before the ACC and submit their wealth statements within seventy-two hours of receiving notification. In a controversial move, the joint forces arrested several senior politicians including former Ministers and Members of Parliament, even as they appeared at the ACC office to submit their statements. The politicians were said to be known for their "dubious and corrupt activities" while many were known as "godfathers and criminals"³² The arrested suspects were sent to jail for 30-day detention while evidence of their alleged offences was collected. These actions were viewed by some as a clear violation of due process.

After publication of the second list of 'corrupt suspects' in the first week of March 2007, the ACC announced that it would not release any more names of 'suspected corrupts'.

²⁸ *The Daily Star*, '20 Govt Groups Busy Gathering Graft Info,' 11 February 2007

²⁹ *The Daily Star*, 'Taskforces Assisting ACC,' 14 March 2007

³⁰ *New Age*, 'Nat'l Anti-Graft Body Holds First Meeting Today', 14 March 2007

³¹ *The Daily Star*, '50 given 72 hours to submit wealth statements,' 19 February 2007

³² *The Daily Star*, '20 Govt Groups Busy Gathering Graft Info,' 11 February 2007

The media reported that the ACC realized its shortcomings such as lack of manpower, the need for specialized investigative teams, as well as other legal and administrative hurdles that hampered their ability to function fully. As the task forces were making arrests and gathering evidence, the ACC Act 2004 was concurrently undergoing several amendments designed to make the ACC properly functional. The amendments required ratification to become legally effective. This was important, as the High Court had earlier stayed proceedings against fifteen of the first fifty suspects when they did not hand in their wealth statements.

The Revision of the Emergency Laws: The Anti-Corruption Commission Act 2004 and the Emergency Powers Rule 2007

Since the transfer of power to the (first) caretaker government in October 2006, the ACC indicated it would take action against the Ministers and MPs of the immediate past government who had allegations of corruption against them. However, the Commissioners blamed the administration for not approving the rules that would enable the Commission to function properly. It was not until the current administration came to power in January 2007 that things started to move.

A seven-member advisory council committee was formed on 24 January to review the existing legal, administrative, and institutional inadequacies of the Commission. Because the drive against corruption under the second caretaker government has been one of the largest that Bangladesh has ever witnessed, the Commission recognized the pertinence of having the proper legal tools to prosecute the 'big fish,' and that amendments to existing legislation were needed.

To enhance their investigative powers, the ACC Act was amended to allow for detention of a suspect for thirty days without a warrant or pending charge. The ACC was given the authority to arrest a person without sanction from the courts, although permission to arrest by an ACC official must be handed down by the upper ACC hierarchy.

Rule 15(D) of the Emergency Power Rules previously empowered the government rather than the ACC to freeze the property of the accused for failing to submit his/her wealth statement by the due date. After the ACC was unable to take legal action against the fifteen individuals who had ignored the notice to submit their wealth statements, the Commission proposed an amendment to the Emergency Power Rules to empower the ACC instead of the government to freeze and/or attach property.³³ Additionally, to prevent suspects from taking advantage of any lag time to dispose of or move their property, a provision was added authorizing the ACC to temporarily seize the suspect's property *immediately upon filing of a case* rather than after the trial, with the stipulation that the Commission would return it if the court found the accused innocent.

³³ *New Age*, 'ACC to Ask 50 New Graft Suspects to Submit Wealth Statements,' 13 March 2007

Additionally, because there was no time limit for cases to be settled, the committee recommended that corruption cases be tried within 270 days, thus ensuring speedy disposal of the cases.

Further amendments included:

- Section 28 made any offence under the ACC Act non-bailable.
- Section 18 legalized the actions taken by the ACC Secretary in the absence of the Commission leadership during the ACC power vacuum in February 2007. The new amendment allowed the Commission to authorize the Secretary's actions which retroactively included notifying the initial fifty corrupt suspects to appear before the Commission within 72 hours with their wealth statements.
- An amendment to Section 32 removed the requirement of prior approval of the Court for preliminary inquiry or investigation by an ACC investigative officer into any corruption case, although they must receive permission from the ACC. Furthermore, ACC approval is also required before submission of the charge sheet.
- The 1958 Criminal Act was also changed to remove the timeframe for the investigation and trial of cases. The new amendment stated that the investigation of any graft case will have to be completed within forty-five days with scope to apply for deferment by fifteen days.
- The Money Laundering Act 2003 was brought under the jurisdiction of the ACC so that the Commission could take the necessary legal steps to recover money sent abroad illegally.
- The Emergency Powers (Amendment) Ordinance 2007 was promulgated on April 16, 2007. The new clause, Section 3A, was inserted into the original ordinance so that special provisions could be made for framing rules to expedite the judicial process with regard to any offence committed under any law during the ongoing State of Emergency.

The ACC argued that these provisions ensured a speedy investigation and trial so that the suspects could not drag out their cases and hide their assets before the case headed to trial. The Commission was confident that these provisions in the Act would significantly improve their fight against corruption.³⁴

Implications of the Recent Empowerment of the ACC: a Preliminary Analysis

The present crackdown on corruption is more than just action against those who allegedly broke the law. It is said to be part of the cleansing of the political process. According to the Chief Adviser, the campaign is part of a comprehensive program of political reforms aimed at creating a congenial environment for holding free, fair and credible elections.³⁵

³⁴ *The Daily Star*, 'ACC Likely to Be Empowered to Seize Property, Give Detention,' 3 February 2007

³⁵ *New Age*, 'Pitfalls of Political Puritanism,' 11 March 2007

The government's war on corruption began with a highly publicized demolition drive to do away with illegal structures. In the initial weeks of the campaign, people were detained for their suspected involvement in crime and corruption; encroachments on government lands and water bodies were pulled down; retailers of contaminated food items were penalized; shops on sidewalks and roadsides were abolished; tons of rotten wheat, and spurious fertilizer was confiscated; and illegal voice over internet protocol (VOIP) centres were raided.³⁶ The drive was met with mixed reactions. On the one hand, people were happy that the government was finally addressing illegal encroachment, but at the same time they sympathized with the thousands of people left homeless and the means to earn their livelihood.

The nationwide anti-corruption crackdown has resulted in the mass arrests of over 120,000 people over the last three months.³⁷ Many have been detained under the Special Powers Act of 1974 and Section 54 of the Criminal Procedure Code, both of which allow arrest and detention without a warrant. The government justifies this provision to facilitate speedy trials. The 45-day timeframe for trial of a graft case may make it impossible to dispense proper justice to some of the arrested.³⁸

The current role of the ACC has been put in question by the formation of the National Coordinating Committee (NCC) and its subsidiary task forces. There is ambiguity regarding the functions and responsibilities of the two entities, and lack of clarity where the line of authority is drawn. It remains to be seen whether or not the NCC becomes a permanent institution or if it is a temporary solution until the ACC can build its capacity. It provides capacity for coordination of other agencies and forces engaged in fighting corruption.

Among the members of the NCC are the Secretary to the Chief Advisor, the Secretary to the ACC, the Chairman of the National Board of Revenue, the Director General of the Central Intelligence Cell, the Inspector General of Police, the Additional Inspector General of Special Branch, the Additional Secretary (Legislative) of the Law Ministry, the Director General and Additional Director General RAB, the deputy Director General Bangladesh Rifles, Deputy Governor or Executive Director of the Bangladesh Bank, Director National Security Intelligence (internal), a director from the Directorate General of Forces Intelligence, the director of military operations of the Army, the Joint Secretary (Political) – Home Ministry, and an additional or deputy Attorney General.

At present, the ACC operated with support of special emergency powers due to the unique situation of the country's State of Emergency. As the fundamental civil rights have been suspended, citizens do not have much recourse if there is excessive and arbitrary behaviour of the joint forces involved in arrest and interrogation. All offences

³⁶ *New Age*, 'Climate of Fear and Government's Belated Reaction,' 15 March 2007

³⁷ *New Age*, 'Wrong turn for our rights,' 11 April 2007

³⁸ *Ibid.*

that are tried under the ACC Act are non-bailable, meaning that any person under investigation can be detained for a maximum of five years, fined, or both as a preventive measure if he/she is perceived as a threat to the state. The ACC has also been empowered to arrest accused suspects without first obtaining a warrant from the courts. When the ACC makes arrests without judicial oversight, it opens the door to speculation whether or not there are legal grounds to make the arrests in the first place.

While the measures taken to address corruption are, at present, perceived as temporary, they may have a negative impact on the long-term operations and sustainability of the institution. If allowed to persist and due process is not restored, the legitimacy of the ACC will be compromised and the public's confidence in the organization, created to enhance transparency and accountability, will diminish.

Finally, there is a question of capacity to deliver results. On 22 March, the ACC announced a shortage of manpower and plans for increasing current employment of around 700 to 1,200. In order to process cases currently pending, the number of investigation Officers (IO) will need to be increased from 90 to 300.³⁹ Low personnel capacity related to overall recruitment shortages coupled with an increase in the number and complexity of cases resulted in a 'bog down' of the process and a halted, for example, the release of more lists of persons suspected of corruption. On 14 March 2007, ACC officials declared that the Commission drafted a third list of graft suspects but could not release it because legal steps against fifteen suspects on the first list are yet to be taken. The officers admitted that the current laws and rules constrained efforts to take legal action against the suspects who ignored orders to provide wealth statements.⁴⁰ Further, there is shortage of expertise: complexities of financial crimes require specialized investigative officers who understand corrupt practices and specialized attorneys who can prepare legal cases. Recognizing these as an impediment to success, the ACC admitted a need to develop specialization of its employees and to build expertise on different types of corruption.⁴¹

Questions to Consider

- Are expectations commensurate with the realistic capabilities of the ACC?
- What steps should be undertaken to balance investigative authority with protecting the rights of the citizens?
- What happens if a case is not settled within the stipulated time frame of 270 days?

³⁹ *The Daily Star*, 'Anti-graft body seeks to bolster its muscles', 22 March 2007

⁴⁰ *New Age*, 'Nat'l anti-graft body holds first meeting today', 14 March 2007

⁴¹ *The Daily Star*, 'Anti-graft body seeks to bolster its muscles', 22 March 2007

SECTION II

ANTI-CORRUPTION AGENCIES IN A COMPARATIVE PERSPECTIVE

The experiences of anti-corruption initiatives in other countries can facilitate the drafting of Bangladesh's anti-corruption policies. Most countries have experienced some trial and error. Some, such as Hong Kong and Singapore, have implemented the single-agency approach in which most of the core functions are centralized into one institution. Others such as Bulgaria and South Africa have adopted the multiple-agency model in which the capacities of existing institutions are strengthened. **Local circumstances determine what works.** A thorough analysis of each country's resources, governance, and political will is important. Finally, experience shows that achievable benchmarks for success should be defined and a strategy for measuring them implemented.

Models of Anti-Corruption Measures

Under the single-agency approach, a number of key capabilities, responsibilities, and resources are administered under one roof, although not *all* functions are centralized. This approach helps centralize information and intelligence on corruption and can reduce coordination problems (Meagher 2004). The multi-agency approach, on the other hand, requires a more coordinated system and a clear delegation of authority over the various anti-corruption functions. Because responsibilities are dispersed into more than one agency, no one particular agency takes the lead, so efforts tend to be less ambitious (Meagher 2004).

In most cases, an ACA must work with other institutions in order to be effective. Coordination must be ensured and responsibilities clearly delegated. UNDP's *Institutional Arrangements to Combat Corruption* report (2005) identifies other institutions that can work with an ACA on anti-corruption measures, depending on the institutional arrangements of each country:

- Prosecutor – The independence of the Prosecutor should be guaranteed to protect the institution from undue pressure and political sway. In some cases the Prosecutor's office handles all prosecutorial functions rather than an independent ACA. For instance, corruption cases in Mongolia, Nicaragua, Mozambique, and Columbia are handled by a special anti-corruption unit in the Public Prosecutor's office rather than by an independent agency. Because the Prosecutor determines which cases to present to the courts, this ensures a series of checks and balances so that the ACA does not have sole discretion on which cases to prosecute. Whether or not the duties of anti-corruption prosecution are assigned to an independent agency or to a special unit within the prosecutor's office, officers should have the same rights as law enforcement officers and equal investigative capabilities (UNDP 2005).

The 2004 Act provided for an ACC prosecution function, but appeared to leave with the Public Prosecutor's Office the discretion to stay any prosecutions. The BAC was required to seek from the Prime Minister's Office (PMO) permission to prosecute cases. but this requirement was dropped in 2004.

- Auditor General – Audit agencies should also be independent and isolated from the influence of political interests. They prevent and detect corruption in financial management systems, and engage the government to be more transparent and forthcoming with information. They identify weaknesses that could leave organisations susceptible to impropriety. Furthermore, they serve as a deterrent in that corruption becomes more risky due to their investigative efforts. Anti-corruption agencies that collaborate and share information with Auditor Generals and ombudsman are more likely to succeed rather than agencies that fail to disclose sensitive information to their counterparts (UNDP 2005).

The Office of the Comptroller and Auditor General (CAG)

is the supreme audit institution of Bangladesh. Until 2002, its responsibilities included accounting and auditing all expenses of parastatal bodies, authorities, and offices of the Government. However, it is now only responsible for auditing these accounts while the Ministry of Finance has taken on the accounting function. The office, though set up to be independent, is constrained by its requirement to report to the President rather than directly to Parliament. It is also subject to the direction and control of the Finance Ministry per the Rules of Business of the Government. The recruitment for the filling of posts at the CAG's office is also subject to the direction and control of the Finance Secretary and the Establishment Secretary (IBTC *et al* 2004)

The Public Accounts Committee (PAC) of the Parliament

is set up to review the CAG's audit reports and hold hearings on reports submitted to it (IBTC *et al* 2004). However, it has only been formed five times in the last seven Parliaments, and very rarely do ministries respond immediately to the CAG's recommendations.

- Public Service Reform Agency or Public Service Commission – Although an ACA can support a general level of integrity in government departments and

agencies, it is the public service sector itself that should promote a culture of zero tolerance for corruption. Some countries have incorporated anti-corruption units within each department which are responsible for investigating internal corruption. For example, Singapore's anti-corruption measures have been largely successful due to the establishment of committees in each department that focus on prevention. These committees ensure the implementation and adherence of anti-corruption policies.

The **Public Administration Reform Commission** in Bangladesh was established to recommend policies and programs to improve the level of efficiency, effectiveness, transparency and accountability of public organisations. To curb corruption, these policies must be supported and implemented by the highest level of Executive authorities (IBTC *et al*).

- Ombudsman – This office is responsible for ensuring accountability in the public sector. The Ombudsman should also act independently, yet coordinate with other anti-corruption bodies. The scope of this office includes corruption offences, but also includes incidents of maladministration due to incompetence, bias, error, or indifference.

Although the Constitution of Bangladesh made provisions for an **Office of Ombudsman** in 1980, no steps have been taken to establish it.

- The Courts – Of all the institutions dedicated to fighting corruption, the judicial branch is often the weakest link. Reasons may include corruption within the pool of judges and prosecutors, delayed trials, and lack of expertise by judges and lawyers in the technicalities of corruption. While reforms of other institutions, such as the legal profession, prosecution services, and law enforcement agencies are also critical, it is at the judicial level that corruption does the greatest harm and where reforms have the greatest potential to improve the situation (UNODC 2004).

In Bangladesh, judges are technically civil servants. This creates an appearance of partiality. The High Court has ordered that this system be changed and steps are now being taken to give effect to this order.

Coordinating the efforts of all institutions involved in anti-corruption is a key determinant in the success of anti-corruption measures. The mandates of each institution should not overlap, or if there is overlap, rules should be implemented so that the most appropriate agency takes the lead role and can direct the others. The legislation guiding the institutions should not conflict, as this will create uncertainty about who does what. Finally, broad-based institutional reforms should be considered to complement the efforts of ACAs (see Appendix 1).

Questions to Consider

- What other institutions in Bangladesh could complement the work of the Anti-Corruption Commission?
- What institutions could be further strengthened to complement the work of the Anti-Corruption Commission?
- How are activities coordinated? How could this process be improved?
- How does the mandate of the ACC differ from the NCC, and how will they ensure cooperation while not engaging in competition?

Resource Availability and Functions

Lack of funds, human resources, information technology, equipment, and facilities, particularly in developing countries, often constrain an ACA's ability to function. Economic and social conditions as well as the political will of governments determine how much of the national budget is allotted to the organisation. While a large part of an ACA's dysfunction is due to limited national budgets, donors also determine how much funding is available and the purposes for which an ACA can apply them. For instance, donors often dictate which frontline functions, such as investigation and prosecution, receive funding priority. When administrative concerns such as information technology and human resource management are ignored, the organisation fails to develop a comprehensive corporate strategy, thus weakening its effectiveness. **Therefore, a successful ACA requires consistent funding at the right times for appropriately specified tasks that are commensurate with a realistic level of performance (Doig, Watt, and Williams 2005). Donor support should not overshadow the support of governments. Rather, governments should be the primary benefactor with donors providing supplementary assistance.**

Although the three-pronged approach of prevention-education-investigation has worked very well for many ACAs such as Australia (New South Wales), Singapore, and Hong Kong, not all organisations can manage these tasks simultaneously. Prevention measures require specialists to analyze weaknesses in government and business practices that are susceptible to impropriety. Education initiatives require a mass awareness campaign to generate buy-in from the public. And investigations require expertise in the discovery of corruption. Furthermore, ACAs that undertake prosecutorial functions also require highly trained and qualified attorneys and financial

analysts who can analyze corrupt practices. All of these require substantial human and monetary resources.

Therefore, at the very onset of their organisational development, ACAs should analyze the functions they can realistically accomplish. In determining its functions, a realistic assessment of available resources (e.g., funds, degree of expertise, and legal permissions) is required so that chances of failure are minimized. An organisation that consistently fails to demonstrate competency in any one area will have a difficult time building credibility and winning the confidence of the public.

Questions to Consider

- What functions can Bangladesh's ACC realistically perform – prevention, education, investigations, and/or prosecution?
- What resources are required for each one?
- What offences should the ACC try to tackle? Low-level petty corruption that requires less specialized skills or highly sophisticated corruption? What are the caveats/risks of each option?

State of Governance

Because corruption occurs in all strata of both the public and private sectors, a solid understanding of a country's governance and operating environment is essential to establishing the anti-corruption measures that will yield the greatest result. In many countries the establishment of anti-corruption agencies and measures omitted such analysis and study, which explains in part the ineffectiveness of their anticorruption efforts (Bhargava and Bolongaita 2004). What may work in some governance environments may not work in others because of differing socio-political, economic, historical and legal factors.

In Bangladesh, BRAC University's Institute of Governance Studies report, *The State of Governance: Knowledge, Perceptions, Reality*, explains the complexities and constraints facing governance in Bangladesh (CGS 2006). This report describes the political, economic, and social conditions that contribute to both the successes and failures of Bangladesh's governance and underscores the importance of reform in key administrative areas for long-term political and economic stability.

The main finding of the report is that political competition and partisan agendas have permeated all aspects of public institutional and collective social life in Bangladesh (CGS 2006). For example, the distribution of resources for schools, roads, health facilities, and relief goods and the administration of contracts are highly politicized and occur in visibly polarized environments in which political parties are in competition with each other. The influence of 'party politics' has even filtered down to the local level of government where parties have tight control over local decision-making. Moreover, the

media and civil society have been corrupted by politicization. Professional associations such as lawyers, doctors, civil servants, port workers, businessmen, academics, and journalists may outwardly follow a specific party line. The influence of politics in the judiciary is perhaps the most harmful to Bangladesh's governance, as it is the most powerful institution of accountability.

Although Bangladesh's formal mechanisms to ensure accountability are weak or non-existent, informal mechanisms are taking shape in the form of 'watchdogs' from members of the media, citizenry, and non-governmental organisations (NGOs). The closing gap between the "untouchable" upper class and the underprivileged lower class aids this process. But informal mechanisms have their limitations, too, and do not replace the need for governments to institutionalize accountability measures. In the absence of these mechanisms, citizens are protesting in the streets, resulting in severe damage to property, injuries, and death. Unfortunately, the majority of the push to create proper accountability mechanisms is generated by donors rather than internal forces. Good governance cannot be imposed from the outside without internal commitment to change and political will to implement it (CGS 2006).

Question to Consider

- Even in the presence of a successful ACA, other factors contribute to the weakening of the state of governance. How can the ACC be set up to mitigate, or at least not be hindered, by these other factors?

Political Will

Without strong political backing of the government, an ACA will not accomplish its mission, even when internal support and sound leadership are present in the ACA. The government exercises discretion over the fiscal budget and the way in which the ACA can carry out its functions. If a country is in a state of political capture in which political influences permeate the administrative and judicial systems, the mission of an ACA can be thwarted.

A country's degree of state capture, in which laws, rules, and regulations are manipulated through private payments to public officials to favour a personal interest can undermine the political will of a government. Corrupt governments are more resistant to change. A broad anti-corruption coalition that spans reformist elements from different sectors of society, of sufficient size and credible leadership, is necessary to shift the balance of forces in favour of change (Bhargava and Bolongaita 2004). **Without the backing of a pro-reform coalition that can exert heavy pressure on an anti-change government, any anti-corruption strategy will flounder.**

Question to Consider

- With whom can the ACC partner to promote broad-based and multi-sector reforms?

ACA's Legal Framework⁴²

As is evident from Bangladesh's ACC Act, an organisation cannot legally function until it has the proper rules in place. This continuously foiled the Bangladesh ACC's ability to investigate and prosecute suspects. Not only were there no clear guidelines to follow, but too many resources and energy were spent in the courts as the legality of the ACC's procedures was continuously challenged. Based on the guiding legislation, an ACA must be properly informed of its mandate and how to proceed with its functions so that it can maintain a high level of efficiency. Furthermore, an ACA must also be given the proper powers to investigate effectively and to prosecute anti-corruption crimes, including the authority to seize documents, summon witnesses, require officials to declare their assets, freeze assets, arrest suspects, and track and recover suspect money held in foreign banks.

Bangladesh's Anti-Corruption Legislation

- The Code of Criminal Procedure 1898
- The Penal Code 1860
- The Criminal Law Amendment Ordinance 1944
- The Prevention of Corruption Act 1947
- The Anti-Corruption Act 1957
- The Anti-Corruption Rules 1957
- The Criminal Law Amendment Act 1958
- The Anti-Corruption (Tribunal) Ordinance 1960
- The Criminal Law Amendment Act 2004
- Ombudsman Act 1980
- Money Laundering Act 2002
- Anti-Corruption Commission Act 2004

Question to Consider

- Does the ACC Act go far enough in giving the ACC the necessary powers to carry out its functions?

⁴² See the analysis of Bangladesh's anti-corruption legal framework by the law firm of Mahmood, Jabbar Khan Barristers and Associates and the general lessons that can be drawn from the ACC.

Independence

The independence of an ACA is characterized by the absence of undue influence from the Executive, political parties, the bureaucracy, or others. It is a key component to creating credibility. Structuring an ACA to be dependent upon any particular branch or department in the government invites individual interests to influence the administration of the organisation, thus compromising investigations and prosecutions of corruption offences. Lack of independence also prevents an ACA from pursuing corruption offences in all strata of society and in all sectors.

Independence should be balanced with accountability. The greater the independence, the greater will be the demand for accountability. An ACA that has various oversight mechanisms in place, particularly ones that involve public participation, helps ensure that bias is kept out of the organisation. For example, Hong Kong's Independent Commission Against Corruption (ICAC) has four independent committees that monitor the organisation. One of the committees includes members of civil society so that the public is informed of the internal processes of the ICAC. This committee facilitates transparency, another component that gives an ACA a degree of credibility. Australia (New South Wales) has established two internal oversight committees and two external oversight committees. The internal committees review the organisation's policies and procedures on prevention, education, research, and investigation, while the external committees ensure that it remains accountable to the public.

To enhance its autonomy, the selection and appointment of the executive(s) of the ACA should be a shared responsibility of several institutions (UNDP 2005). The list of qualified individuals for both the selection committee and the organisation's leadership should represent both the public and the private sectors, such as businesses, NGOs, civil society, and professional associations. This will downplay negative influence by any one particular entity and grant more stakeholders 'buy-in' to the process. It should be as transparent as possible to prevent the appointment process itself from becoming corrupt.

In addition to oversight mechanisms and autonomy in the selection of the ACA leadership, an ACA should also have the freedom to hire its own staff. This will avoid undue influence from the government and will allow the organisation to select the most qualified workforce. They should also have the authority to investigate public servants and require them to submit wealth statements, if necessary, so that they are not an 'agent' of any particular department or branch of government. The ACA should have discretion over how it will allocate the funds among its various departments, yet an oversight mechanism should be in place to ensure that the process is transparent. Finally, the ACA should be accountable to a representative body such as Parliament rather than the Executive branch.

Questions to Consider

- What are the assurances of independence in the ACC Act?
- Are these practiced or fully implemented?
- How can the independence of the ACC be further strengthened?

Benchmarks for Success

Governments, donors, civil society, and ACAs themselves will flag the organisation a “failure” if it cannot meet certain expectations. These are often based on applying benchmarks of successful models such as Hong Kong and Singapore without recognizing that economic, political, and social conditions vary country to country. When the ACA is unable to meet unrealistic expectations, it loses sustained support which limits its capacity to develop as an organisation. Failure “to thrive” encourages disillusionment in governments, donors, and in ACAs themselves (Doig, Watt, and Williams 2005).

The ACA is connected to two other entities – government and donors – which also affect its success or failure. When new governments are elected, priorities and resources are shifted. Some place anti-corruption high on the agenda while others fail to connect anti-corruption efforts to poverty reduction, administrative reform, and democratization. Moreover, a government that perceives an ACA as part of a wider anti-corruption agenda is more likely to contribute to its success than one that expects it to bear sole responsibility. Therefore, an ACA should be set up to withstand the flux of political rotation and maintain a consistent level of expectation.

Donor support is dependent upon a government’s ability to meet core democratization and anti-poverty objectives (Doig, Watt, and Williams 2005). Countries that demonstrate a commitment to these goals are more likely to fare well in receiving donor funds and assistance in anti-corruption efforts. However, because donors have a vested interest in the success of the ACA, they can heavily influence the funding and policy priorities of the ACA, resulting in high expectations and undue pressure. While donors should contribute to the policy formulation process, ACAs should take the lead and develop the strategy best suited to the organisation. Expectations of the ACC should be commensurate with their actual capabilities as well as the environment in which it operates.

Some ACAs that have modelled their organisational structure and functions on the highly successful Hong Kong and Singapore models could be vulnerable because of differences in their circumstances. For instance, Hong Kong and Singapore are both small city-states and have different government organisational structures than a much larger nation separated into different provinces or states. Unlike many developing countries, they also possess vast resources. Singapore, for example, has only 3% of the

population of Bangladesh, with nearly half of Bangladesh's GDP and roughly 30 times its per capita GDP⁴³

Improving performance *measurement* is equally important as improving actual performance. Once realistic expectations of what an ACA can perform are identified, a plan to measure their impact should be defined, particularly with an understanding of which environments are most conducive to ACA success. To develop the most appropriate policy framework for measuring success, Doing, Watt, and Williams (2005) propose the following framework:

- The government must draw up a single, evidenced, and realistic country strategy, allocating responsibilities and a timeline for delivery with specific and measurable outputs.
- The strategy must be inclusive and devolve responsibility for anti-corruption work to the right public sector institution.
- Once agreed, governments must signal commitment through core funding, with project coordination and cooperation between donors, to support the single strategy.
- The strategy must prioritize the areas of greatest public dissatisfaction, balanced by the areas where there is the greatest loss of revenue.
- The ACA should seek partnerships with developed country institutions for advice, training, and evaluation.
- Independent evaluations should be undertaken on an annual basis to monitor the organisation's management, goals and objectives, budgetary process, and performance.

The success of an anti-corruption agency depends on the political, social, and economic climate that allows it to work with adequate resources and in an independent manner. There is no "one-size-fits-all" strategy; each is very specific to that country, and a thorough analysis of the state of governance, political will, and legal framework is required to determine the proper structure, functions, and institutional arrangements of the ACA. Finally, indicators of success and the proper way to measure them should be explicit in order to garner government and civic support.

Questions to Consider

- What can the ACC realistically expect to achieve?
- How does the ACC define success?
- Who sets the standards of success?
- What is/has been the role of donors in formulating the ACC's policies? Are they commensurate with what the organization can realistically hope to achieve?

⁴³ World Factbook

Appendix I
Bangladesh's ACC at a Glance: Statistics (as of May 2007)⁴⁴

1. Number of complaints registered

Approximately 25,000 complaints (allegation petitions) have been received since the inception of the ACC in 2004. The BAC scrutinized about 6,000 allegation petitions for inquiry. Present ACC is currently processing 600-700 allegations. Scrutiny is performed by an internal review committee.

2. Current cases investigated

Prior to 2007, the ACC began investigations into 130-150 cases including high-profile cases of the now defunct BAC. Since 2007 the ACC has started investigating new VIP cases that were lodged very recently.

3. Past cases since 2004

About 60-70 cases of the defunct Bureau were investigated and charge sheets submitted. The cases have since been stayed by the order of the High Court.

4. Number of cases prosecuted

As of this writing, prosecution/trial has yet to begin, with only thirty-seven cases currently in the queue. Previous ACC submitted charge sheets in 60-70 cases but trials could not start because of stay order from the High Court.

5. Number of cases that ended in conviction

Not applicable because no trial has yet begun due to stay order from the High Courts.,

6. Number of cases ending in acquittal

Same as above.

7. Number of case dismissals due to procedural or other reasons

Same as above.

8. Rate of conviction

⁴⁴ The following is drawn from an unpublished paper prepared by the ADB Project: Preparing the Good Governance Project (BAN 4744) and the materials are permitted with the permission of the Team Leader Donald Bowser. The statistics have not been verified with the relevant agency.

BAC'S rate of conviction was 40%. ACC's conviction rate will be ascertained after trials have begun.

9. Number of cases filed after January 11, 2007

Approximately 70. (see note no. 3).

10. Present status of the cases

All cases lodged by the ACC are still under investigation including the 13 VIP cases lodged by the present commission. The ACC has started inquiry into 100 high profile corruption cases against Ex-Ministers, MPs, bureaucrats, and business people.

11. Staff size at ACC

BAC's staff size was 1,281. The previous ACC proposed 1,376 of which 650 were approved. The present ACC has proposed a staff of 1,250.

12. Existing equipment

Photo copiers: 3; Faxes: 1; Computers: 50

13. Budget

BDT 153,132,000

Appendix II

Institutional reforms to be considered to strengthen the enforcement of anti-corruption incentives (UNDP 2004):

- Establish independent investigators, prosecutors, and adjudicators that ensure 'equal' enforcement of the laws and regulations.
- Strengthen capacity and integrity of the police as the frontline investigative agency for criminal infractions.
- Strengthen and ensure independence and accountability of the judicial system.
- Provide adequate powers of investigation and prosecution consistent with international human rights norms.
- Integrate transparent mechanisms, which eliminate privileges that have no relation with the needs of the public, and which high public officials enjoy by reason of their office, into the reform of enforcement measures.
- Develop effective complaints mechanisms and procedures for appeals, whether internally by a public servant or by a member of the public.
- Develop mechanisms to protect whistleblowers: encourage the development of institutions, laws and practices which ensure that responsible citizens can report corrupt practices without fear of reprisals, and ensure that the media is empowered to play its pivotal role in holding relevant individuals and institutions accountable.
- Tackle special sectors that are known to breed corruption.
- Impose powerful deterrents for the would-be corrupt, such as civil penalties, blacklisting of corrupt firms, extradition arrangements, and other legal provisions that enable the profits of the corrupt to be seized and forfeited, inside or outside the country.
- Strengthen the ministry in charge of civil service reform and establish a close relationship between it and other anti-corruption agencies (enforced codes of conduct; increased supervision; results-oriented enforcement; management-based measurable performance indicators; empowering the public through citizens' charters; a credible public complaints system; access to information).

Appendix III

What makes a successful Anti-Corruption Agency? (Meagher 2004)

- **Establishment** – includes a comprehensive anti-corruption strategy, careful planning and performance measurement, realistic expectations, and strong enough political backing regardless of consequences. Capitalizing on a traumatic level of scandal can help create a sense of urgency and necessity in setting up an anti-corruption agency. The culture of a country can also make a difference, particularly when social norms of rule-obedience permeate.
- **Focus** – needs to be clearly defined; for example, define the agency's role as watchdog, educator, prosecutor, etc. Determine if the agency will take on all complaints or select the key ones based on a set of qualifications. If feasible, an agency that tackles petty corruption with the same determination as high profile corruption will deter an escalation of high profile corruption; meaning, no one is barred from investigation and prosecution.
- **Accountability** – application of legal standards, the availability of judicial review, systems for public complaints and oversight, a requirement that the agency answer to all branches of government and the public, and precise and comprehensive expenditure accountability. Some commentators also suggest keeping the agency's size as well as the "free" support given by aid donors to a minimum.
- **Independence** – characterized by the absence of politicization of ACA operations, as well as fiscal autonomy.
- **Powers** – strong research and prevention capabilities, access to documents and witnesses, ability to freeze assets and seize passports, protect informants, monitor income and assets, propose administrative and legislative reforms, and exercise jurisdiction over the chief of state, sometimes at the expense of limited judicial scrutiny.
- **Staff** – well-trained and well-compensated professionals with a strong ethic of professionalism
- **Other resources** – sufficient funds, adequate facilities and assets, and high level information sharing and coordination with other government bodies
- **Complementary institutions** – functioning courts, free and active media, and active community of NGOs and public interest groups, and other capable institutions such as supreme audit and central bank.
- **Other exogenous conditions** – macroeconomic stability, absence of crippling distortions, and an environment where corruption is not entrenched across the whole system.

Caveats

- Risk of politicization, predation, diversion of attention and resources from other necessary areas, and bureaucratic duplication.

- Degree of success is dependent upon cooperative relationship with other government institutions.
- Limitations such as economic instability, lack of credible courts and watchdog agencies, regulatory incentives towards bribery and rent-seeking, and other large-scale drivers of corruption are beyond the control of anti-corruption agencies.
- Not possible to create the perfect “blueprint” of an anti-corruption agency due to political, bureaucratic, cultural, and economic variables.

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