



The Government of
the People's Republic of Bangladesh

UNCAC

A Bangladesh Compliance & Gap Analysis

July 2008
Second Edition



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First Edition Published by

Government of the People's Republic of Bangladesh
January 2008

Second Edition Published by

Government of the People's Republic of Bangladesh
July 2008

Ministry of Law, Justice and Parliamentary Affairs

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Cover Design: Amreen Rahman
Page Layout & Printing: Genesis (Pvt.) Ltd.



Foreword

The accession to the United Nations Convention against Corruption (UNCAC) by the Government of the People's Republic of Bangladesh in February 2007 has been a significant and symbolic step, expressing our Government's commitment to taking swift and effective reform measures necessary to promote good governance and fight corruption in compliance with international standards. The UNCAC provides an excellent benchmark for the Government of Bangladesh to advance and measure its progress in fighting corruption. Consequently, the Government believes that any sustainable and effective anti-corruption reform program should be based on a comprehensive analysis of compliance between the UNCAC and its laws, institutions, and processes in place. Such an analysis will generate understanding of potential gaps and loopholes, thereby better equipping the Government in its anti-corruption efforts. To that end, an initial version of the report, "UNCAC: A Bangladesh Compliance & Gap Analysis" was published by the Government in January 2008. It was created to serve as a dynamic tool for the purposes of combating corruption; most importantly, it provides a comprehensive understanding of the current status of Bangladesh's anti-corruption system vis-à-vis the internationally recognized benchmark of the UNCAC. Furthermore, with much acclaim, the Government of Bangladesh used it as its basis for reporting on its progress in implementing the UNCAC at the second Conference of States Parties in Bali, Indonesia, in January 2008.

Since January 2008, significant progress has taken place domestically with regard to anti-corruption efforts. Most notable are the legislative developments, namely the coming into effect of the *Money Laundering Prevention Ordinance (MLPO), 2008* and the *Public Procurement Rules, 2008*. The MLPO is of particular consequence as it was drafted in light of the UNCAC and as such, has made huge strides in bringing Bangladesh into compliance with the Convention. Given these important changes, the Government found it necessary to revise the report so that it may offer a current picture of Bangladesh's status with regard to the UNCAC, thereby serving as more effective instrument for fighting corruption. Furthermore, in the spirit of updating the report, additional articles of the UNCAC have been added, to provide a more thorough analysis. The revised report will ensure that the Government continues to meet its other objectives for the report. In particular, the report is intended to guide and instruct anti-corruption reform programs undertaken by the Government and other concerned stakeholders over the coming months and years. The revision guarantees that the Government possesses a current and comprehensive grasp of the situation to adroitly direct its efforts. Moreover, the analysis will enable an up-to-date evaluation of its progress in implementing anti-

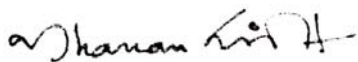


corruption measures over time, which allows civil society and the general public in Bangladesh to monitor the Government's commitment to combating corruption.

The report is the result of an extraordinary effort of coordination and cooperation among all concerned government institutions of Bangladesh, lead by the Anti-Corruption Commission and the Ministry of Law, Justice and Parliamentary Affairs, with the support of Ministries of Foreign Affairs, Finance, Planning, Home Affairs as well as the Cabinet Division, the Bangladesh Bank, the Office of the Attorney General, and the Law Commission. The work was coordinated by the Joint Secretary (Drafting) of MOLJPA who acted as focal point for this exercise.

The report was planned and drafted jointly with the experts from the Institute of Governance Studies (IGS) of BRAC University, to whom we express our sincere thanks. Financial and technical support from the German Technical Cooperation (GTZ) towards this important exercise is gratefully acknowledged, as well as expert advice provided by the Basel Institute on Governance, the UN Office on Drugs and Crime, the World Bank and the UNDP.

The revised report is a manifestation of the Government's continuous efforts to have a comprehensive and in-depth assessment on the status of implementation of the UNCAC in Bangladesh.



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Ministry of Law, Justice & Parliamentary Affairs

Ministry of Religious Affairs

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Acronyms

ACC	– Anti-Corruption Commission
ACC Act	– Anti-Corruption Commission Act, 2004
ACC Rules	– Anti-Corruption Commission Rules, 2007
AML	– Anti-Money Laundering
AMLD	– Anti-Money Laundering Department, Bangladesh Bank
BASC	– Bangladesh Administrative Staff College
BB	– Bangladesh Bank
BB Circular	– Bangladesh Bank (Anti-Money Laundering) Circular
BBTA	– Bangladesh Bank Training Academy
BCGA	– Bangladesh Compliance and Gap Analysis
BCS	– Bangladesh Civil Service
BCSR	– Bangladesh Civil Service Rules, 1981
BIG	– Basel Institute on Governance, Switzerland
BPATC	– Bangladesh Public Administration Training Centre
CAG	– Comptroller and Auditor General
CGFR	– Compilation of General Financial Rules
CID	– Criminal Intelligence Department
CoSP	– Conference of State Parties
COTA	– Civil Officers Training Academy
CPAR	– Country Procurement Assistant Report
CPC	– Code of Civil Procedure, 1908
CPTU	– Central Procurement Technical Unit
CrPC	– Code of Criminal Procedure, 1898
EA, 1872	– Evidence Act, 1872
EA, 1974	– Extradition Act, 1974
EC	– Election Commission
ECNEC	– Executive Committee of National Economic Council
EPR	– Emergency Powers Rules, 2007
FATF	– Financial Action Task Force
FI	– Financial Institution
FIU	– Financial Intelligence Unit
FY	– Fiscal Year
GATCO	– Global Asia Trading Company
GFET	– Guidance for Foreign Exchange Transaction, 1996
GoB	– Government of Bangladesh
GTZ	– German Technical Cooperation



IDA	– International Development Agency
IGS	– Institute of Governance Studies, BRAC University
IMED	– Implementation Monitoring and Evaluation Department
INTERPOL	– International Criminal Police Organization
IPSAS	– International Public Sector Accounting Standards
KYC	– Know Your Customer
MIS	– Management Information System
MLA	– Mutual Legal Assistance
MLPA	– Money Laundering Prevention Act, 2002
MLPO	– Money Laundering Prevention Ordinance, 2008
MoLJPA	– Ministry of Law Justice and Parliamentary Affairs
MOU	– Memorandum of Understanding
NGO	– Non-Governmental Organization
NIPA	– National Institute of Public Administration
NIS	– National Integrity Strategy
NPC	– National Pay Commission
PAC	– Public Accounts Committee
PATP	– Public Administration Training Policy, 2003
PCA	– Prevention of Corruption Act, 1947
PEPs	– Politically Exposed Persons
PPPAP	– Public Procurement Processing and Approval Procedures, 2004
PPR	– Public Procurement Regulations, 2003
PSC	– Public Service Commission
RPO	– Representation of the People’s Order, 1972
RRC	– Regulatory Reform Commission
RTI	– Right to Information
SAARC	– South Asian Association for Regional Cooperation
SDOMD	– SAARC Drug Offence Monitoring Desk
STI	– Staff Training Institute
STOMD	– SAARC Trafficking Offence Monitoring Desk
TEC	– Tender Evaluation Committee
TIB	– Transparency International Bangladesh
UN	– United Nations
UNCAC	– United Nations Convention against Corruption
UNDP	– United Nations Development Programme
UNODC	– United Nations Office on Drugs and Crime
UNSC	– United Nations Sanction Committee
US	– United States
USD	– United States Dollar

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Executive Summary

The first Conference of States Parties (CoSP) to the United Nations Convention against Corruption (UNCAC), held in Jordan on December 2006, took far reaching actions to promote the implementation of the UNCAC. In particular, it encouraged States Parties, including Bangladesh, to take systematic steps to identify necessary legislative reforms and internal capacity needs to fully implement the UNCAC. It also called upon signatories to complete and return the self-assessment checklist developed by the Secretariat, which the Government of People's Republic of Bangladesh (GoB) did in October 2007. The first CoSP further called upon the Secretariat to collate and analyze information provided by States Parties and signatories through the self-assessment checklist or other means, and to share this information and related analysis with the CoSP at its second session. In order to support this process, and to advance its own UNCAC implementation efforts, the GoB decided to take the self-assessment process one step further by analyzing its entire set of anti-corruption laws, institutions and mechanisms against the Convention standards in the framework of a comprehensive UNCAC gap and compliance review. The initial version of the report was the result of this process and served the GoB at the second CoSP in Bali in January 2008 to report on its progress in implementing the UNCAC. Since that time, significant legal changes have taken place making it necessary to update and expand the report. To that end, the GoB has undertaken a revision of the report which addresses legal developments and additional Convention articles. It is intended that this revised edition will be a more precise tool given its comprehensive in-depth coverage.

The overall findings of the report indicate that in terms of legal regime, Bangladesh appears to be largely compatible with the standards and principles of the UNCAC. However, the report also identifies a number of weaknesses with regard to gaps in both the law and practice. There are also areas where further clarification and modification of existing legislation is necessary, particularly on laws related to international cooperation. Furthermore, certain laws need to be amended; for example, all offences covered by the UNCAC should qualify as “extraditable offences” in the *Extradition Act, 1974* in order to promote greater international cooperation between States Parties for the prevention and prosecution of corruption and related crimes.

Prevention of Corruption (Chapter II UNCAC)

With regard to preventive measures, there exists a comprehensive legal regime in place that includes an anti-corruption law, the *Prevention of Corruption Act, 1947*, and the *Anti-Corruption Commission Act, 2004*, which created an independent anti-corruption body. Furthermore, a



comprehensive procurement regime exists with the *Public Procurement Act, 2006*, and the *Public Procurement Rules, 2008*. The Bangladesh regulatory regime that serves to promote public sector integrity, governing issues of public sector recruitment, hiring, retention, promotion and retirement, is composed of the *Bangladesh Civil Service Rules, 1981*, the *Bangladesh Civil Service Recruitment (Age Qualification and Examination for Direct Recruitment) Rules, 1982*, the *Public Service Commission Ordinance, 1977*, and guidelines for public sector training, such as the *Public Administration Training Policy (PATP), 2003*. Furthermore, institutions such as the constitutionally sanctioned Office of the Comptroller and Auditor General (CAG) and the Central Procurement Technical Unit (CPTU) are additional mechanisms that ensure greater transparency and accountability in public procurement and public finance.

However, implementation of these laws in practice still lacks consistency, and the study identifies a number of areas where this should be improved as a matter of priority. For example, the application of the procurement regime has proven to be relatively inconsistent across the Government and within individual agencies, and implementation has also been severely hampered by the lack of adequate resources within concerned agencies.

While there is a set of rules in place governing issues of recruitment, promotion, hiring and codes of conduct for public officials, their practice has come under scrutiny from time to time; in particular, the approach and content of the existing instruments, including the *Code of Conduct, 1979*, require modernization in order to create a “citizen friendly” and efficient pool of public officials. There is also a need for training and capacity building of public officials in corruption specific issues. Furthermore, a more coherent reward structure for public officials as a means to provide incentives and promote greater integrity has also been identified as a useful tool to professionalize the public service. With regard to integrity and transparency in election processes and the funding of political parties, the changes made in 2008 to the *Representation of the People’s Order (RPO), 1972* are significant reform measures largely in line with the requirements of the UNCAC. For instance, the suggested amendments to the RPO, 1972 require political parties and individual candidates to register with the country’s Election Commission, provide a number of grounds for disqualification from participating in elections, and reduce the maximum number of constituencies from which candidates may contest elections from five to two.

In reference to improving the management of public finance, separate internal audit units could be created within Ministries to complement the functions and role of the offices of the CAG. This would increase the overall capacity available for the oversight of public finance management and assist in overcoming the current delays in submitting the annual audit reports. Conducting audits of foreign aided projects is a possible way to ensure accountability in the public international sector. Additionally, with regard to the highly corruption prone area of public procurement, the

coming into force of the *Procurement Act, 2006* has given adequate means to address current gaps and loopholes in policy and practice in this area. Similarly, the forthcoming Audit Act is highly desirable as it will fill some of the gaps with regard to transparency and integrity in the management of public finances.


Criminalization and Law Enforcement (Chapter III UNCAC)

With regard to criminalization and law enforcement, States Parties are required to criminalize a wide range of acts of corruption (articles 15-27) and to establish a series of procedural measures and mechanisms to support such criminalization (articles 28-41). Criminalization obligations encompass bribery of national public officials, bribery of foreign public officials and officials of public international organizations, bribery in the private sector, embezzlement, misappropriation or diversion of property by public officials and in the private sector, trading in influence, abuse of function, illicit enrichment, laundering of proceeds of crime, concealment and obstruction of justice. Other than the offence of active bribery of foreign public officials and officials of public international organizations, all mandatory offences are criminalized in the existing domestic laws of Bangladesh. All non-mandatory offences, with the exception of passive bribery of foreign public officials and officials of public international organizations and bribery in the private sector, are also criminalized in the domestic laws of Bangladesh. Consequently, it can be said that the existing laws of Bangladesh are largely in compliance with the requirements set forth in articles 15 to 27 of the UNCAC.

Law enforcement obligations of the UNCAC encompass certain procedural steps meant for detection, prosecution, punishment and reparation. Almost all the law enforcement mechanisms are available in the domestic legal regime. However, mechanisms for protection of witnesses, experts and victims are not yet compatible with the UNCAC standards. Moreover, there are weaknesses in the mechanisms for cooperation with law enforcement agencies, cooperation between national authorities, and cooperation between national authorities and the private sector. Over the years, many of the offences and law enforcement mechanisms contained in domestic law remained underused. However, significant changes to this trend have taken place in recent times; particularly noteworthy are the activities and activism of the Anti-Corruption Commission (ACC), a specialized body entrusted with functional independence and with the authority to enforce relevant anti-corruption laws.

International Cooperation (Chapter IV UNCAC)

With regard to international cooperation, the UNCAC requires States Parties to provide the widest measure of mutual assistance necessary for the prevention, investigation and prosecution of offences mentioned in the Convention. Under the Convention, States Parties can opt to take the



provisions of the UNCAC as a basis for cooperation on extradition with other States Parties or opt to cooperate on the basis of bilateral treaties. Bangladesh has taken this second option. The *Extradition Act (EA), 1974* spells out a list of extraditable offences, with bribery and embezzlement being a few of the UNCAC offences that have been listed therein. Consequently, numerous UNCAC offences are not recognized by the domestic law as extraditable offences, a gap that should be filled by amending the list of extraditable offences in the EA, 1974 according to the respective UNCAC provisions.

However, the domestic legal regime of Bangladesh now has adequate provisions to ensure widest mutual legal assistance (MLA) to other UNCAC State Parties as required by the Convention. Through gazette notification the Government has nominated the Ministry of Home Affairs and the Office of the Attorney General as the designated central authority for receiving and executing MLA requests. Furthermore, section 26 of the *Money Laundering Prevention Ordinance, 2008* allows the Government, or in appropriate cases the Bangladesh Bank (BB), to enter into agreements with foreign countries or organizations to control money laundering. Moreover, under section 503 (2B) of the *Code of Criminal Procedure, 1898*, there are limited provisions for seeking assistance for gathering evidence through commissions that can examine witnesses abroad. The law does not permit seeking other forms of MLA or responding to incoming requests for MLA, such as providing information or documents relating to investigation or prosecution. Nonetheless, the Government is empowered to enter into MLA agreements with other States. Indeed, Bangladesh has recently taken the initiative to conclude such agreements. Still, international cooperation through the central authority under the UNCAC has not yet taken place. Consequently, despite these legal developments, domestic legislation still requires some amendments and improvements in order to be compatible with the UNCAC provisions.

Asset Recovery (UNCAC V Chapter)

With regard to asset recovery, the UNCAC requires that States Parties criminalize the conversion or transfer of proceeds of crime done for the purpose of concealing or disguising the illicit origin of the property. Money laundering has been an offence in Bangladesh since April 2002 when the *Money Laundering Prevention Act (MLPA), 2002* was enacted. However, the MLPA was criticized for inadequacy in controlling all forms of money laundering due to ambiguity in the definition of money laundering and an insufficient list of reporting agencies. The *Money Laundering Prevention Ordinance (MLPO), 2008* has successfully addressed these issues.

Money laundering is a non-bailable criminal offence. The penalty can be up to seven years imprisonment and fines (MLPO, section 4). Special courts for corruption related cases have jurisdiction to try cases of money laundering. Cognizance of offences can only be taken at the written


complaint made by the ACC or by any law enforcing agency authorized by the ACC. The MLPO further authorizes the BB to supervise the activities of banks in relation to money laundering and to take appropriate steps to address any problems that may come up. The MLPO requires financial institutions to accurately identify customers and to report suspicious transactions to the BB. Consequently, banks in Bangladesh are currently implementing appropriate procedures and “Know Your Customer” practices. A detailed *Guidance Note on Prevention of Money Laundering* has been circulated among banks and financial institutions to guide this process. Banks are also required to have an Anti-Money Laundering Compliance Unit in their head office and a designated Anti-Money Laundering Compliance Officer in each bank branch. Additionally, the BB conducts regular training programs for compliance officers based on the guidance note.

A Financial Intelligence Unit (FIU) has also been formed that operates as part of the BB’s Anti-Money Laundering Department (AMLDD). The FIU’s effectiveness will be largely enhanced upon Bangladesh’s membership into the Egmont Group, a coordinating body for the international consortium of FIUs. Bangladesh has already taken some steps towards achieving membership, such as amendment of laws relating to money laundering and enactment of the *Anti-Terrorism Ordinance, 2008* which includes provisions for criminalizing terrorist-financing. Once Bangladesh becomes a member, the BB would be able to exchange information or expertise with FIUs of the other country members.

A number of other improvements are further recommended with regard to the GoB’s money laundering prevention regime in order to fully comply with international standards. In particular, Bangladesh should provide safe harbor provisions to protect reporting individuals, and introduce banker negligence accountability to ensure that individual bankers may be held responsible if their institutions are found laundering money.

Technical Assistance and Information Exchange (UNCAC VI Chapter)

To combat corruption, States Parties are obligated to take a comprehensive approach that involves reforms of law and the enhancement of practical capabilities related to the prevention and detection of, and recovery from, acts of corruption. The UNCAC specifically obligates States Parties to undertake training, technical assistance, monitoring, and efforts at international cooperation for the purposes of successfully implementing anti-corruption laws and policies, and increasing capacity to take efficient and appropriate measures. Domestic law expressly provides for anti-corruption training. Both the ACC Act, 2004 and the MLPO, 2008 empower government bodies to provide training to prevent corruption. The ACC and the BB’s AMLDD have conducted training on the relevant laws and proper practices, with plans underway for more training in the future.



Despite laws in place and the presence of training bodies in various government institutions, compliance with the UNCAC training requirements is lacking. One major obstacle to implementing training programs is lack of resources. Undoubtedly, to overcome this, the GoB must prioritize providing or securing adequate funding for training programs. Once funding is secured, problems in implementation will be easier to address. Furthermore, entering into bilateral and multilateral agreements with regard to technical assistance is recommended as Bangladesh could benefit from the experience and knowledge of other nations.

With regard to information gathering, Bangladesh has made noteworthy efforts. In preparation for the second CoSP in Bali, Indonesia in January 2008, the GoB prepared and distributed the initial version of this report, both to share its progress with other States Parties and to show its commitment to fighting corruption. Furthermore, the attending Bangladesh delegation was very active at the meeting and was eager to exchange information with other nations. Domestically, there are other mechanisms in place that should facilitate compliance with the UNCAC in regard to research and analysis. The ACC Act, 2004 and the MLPO, 2008 both contain provisions for research and analysis for the purposes of corruption prevention. Monitoring is also provided for in the MLPO, 2008 and the ACC Act, 2004. Both the BB and the ACC have mechanisms in place that review and monitor practical compliance with the laws and regulations in place; however, means to monitor and review the effectiveness of policies is lacking. More government effort and resources should be devoted to research, analysis, and monitoring as such activities are necessary for a successful plan of action against corruption.

The GoB has recently taken steps related to international cooperation to promote compliance to the Convention. In particular, the GoB has now established an authority to assist other States Parties in implementing and developing measures to prevent corruption. Additionally, in further compliance with the UNCAC, Bangladesh has designated a central authority responsible for requests of mutual legal assistance, namely the Ministry of Home Affairs and the Office of the Attorney General. These two developments are significant as previously the main obstacle to international cooperation was that there was no authority to conduct such efforts. Another important development with regard to Convention implementation through international cooperation is the MLPO, 2008, which gives the BB and the ACC power to make agreements with other countries or authorities to recover stolen assets. Given that the GoB has only recently been equipped to engage in international cooperation, it is difficult to measure practical compliance; nonetheless, it is clear that Bangladesh is now endowed with the necessary legislation and is empowered to act.

Chapter 1

Introduction

- 1.1 Background
- 1.2 Aim(s) and Objectives
- 1.3 Methodology

Introduction


1.1 Background

The Government of the People's Republic of Bangladesh (GoB) accession to the United Nations Conventions against Corruption (UNCAC) in February 2007 was an important development in its efforts toward great reforms for good governance. Not only does it reinforce the Government's commitment and declared strategy to fight corruption, it assists the country's efforts to comply with international standards. In December 2006, the Government participated as an "observer" at the first Conference of the States Parties (CoSP) to the UNCAC in Dead Sea, Jordan. The CoSP in Jordan made far reaching decisions to promote the implementation of the UNCAC, specifically requiring that States Parties, including Bangladesh, take systematic steps toward identifying necessary legislative reforms, strengthening internal capacity needs for effective law enforcement, and formulating anti-corruption strategies that are utilized across institutions at risk of corruption.

A reform regime, necessary for the effective implementation of the UNCAC, must be based on a clearly articulated compliance review and analysis (gap analysis) on the implications of the UNCAC provisions on Bangladesh's legislation, practices and institutional realities, including an assessment of the extent of compliance, gaps and capacity needs. Such analysis has been successfully used as an instrument for identifying needed legal and institutional changes by other States Parties. As an expression of their commitment to generating such an analysis, the GoB formed an Inter-Ministerial Committee in April 2007, led by the Secretary of the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), to conduct the Bangladesh Compliance and Gap Analysis (BCGA). The Committee was made responsible for coordinating with relevant ministries and other stakeholders. Also, a Joint Secretary (Drafting) of MoLJPA was designated as the focal point for the exercise.

The study was coordinated by the MoLJPA and carried out in partnership with the experts from the Institute of Governance Studies (IGS), BRAC University, with financial and technical support from the German Technical Cooperation (GTZ), as well as with expert advice from the Basel Institute on Governance (BIG) in Switzerland, the United Nations Office on Drugs and Crime (UNODC) in Vienna, Austria, and the United Nations Development Programme (UNDP).

Between October 2007 and January 2008 a number of activities were undertaken that included the completion and submission of the UN Self Assessment Checklist, formation of a research team, an orientation and



methodology workshop, desk based research, focus group discussions, and interviews with technical specialists in various government ministries and departments. These activities culminated in the drafting of the first edition of the report, which was presented to and approved by the Inter-Ministerial Committee on 10 January, 2008.

The BCGA was presented and distributed at the CoSP in Bali, Indonesia in January 2008. The report generated a great deal of interest and discussion at the CoSP in Bali and in Bangladesh. However, since that time, major legislative changes were introduced which has made it necessary to revise the report. On 3 May, 2008, the Institute of Governance Studies (IGS) was pleased to host a Needs Assessment Workshop to devise a strategy to further implement the provisions of the UNCAC. Workshop participants reached a consensus that priority should be given to updating the report. Aside from wanting to include the significant legal and practical developments that have taken place since the publication of the report, participants (the GoB, IGS and development partners) indicated that they would also like to increase the scope of the report by addressing articles that were not previously covered. Following this request, the IGS was pleased to provide technical assistance for the second edition of “UNCAC: A Bangladesh Compliance & Gap Analysis.”

1.2 Aim(s) and Objectives

The primary aim of the first edition of the BCGA was to enable the GoB to update and report on its progress of implementation at the January 2008 CoSP in Bali, Indonesia. At that time, the BCGA aimed to:

- Provide an analysis of compatibility and compliance of national laws and practice with the provisions in certain selected key thematic areas of the UNCAC, which will provide a useful basis for the development of an action plan for implementing the recommendations of BCGA;
- Indicate key challenges for the GoB in implementing the Convention and assessing capacity needs;
- Seek to raise the level of knowledge of the UNCAC within Bangladesh, build internal support, and identify key decision makers for the implementation of the UNCAC.

The revised edition continues to fulfill the previous objectives and also aims to update the analysis with regard to recent developments in law and practice.


1.3 Methodology

The methodology and framework for the BCGA study was developed at the Orientation Workshop (6-8 November, 2007) with the participation of the various stakeholders in the Government including the Ministries of Law, Justice and Parliamentary Affairs, Home Affairs, Foreign Affairs, Cabinet Division, Finance, Planning, the Anti-Corruption Commission, the Office of the Attorney General, the Bangladesh Bank, the Law Commission and members of the IGS, with representation from the GTZ, the Basel Institute on Governance, the World Bank, the University of Dhaka, the UNDP, and the Federation of Bangladesh Chambers of Commerce and Industries.

The Core Research Team was comprised of the Focal Point, Ms. Nasreen Begum, Joint Secretary (Drafting), Associate Focal Point, Mr. Humayun Farhad, Deputy Secretary (Drafting), Mr. Muhammad Belal Husain, Senior Assistant Secretary (Drafting) from the MoLJPA. Mr. Manzoor Hasan, Director, Ms. Tahmina Rahman, Research Coordinator (First Edition), Ms. Sara Shapouri, Research Coordinator (Second Edition), Mr. Niloy Ranjan Biswas, Research Associate/Lecturer, Mr. Saiful Bhuiyan, Project Associate, from the IGS, BRAC University. Consultants from the IGS included Mr. Mahbubur Rahman and Mr. Ghulam Murtaza. Ms. Gretta Fenner, Director of the Basel Institute on Governance, Dr. Geinitz Dedo, Anti-Corruption Focal Point, GTZ, Mr. Roland Hackenberg, Associate Expert, GTZ Bangladesh and Dr. Rizwan Khair, Academic Coordinator, IGS, provided specialist advice.

The Orientation Workshop agreed to take a thematic approach for the BCGA, rather than an article by article approach, focusing on a number of key priority areas known to be particularly significant, as well as challenges in Bangladesh's efforts to combat corruption. In addition, to simplify analyzing the compatibility between the UNCAC and the domestic legal and regulatory regimes, the group further decided to examine gaps between law and practice. The priority areas identified by the orientation workshop participants included:

1. Anti-corruption policies and measures (articles 5, 6);
2. Public sector integrity (articles 7, 8);
3. Public procurement and management of finances (article 9);
4. Enforcement issues related to existing criminal laws and procedures (articles 15-25, 30-40);
5. International cooperation including extradition and mutual legal assistance (articles 43-50);
6. Asset recovery focusing on laundering and proceeds of crime (articles 14, 23, 51-59).



As previously mentioned, the May 2008 Need Assessment Workshop participants requested that the scope of the BCGA be expanded to include articles that were not addressed in the first edition. Consequently, the theme of “technical assistance and information exchange,” embodied in articles 60-62, is now represented in the revised edition. In addition, the original thematic areas have been expanded to include other relevant articles, including article 10 (public reporting), article 13 (participation of society), article 14 (prevention of money laundering), article 41 (criminal record), article 42 (jurisdiction), article 43 (international cooperation), article 50 (special investigative techniques) and article 51 (general provision for asset recovery).

The study took an interactive approach, which included discussions with the relevant GoB officials and specialists in various sectors. As part of the methodology, five focus group discussions were conducted between 10-17 December, 2007 on the key thematic areas, with the participation of technical specialists, Mr. AFM Mustafa, Director General (Law and Prosecution), Anti-Corruption Commission, Mr. Md. Zakir Hossain, Director General, Foreign Aided Projects Audit Directorate, Ahmed Ataul Hakim, Comptroller General Defense Finance, Ministry of Defense, Mr. Md. Moshir Rahman, Joint Secretary Cabinet Division, Mr. Nur Ahmed, Senior Assistant Chief, Cabinet Division, Mr. Iqbal Ahmed, Assistant Secretary, Ministry of Foreign Affairs, Ms. Quamrun Nahar Ahmed, Deputy Secretary, Ministry of Finance, Mr. Abdul Mannan, Deputy Secretary (Regulation), Ministry of Establishment, and Mr. Md Muniruzzaman, Assistant Director, Financial Intelligence Unit (FIU), Bangladesh Bank.

Detailed interviews were also conducted with Mr. AKM Fazlul Karim, Adviser (Ex-Director General), Central Procurement Technical Unit (CPTU), Implementation, Monitoring and Evaluation Department of the Ministry of Planning, Mr. Barman, Deputy Director of the CPTU, Mr. Mahfuzur Rahman, Deputy General Manager, Anti-Money Laundering Unit, Bangladesh Bank, Mr. Javed Ahmed, Deputy Secretary, Ministry of Home Affairs, and Mr. Zakir Hosain, Director (Law and Prosecution), Anti-Corruption Commission.

In preparation for the revised report further interviews were conducted with different government ministries and organizations in order to update the analysis in accordance with the current status of law and practice. Notably, Mr. AFM Mustafa, Director General (Law and Prosecution) and Mr. Md. Abu Talib Miah, Director General (Research, Analysis, Prevention and Mass Awareness), Anti-Corruption Commission, Mr. Javed Ahmed, Deputy Secretary, Ministry of Home Affairs, Mr. Md. Abul Quasem, Executive Director, Mr. Md Muniruzzaman, Assistant Director, and Mr. Mohamad Abdur Rab, Assistant Director, Financial Intelligence Unit (FIU), Bangladesh Bank made significant contributions.

The primary audience of the report is the Government of People’s Republic of Bangladesh, in particular the Inter-Ministerial Committee on the gap analysis and the various Ministries and agencies involved in this Committee, the members of the CoSP as the responsible body for monitoring the implementation of the UNCAC, and its Secretariat within the UNODC. Other target audiences include civil society at large, NGOs, academic institutions, the media, and the international donor community, both in Bangladesh and abroad.

To systematize the data the following Matrix is used to form the basis of this report:

UNCAC Provisions	Domestic Legal/Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
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In drafting the report, a process of collaborative writing was followed, led by the Research Coordinator, the IGS, BRAC University, with GoB Focal Point, Associate Focal Point and researchers from the Institute. Other than the present chapter, the report consists of seven different chapters. Chapter 2 is concerned with the status of preventive measures against corruption; in particular, it focuses on anti-corruption policies and mechanisms, public sector integrity, public procurement, and management of public finances. Chapter 3 focuses on compliance and gaps with regard to criminalization and law enforcement. The topics of extradition and mutual legal assistance are addressed in Chapter 4. Chapter 5 looks at asset recovery, with particular emphasis on the laundering and proceeds of crime, and the prevention, detection and recovery of such proceeds. Chapter 6 addresses technical assistance and information exchange. Lastly, Chapter 7 highlights key conclusions of the report.

Chapter 2

Prevention

- 2.1 Anti-Corruption Policies and Mechanisms
 - 2.2 Public Sector Integrity
 - 2.3 Public Procurement
 - 2.4 Management of Public Finances
 - 2.5 Participation and Access to Information
- Matrix on compliance with articles 5-9, 10, 13*

Prevention

Corruption thrives on systemic weaknesses; consequently, anti-corruption measures must address flaws through preventive measures that reduce opportunities for corruption. In this respect, the UNCAC rightly emphasizes the need for measures to both enhance transparency, making corruption visible, and strengthen integrity, thereby promoting a culture in which corruption is no longer an accepted behavior. The following sections focus on preventive anti-corruption policies and practices, anti-corruption bodies, issues in the public sector, such as recruitment, retention, promotion and code of conduct for public officials, along with public procurement and management of public finances.


2.1 Anti-Corruption Policies and Mechanisms

The establishment of effective policies and mechanisms for the prevention of corruption is a significant step for a state toward combating corruption.

Article 5: Preventive anti-corruption policies and practices

Article 5 of the UNCAC requires States Parties to develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (article 5.1). To that end, States Parties are also required to collaborate with each other and with relevant international and regional bodies (article 5.4).

A number of legislations can be mentioned in this regard, in particular, the *Anti-Corruption Commission (ACC) Act, 2004*, the *Anti-Corruption Commission (ACC) Rules, 2007*, and the *Prevention of Corruption Act (PCA), 1947*. The *Prevention of Corruption Act, 1947* was the first of its kind in South Asia and was a precursor to the myriad future efforts aimed at codifying anti-corruption measures. In line with this rich legislative history, the ACC Act was proposed to prevent, punish, and investigate acts of corruption. In addition, it was devised to provide a consolidated framework to prevent corruption and related practices, along with an overall framework both to conduct enquiries and investigations for specific offences and to enact other relevant measures related to corruption. The scheduled offences of the ACC Act are the offences included under the *Prevention of Corruption Act, 1947*, some specific offences under the *Penal Code, 1860*, and offences listed in the Act itself. The anti-corruption legal system is also bolstered by other laws. The *Criminal Law (Amendment) Act, 1958* (XL of 1958) is significant in the anti-corruption regime as it plays a role in the procedural aspects of the Anti-Corruption Commission. Section 2 (l) of the ACC Act, 2004 provides for a “Special



Judge,” which is defined as a Special Judge appointed under section 3 of the ***Criminal Law Amendment Act, 1958***. Moreover in cases of judgment of the offences, the Criminal Law Amendment Act of 1958 shall be applied to prosecutions and appeals brought under the ACC Act, 2004 (section 28 of the ACC Act, 2004).The ***Money Laundering Prevention Ordinance, 2008*** also contains important provisions contributing to the anti-corruption legal framework. For example, predicate offences under the Ordinance, 2008 include corruption and bribery, forgery of currencies and documents, extortion, cheating, dealing in illegal arms and drug, and smuggling (section 2). Moreover, it allows the Government to seek help from any country and assist investigative agencies in probing crimes linked to money laundering, confiscating laundered money and having recourse to law. Additionally, the recent steps toward the separation of the judiciary accentuate the qualitative aspects for procedural matters in combating corruption, along with generating an overall impact that strengthens the anti-corruption regime.


A change of focus for the Caretaker Government in January 2007 has meant that under this new leadership, significant steps have been made toward reforms for good governance, fighting corruption, and complying with international standards. These steps have included accession to the UNCAC in February 2007 and a change of leadership in a number of relevant state institutions, including the Anti-Corruption Commission, the Public Service Commission and the Election Commission. The GoB has also taken measures to ensure that new recruitments are transparent and fair. Driven by top leadership, the Government, with the participation of a wide range of stakeholders, is also in the process of formulating a National Integrity Strategy (NIS). A NIS is a comprehensive system to initiate realistic efforts in combating corruption holistically and improve the overall governance situation in the country. Furthermore, the development and implementation of a NIS aids in compliance of article 5 as it envisages a broad framework for promoting and creating preventative anti-corruption measures and practices in Bangladesh, along with fostering accelerated participation from all sectors of society. Its full implementation is expected to take a few years upon finalization at the end of 2008. Undoubtedly, this will offer a vision for the development and implementation of reforms to promote better governance and combat corruption in Bangladesh. The GoB envisages that such a strategy will highlight the need for public and private sector changes, involve public awareness campaigns, and seek international cooperation. Additionally, the NIS will seek to strengthen internal controls in state owned institutions and aims to induce a cultural shift by encouraging the adoption of citizen-owned accountability mechanisms in Bangladesh.

Article 6: Preventive anti-corruption body or bodies

Article 6 of the UNCAC requires States Parties to have an anti-corruption body or bodies in charge of preventive measures and policies (article 6.1). This body must also be independent to ensure that it can do its job unimpeded by undue influences (article 6.2). Furthermore, the State Party must provide it with adequate resources and training (article 6.2).

In Bangladesh, the Anti-Corruption Commission (ACC) is in charge of enforcing and implementing preventive measures and policies. The *Anti-Corruption Commission Act, 2004* empowers the ACC to review anti-corruption policies outlined in different laws, recommend effective implementation strategies, conduct anti-corruption research, create public awareness against corruption, and hold seminars, symposiums and workshops on corruption (section 17). To achieve these ends, the ACC has been receiving capacity development training for its officials with the assistance from international development partners. These trainings are provided to enhance the capacity of the workforce of the Commission in diversified areas to combat and prevent corruption effectively with the use of modern technologies and capabilities. According to the ACC Act, 2004 the Chairman of the ACC enjoys the status of a judge of the Appellate Division of the Supreme Court while the commissioners have the status of High Court Judges. The Commission can decide independently to commence an enquiry or investigation into any corruption case. This new power was introduced recently by an amendment to the *Criminal Law (Amendment) Act, 1958*. Previously under this law, the Bureau of Anti-Corruption had to seek government permission for an enquiry or investigation against any government servant. Through the amendment, this bar has been withdrawn which now facilitates the detection of corruption activities. Moreover the selection procedure of the Chairman and commissioners was made transparent by section 7 of the ACC Act, 2004, which has been followed in practice.

The ACC, during recent times, has undertaken various preventive anti-corruption activities. This includes creating public opinion, outreach and internal capacity development. In April 2007, with the aim of starting an anti-corruption mass movement, the Chief Executive of the ACC embarked on a national tour of different parts of Bangladesh. Additionally, in December 2007, Transparency International Bangladesh (TIB) and the ACC jointly started an anti-corruption campaign program. Legal mandate, the ACC launched this campaign by arranging public dialogues, youth rallies, musical concerts, and intellectual debates in different districts of Bangladesh. TIB is helping the ACC in organizing these events with their extended local networks and expertise. The rationale behind this campaign is to motivate the masses to formulate policies for the prevention of corruption. This is also significant as it serves to make the whole anti-corruption mechanism more durable and effective.



Efforts taken by the GoB in compliance of the article 6 of the Convention are noteworthy. In reference to this particular provision, the formation of the Regulatory Reform Commission should be mentioned. Created in October 2007, it is responsible for promoting changes in administrative rules and regulations with a goal of making them investment, commerce and trade friendly. Additionally, the *Anti-Corruption Rules, 2007* has made the activities of the sole preventative anti-corruption body of Bangladesh, the ACC, more pro-active to better combat corruption and formulate policies for prevention. In addition, the current legal framework has generated more freedom for the ACC than the previous Bureau of Anti-Corruption. The ACC Act, 2004 has also given the administrative framework greater flexibility in recruiting needed personnel to the Commission, thus making it stronger in terms of human resources. Furthermore, the history of enacting laws regarding corruption indicates that Bangladesh is relatively compliant to the UNCAC, regardless of the level of implementation it has achieved throughout the years. However, it is important to devote efforts to exploring mechanisms of proper and effective implementation of the policies, along with the encouraging neutral and practical functioning of institutions of accountability like the ACC.

2.2 Public Sector Integrity

Article 7.1(a): Recruitment, hiring, retention, promotion of public officials

The UNCAC requires States Parties to endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion, and retirement of civil servants, based on principles of efficiency and transparency, using objective criteria such as merit, equity and aptitude.

Bangladesh has a comprehensive regulatory regime governing issues of public sector recruitment, hiring, retention, promotion, and conduct, dating from the colonial era, which has more recently been codified after the emergence of the state of Bangladesh. Article 133 of the Constitution of Bangladesh requires the state to enact laws and procedures “to regulate the appointment and conditions of service of persons in the service of the Republic.” The regulatory regime includes the *Bangladesh Civil Service Recruitment (BCSR) Rules, 1981*, the *Bangladesh Civil Service Recruitment (Age, Qualification and Examination for Direct Recruitment) Rules, 1982*, the *Bangladesh Public Service Commission Ordinance, 1977*, the *Bangladesh Civil Service (Examination for Promotion) Rules, 1986*, the *Administrative Tribunal Act, 1980*, and the *Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985*. The BCSR Rules, 1981 provides procedures for recruitment, appointment by direct recruitment, appointment by promotion, probation, and confirmation of individuals for civil service. The *Bangladesh Civil Service Recruitment (Age, Qualification and Examination for Direct Recruitment) Rules, 1982*


introduced criteria for eligibility based on the age and qualifications of candidates that are recruited directly to civil services.

The Public Service Commission (PSC), a constitutional body, is entrusted with the responsibility of conducting tests and examinations for recruitment. With the promulgation of the *Bangladesh Public Service Commission Ordinance, 1977* the two previously existing PSCs (PSC first and PSC second) were merged into a single Commission. The functions of PSC include holding professional examinations for the selection of suitable persons for appointment to the service of the Republic along with advising the President on matters relating to qualifications for and methods of recruitment, appointment, promotion, and transfer. Furthermore, the PSC is directed to advise the President on issues, terms and conditions of service and discipline (article 140(2) of the Constitution of Bangladesh).

The role of the Administrative Tribunal and Administrative Appellate Tribunal is significant as it is responsible for the adjudication of disputes between the appointing authorities and public officials. Administrative Tribunals are set up to rule on matters relating to the terms and conditions of employment, recruitment, appointment, promotion and transfer, and must also uphold the rights of civil servants (sections 4 and 5 of the *Administrative Tribunal Act, 1980*). The tribunals are comprised of assigned officers and staff of the civil service.

While there is a strong regulatory regime in place with regard to these issues, recruitment and promotion practices of public officials have come under criticism from time to time. Questions have been raised whether recruitment, hiring and promotion have been based on merit, equity, and aptitude. The PSC being the principle recruiter of the civil service has often drawn attention to itself and its image as a constitutional body has at times been compromised with the cancellation of examinations and assertions of political affiliation in recruitments. This has weakened the high standing of the civil service.

In line with the UNCAC's explicit provision for merit, equity and aptitude based recruitment in the civil service to promote efficiency and transparency in the system, the GoB has taken a number of significant steps toward improving the overall governance situation in the country, including a series of institutional reforms intended to strengthen constitutional bodies such as the PSC. Under new leadership, the PSC is already in the process of modernizing a long drawn and antiquated examination system that is aimed at improving the quality of new recruits. Along with the legal and institutional reforms, there is a pressing need to oversee the implementation mechanisms of these reforms for its sustainability. Only proper implementation can ensure an effective public administration which is critical for the development of Bangladesh. Measures should also be considered which improve the independence, effectiveness and efficiency of the service



with greater financial autonomy, enhanced training and capacity building, more opportunities for deputation and lateral entry, and technical support to upgrade administrative systems. Mechanisms for disciplinary actions should also be improved. These changes would help to establish a system that is not only in compliance with the UNCAC standards, but ensures fair practices in civil service employment.

Articles 7.1(b) & (d): Training of public officials

The UNCAC requires States Parties to endeavor to include adequate training and education programs for public officials, especially those vulnerable to corruption, in order to enhance performance of their public duties and functions (article 7.1(b)). This should include specialized and appropriate training for the purposes of increasing awareness of the risks of corruption (article 7.1(d)).

Training programs in the civil service are designed to encourage civil servants to improve and increase their skills, talents and creativity, so that they can make best use of their resources and contribute to the nation's development. The *Public Administration Training Policy (PATP), 2003* provides guidelines for public sector training. It details training procedures, content, goals and the various types of training that could be used for public officials. It requires public institutions to formulate and conduct training programs based on the training needs of the officials of different sectors and departments. Training is also provided by the training centers or institutes of different Ministries, departments and divisions, i.e., the Bangladesh Civil Service (Administration) Training Academy, the Judicial Administrative Training Institute, the Police Staff College, etc.

Founded in 1984, the Bangladesh Public Administration Training Centre (BPATC) is an amalgamation of the Bangladesh Administrative Staff College, the National Institute of Public Administration, the Civil Officer's Training Academy, and the Staff Training Institute. It now operates as the apex training institute in the public sector. The merger took place with a vision to integrate resources, pool diverse ideas and experiences, and widen the scope of interaction between different cadres and services. Thus, the BPATC inherits a rich legacy and sets a unique model of integrated training in the fields of public administration and management. It designs and organizes training courses, workshops, and seminars and conducts research on public administration, management and development economics. It also provides in-service training to local authorities, foundation training to the officers of various cadres of the Bangladesh Civil Service (BCS), and foundation and refresher training to non-cadre officers of the Government. Moreover, the centre advises the Government on policy making issues of the day. Clientele groups of BPATC are diverse, representing all the 29 cadres of the civil service. Their level ranges from newly recruited civil servants to top level policy makers.


There are a wide range of training courses offered by the BPATC and other training institutes, with workshops and seminars especially dedicated to corruption and risks; however, specific training modules on this are rare. The BCS Academy (with Transparency International Bangladesh and the ACC) is one of the very few that offers a training course specifically dedicated to anti-corruption issues. Also public officials often find training to be one-off, with less attention to their specific capacity building needs. There is also a need for modernizing training tools and methodologies and making training more problem solving, enabling technical as well as project management skills and expertise geared toward meeting the day to day demands of public officials. Additionally, specific training courses on good governance should be provided.

Modern and effective public administration is the outcome of meritorious and trained personnel who can understand their responsibilities, make decisions, and execute strategies in a systematic and effective way. The UNCAC emphasizes the importance of this issue in its expression of the need for specialized and appropriate corruption specific trainings. As mentioned earlier, the GoB is aware of the significance of the issue. Indeed, it is not that the Government is unwilling to engage in training, but that it faces a lack of resources and expertise.

Article 7.1(c): Remuneration and pay scale

The UNCAC requires States Parties to promote adequate remuneration and equitable pay scales, taking into account the economic development of the country.

Since the independence of Bangladesh, a number of National Pay Commissions (NPC) have been set up for ascertaining pay scales for public servants. The first NPC was set up in 1972, when the civil service was structured into ten grades. This was subsequently upgraded into twenty grades in 1977. The current pay scale is based on the recommendations of the sixth National Pay Commission report from 2005. Bangladesh does not have a permanent Pay Commission that is entrusted with determining and evaluating this highly technical, complex, and politically sensitive issue. Traditionally, it has been government practice to respond to inflationary trends and pressures of stakeholders in the service. There are also examples of ad-hoc incrementing of salaries (by providing Dearness Allowance or 10-15% basic enhancement) to satisfy political needs and silence unrest in the public administration. Consequently, a more coherent pay structure is needed. The Pay Commission has consistently given recommendations for the establishment of a permanent commission that would regularly supervise the issue of salary. The past practice of the GoB has been to consider the recommendations of the Pay Commission on the availability of funds in determining the percentage of salary increase.



It is critical for the Government to devote adequate effort to the establishment of a permanent Pay Commission which would determine the salary scale. The Budget Speech of the current Finance Adviser of GoB reflected the Government's recognition of this necessity when he discussed the need for the establishment of a Permanent Pay Commission. This Pay Commission would conduct research on economic trends, inflation, and other relevant factors to regularly and precisely determine the salary needs of public officials. This issue of salary is important as it is consistently related to the effectiveness of the public sector. The GoB should introduce the reforms in accordance with the economic development of the country. Such reforms would lead to satisfaction of the requirement of the UNCAC provision and create a more fair and transparent system of pay.

Articles 7.2 & 7.3: Election to public offices and transparency in funding

States Parties are required under the provisions of the UNCAC to take appropriate measures for prescribing criteria concerning candidature for and election to public office (article 7.2), and to enhance transparency in both the funding of candidates for elected public office and the funding of political parties (article 7.3).

Article 65 of the Constitution of Bangladesh paved the way for the establishment of the Parliament of Bangladesh (House of the Nation) where legislative powers of the Republic are vested. The Parliament is composed of three hundred members who, in accordance with the law, are elected from single territorial constituencies by direct election. Article 59 provides that the local government, in every administrative unit of the Republic, "shall be entrusted to bodies, composed of persons elected in accordance with law." Article 66 contains clear criteria for the disqualification of candidates in elections; they include declaration by a competent court of unsoundness of mind, insolvency, taking allegiance in a foreign country, and conviction for a criminal offence involving moral turpitude. A person will also be considered to be ineligible if imprisoned for two or more years and a period of five years has not elapsed since his/her release.


Contemporary laws and regulations regarding the conduct of elections for different local bodies authorize the Election Commission (EC) to conduct national and local level elections (at the union, sub-district and city corporations). In Bangladesh, the EC is the sole responsible constitutional body for holding elections to local councils and the National Parliament. Article 118 of the Constitution provides for the establishment of an EC for Bangladesh, which consists of a Chief Election Commissioner and such number of other Election Commissioners, if any, that are appointed at the discretion of the President. The EC is an independent body that has the duty of holding free and fair elections. The EC prescribes certain rules and

regulations, including codes of conduct for the participation of the candidates in elections. Generally, codes of conduct are revised and updated before any election to provide guidelines that will be applicable for that particular context.

With regard to integrity and transparency in election processes and the funding of political parties, a number of reform measures have been proposed to the *Representation of the People's Order (RPO), 1972* which are currently being discussed with various political parties. The changes aim to ensure objective criteria in determining participation in elections to public offices, and are as follows:

- *Registration of political parties or independent candidates:* All political parties are required to be registered with the EC; candidates who are members of such parties are eligible to contest in elections. Independent candidates are required to provide evidence of support from at least 1% of voters in his/her constituency;
- *Loan defaulters:* Candidates who have defaulted in the repayment of loans from banks and/or financial institutions (except for house-building purposes) within a year of submission of nominations will be considered disqualified;
- *Participation of retired officials:* Candidates who have held public positions and have resigned, retired or have been removed forcefully by way of dismissal or suspension, will be considered ineligible if an intervening period of three years has not elapsed from such actions taken against them. This is also applicable for employees of non-governmental organizations;
- *Defaulters of service/utility bills:* Candidates will also be considered ineligible, should they have any outstanding service/utility bill, including telephone, gas, water or any other related service, at the time of his/her submission of nomination;
- *Candidature in more than one constituency:* Article 66 of the Constitution allows candidates to contest from two or more constituencies. The proposed RPO decreases the maximum number of constituencies from which candidates may contest elections from five to two.

The Supreme Court of Bangladesh in the landmark case of *Mr. Abu Sufa vs the Election Commission, 2007* has confirmed the mandatory public disclosure of eight types of personal information by electoral candidates, which include: academic qualifications, any pending criminal proceeding(s), records of criminal cases and their outcome, sources of income, assets, liabilities, and amounts of loans taken from banks and financial institutions (personally, jointly or by a dependent).



Significant reform measures are being proposed which would govern the funding of candidates to public office and would require political parties to enhance transparency and accountability in such matters during elections. Proposals by the EC include the mandatory declaration of sources of election expenditure, a ban on receiving funds from foreign sources and submission by individuals and political parties of details of election related expenditures within sixty days of the declaration of election results.

Election to the public office is a critical mechanism which promotes democratic governance and enables anti-corruption mechanisms to work properly; the manipulation of such activity directly and compellingly questions the legitimacy of the government. The provisions stated in these particular sub-articles of the UNCAC clearly illustrate the importance of elections. The independence of the agency that conducts elections for public office is essential for its effective and honest functioning. The EC has already undergone progress in this respect. In facilitation of its independence, an Ordinance (Ordinance No. V of 2008) was made by the Honourable President on 5 March, 2008 which established the Independent Election Commission Secretariat. The EC's independence is important because by achieving such status, the EC will be more powerful in terms of executing its legal jurisdictions over its clientele. Upon exercise of administrative independence and freedom from undue influence, it will be able to conduct free and fair elections.

Articles 8.1 & 8.2: Codes of conduct

The UNCAC requires States Parties to promote integrity, honesty and responsibility among public officials and calls for codes or standards of conduct for the correct, honorable and proper performance of public functions.

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. These regulations administer over the manner of business transactions and the procedures for signing orders,


instruments, arrangements and contracts, which are referred to the President or the Prime Minister, and the manner of submitting cases to the President and the Prime Minister. They also provide procedures for inter-ministerial consultations, Cabinet meetings, formation of committees of the Cabinet, submission of cases to the Cabinet, meetings of the Cabinet committees, action on Cabinet decisions, custody of Cabinet papers, periodic reports on activities of ministries/divisions and so on. The Rules also include protocol for the protection and communication of official information, channels of communication with foreign governments or agencies and correspondence between defense headquarters. It authorizes the Prime Minister to condone or permit departure from the observance of the rules in specific cases or classes of cases to the extent s/he deems necessary.

Public administration is one of the most significant institutions in democratic societies and must have at its disposal appropriate individuals to properly carry out the tasks with which they are assigned. Public officials, the key actors of the civil administration, should have the necessary qualifications and a sufficient legal environment and resources in order to complete their duties effectively. Codes of conduct and rules of business for public officials are essential in this regard. These policies should comply with the UNCAC standards because in so doing, they will address a serious threat to the effective functioning of the public administration, that is, corruption. Moreover, reforms are necessary to eradicate the impediments towards establishing rule of law, democracy, human rights, equity and social justice, thus diminishing the obstacles of economic development which endanger the stability of democratic institutions and the moral foundation of society. Given the significance of this issue, it is laudable that the GoB has practically complied with these provisions by establishing and implementing a comprehensive code of conduct that promotes honesty and integrity in its public officials.

Article 8.3: International code of conduct for public officials

States Parties are required to take note of relevant initiatives of regional, inter-regional and multilateral organizations, such as the UN International Code of Conduct for Public Officials (General Assembly Resolution 51/59 of 12 December 1996), to ensure compatibility with it.

The General Assembly of the United Nations, in consideration of the seriousness of public sector corruption, adopted the International Code of Conduct for Public Officials (resolution 51/59, annex) in December 1996. In survey findings from late 1999 coordinated by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat of the United Nations, the majority of states responding



indicated that their domestic laws or administrative policies included codes of conduct that set out clearly and consistently the functions and duties of public officials (Implementation of the International Code of Conduct for Public Officials Report of the Secretary-General, Eleventh session Vienna, 16-25 April 2002, E/CN.15/2002/6/Add.1). Bangladesh was one of the compliant respondents among other countries in that survey. Indeed, Bangladesh was also found to be a conforming state for adopting codes of conduct that set out the functions and duties of public officials. However, codes of conduct on duties and obligations need to be provided to public officials upon the time entry.

Compliance with this particular article of the UNCAC, particularly the principles of the International Code of Conduct, would undoubtedly foster integrity in the public service and encourage adherence to codes of conduct at the domestic level. However, it requires significant resources to determine the strategies for implementation of the International Code of Conduct for Public Officials and to ascertain its direct impact on domestic legislation. Once its impact is assessed, the GoB may develop a proper strategy for introducing legislation implementing these international codes of conduct at the national level.

Article 8.4: Reporting acts of corruption

States Parties are bound by the UNCAC to establish measures and systems that facilitate public officials reporting acts of corruption to appropriate authorities.

This particular provision essentially refers to a special law or regulation where a public official can report the corrupt acts of another public official, commonly known as a “whistleblower” law. There is no explicit legal provision regarding this in Bangladesh. However, there are laws that address corrupt acts by public officials. Chapter IX of the Penal Code deals with offences by or relating to public officials. Section 161 addresses situations such as public servants taking gratification other than legal remuneration in respect to an official act. Sections 162 and 163 also deal with corruption of public servants. Moreover the ACC Act, 2004 provides guidelines for investigating corruption cases of any individual or institution. It can report corruption cases and prosecute public officials after proper investigation. However, there is a major gap with regard to protection provided to complainants from within the civil service.

The Government of Bangladesh may enact a separate whistleblower law to strengthen anti-corruption mechanisms in the public sector. The significance of such a law is that it serves to strengthen and improve protection of the rights of public employees, prevents reprisals, and helps to eliminate wrong doing within the Government by mandating that employees not suffer adverse consequences as a result of voluntary

disclosure of information related to illegal/corruption activities. Such a law will establish a framework where officials are not punished by their superiors for voluntary disclosure, along with creating sufficient protection mechanisms, such as privacy of the informant's identity. By implementing a whistleblower law, the GoB can be fully compliant with this particular provision of the UNCAC and encourage the discovery of acts of corruption. In addition, a concrete policy from the GoB with regard to this issue is essential for the safeguarding of whistleblowers, so that their protection goes beyond legal documents, to guarantee that their rights are practically protected.


Article 8.5: Asset declaration

The UNCAC recommends States Parties to establish measures that require public officials to declare to appropriate authorities outside activities, employment, investments, assets, and substantial gifts or benefits received from which a conflict of interest may arise.

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.

In practice, submissions of wealth statements at the time of recruitment of public officials have been maintained while submissions of annual updates have been irregular. However, 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.

Implementing the regulations for declaration of assets and liabilities of public officials and making them public is critical in that such acts promote a corruption free civil service. To that end, the Government has been keen to promote this in every strata of the public sector. Nonetheless, to achieve compliance with the UNCAC and detect possible acts of corruption, the national legislation requires modification, particularly in terms of modernization, in order to hold public officials accountable by making them declare their assets transparently. Modernization in the area of asset declaration can be done by making the process of submission more e-friendly, e.g., the GoB can redesign the format of the asset declaration forms and make them available on government websites. Additionally,



related rules and circulars can be modified in light of the current state of the economy to redefine the ceiling for public officials in terms of holding particular assets. However, the GoB has shown that it is willing to bring about needed modifications for this significant UNCAC issue. A comprehensive Civil Service Rules is in the process of being drafted and it is expected that it will modify the relevant rules, thus making the domestic legal regime compliant in regard to this provision.

Article 8.6: Violation of conduct in public service

The UNCAC requires States Parties to take measures to initiate disciplinary or other measures against public officials who violate codes or standards.

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 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.

2.3 Public Procurement

Article 9.1: Appropriate systems of procurement


The UNCAC obligates States Parties to take necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, which are effective for the prevention of corruption. These steps include the public distribution of information relating to procurement procedures and contracts, invitations to tender, and the award of contracts (article 9.1(a)), establishment of conditions of participation including selection and award criteria (article 9.1(b)), use of objective and predetermined criteria for public procurement decisions (article 9.1(c)), an effective system of domestic review, including appeal (article 9.1(d)), and rules regarding declaration of interest, in particular public procurements and screening procedures (article 9.1(e)). The following sections provide an analysis of compatibility and compliance of both the act and rules in Bangladesh and the practice in the area of public procurement.

The Constitution of Bangladesh has no direct provision bearing on public procurement nor was there any nationally applicable procurement law to regulate approximately 3 billion USD per year of government procurement until 2003 when the ***Public Procurement Regulations, 2003***, was approved. A high percentage of the annual volume of public procurement in Bangladesh is externally funded. The major share of public procurement is handled by public sector corporations and semi-autonomous bodies, such as the Water Development Board, the Roads and Highways Department, the Local Government Engineering Department, the Bangladesh Railway, Telephone and Telegraph Board, the Rural Electrification Board, the Dhaka Electric Supply Authority, the Dhaka Water and Sewerage Authority, and the Port Authority.

The public procurement procedures and practices have evolved over the years from the days of British and subsequent Pakistani rule. A Compilation of General Financial Rules, originally issued under British rule and slightly revised in 1951, was reissued in 1994 and 1999 with very few changes. Poor performances in different projects lead to an assessment of the then public procurement policy, framework, institutions and staff skills, leading to the Country Procurement Assessment Report by the Implementation, Monitoring and Evaluation Division (IMED) under the Ministry of Planning with the World Bank (WB), which identified many deficiencies in the public procurement system.

The recommendations of the report were formulated into a comprehensive regulatory and policy regime for public procurement in 2003. These include the ***Public Procurement Regulations (PPR), 2003*** and the ***Public Procurement Processing and Approval Procedures (PPPAP), 2004***. Afterwards, the ***Public Procurement Act (PPA), 2006*** has come into force on 31st January, 2008 along with the ***Public Procurement Rules (PPR), 2008*** (gazette notified on 27 January 2008 from the CPTU of the IMED of the GoB), which consolidated the whole regime. PPR, 2003 was more a successful attempt to bring all public sector bodies under one uniform umbrella for systemic procurement and dissemination across the country. 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 organisation.

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 value 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 governing public sector procurement. Additionally, these laws seek to ensure greater autonomy from Cabinets and concerned Ministries though a shift to procuring entities both at the national and local levels, who have now been delegated the authority to award and approve contracts (within defined ceilings). Taking a pro-client approach, the CPTU has also produced several other documents including customized formats,

guidelines, and manuals on various procurement issues for procuring entities and tenderers. Some of these documents include formats for quotation requests and guidelines for restricted and open tendering methods. Steps have also been taken to professionalize the management of the public procurement system and improve capacity through training public officials. A critical mass of about 25 national trainers and 1800 staff have been trained which will contribute to improving the administration of contracts and the quality of bidding processes. Overall, these approaches and activities have provided a sound mechanism for ensuring transparency and accountability. Additionally, a public/private partnership has been established consisting of beneficiary groups, civil society, and NGOs, which will take up the role of working closely and constructively with beneficiary communities, the CPTU, procuring entities, and contracting communities in order to facilitate proper implementation of the regulatory regime.

However, application of the national procurement act and rules has proven to be relatively inconsistent across the Government and within individual agencies; furthermore, implementation of the rules has severely strained the capacity of executing agencies. Vulnerabilities in relation to the management of procurement include lack of information and expertise, contacts and collusion, conflicts of interest with public officials, lack of accountability and political influence. Experiences in procurement have consisted of discrimination and delay in the issue of bidding documents to suppliers, cartel information to suppress competition, physical threats to bidders, bid boxes at multiple locations, tampering of bid files, delays in evaluation of bids, human interference at every stage, and an unwillingness to provide transparency. Moreover, limited knowledge of procurement rules and procedures by public officials remains an issue. In cases of emergency procurements, the use of “time waivers” (reducing the time span for bidding) is also problematic.

The Public Procurement Reform Project II is expected to address some of the above-mentioned concerns. This project will be implemented over a period of five years from 2007 through four distinct components, such as, Policy Reform and Institutionalizing Capacity Development; Strengthening Procurement Management at Sectoral Level; Introducing e-government Procurement and Communication, Behavioral Change & Social Accountability. The project will form a Management Information System (MIS) with the four most crucial sectors of the GoB, i.e., the Roads and Highways Department, the Local Government Engineering Department, the Water Development Board, and the Rural Electrification Board. The MIS will aspire for greater transparency on procurement in these sectors. Plans are also in place to promote a system of procurement based on the use of e-governance, which is expected to cut costs and promote transparency.



It is widely believed that procurement in the public sector is the biggest source of corruption all over the world. The objective of the UNCAC is to curb those bad practices in procurement and to influence the Government to empower procurement professionals against corruption and ensure that they have enough tools, training, and inspiration to deliver improved public services more efficiently. In partnership with the international development partners, GoB has taken action to make the procurement process more effective, thereby promoting a sustainable development agenda.

Article 9.1(a): Distribution of procurement information

In accordance with the principles of the UNCAC, systems of procurement should include clear procedures for public distribution of information, particularly information on invitations to tender and pertinent information on the award of contracts, which allows potential tenderers sufficient time to prepare and submit their tenders.

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 advertisements.

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.

Article 9.1(b): Conditions for participation, criteria for selection and award

In accordance with the provisions of the UNCAC, procurement systems are also required to establish in advance, conditions for participation, including selection and award criteria and tendering rules; additionally, these conditions must be publicized.

Under PPR, 2008 any government agency who uses public fund may authorize to make decision 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.

Sections 5 to 8 of chapter 2 of the *Public Procurement Act, 2006* propose systems for the preparation of tender, handling proposals, establishment of committees, and the like. The whole of chapter 3 is dedicated to "Principles of Public Procurement," which covers "General Guidelines" (part 1), specifically the public accessibility of the Procurement Act, forms of communication, preparation of procurement plans, procurement related documentation, competition in procurement, determination of tender validities, contracts, administration and management, maintenance of procurement records, and procurement post review procedures. Part 2 of the chapter deals with participation in the procurement process, while part 3 looks at complaints and appeals.

The prime motive of the procurement legislation is to ensure a profitable purchase by the Government so that it can use the public funds most effectively and transparently, thereby ensuring that citizens benefit from the services of the public sector. The current legal instrument, after its effectiveness in 2008, has sufficiently achieved this aim in line with the provisions of the UNCAC.

Article 9.1(c): Predetermined criteria for public procurement decisions

Article 9.1(c) of the UNCAC requires the use of objective and 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. Section 43 of chapter 6 (part 2) details the process of evaluating prequalification applications and the making of decisions thereon. Sections 48 to 51 under the same chapter of *Public Procurement Act, 2006* govern the evaluation of tenders, post qualification of tenderers and the approval process. Section 56 of part 4 provides for the evaluation of applications and approval of short lists and section 59 addresses evaluation of proposals. 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.

Article 9.1(d): Review and appeal

The UNCAC requires that effective systems of domestic review, including an adequate system of appeal, be put in place to ensure legal recourse and remedies where procurement rules and procedures have not been followed.

Rules 56-60 of the PPR, 2008 set out detailed mechanisms and procedures for complaints and appeals that include the right to appeal, the

establishment of a review panel, and procedures for bringing a complaint to the review panel. Complaints can be submitted to the procuring entity in the first instance. In the event the complainant is not satisfied with the decision of the procuring entity, s/he may go to the next stage of review, i.e., to the Secretary of the concerned Ministry. Finally, the complainant has the option to pursue his/her dissatisfaction to the review panel constituted under rule 60 of the PPR, 2008. Between 2003 and 2007, a total number of 31 cases were brought before the Review Committee under the CPTU. Of these, at least three cases resulted in the procuring entities being asked to re-tender.

Section 24 of the ***Public Procurement Act, 2006*** describes the system for procurement post review. The Act obligates the Government to establish a procuring entity which shall, within nine months of the end of each fiscal year, arrange for an independent procurement post review on a sample basis from its total procurement activities during the preceding year. Part 3, “Complaints and Appeals,” of chapter 3 details the procedures for exercising the right to complain (article 29), lodging complaints to the administrative authority, and making appeals (article 30). The essence of the system is to provide justice for the proper bidder due to the failure of a procuring entity to fulfill its obligations under the ***Public Procurement Act, 2006***.

Despite the aforementioned, there is a serious need for training and capacity building of public officials, bidding communities and beneficiaries in procurement related issues. This includes enhanced knowledge of the ***Public Procurement Act, 2006*** and the ***Public Procurement Rules, 2008*** and its procedures, along with improved technical skills for evaluation and assessment in procurement. The CPTU is in the process of initiating such training, with assistance of the World Bank, under Phase II of the PPRP. Insufficient procurement expertise and inadequate delegation of powers has considerably slowed down effective implementation of the procurement procedures. In light of these obstacles, the CPTU has started procurement management capacity building programs to substantially enhance capacity for procurement management through a structured education and training curriculum addressing the needs of senior managers, working level staff, auditors and the business community for the purposes of building a profession of procurement specialists. This will promote the capacity of concerned persons to contribute effectively in the review and appeal mechanisms of procurement decisions, along with enhancing abilities in other areas of the procurement. Consequently, the implementation mechanism of proper procurement has been strengthened, which has made Bangladesh a compliant state with regard to the UNCAC provisions on procurement.

2.4 Management of Public Finances

Article 9.2: Management of public finances

Under article 9.2, States Parties are obligated to take appropriate measures to promote transparency and accountability in the management of public finances. Such measures should include procedures for the adoption of the national budget (article 9.2(a)), timely reporting on revenue and expenditure (article 9.2(b)), appropriate systems of accounting, auditing standards and related oversight (article 9.2(c)), and risk management and internal control (article 9.2(d)).

The Ministry of Finance is required to prepare and present an annual budget, the financial statement of the country for the fiscal year, to the Parliament in accordance with article 87 of the Constitution. The budget is based on requests for allocations from various ministries, divisions and departments. Rules 111 to 115 of the *Parliamentary Rules of Procedure* provide a detailed framework for the presentation of the budget and its deliberation. Article 127 of the Constitution establishes the Office of the Comptroller and Auditor General (CAG) for the management of all public finances and related oversight of all public institutions. In accordance with article 128 of the Constitution, the CAG prepares the audit report of all public accounts of the Republic, including revenue and expenditures. The CAG is also required to present the report to the Head of the State, i.e., the President of Bangladesh (article 132 of the Constitution). The report is then placed before the Public Accounts Committee for scrutiny and discussion by the Parliament. The CAG is also constitutionally designated as the Supreme Auditing Institute for financial audits, along with compliance, regulatory and performance audits.


The *Parliamentary Rules of Procedure* provides a detailed framework for the formulation and finalization of the budget; however, it is generally accepted that improvements can be made to the quality of consultations held with the various ministries and relevant departments. Financial priorities in the process of formulating the budget need to be guided by periodic sectoral policy analysis. The absence of such analysis hinders transparency and creates opportunities for mismanagement of public funds.

Existing auditing standards such as the accounts code for government expenditures, the field auditing and reporting standards, the audit code and operational manuals, performance manuals for different directorates, the code of ethics for government auditing, and the financial management rules are all complimentary to the provisions of the UNCAC. Nevertheless, improvements are necessary to strengthen auditing systems. Present systems can be improved through a focus on auditing corruption. More

emphasis should be given to corruption audits rather than the present trend of compliance and regulatory audits. In addition, International Public Sector Accounting Standards (IPSAS) should be followed in order to improve accounting mechanisms and achieve international compliance. Other possible improvements include providing customized internal control manuals for different ministries (like those in the Ministry of Finance). There is also a need for separate internal audit departments within ministries to compliment the function and role of the offices of the CAG. This lack of separate departments is a key reason for delays in finalizing and submitting annual audit reports. The latest CAG report before the President is for FY 2004-05. The reports for FY 05-06 will be due in FY 07-08, while those of FY 06-07 will be due in FY 08-09. This severely delays any corrective action proposed by the Government. It is also important to conduct audits for foreign aided projects as this will ensure donor accountability in the public international sector. Moreover, stronger enforcement measures are required to enhance both public sector and international public sector accountability. Introduction of physical, environmental and free auditing systems by the Executive Committee of the National Economic Council is encouraged. It is important that all stakeholders of the public sector, international public sector, and private sector are committed to guaranteeing proper public finance management.

The forthcoming Audit Act could seek to address some of the abovementioned issues which is regarded as highly desirable to close the gap between policy and practice in this sector. Furthermore, it would be helpful to conduct strict audits for development projects by the GoB to reduce the propensity of corruption related to these projects. Such audits involve monitoring and evaluation of the project by the international development partners in the project's mid-term and final state. Another significant area with regard to auditing and public finances is auditing of the private sector, which is linked with the financial management system of the public sector; most importantly, it has indirect effects on the auditing standards of the public sector and the overall development of the country. Consequently, the Government should incorporate policies requiring the private sector to comply with national accounting and auditing standards. In addition, the prevailing system in auditing and accounting practices of the private sectors and autonomous bodies should be reviewed by the CAG. A proper policy in regard to this review process should be formulated in near future. Indeed, the proposed Audit Act could produce guidelines in this regard.

The budget process of the fiscal year 2007-2008 was fairly consultative with changes made to the proposed budget after input was received from the public budget process. The GoB has just announced its budget for the fiscal year of 2008-2009. The budget, according to the Finance Adviser, is a participatory one which is subject to modification based on the response



of the persons from all sectors of society. The Government has run several consultative meetings with stakeholders before formulating the proposed budget. Additionally, it welcomes any comment on the budget which is posted electronically on the website of the Ministry of Finance. The whole process will be more consultative with a farsighted approach for development rather than a top-down process in which the annual financial statements prepared by different sectors are presented by the Finance Minister. Furthermore, this consultative approach promotes a well crafted mechanism for the management of funds in the implementation stage as participatory budgets involve turning over budgetary decisions to citizens and significant stakeholders through the use of public arenas which allow for discussion and prioritization of needs and demands.

Finally, the UNCAC has guided States Parties to prepare an all-inclusive policy detailing such key areas as the formulation of the national budget, efficient internal finance mechanisms, and accounting and auditing standards. Such a comprehensive policy will ultimately ensure transparency and effective use of public finances. The trajectory mentioned in the UNCAC should be followed by the Government of Bangladesh. At this point, the GoB is making a few modifications in its formulation of the annual budgetary process by applying participatory methods. However, the Government must still work on the management sectors of public finances. To that end, enactment of a comprehensive audit act and capacity development of the audit officials would improve the status of Bangladesh, making it fully compliant with this particular provision of the UNCAC.

2.5 Participation and Access to Information

Article 10: Public reporting

The UNCAC requires States Parties to enhance transparency in public administration, particularly with regard to its organization, functioning and decision-making processes. It encourages governments to adopt procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration with due regard for protection of privacy and personal data (article 10(a)). The article guides States Parties to facilitate public access to the competent decision-making authorities (article 10(b)) and to publish information, specifically reports on the risk of corruption in public administration (article 10(c)).


The GoB has recently made efforts to guarantee a significant civil right of its citizens, specifically the right to information (RTI), by taking the initiative to enact an ordinance on the RTI through the *Right to Information Ordinance, 2008*. Currently a draft version of the Ordinance was prepared

by an eight member committee headed by a Joint Secretary of the Ministry of Information along with representatives from civil society such as the Manusher Jonno Foundation. Additionally, it has been placed on the Ministry's website for further public scrutiny.

The Ordinance has been drafted in the spirit of promoting the freedom of thought, conscience, and speech, which has been recognized in the Constitution. The realization of this right is essential as it empowers citizens to actively participate in the democratic process. The draft RTI Ordinance contains 37 articles, including one for the establishment of an Information Commission which shall have the power to prepare guidelines to be followed by the competent authority governing the preparation of catalogues and indexes of available information. The prescribed Information Commission can also impose fines of up to Taka 5,000 (1 USD=70 Taka (appx.)) and recommend punishment as per the service rules if any authority/institution fails to provide information to citizens in the stipulated time frame.

The Ordinance defines "information" broadly; it includes advice, circulars, orders, contracts, statistics, e-mail, logbooks, materials, models, memos, opinion, papers, press releases, records, reports, samples, material held in any electronic form, correspondence, memoranda, books, plans, maps, drawings, diagrams, photographs, films, microfilms, sound recordings, VDO tapes, records readable in machine, any certified materials irrespective of its condition and nature and its reproduction, and any information about any authority obtained under any law in force. Section 2 includes some private sector organizations along with public sector in the definition of "authority." The Ordinance states that public sector organizations are bound to produce annual reports at least once in every two years. With regard to international compliance this is not problematic as global best practices with respect to these kinds of laws are only applicable to the public sector. Additionally, section 9 of the draft Ordinance provides that information related to state security, sovereignty, dignity, foreign policy, defense, relations with foreign countries or foreign organizations, commerce or trade interests, technical scientific interest, income tax, customs and excise duties, monitoring and executive operations of financial organizations, and disclosures counter to public interest will be exempt from production requirements. However, section 9 requires revision to make it more comprehensive and specific as these categories are so broad that it could negate the purpose of the Ordinance.

In the Ordinance, the Government has taken a cautious stand with respect to citizens' access to issues related to national defense and security. Exemptions are given to information related to the aforementioned issues for the sake of national interest. It is assumed that disclosure of information on such issues would prejudicially affect the sovereignty, honor, foreign policy, defense or relations with foreign states or organizations (section 9



of the proposed Ordinance). Although this is a valid concern, the GoB must ensure greater transparency and accountability to strengthen democracy. Information submitted to the GoB by both public and private sector organizations under existing legal frameworks should be made available to general public. Additionally, the Ordinance should include procurement related documents, including public, private, and defense sector procurement, within its jurisdiction.

Although, quite comprehensive, the draft Ordinance may benefit from some modification. Section 4(2) emphasizes the importance of cataloging and indexing, while section 5 explains different modes of information transmission. However, the role of information technology is missing; particularly, there is a lack of guidance on the creation of e-reports and modes of supply through mediums of information technology. Making documents readily available in electronic formats through the internet would facilitate access to information in an efficient and cost-effective manner. Additionally, the proposed Information Commission should enjoy the status of an “institution of accountability;” in particular, it should exercise both functional and financial independence and its accountability mechanisms should be properly practiced ensuring that it will perform its duties and responsibilities effectively.

The Ordinance is likely to be promulgated within the shortest possible time, potentially in July 2008, to ensure public access to information to maintain transparency and accountability in government and non-government levels. The Ministry of Information took a public/private co-production strategy through legal dialogues with civil society, NGOs, intellectuals, lawyers, journalists, businessmen and other professionals in order to receive recommendations and input. The effectiveness of this proposed Ordinance, through its proper implementation, would improve Bangladesh’s status in regard to compliance with the Convention. Additionally, it would bolster the philosophy of democratic governance in which people enjoy their constitutional right of access to information which is a necessary condition for transparency (article 39 of the *Constitution of People’s Republic of Bangladesh*). This free flow of information to the masses would generate informed opinions, strengthen our democracy and create an enabling environment for good governance.

Article 13: Participation of society


The UNCAC requires States Parties to promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community based organizations, for the purposes of preventing and combating corruption and to raise public awareness regarding the existence, causes, gravity, and threat posed by corruption

(article 13.1). It emphasizes the significance of measures that ensure public access to the anti-corruption bodies of the State Party for any kind of reporting or inquiry (article 13.2).

Combating corruption has emerged as a key issue of concern in recent years. 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. Specifically, in May 2007 the Chairman visited the Chapainawabganj, Rajshahi, Natore and Pabna districts and received many constructive responses from participants. 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. To that end, the UNCAC has tried to institutionalize societal participation in government efforts to curb 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. However, the ACC Act, particularly in regard to prevention, needs more clarification and resources in order to be properly implemented. Citizen's committees, promised to be established by the ACC, should be created and activated with clear terms of reference. Additionally, regular campaigns should be launched which attract people, particularly the youth of society. Moreover, motivational workshops and dialogues should be arranged. Most importantly, the ACC needs to monitor the effectiveness of its Research, Analysis, Prevention & Mass Awareness Department which is responsible for formulating and implementing these activities.

Chapter 2
Prevention (Articles 5-9, 10, 13)

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 5: States Parties are required to develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs.</p>	<p><i>Prevention of Corruption Act, 1947</i> <i>Anti-Corruption Commission (ACC) Act, 2004</i> <i>Anti-Corruption Commission Rules, 2007</i> <i>Emergency Powers Rules, 2007</i> <i>Criminal Law (Amendment) Act, 1958</i></p> <p>Other relevant laws and regulatory frameworks have been included in the other parts of the report corresponding to the various thematic areas outlined in the UNCAC.</p>	<p>The ACC Act, 2004 provides a consolidated framework to prevent corruption and other related practices in the country and the overall framework to conduct enquiry and investigation for specific offences and to enact other relevant matters in relation to corruption.</p>	<p>A change in the focus of the Caretaker Government, in January 2007 has meant that under the new leadership, significant steps have been taken toward reforms for good governance, fighting corruption and complying with international standards; These have included the accession to the UNCAC in February 2007 and the change of leadership in a number of relevant state institutions including the Anti-Corruption Commission, Public Service Commission and the Election Commission;</p> <p>A Regulatory Reform Commission has been established headed by a very senior level former public official;</p> <p>The Government is also in the process of formulating a National Integrity Strategy (NIS), with the participation of a wide range of stakeholders.</p>	<p>It is expected that the NIS will offer a vision for the development and implementation of reforms to promote better governance and combat corruption in Bangladesh;</p> <p>The NIS will seek to strengthen internal controls in state institutions and aims to induce a cultural shift by encouraging the adoption of citizen-owned accountability mechanisms in Bangladesh;</p> <p>The present report is expected to guide future anti-corruption reforms in line with the internationally accepted standards of the UNCAC.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 6: States Parties are obligated to have an anti-corruption body or bodies in charge of preventive measures and policies, to grant that body independence to ensure that it can do its job unimpeded by undue influences, and provide it with adequate resources and training.</p>	<p><i>Anti-Corruption Commission (ACC) Act, 2004</i></p>	<p>The Anti-Corruption Commission (ACC) is in charge of implementing preventive measures and policies;</p> <p>Section 17 of the ACC Act, 2004, empowers the ACC to review anti-corruption policies outlined in different laws and requires the effective implementation of strategies, to conduct anti-corruption research, create public awareness against corruption, and to hold seminars, symposiums and workshops on corruption;</p> <p>By law (sections 24, 25) the ACC has been guaranteed functional independence in the discharge of its functions.</p>	<p>Although the ACC was established in November 2004, it was not until the new Government came to power in 2007 that it became infused with political will, commitment and resources to fight against corruption;</p> <p>Under the new leadership of the ACC, additional resources have been dedicated for the investigation and prosecution of cases;</p> <p>The ACC during recent times has undertaken various preventive anti-corruption activities. In April 2007, with the aim of starting an anti-corruption mass movement, the chief executive of the ACC started a national tour in different parts of Bangladesh;</p> <p>In December 2007, Transparency International Bangladesh (TIB) and the ACC jointly started an anti-corruption campaign program.</p>	<p>The GoB's efforts to transform the fight against corruption into a social movement will be complimented by the formulation and implementation of a National Integrity Strategy.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Articles 7.1 and 7.1(a): States Parties must adopt, maintain, and strengthen systems for recruitment, hiring, retention, promotion of public officials based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude.</p>	<p>Article 133 of the <i>Constitution of Bangladesh Administrative Tribunal Act, 1980</i> <i>Bangladesh Public Service Commission Ordinance, 1977</i> <i>Bangladesh Civil Service Recruitment (BCSR) Rules, 1981</i> <i>Bangladesh Civil Service Recruitment (Age, Qualification and Examination for Direct Recruitment) Rules, 1982</i> <i>Bangladesh Civil Service (Examination for Promotion) Rules, 1986</i></p>	<p>Bangladesh has a comprehensive regulatory regime governing issues of public sector recruitment, hiring, retention, promotion, retirement of civil servants; The regime includes: <ul style="list-style-type: none"> • The <i>BCSR Rules, 1981</i> which provides procedures for recruitment, appointment and promotion; • The <i>Bangladesh Civil Service Recruitment (Age, Qualification and Examination for Direct Recruitment) Rules, 1982</i> provides necessary criteria for eligibility and candidates to be recruited into the civil services; • Under the <i>Administrative Tribunal Act, 1980</i>, Administrative Tribunals are set up to rule on matters relating to the terms and conditions of employment, recruitment, </p>	<p>The Public Service Commission (PSC), a constitutional body, conducts tests and examinations for recruitment; The functions of PSC include the holding of professional examinations, selection of suitable persons for appointment, advising the President on matters relating to principles of appointments, promotion, terms and conditions of service, and discipline; Generally the recruitment system is considered to require modernization; suggestions for improving the recruitment and promotion practices of public officials have been raised from time to time to ensure greater compliance with the principles of merit, equity and aptitude.</p>	<p>The BCSR Rules, 1981 have gone through several changes in the fields of application form selection, preliminary tests, written examinations, viva voce and appointment of selected candidates; Significant steps toward improving the overall governance situation in the country include institutional reforms toward strengthening constitutional bodies such as the PSC; The PSC is in the process of modernizing a long drawn and antiquated examination system; Measures are being considered to improve the independence, effectiveness and efficiency of the service including greater financial autonomy, training and capacity building opportunities; Mechanisms for disciplinary actions could be strengthened.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 7.1(b) & (d): States Parties are required to train public officials to enhance performance and increase aversion to risks of corruption.</p>	<p><i>Public Administration Training Policy (PATP), 2003</i></p>	<p>appointment, promotion and transfer, and must also uphold the rights of civil servants.</p> <p>The PATP, 2003 provides guidelines for public sector training. It details training procedures, content, purposes and the various types of training that could be designed for public officials. It requires public institutions to formulate and conduct training programs based on the training needs of officials of different sectors and departments.</p>	<p>Clientele groups of BPATC are diverse representing all of the 29 cadres of the civil services, from newly recruits to top level policy makers;</p> <p>Training is also provided by the training centers and institutes of the different ministries, departments and divisions;</p> <p>Until very recently there was almost no training specifically related to corruption issues;</p> <p>There is a need to make training more problem solving, enabling technical and project management skills and expertise to meet day to day demands of public officials.</p>	<p>Specific training courses on anti-corruption and good governance similar to those offered by BCS Academy should be provided.</p>
<p>Article 7.1(c): States Parties are required to promote adequate remuneration and equitable pay scales.</p>	<p><i>National Pay Commissions, 1972, 1977 and 2005</i></p>	<p>A number of National Pay Commissions (NPC) were set up for ascertaining pay scales for public servants; The first NPC was set up in 1972; salaries were</p>	<p>Bangladesh has no permanent Pay Commission that is entrusted with determining and evaluating of this highly technical and complex issue;</p>	<p>A permanent pay commission or a permanent pay cell in the Ministry of Finance could be considered that would determine remuneration and pay scales</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Articles 7.2 and 7.3: States Parties are required to take appropriate measures for prescribing criteria concerning candidature and election to public office;</p> <p>States Parties are obligated to enhance transparency in the funding of candidatures for elected public office and/or funding of political parties.</p>	<p>Articles 59, 65 and 66 of the <i>Constitution of Bangladesh Representation of People's Order, 1972</i></p> <p><i>Representation of People's Order, 2008 (proposed)</i></p>	<p>determined based on a ten tier civil service structure;</p> <p>In 1977 pay scales were determined based on an upgraded twenty tier service;</p> <p>The current pay scale is based on the recommendations of the sixth National Pay Commission report in 2005.</p>	<p>The Government has responded at times to inflationary trends and pressures of stakeholders in the service;</p> <p>There have been examples of introducing ad-hoc increment of salaries to satisfy practical needs and consequences.</p>	<p>for the civil servants taking into account examples from other countries; this would promote a coherent reward structure;</p> <p>The discrepancy between salaries in the public sector and the private sector are considered one of the major reasons for the lack of motivation and at times inadequate level of integrity in the public sector.</p>
<p>Articles 7.2 and 7.3: States Parties are required to take appropriate measures for prescribing criteria concerning candidature and election to public office;</p> <p>States Parties are obligated to enhance transparency in the funding of candidatures for elected public office and/or funding of political parties.</p>	<p>Articles 59 and 65 of the Constitution give provisions for conducting parliamentary and local government elections;</p> <p>Elections over the last 36 years have been conducted in accordance with the provisions of the <i>Representation of the People's Order (RPO), 1972</i>;</p> <p>Separate codes of conduct have been set up to regulate elections and criteria for candidature by the Election Commission (EC);</p> <p>An Ordinance (Ordinance No. V of 2008) was made by the Honourable President on</p>	<p>The EC has proposed significant changes to the RPO, 1972 as reform measures to enhance transparency in the funding of candidates to elected political parties. These are as follows:</p> <ul style="list-style-type: none"> • Registration of political parties and individual candidates with the EC is a must; • Disqualification of defaulters of loan and service bills as candidates; • Limits candidature in the number of 	<p>The Government has responded at times to inflationary trends and pressures of stakeholders in the service;</p> <p>There have been examples of introducing ad-hoc increment of salaries to satisfy practical needs and consequences.</p>	<p>If implemented, the proposed amendments to the RPO, 1972 will be instrumental in democratizing political parties and the manner in which they participate in elections.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Articles 8.1 and 8.2: States Parties are required to promote integrity, honesty and responsibility among public officials;</p> <p>States Parties are obligated to formulate codes or standards of conduct for the correct, honorable and proper performance of public functions.</p>	<p><i>Government Servants (Conduct) Rules, 1979</i> <i>Government Servants (Discipline and Appeal) Rules, 1985</i> <i>Rules of Business, 1996</i></p>	<p>5 March, 2008 which established the Independent Election Commission Secretariat.</p> <p>Articles 5 to 33, of the <i>Government Servants (Conduct) Rules, 1979</i> provide guidelines for the behavior and conduct of public officials in the civil service on 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 Conduct Rules are dealt with by the provisions of the <i>Government Servants (Discipline and Appeal) Rules, 1985</i>, which makes violations liable to inquiry and punishment, if proved; The <i>Rules of Business, 1996</i> regulate government transaction of business and</p>	<p>constituencies to two from the earlier five in the event candidates contest from more than one.</p> <p>The GoB has practically complied with the UNCAC by establishing a comprehensive code of conduct which promotes honesty and integrity in its public officials.</p>	<p>Public officials, the key actors of the civil administration, should have the necessary qualifications and a sufficient legal environment with resources in order to complete their duties effectively;</p> <p>This is an area for further research which could examine the role of these Rules to update and upgrade the existing regime, ensuring government efficiency and effectiveness;</p> <p>The proposed NIS is expected to address issues of integrity including those for public officials.</p>

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<p>Article 8.3: States Parties are required to take note of relevant initiatives of regional, interregional and multilateral organizations, such as the UN International Code of Conduct for Public Officials (General Assembly resolution 51/59 of 12 December 1996) to ensure compatibility with it.</p>	<p><i>Government Servants (Conduct) Rules, 1979</i></p>	<p>the allocation of functions among different ministries/divisions. See above</p>	<p>Bangladesh was found to be compliant with regard to the adoption of codes of conduct for public officials in a UN survey.</p>	<p>Codes of conduct on duties and obligations should be provided to public officials upon the time entry; The GoB should develop a strategy for introducing legislation implementing international codes of conduct at the national level.</p>
<p>Article 8.4: States Parties are required to establish measures and systems that facilitate the reporting by public officials of acts of corruption to appropriate authorities.</p>	<p><i>Penal Code, 1860</i> <i>Anti-Corruption Commission (ACC) Act, 2004</i></p>	<p>There is no direct legal provision regarding the protection of public officials in reporting acts of corruption of other public officials. Chapter IX of the <i>Penal Code, 1860</i> deals with the offences by or relating to public officials; Section 161 of the Penal Code criminalizes the taking of gratification other than legal remuneration in respect of an official act; Sections 162 and 163 of the Penal Code address corruption of public servants;</p>	<p>This particular provision indicates the need for a special law or regulation where a public official can report the corruption of another public official. This is known as a <i>whistleblowers</i> act. This is a major gap with regard to protection provided to complainants from within the civil service.</p>	<p>The adoption of a law to protect public officials regarding reports of acts of corruption in good faith is recommended; A concrete policy from the GoB with regard to this issue is essential for safeguarding whistleblowers, so that their protection goes beyond legal documents, to guarantee that their rights are practically protected.</p>

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<p>Article 8.5: Public officials are required to make declarations about their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise.</p>	<p><i>Government Servants (Conduct) Rules, 1979</i> <i>Penal Code, 1860</i></p>	<p>The ACC Act, 2004 provides guidelines for investigating corruption cases of any individual or institution. The ACC can report corruption cases and prosecute public officials after proper investigation.</p>	<p>Relevant laws were not strictly followed in the past, however, they are now being taken seriously; A recent Government circular requires the submission of wealth statements by February 2008 for all public officials.</p>	<p>Rules should be maintained regularly. An oversight mechanism should be established to observe the regular implementation of the provisions and ensure compatibility with the standards of the UNCAC; National legislation requires modification, particularly in terms of modernization; Related rules and circulars can be modified in light of the current state of the economy to redefine the ceiling for public officials in terms of holding particular assets; A comprehensive Civil Service Rules is in the process of being drafted and it is expected that it will modify the relevant rules, thus making the domestic</p>

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		imprisonment for violation of the laws.		legal regime compliant in regard to this provision
<p>Article 8.6: States Parties are obligated to take measures to initiate disciplinary or other measures against public officials who violate the codes or standards.</p>	<p><i>Government Servants (Discipline and Appeal) Rules, 1985</i></p>	<p>A public official is liable to an enquiry under the <i>Government Servants (Discipline and Appeal) Rules, 1985</i> for any contravention of any provision in said rules. If proved guilty, measures for punishment can be recommended;</p> <p>Part II of the Rules addresses the issue of discipline in civil service with procedures of inquiry in cases with major and minor penalties;</p> <p>Part III describes the appeal procedure against any government order.</p>	<p>The Ministry of Establishment and the Cabinet Division are the agencies who deal with this issue;</p> <p>Disciplinary measures are regularly taken against those officers who had been accused of violating the law.</p>	
<p>Article 9.1: States Parties must establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption.</p>	<p><i>Public Procurement Act, 2006</i> <i>Public Procurement Rules, 2008</i></p>	<p>Rules 13-18, 47-48, 56-60 of the PPR, 2008 have specified basic procurement guidelines including public accessibility of tendering rules, eligibility and non-discrimination criteria regarding selection of tender and qualifications of tenderer;</p> <p>Section 40 of the PPA, 2006</p>	<p>The PPA 2006 and the PPR, 2008 aim to provide a legal and regulatory framework governing public sector procurement and address a number of the earlier malaises such as delays caused by complex bureaucratic procedures;</p> <p>Greater autonomy from</p>	<p>The <i>Public Procurement Act, 2006</i> was successful in addressing gaps in policy and practice in the areas of public procurement;</p> <p>There is a need for training and capacity building of public officials in procurement related issues. This includes enhanced</p>

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		<p>and rule 90 of the PPR, 2008 provide procedure for open national tendering system. They also include provisions for policy formulation, coordination and monitoring of the procurement procedure;</p> <p>A detailed legal framework for complaints and appeals has also been provided;</p> <p>The PPR, 2008 requires Tender Evaluation Committees (TEC) to be established for decisions on procurements;</p> <p>The PPR, 2008 has criminalized corruption in procurement processes by public officials and other relevant parties as a means to address some of the existing maladies;</p>	<p>cabinets and concerned ministries has now been provided to procuring entities both at the national and local levels in awarding and approving contracts (within defined ceilings);</p> <p>Application of the national procurement rules has proven to be relatively inconsistent across the Government and within individual agencies;</p> <p>Implementation of the rules has severely strained the resources of executing agencies;</p> <p>Vulnerabilities in relation to the management of procurement include lack of information and expertise, contacts and collusion, conflict of interest with public officials, lack of accountability and political influence;</p> <p>Experiences have included discrimination and delays in the bidding of documents, cartel information to suppress competition, physical threats to bidders, bid boxes at multiple</p>	<p>knowledge of the PPR, 2008, its various rules and procedures, technical skills for evaluation and assessment in procurements;</p> <p>The Central Procurement Technical Unit is in the process of initiating such training with assistance of the World Bank under phase II of the PPPP.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 9.1(a): Systems of procurement should include clear procedures for public distribution of information, including information on invitations to tender and pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.</p>	<p><i>Public Procurement Act, 2006</i> <i>Public Procurement Rules, 2008</i></p>	<p>Rule 14 of the PPR, 2008 requires procuring entities to make all relevant information publicly accessible in paper and e-format pertaining to specific tenders;</p> <p>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;</p> <p>Section 40 of the PPA, 2008 expressly mentions the necessity of distributing information about invitations to tender and other pertinent information.</p>	<p>locations, tampering of bid files, delays in evaluation of bids, human interference at every stage and an unwillingness to provide transparency;</p> <p>Limited knowledge of procurement rules and procedures by public officials is also an issue.</p>	<p>In 2003, courts decided that procuring entities would be responsible for disseminating information relating to procurements and that all advertised in government listed newspapers that are "well circulated."</p>

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<p>Article 9.1(b): States Parties are required to establish, in advance, conditions for participation in procurement, including selection and award criteria and tendering rules, which must be publicized.</p>	<p><i>Public Procurement Act, 2006</i> <i>Public Procurement Rules, 2008</i></p>	<p>The PPR, 2008 states that the Central Procurement Technical Unit (CPTU) may authorize any other agency to make decisions and take actions as a procuring entity;</p> <p>Rule 130 of the PPR, 2008 vests the CPTU with the responsibility of providing guidance for setting up an enabling environment and conditions for participation;</p> <p>Rule 47 of the PPR 2008 provides for a non-discrimination;</p> <p>Rule 48 of the PPR, 2008 provides for qualifications for tenderer including the possession of necessary technical and professional expertise;</p> <p>Rules 48-49 of the PPR, 2008 require any procurement process to clearly articulate technical specifications for the award of any contract;</p> <p>Rules 56-60 of the PPR, 2008 provide for a Review Panel that is responsible for reviewing a tenderer's complaint and recommending corrective</p>	<p>Issues with regard to setting up transparent and objective selection criteria still exist. Of the 31 cases brought before the Review Panel (between the years 2003-2007) the Committee found four instances where the procuring entities did not stipulate clear criteria on the basis of which contractors were selected.</p>	<p>The <i>Public Procurement Act, 2006</i> and the <i>Public Procurement Rules, 2008</i> have strengthened the implementation mechanisms of existing procedures.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 9.1(c): State Parties are required to use objective and predetermined criteria for public procurement decisions.</p>	<p><i>Public Procurement Act, 2006</i> <i>Public Procurement Rules, 2008</i></p>	<p>action to a procuring entity, with respect to any breach of its obligations under these Regulations; Sections 5 to 8 of the PPA, 2006 proposes systems for the preparation of tender, handling proposals, establishment of committees, and the like.</p>	<p>A cause for dissatisfaction has been the exclusion of the two external experts in the TECs, which is an important safeguard against favoritism.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 9.1(d): States Parties are obligated to have effective systems of domestic review put into place, including an adequate system of appeal, to ensure legal recourse and remedies where procurement rules and procedures have not been followed.</p>	<p><i>Public Procurement Act, 2006</i> <i>Public Procurement Rules, 2008</i></p>	<p>tenders and the approval process; Section 56 to the Act of 2006 provides for the evaluation of applications and approval of short lists, while section 59 addresses the evaluation of proposals.</p> <p>Rules 56 to 60 of the PPR, 2008 set out detailed mechanisms and procedures for complaints and appeals which include the right to appeal, the establishment of a review panel and procedures for complaint; Complaints can be submitted to the procuring entity in the first instance; the complainant can go to the next stage of review, i.e., to the Secretary of the concerned ministry and finally s/he can ask for a review panel to be constituted under regulation 60 of the PPR 2008; Section 24 of the <i>Public Procurement Act, 2006</i> describes the system for <i>procurement post review</i> by establishing a procuring</p>	<p>Between years 2003-2007 a total of 31 cases have been brought before the review panel. Of these, at least three cases resulted in the procuring entities being asked to re-tender; The CPTU has started procurement management capacity building programs to substantially enhance capacity for procurement management through a structured education and training curriculum addressing the needs of senior managers, working level staff, auditors and the business community for the purposes of building a profession of procurement specialists.</p>	<p>Training and capacity building of public officials, bidding communities and beneficiaries in procurement related issues would encourage adherence to procurement rules and procedures.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 9.2: States Parties are required to take appropriate measures to promote transparency and accountability in the management of public finances. Such measures should include procedures for the adoption of the national budget, timely reporting on revenue and expenditure, appropriate systems of accounting and auditing standards, related oversight, risk management and internal control.</p>	<p>Article 87 of the <i>Constitution of Bangladesh</i> Rules 111-115 of the <i>Parliamentary Rules of Procedure</i></p>	<p>entity which shall, within nine months of the end of each fiscal year, arrange for an independent procurement post review.</p> <p>The Ministry of Finance is required to prepare and present an annual budget to the Parliament in accordance with article 87 of the Constitution, Rules 111 to 115 of the <i>Parliamentary Rules of Procedure</i> provide a detailed framework for the presentation of the budget and discussions on it; Article 127 of the Constitution provides for the establishment of the Office of the Comptroller and Auditor General (CAG) for the management of all public finances and related oversight of all public institutions; Existing auditing standards such as the accounts code for government expenditures, field auditing and reporting standards, audit code and operational</p>	<p>Financial priorities in the process of formulating the budget need to be guided by periodic sectoral policy analysis. The absence of such analysis hinders transparency and creates opportunities for the mismanagement of public funds; Improvements are necessary to strengthen auditing systems, that could include adopting the standards of International Public Sector Accounting and customized internal control manuals for different ministries (such as that in the Ministry of Finance); There is also a need for separate internal auditing departments within ministries to compliment the function and role of the CAG; The budget process of the</p>	<p>The whole process of budget formulation should be more consultative instead of the top-down approach in which the annual financial statements prepared by different sectors are presented by the Finance Minister; The Government should work on the management sectors of public finances. To that end, enactment of a comprehensive audit act and capacity development of the audit officials would be helpful; The forthcoming Audit Act should address some of the gaps identified between policy and practice in the management of public funds.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>Article 10: States Parties are required to enhance transparency in public administration, including its organization, functioning and decision-making processes, by adopting procedures or regulations allowing</p>	<p><i>Right to Information Ordinance, 2008 (proposed)</i></p>	<p>manuals, performance manuals for different directorates, code of ethics for government auditing and financial management rules are complementary to the provisions of the UNCAC.</p>	<p>fiscal year 2007-2008 was fairly consultative with changes made to the proposed budget after input was received from the public budget process;</p> <p>The GoB has just announced its budget for the fiscal year of 2008-2009. According to the Finance Adviser, it is a participatory budget that is subject to modification based on the response of persons from all sectors of society;</p> <p>The Government has run several consultative meetings with stakeholders before formulating the proposed budget. Additionally, it welcomes any comment on the budget which is posted electronically on the website of the Ministry of Finance.</p>	<p>The Ordinance should include procurement related documents (e.g. public/private/defense sector procurement) within its ambit;</p> <p>The proposed information</p>
		<p>There is no such law that protects the right of individuals to obtain information about the activities of the public/private offices of Bangladesh;</p> <p>The GoB has made efforts to</p>	<p>The Ordinance has been drafted in the spirit of promoting the right to knowledge which has been recognized in the Constitution.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>members of the general public to obtain information on the organization, functioning and decision-making processes of the public administration with due regard to protection of privacy and personal data;</p> <p>The article encourages States Parties to facilitate public access to the competent decision-making authorities and to publish information, specifically reports on the risk of corruption in public administration.</p>	<p><i>Anti-Corruption Commission (ACC) Act, 2004</i></p>	<p>ensure the right to information by taking initiatives to enact an ordinance on right to information (RTI). The law, the Right to Information Ordinance, 2008;</p> <p>The draft Ordinance contains 37 articles, including one on the formation of an Information Commission (Section 12 A), which will have the power to prepare guidelines to be followed by the competent authority to prepare the catalogue and index of available information;</p> <p>The Commission can also impose a fine of up to Tk 5,000 and recommend punishment as per the service rules if any authority/institution fails to provide information to citizens in a stipulated time.</p>	<p>The ACC has started a public awareness campaign in different areas of the country to promote the role of civil society organizations, and individuals in preventing</p>	<p>Commission should enjoy the status of an institution of accountability, thereby exercising both functional and financial independence;</p> <p>Making documents readily available in an electronic format through the internet would facilitate access to information in an efficient and cost-effective manner.</p>
<p>Article 13: States Parties are required to promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community based</p>	<p><i>Anti-Corruption Commission (ACC) Act, 2004</i></p>	<p>Section 17 of the Act requires the ACC to:</p> <ul style="list-style-type: none"> Promote the values of honesty and integrity in order to prevent corruption and take 	<p>The ACC has started a public awareness campaign in different areas of the country to promote the role of civil society organizations, and individuals in preventing</p>	<p>People's participation and public-private partnership are essential for corruption prevention;</p> <p>Citizen's committees can be formed and activated with</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility Between UNCAC and Domestic Regime	Compliance and Gap Between Law and Practice	Remarks
<p>organizations, in order to prevent and fight against corruption and to raise public awareness.</p>		<p>measures to build up mass awareness against corruption (Section 17g);</p> <ul style="list-style-type: none"> • Arrange seminars, symposiums and workshops on the subjects falling within the jurisdiction of the Commission (Section 17h); • Carry out research on prevention of corruption and prepare recommendation for the President regarding actions to be taken on the basis of research findings (Section 17f). 	<p>corruption;</p> <p>The campaign consists of consultation meetings, colorful rallies, public service announcements for media, debates and dialogues and other awareness campaign tools to increase mass awareness, thereby accelerating their participation in the anti-corruption battle.</p>	<p>clear terms of references;</p> <p>Motivational workshops and dialogues should be arranged;</p> <p>The ACC needs to closely monitor the effectiveness of its Research, Analysis, Prevention & Mass Awareness Department which is responsible for formulating and implementing these activities.</p>

Chapter 3

Criminalization and Law Enforcement

3.1 Criminalization of Offences

3.2 Law Enforcement Measures

Matrix on compliance with articles 15-42

Criminalization and Law Enforcement


Prevention and eradication of corruption require a comprehensive and multidisciplinary approach. Chapter III of the United Nations Convention against Corruption (UNCAC) obligates States Parties to criminalize a wide range of acts of corruption (articles 15-27) and to establish a series of procedural measures and mechanisms that support such criminalization (articles 28-41). Some of these obligations are mandatory while others are non-mandatory. When attributing mandatory obligations to the States Parties, the UNCAC uses the terms “shall adopt,” “shall establish,” etc. On the other hand, in respect to non-mandatory obligations, the UNCAC uses the terms “shall consider adopting,” “may adopt,” etc. The UNCAC emphasis on criminalization and law enforcement indicates that these are essential areas for action in order for Bangladesh to effectively fight corruption.

3.1 Criminalization of Offences

Articles 15, 16 & 21: Bribery

The UNCAC obligates States Parties to criminalize certain acts of bribery. These are active bribery of national public officials (article 15(a)), passive bribery of national public officials (article 15(b)), and active bribery of foreign public officials and officials of public international organizations (article 16.1). Criminalization of these acts is mandatory on the part of a State Party. The UNCAC also requires States Parties to consider criminalization of passive bribery of foreign public officials and officials of public international organizations (article 16.2), active bribery in the private sector (article 21(a)), and passive bribery in the private sector (article 21(b)).

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



However, there is no domestic law categorically criminalizing active bribery of foreign public officials and officials of public international organizations as required by article 16, paragraph 1 of the UNCAC. Moreover, so far as passive bribery of foreign public officials and officials of public international organizations and bribery (active or passive) in the private sector are concerned, the UNCAC standard is yet to be translated into the domestic laws of Bangladesh.

To ensure compatibility with the mandatory obligation of the UNCAC, it is recommended that active bribery of foreign public officials and officials of public international organizations be criminalized as required by article 16, paragraph 1 of the Convention. Moreover, passive bribery of foreign public officials and officials of public international organizations and bribery (active or passive) in the private sector should also be criminalized. Although criminalization of these offences is not a mandatory requirement of the UNCAC, domestic realities of Bangladesh demand punishment for these acts. This is because foreign public officials, officials of public international organizations and persons concerned in the private sector frequently indulge in acts of bribery. Keeping these acts of bribery outside the purview of penal laws would frustrate the efforts of Bangladesh against corruption. Accordingly, enactment of new legislation or amendment of existing laws may be recommended.

Articles 17 & 22: Embezzlement, misappropriation or other diversion of property

States Parties have a mandatory obligation to criminalize embezzlement, misappropriation or other diversion of property by a public official (article 17) and a non-mandatory obligation to criminalize embezzlement of property in the private sector (article 22).

Regarding “embezzlement, misappropriation or other diversion of property by a public official” (article 17), the domestic standards are quite compatible with the UNCAC standard. The *Penal Code, 1860* criminalizes the acts of “dishonest misappropriation of property” (section 403) and “criminal breach of trust by [a] public servant” (section 409). These offences, as their definitions indicate, include embezzlement, misappropriation or other diversion of property by a public official. Moreover, according to the *Prevention of Corruption Act, 1947*, the act of “dishonest or fraudulent misappropriation or conversion by a public servant for his own use of any property entrusted to him or under his control as a public servant or allowing any other person so to do” is punishable criminal misconduct (section 5(1)(c)). On the other hand, definitions of the offences of dishonest misappropriation of property (section 403) and criminal breach of trust (section 406) as criminalized by the *Penal Code, 1860*, include embezzlement of property by a person directing or working in a private

sector entity. Accordingly, embezzlement of property in the private sector is also punishable under the penal laws of Bangladesh.

Although domestic laws of Bangladesh contain several penal provisions dealing with embezzlement, misappropriation or other diversion of property, these provisions are not equally resorted to by the prosecuting agencies. In many cases, charges are brought under section 409 of the *Penal Code, 1860* and/or section 5(1)(c) of the *Prevention of Corruption Act, 1947*. Charges under sections 403 and 406 of the *Penal Code, 1860* to address acts of corruption are rare. This reflects that less attention is being paid to bringing the acts of embezzlement, misappropriation or other diversion of property in the private sector to justice. Therefore, the Government should ensure that penal provisions regarding such acts are put into more frequent practice.

Article 18: Trading in influence

The UNCAC prescribes that States Parties consider criminalization of active as well as passive trading in influence (article 18). In Bangladesh, the *Penal Code, 1860*, criminalizes the act of “taking gratification in order to influence [a] public servant by corrupt or illegal means” (section 162), the act of “taking gratification for exercise of personal influence with [a] public servant” (section 163), the act of “obtaining by a public servant of [a] valuable thing without consideration from [a] person concerned in proceedings or business transacted by such public servant” (section 165) or any abetment, i.e., instigating or aiding, of any of these offences (sections 164 and 165A). Moreover, according to the *Prevention of Corruption Act, 1947*, the act of “accepting or obtaining, by a public servant, a valuable thing, without consideration from persons concerned in proceedings or business transacted by such public servant” is punishable criminal misconduct (section 5(1)(b)). All these penal provisions adequately address the UNCAC requirements regarding active and passive trading in influence.

Article 19: Abuse of functions

States Parties are required to consider criminalization of intentional abuse of functions or position in violation of laws by a public official while discharging official functions for the purpose of obtaining an undue advantage for any person or entity (article 19). This is a non-mandatory obligation for the States Parties. In Bangladesh, according to the *Prevention of Corruption Act, 1947*, “abuse of position, by corrupt or illegal means or otherwise, by a public servant for obtaining or attempting to obtain for himself or for any other person any valuable thing or pecuniary advantage” is a punishable criminal misconduct (section 5(1)(d)). Consequently, Bangladesh has satisfied the UNCAC provision on abuse of functions.

Article 20: Illicit enrichment

It is very difficult to prove the actual transaction of corruption. However, a significant increase in the assets of a public official, if disproportionate to his or her lawful income, always conveys a prima facie (on the face of it) presumption that the public official concerned benefited from any such corruption. As such, establishment of illicit enrichment as an offence has been found helpful as a deterrent to corruption among public officials in a number of jurisdictions. Accordingly, the UNCAC prescribes that States Parties consider criminalization of illicit enrichment (article 20).

The *Anti-Corruption Commission Act, 2004* criminalizes the act of “possession of property in excess of known sources of income” (section 27). Moreover, according to the *Prevention of Corruption Act, 1947*, “possession of pecuniary resources or of property disproportionate to known sources of income by a public servant or any of his dependents, for which no reasonable explanation is offered” is punishable criminal misconduct (section 5(1)(e)). These provisions meet the requirement of article 20 of the UNCAC. Apart from these penal provisions, there is disciplinary framework by which the cases of illicit enrichment by public servants can be dealt with. The *Government Servants (Conduct) Rules, 1979* require every public servant to submit his/her wealth statement at the time of joining the service and thereafter once every year (rule 13). Non-compliance with this obligation may lead to disciplinary action against that public servant.

Despite the existence of adequate penal and disciplinary provisions regarding illicit enrichment, over the years these provisions were underused; there were hardly any convictions for the offence of illicit enrichment. The historic drive against corruption initiated in 2007 has activated the efficacy of penal provisions regarding illicit enrichment. Since 2007, 357 persons were asked by the ACC to declare their assets. On scrutiny of these declarations, the ACC successfully prosecuted and convicted offenders. On the other hand, until 2008, public servants would avoid their obligation of submitting wealth statements on the pretext of non-availability of the prescribed wealth statement form. In 2008, the Government finalized the form and accordingly, public servants have submitted their wealth statements. These statements are now being verified by government agencies.

In a developing country like Bangladesh where corruption is generally perceived as one of the most effective means of enrichment, there is no room to overlook the offence of illicit enrichment. As such, the ongoing activism of the prosecuting agencies and the Government to deal with illicit enrichment should continue and, if required, be strengthened in the days to come.

Article 23: Laundering of proceeds of crime

The UNCAC obligates States Parties to criminalize “laundering of proceeds of crime” (article 23). This UNCAC offence includes the act of conversion or transfer for the purpose of concealing or disguising the illicit origin of any proceeds of crime, the act of concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to any such property and the act of acquisition, possession or use of any such property.

The domestic legal regime on money laundering is relatively new. The *Money Laundering Prevention Act, 2002* was the first penal law dealing with the offence of money laundering. Since then, the criminal courts have tried few offenders under this Act. Because of some substantive as well as procedural lacunas imbedded in the Act, the Government repealed it and enacted the *Money Laundering Prevention Ordinance (MLPO), 2008*. The present legislation came into force on 15 April, 2008. This legislation, because of its extensive definition of “money laundering” and “predicate offence,” reflects better compatibility with article 23 of the UNCAC.

In Bangladesh, the MLPO, 2008 defines “money laundering” in such an extensive way that includes transfer, conversion, remittance or concealment of any property acquired through the commission of any predicate offence (section 2(k)). Under this Ordinance, money laundering is a criminal offence (section 4). It is pertinent to mention here that the definition of “predicate offence” as offered by section 2(q) of the MLPO, 2008 is also very extensive. Accordingly, domestic standards are compatible with the UNCAC requirement.

Article 24: Concealment

The UNCAC requires that States Parties consider criminalization of intentional concealment or continued retention of property with the knowledge that such property is the result of any offence established in accordance with the UNCAC, but without having any participation in any such offence (article 24).

So far as the domestic penal norms of Bangladesh are concerned, concealment of any property acquired through the commission of any predicate offence amounts to money laundering (section 2) and as such is punishable (section 4) in accordance with the MLPO, 2008. Moreover, the *Penal Code, 1860* criminalizes “dishonest or fraudulent removal or concealment of property” (section 424), “dishonestly receiving or retaining stolen property” (section 411) and “assisting in concealment of stolen property” (section 414). It is relevant here to mention here that under the Penal Code, 1860, “stolen property” includes, *inter alia*, the property in

respect of which “dishonest misappropriation” or “criminal breach of trust” has been committed (section 410). All these penal provisions adequately address the elements of article 24 of the UNCAC.

Until 2008, the domestic legal regime on concealment was not effective although there were many provisions in the *Penal Code, 1860* to that effect. This is because the offences of the *Penal Code, 1860* require the proof of “dishonesty” or “fraud” as a precondition for punishment. In this regard, the newly enacted penal provision of the MLPO, 2008 seems more prosecution-friendly. As such, one can expect that in the days to come the legal regime on concealment would be stronger and more efficacious.

Article 25: Obstruction of justice

Article 25 of the UNCAC requires the establishment of two offences relating to obstruction of justice. One is related to the use of physical force, intimidation, or the promise and offering of an undue advantage to obtain false testimony in proceedings concerning UNCAC offences (article 25(a)). Another provision relates to the use of physical force or intimidation to interfere with the exercise of official duties by a justice or law enforcement official (article 25(b)).

In Bangladesh, under the *Penal Code, 1860*, use of criminal force (section 352), and intimidation or threat (sections 506-507) are, *ipso facto* (by that very act), punishable. As such, these penal provisions can be invoked to address both offences described in article 25 of the UNCAC. The *Penal Code, 1860* also criminalizes the acts of giving false testimony (sections 193-196), causing the disappearance of evidence (section 201) and destruction of a document to prevent its production as evidence (section 204). Abetment, i.e., instigating or aiding, of any of the abovementioned offences is also punishable. Furthermore, section 7 of the MLPO, 2008 provides that obstruction or refusal to assist an investigating officer for money laundering constitutes an offence. These offences contain the elements of the offence as described in article 25(a) of the UNCAC.

Interference with judicial proceedings can be tried under different penal provisions relating to contempt of lawful authority of public officials and insult or interruption of judicial proceedings by any such official (the *Penal Code, 1860*, sections 175, 178, 179, 180, 228). Moreover, use of criminal force to deter a public servant in discharging his/her duty as criminalized by the same Code (section 353) can be used to punish a person committing an offence described in article 25(a) of the UNCAC. Furthermore, the *Contempt of Courts Ordinance, 2008* defines the terms “contempt of courts” in such an extensive manner that includes any act interfering with the course of justice administered by the courts (section 2) and provides punishment for such acts (section 13).

In Bangladesh, because of a strong legal regime and consistent judicial activism in upholding its prestige and dignity, the offence of interfering in the exercise of judicial functions, as prescribed in article 25(a) of the UNCAC, is frequently brought to justice. However, because of a weak domestic framework for protection of witnesses, penal provisions corresponding to the offence as described in article 25(b) of the UNCAC are infrequently used for prosecution. It is therefore recommended that witness protection mechanisms be strengthened.


Article 26: Liability of legal persons

Article 26 of the UNCAC requires the establishment of criminal, civil or administrative liability for legal entities for the UNCAC offences. This obligation is mandatory, to the extent that it is consistent with domestic legal principles.

Domestic standards of Bangladesh comply with the UNCAC requirement. The definition of the term “person,” as provided by the *Penal Code, 1860*, includes legal persons (section 11). Accordingly, in Bangladesh, legal persons are amenable to criminal punishment for offences punishable with fines only. Additionally, civil and administrative liability of legal persons is acknowledged by the domestic legal regime. In Bangladesh, corporate bodies can be identified as perpetrators of many acts amounting to corruption. Nevertheless, these legal persons are hardly prosecuted, let alone convicted, for any corruption offences. Therefore, so far as criminal liability of legal persons is concerned, the provision of the *Penal Code, 1860* acknowledging such liability by giving an extensive definition for the term “person” practically remains nugatory. This is because the domestic laws of Bangladesh do not contain any rule enabling the courts to presume constructive *mens rea* (guilty mind) of legal persons. In the absence of such rule of presumption, criminal liability of legal persons cannot be ensured since almost all the offences of corruption demand *mens rea* of the accused. To remedy the situation, amendment of existing laws should be given serious thought so that *mens rea* can be imputed on legal persons accused of committing acts of corruption.

Article 27: Participation, attempt and preparation

Under the UNCAC, States Parties are obliged to establish as criminal offence, the participation in any capacity as an accomplice, assistant or instigator in the commissions of any UNCAC offence (article 27.1). This obligation is mandatory. In addition, States Parties may wish to consider the criminalization of attempts to commit an offence (article 27.2) or the preparation of any such offence (article 27.3).



According to the *Penal Code, 1860* and the other laws on corruption, such as section 2(k) of MLPO, 2008, participation in and attempt of any offence are generally punishable in Bangladesh. However, preparation to commit an offence is not punishable. Hence, the domestic laws of Bangladesh are fully compatible with the mandatory obligation of the UNCAC and partially compatible with its non-mandatory requirements.

In this regard, criminalization of preparation to commit an UNCAC offence as a fulfillment of the non-mandatory obligation of the UNCAC is not very easy to suggest. If we consider the fundamental principles of the criminal laws of Bangladesh and their practical implications, it is feared that it would be a troublesome task to fix the criteria of defining “preparation” without putting the legitimate rights of an accused at risk and such criminalization would be prone to abuse by the investigating and prosecuting agencies and personnel. However, comprehensive research and continuing debates in the public sphere might suggest viable options that Bangladesh can avail itself of in this regard.

3.2 Law Enforcement Measures

Article 28: Knowledge, intent and purpose as elements of an offence

The UNCAC provides that knowledge, intent or purpose required for the commission of an UNCAC offence be inferred by courts in judicial proceedings from objective factual circumstances. This provision calls for evidentiary provisions in domestic laws.

Generally, the criteria to infer “knowledge,” “intent” or “purpose” is not regulated in Bangladesh by any statute. This is left to the courts’ objective judgment. Nevertheless, domestic standards enable the courts to presume certain mental states of a person accused of corruption. For example, the *Penal Code, 1860*, in sections 161, 162, 163, 165, and 165A, criminalizes taking or obtaining by and giving or offering to any public servant any gratification or any valuable thing provided such acts of taking, obtaining, giving or offering are done with certain specified intention or purpose(s). In trial of such offences, the court, on the proof of *actus rea* (such taking, obtaining, giving or offering), may presume, unless the contrary is proved, the intention or purpose(s) required to constitute the offence (the *Criminal Law Amendment Act, 1958*, section 7 paragraphs (2) and (3)). The *Prevention of Corruption Act, 1947* also contains similar special rules of evidence (section 4). Moreover, the *Criminal Law Amendment Act, 1958* provides that when any person is charged for corruption, the fact that such person or any other person through him or on his behalf is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that such person has, on or about the time of offence with which he is charged, obtained an accretion to his pecuniary

resources or property for which he cannot satisfactorily account may be taken into consideration by the court as a relevant fact in deciding the whether he is guilty (section 7(1)). Accordingly, the UNCAC requirement is duly addressed in the domestic laws of Bangladesh.


Article 29: Statute of limitations

The UNCAC requires that States Parties establish a long period of limitations for UNCAC offences and suspension of such statute or establishment of a longer statute of limitations for alleged offenders evading the administration of justice.

In Bangladesh, there exists no statute of limitations prescribing the time limit for commencement of criminal proceedings. As such, the domestic standard is more prosecution-friendly than the UNCAC in the sense that criminal proceedings cannot be barred by limitations. Since article 29 of the UNCAC does not require States Parties without statutes of limitation to introduce them, domestic standards of Bangladesh fully comply with the UNCAC requirement. It is relevant to mention here that although there exists no limitation period for initiation of criminal proceedings, courts always require reasonable explanation if there is delay in initiating such a proceeding. If such delay is not reasonably explained to the satisfaction of the court, the benefit of doubt goes in favor of the accused.

Article 30: Prosecution, adjudication and sanctions

Article 30 provides for mandatory and non-mandatory obligations relating to prosecution, adjudication and sanctions. States Parties should take into account the gravity of the offence while prescribing punitive measures (article 30.1). Such measures do not preclude any disciplinary action taken by competent authorities against civil servants (article 30.8). They are also required to establish or maintain an appropriate balance between any immunities or privileges accorded to their public officials and the possibility of effectively investigating, prosecuting and adjudicating UNCAC offences (article 30.2). States Parties must take appropriate measures to ensure the presence of any defendant released during trial at subsequent criminal proceedings (article 30.4) and to take into account the gravity of the offences concerned when considering early release or parole of persons convicted of UNCAC offences (article 30.5). They should also endeavor to ensure that discretionary powers relating to prosecution are exercised to maximize the effectiveness of law enforcement measures (article 30.3) and to consider establishing mechanisms through which a public official accused of an UNCAC offence may be removed, suspended or reassigned (article 30.6). States Parties should also consider establishing procedures for the disqualification from public office of persons convicted of an UNCAC offence (article 30.7).



In Bangladesh, punishments prescribed for corruption related offences are proportionate to the gravity of those offences. In most cases, offenders liable for offences relating to bribery and trading in influence can be punished with imprisonment for up to three years and/or fines. For commission of similar offences, imprisonment of a public servant may extend to seven years. Generally, offenders liable for embezzlement, misappropriation or other diversion of property can be punished with imprisonment for up to two or three years and/or fines. In case of public servants, the term of imprisonment may extend to imprisonment for life or imprisonment for up to ten years. In all other cases, the amount of fines imposed on an offender liable for corruption shall not be less than the gain illegally derived. These punishments do not affect the initiation or continuation of any disciplinary proceeding against a public servant (the ***Government Servants (Discipline and Appeal) Rules, 1985***).

Domestic laws do not prescribe any immunities or jurisdictional privileges for public officials that are disproportionate to the need or efficacy of investigation, prosecution or trial. Until 2004, previous sanction was necessary to prosecute a public servant for corruption cases. With the enactment of the ***Anti-Corruption Commission Act, 2004***, this jurisdictional privilege for public servants has been abolished. Most of the offences under the domestic laws corresponding to UNCAC offences are non-bailable. Therefore, the accused is not generally entitled to claim bail as of right. However, the court may, in appropriate cases, grant bail in favor of an accused. Conditions imposed on bail are matters of judicial discretion. According to the ***Government Servants (Discipline and Appeal) Rules, 1985***, government servants can be suspended for their alleged involvement in any offences. Moreover, according to the ***Public Servants (Dismissal on Conviction) Ordinance, 1985***, a public servant convicted of any offence punishable with death, transportation or imprisonment for a term exceeding six months and/or fined with taka one thousand or above will stand dismissed from service from the date of judgment (section 3(1) read with schedule). The Constitution also disqualifies a person convicted of an offence involving moral turpitude and sentenced to imprisonment for a term of two years and/or above from participating in an election to Parliament for a term of five years since release (article 66). Similar restriction applies for election to local government bodies such as union parishad (the ***Local Government (Union Parishads) Ordinance, 1983***, section 7), paurashava (the ***Paurashava Ordinance, 1977***, section 10) and city corporation (the ***Dhaka City Corporation Ordinance, 1983***, section 11; the ***Chittagong City Corporation Ordinance, 1982***, section 11; the ***Khulna City Corporation Ordinance, 1984***, section 11; the ***Rajshahi City Corporation Act, 1987***, section 13; the ***Sylhet City Corporation Act, 2001***, section 8; the ***Barisal City Corporation Act, 2001***, section 8). On the whole, it appears that the UNCAC requirement is adequately addressed in the domestic laws of Bangladesh.


The substantive provisions of domestic laws stated above are frequently resorted to. Public servants accused of corruption are in almost all the appropriate cases subjected to disciplinary actions. Once any such public servant is convicted and awarded imprisonment for a term exceeding six months and/or fines of taka one thousand or more, his service is automatically terminated. Moreover, electoral laws disqualifying corrupt convicts are also frequently put into practice because of objections raised by competing candidates. There was an instance where a member of Parliament lost his membership status for conviction in a corruption case even after he was elected.

Article 31: Freezing, seizure and confiscation

One of the most important ways to prevent offenders from profiting from their acts of corruption is to ensure that States have strong confiscation regimes that provide for the identification, freezing, seizure and confiscation of illicitly acquired funds and property. As such, article 31 of the UNCAC prescribes measures for confiscation.

The substantive obligations of States Parties arising out of article 31 are found in paragraphs 1, 3, 4, 5 and 6, while procedural powers to trace, locate, gain access to and administer assets are found in the remaining paragraphs. States Parties are required to take necessary measures to enable confiscation of proceeds of crime derived from the UNCAC offences (article 31.1), property into which proceeds of crime are intermingled by way of transformation or conversion (article 31 paragraphs 4 and 5), and income or other benefits derived from proceeds of crime (article 31.6). Additionally, States Parties are also obligated to take necessary measures to enable the identification, tracing, freezing or seizure of such property (article 31.2) and to regulate the administration of frozen, seized or confiscated property (article 31.3).

Provisions for confiscation of property are contained in several laws of Bangladesh. The *Anti-Corruption Commission Act, 2004* allows for the confiscation of any property that has been acquired by illegal means or is disproportionate to the legal source of income (section 27(1)). This provision is broader in its application than the UNCAC. The *Criminal Law Amendment Act, 1958* also empowers the courts to confiscate the proceeds of corruption (section 9). Moreover, courts can order freezing or attachment of properties allegedly acquired by illegal means or disproportionate to the legal source of income, even before the commencement of trial (the *Anti-Corruption Commission Rules, 2007*, rule 18). The *Criminal Law Amendment Ordinance, 1944* also contains a similar provision (section 4). Moreover, the *Money Laundering Prevention Ordinance, 2008* empowers the courts to freeze, attach (section 14) or confiscate (section 17) the property of any person accused of money



laundering. Generally, administration of frozen or attached property is determined at the discretion of the courts (the *Criminal Law Amendment Ordinance, 1944*, section 9) while the duty to administer attached property lies with the Government. However, in case of any property attached, frozen, or confiscated in relation to an offence amounting to money laundering, the concerned court can appoint a receiver for the proper administration of such property (the *Money Laundering Prevention Ordinance, 2008*, section 21).

On the whole, it appears that domestic standards are fully compatible with the UNCAC. However, over the years domestic standards providing for freezing, attachment and confiscation of proceeds of corruption practically remained dormant. Before the massive drive of the ACC against corruption initiated in 2007, these provisions were hardly resorted to. However, since 2007, these provisions have been applied and accordingly, illegally acquired properties of many persons accused of corruption have been frozen, attached and confiscated. Although recourse to the legal regime on freezing, seizure and confiscation is too recent to be evaluated, one can expect that this recent trend, if continued in the long run, will constitute an important deterrent that might have as great an effect as the punishments of imprisonment and fines. Moreover, the threat of freezing, seizure and confiscation will render the crime of corruption less attractive and thus play an important preventing role in the fight against corruption.

Articles 32 & 33: Protection of witnesses, experts, victims and reporting persons

Unless people feel free to report, testify and communicate their knowledge and experience to the relevant authorities, all objectives of the UNCAC could be undermined. This is why the UNCAC calls for the protection of witnesses, experts, victims (article 32) and reporting persons (article 33). While the arrangement for protection of witnesses, experts, and victims is mandatory, that of reporting persons is non-mandatory. States Parties are mandated by the UNCAC to take appropriate measures against potential retaliation or intimidation of witnesses, victims and experts. States are also encouraged to provide procedural and evidentiary rules for strengthening these protective measures as well as extending similar protection to reporting persons.


In Bangladesh, there is no specialized legal arrangement for protection of witnesses, experts, and victims (with exception to the protection of victims of gender violence which is outside the remit of this study). In relation to reporting persons, section 28 of the MLPO, 2008 provides protection to the Government, any government official or any reporting organization from being sued or prosecuted, by any person that is affected or likely to be affected due to proceedings brought in good faith under the Ordinance.

Nonetheless, this lack of protection for other persons is a major constraint for the prosecution in corruption cases. Witnesses lack the necessary assurances for their safety and security in order to testify in court. In cases where they appear, they are hesitant to speak the truth, especially when they feel that the accused persons are politically, financially or otherwise influential. This non-compliance with the UNCAC goes against the legitimate interests of the prosecution. It also contributes to the lack of exposure of many cases of corruption. Hence, to meet the UNCAC requirement it is recommended that either the existing laws are amended or new legislations are made so that witnesses, experts, victims and reporting persons are safeguarded against any retaliation and intimidation. In particular, the options of ensuring confidentiality of a reporting person's identity, permitting the giving of testimony through the use of communication technology, cross-border arrangement for relocation of witnesses, experts, victims and reporting persons under apprehension of threat, special security arrangement for such persons, etc., can be considered. In this regard, consulting witness, victim, and whistleblower protection laws of different countries could be of great help.

Article 34: Consequences of acts of corruption

The UNCAC contains a general obligation for States Parties to take measures, with due regard to the rights of third parties acquired in good faith and in accordance with the fundamental principles of the domestic law, to address the consequences of corruption. In this context, it is suggested that States Parties may wish to consider corruption as a relevant factor in legal proceedings to: (a) annul or rescind a contract; (b) withdraw a concession or other similar instrument; or (c) take any other remedial action.

Domestic laws contain many provisions to address the consequences of corruption. The **Contract Act, 1872** provides that an agreement is void if any part of a single consideration for one or more of its objects is unlawful (section 24). As corruption is unlawful, it renders such contracts null and void. Additionally, corruption amounting to *mala fide* may be a sufficient ground for the withdrawal of any concessions in any contract or similar instrument. Furthermore, according to the **Criminal Law Amendment Ordinance, 1944**, property procured by means of corruption, even if it is in the possession of a transferee, can be attached or forfeited, unless s/he is a *bona fide* transferee for value (sections 4 and 13). With regard to *bona fide* transferees, section 17(3) of the MLPO, 2008 also recognizes the right of third parties to property acquired in good faith. This provision states that if a person in good faith and for proper value had purchased the property before the order of forfeiture was passed by the court under section 17 and is able to convince the court that s/he had no knowledge of the property being laundered and had purchased it in good faith, the court may order



the convicted person to deposit the sold value of the said property in the government treasury within a timeframe determine by the court, instead of giving a forfeiture order. Accordingly, the domestic laws meet the UNCAC obligation.

So far as the consequences of corruption are concerned, the *Constitution of the People's Republic of Bangladesh* goes beyond the UNCAC. It states that, "the State shall endeavor to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes..." (article 20(2)). Therefore, it is the constitutional duty of the State to address the consequences of corruption in a more pro-active manner. Mere fulfillment of the UNCAC requirement would not be sufficient. Therefore, the Government should consider going beyond the prescription of remedial actions in legal proceedings and develop preventive mechanisms so that a person is unable to enjoy incomes derived from corrupt transactions.

Article 35: Compensation for damage

The UNCAC requires that States Parties take such measures as may be necessary, to ensure that victims of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. This mandatory requirement as outlined in article 35 does not require that victims be guaranteed compensation or restitution, but that legislative or other measures are provided, whereby such compensation can be sought or claimed.

The domestic legal system of Bangladesh recognizes the right to claim compensation for any damage in accordance with the law of torts. An aggrieved person, by filing a civil suit, can do so. Victims of corruption are no exception in this regard and they can also be awarded compensation in criminal proceedings (the *Code of Criminal Procedure, 1898*, section 545). As such, domestic laws meet the requirement of the UNCAC. However, there is hardly any precedent of using these domestic standards in favor of any victim of corruption. Moreover, in practice, the amount of court fees required to file any civil suit for compensation is a major factor that deters corruption victims from coming forward with their lawful claim of compensation. As such, this amount can be reduced for corruption victims.

Article 36: Specialized authorities

The UNCAC requires that States Parties establish a body or bodies specialized in combating corruption through law enforcement. Such a body or bodies must be granted the necessary independence to be able to carry out their functions effectively, without any undue influence, and should have the appropriate training and resources to carry out their tasks.

In Bangladesh, the Anti-Corruption Commission (ACC) has been established under the provisions of the *Anti-Corruption Commission Act, 2004* as the specialized authority for combating corruption. It comprises three Commissioners, who have at least 20 years of experience of service in the fields of law, education, administration, judiciary or armed forces. A Selection Committee, consisting of two judges of the Supreme Court (nominated by the Chief Justice of Bangladesh), the Comptroller and Auditor General (CAG), the Chairman of the PSC, and a former Cabinet Secretary, is responsible for recommending the appointment of the Commissioners who have a guaranteed tenure of four years. The Commissioners are supported by an office of over a thousand staff that include 6 Directorates, i.e., administration, legal and prosecution, enquiry and investigation, research, evaluation, prevention and public awareness, and pending matters, each headed by a Director General, 19 directors and 81 deputy directors. Under the law, the ACC has been guaranteed functional independence (sections 3 and 24). Furthermore, the MLPO, 2008 established the Bangladesh Bank and the Financial Intelligent Unit as the regulatory body for preventing and combating money laundering. Accordingly, the UNCAC requirement is reasonably reflected in the domestic legal standard. However, allocation of more resources, greater financial and administrative autonomy and imparting necessary training to its personnel will enhance the effectiveness of the ACC in the discharge of its functions

Established in 2004, the ACC experienced a re-constitution in 2007. Since then it has been working with tremendous enthusiasm, showing unprecedented activism and increasingly gaining public confidence. In 2007 (as of 23 April, 2008), the ACC filed 362 criminal cases of corruption. Of them, 166 are under investigation, 148 on trial and judgments have been received in 48 cases. However, to institutionalize this current image and effectiveness of the ACC, along with the continued political will and commitment to combating corruption, an independent judiciary and other watchdog institutions are essential. To make the ACC more effective, the institutional febleness of some other institutions of national importance must also be cured. In 2007, the judiciary of Bangladesh was completely separated from the executive. This is a historical achievement. Now more attention should be paid to ensure that the independence of the judiciary is safeguarded. While the office of the Tax Ombudsman is functioning, the office of the Ombudsman is yet to be established. However, once established, the office of the Ombudsman could play a vital role in supplementing the activities of the ACC. This is because the *Constitution of the People's Republic of Bangladesh*, the supreme law of the land, empowers the Ombudsman to investigate any action taken by a Ministry, public officer or statutory public authority (article 77). Due importance should also be given to the reform of the public accounts committee of the Parliament and the Office of the CAG, so that these bodies can be more

effective in fighting corruption. These issues are at the forefront of public debates on good governance.

Article 37: Cooperation with law enforcement authorities

Under article 37 of the UNCAC, States Parties are required to take appropriate measures to encourage persons taking part in the commission of an UNCAC offence (a) to supply information to competent authorities for investigative and evidentiary purposes; and (b) to provide specific facts to help authorities. This obligation is mandatory. Additionally, States Parties are required to consider the options of immunity from prosecution (article 37.2) and mitigation of sentences (article 37.3) for such persons who have assisted in providing information relevant to the case. However, this obligation is non-mandatory.

Domestic standards comply with the UNCAC requirement. The *Criminal Law Amendment Act, 1958* provides: “at any stage of investigation, enquiry, and trial the Special Judge, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, may for reasons to be recorded in writing, tender pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof . . .” (section 6(2)). The *Code of Criminal Procedure, 1898* contains similar provisions (sections 337 and 338). Furthermore, there are provisions under the domestic laws which actually oblige related persons to cooperate with the investigating authorities. For example, section 7 of the MLPO, 2008 has criminalized obstruction or refusal to assist a concerned officer engaged in investigation under the Ordinance, failure to comply without reasonable grounds with a reporting obligation, and failure to supply information relating to money laundering. Moreover, providing false information concerning the source of funds or the identity of any account holder, beneficial owner, or nominee also amounts to a criminal offence under section 8 of the MLPO, 2008. This arrangement, designed by the domestic laws of Bangladesh, is meant to encourage, and in some cases compel, cooperation with law enforcement authorities.

In practice, the arrangement designed by the domestic laws does not ensure sufficient cooperation with the law enforcement authorities. Several factors impede such cooperation. First, it is an enabling provision empowering the court to grant pardons to the accused. It does not provide the choice to cooperate of one’s own accord to claim any immunity or exemption. Second, statements by an accused to law enforcement agencies are not generally admissible in courts of law in Bangladesh. This hinders fair cooperation with law enforcement agencies. Third, the

absence of protection mechanisms for witnesses and reporting persons discourages cooperation with law enforcement agencies. However, the massive drive and campaign against corruption, initiated by the ACC in 2007, has inspired people to cooperate with law enforcement authorities. To ensure long-term sustainable cooperation with law enforcing agencies, laws can be amended to uproot or at least minimize the abovementioned factors that impede such cooperation.

It is relevant to mention here that on 5 June, 2008 the Honourable President issued an Ordinance on the establishment of a Truth and Accountability Commission (section 04 of the Ordinance No. XXVII of 2008). Once this Commission, a quasi-judicial body, starts functioning, persons enriched in an illicit manner shall be dealt with some sort of leniency provided they make a voluntary disclosure about their corrupt enrichment.

Article 38: Cooperation between national authorities

According to article 38 of the UNCAC, a State Party is required to take necessary measures to encourage, in accordance with its domestic law, cooperation between its public authorities as well as its public officials and its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include: informing the latter authorities, on their own initiative, when there are reasonable grounds to believe that offences of “bribery of national public officials,” “bribery in the private sector” or “laundering of proceeds of crime” has been committed (article 38(a)); or providing, upon request, to the latter authorities all necessary information (article 38(b)).

Domestic standards do not, in general, provide obligations for public authorities to inform *suo motu* (on its own motion) the investigating or prosecuting authorities. However, according to the ***Anti-Corruption Commission Act, 2004***, public authorities are duty bound to provide necessary information if the ACC requires (section 23). Furthermore, section 23(2) of the ***Money Laundering Prevention Ordinance, 2008*** obliges the Bangladesh Bank to provide information related to money laundering or suspicious transactions upon request from any investigating organization unless there is any bar under the existing laws or for any other cause. Accordingly, the domestic standard partially meets the UNCAC requirement since it ensures cooperation of public authorities, if such cooperation is sought for. To make it more compatible with the UNCAC standard, public authorities may be brought under a reporting obligation to inform the prosecuting and investigating agencies about any transaction of corruption within their knowledge.

Article 39: Cooperation between national authorities and the private sector

Article 39 of the UNCAC requires States Parties to take necessary measures to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, particularly financial institutions, relating to matters involving the commission of UNCAC offences (article 39.1). Beside this mandatory obligation, States Parties should consider encouraging their nationals and other persons with a habitual residence in their territory to report to the national investigating and prosecuting authorities the commission of an UNCAC offence (article 39.2).

According to the *Anti-Corruption Commission Act, 2004*, every person is duty-bound to provide necessary information if the ACC requires such information; failure to provide this is a criminal offence (section 19). Additionally, according to the *Money Laundering Prevention Ordinance (MLPO), 2008*, any unreasonable refusal to cooperate with an officer concerned with investigating money laundering is a criminal offence (section 7). Moreover, the MLPO, 2008 identifies banks, financial institutions, insurance companies, money changers, companies or organizations remitting or transferring money, and any other organizations which conduct business with the approval of the Bangladesh Bank (BB), as “reporting organizations” for the prevention of money laundering. Section 25 obliges the reporting organizations to cooperate with the BB by keeping the correct and full information of their clients’ identity and records of transactions; furthermore, they must provide these records to the BB on demand. Reporting organizations are also required to inform the BB proactively and immediately of facts on suspicious, unusual, or doubtful transactions which may likely be related to money laundering. These provisions of domestic laws ensure cooperation, if such cooperation is demanded by national authorities. Thus, the UNCAC requirement is partially complied with.

In practice, prosecuting and investigating agencies are receiving cooperation whenever they seek it. Specific penal provisions are ensuring such cooperation. Nevertheless, the end result is not encouraging enough for the fight against corruption. Various factors are contributing this result. Firstly, domestic laws do not obligate any person or authority to cooperate with such agencies other than what they had asked for. This is minimizing the expectation that persons or authorities having knowledge or information on the commission of corruption would feel bound to come forward and cooperate with the investigating and prosecuting agencies. Secondly, domestic laws do not contain adequate protection mechanisms for reporting persons. Since, perpetrators of corruption are influential persons, the vulnerability of reporting persons is discouraging *suo moto* (on its own motion) cooperation. Thirdly, laws and policies of

Bangladesh do not contain any incentives for such cooperation. Consequently, the level of cooperation between national authorities and the public sector which now exists is far below the level visualized by the UNCAC.

To make the domestic legal regime fully compliant with the requirement of the UNCAC and also to deal with practical shortcomings, *suo moto* cooperation between national authorities and the private sector can be encouraged by ensuring better protection of reporting persons and also by giving incentives for such cooperation. Unless this is done, it is likely that many cases of corruption will remain undetected and accordingly, the problem of corruption will be more acute day by day.


Article 40: Bank secrecy

Bank secrecy laws may operate as a hurdle in the investigation and prosecution of serious crimes with financial aspects. Therefore, the UNCAC requires that, in cases of domestic investigation of UNCAC offences, States Parties have appropriate mechanisms available within their domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

The *Code of Criminal Procedure, 1898* empowers the investigating authority to have access to documents or information relating to anything in the custody of a bank or banker, or the bank account of any person. This would enable law enforcement to overcome obstacles arising out of bank secrecy laws in case of investigation; however, this is only possible with an order of the court (section 165). Additionally, under section 25 of the MLPO, 2008, reporting organizations are under a duty to provide the Bangladesh Bank with information about their clients and transactions on demand from the BB. Consequently, domestic laws are compatible with the UNCAC standards. During a massive drive against corruption initiated in 2007, the ACC has filed many cases where they have substantially relied on bank information. Indeed, bank secrecy laws have not posed any significant legal threat for the ACC.

Article 41: Criminal record

The UNCAC suggests that States Parties may wish to consider adopting such legislative or other measures as may be necessary to take into consideration any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings related to an UNCAC offence. However, taking such measures is non-mandatory.



According to the *Evidence Act, 1872*, previous conviction of an accused by a foreign court is not, *ipso facto* (by that very fact), admissible in any judicial proceeding in Bangladesh (section 43). As such, this optional guideline of the UNCAC is not reflected in the domestic standards of Bangladesh.

The UNCAC requirement as outlined in article 41, although a non-mandatory guideline, is very important for ensuring effective law enforcement. Day by day, corruption is taking international dimensions. The perpetrators of corruption as well as the proceeds of corruption are crossing borders with ever greater ease. In these days, the rigid rule of evidence as prescribed by section 43 of the *Evidence Act, 1872* seems quite ineffective and inadequate. Hence, it may be recommended that the existing laws be amended so that courts can take into consideration any previous conviction in another state of an alleged offender and use the same in criminal proceedings relating to an offence of corruption.

Article 42: Jurisdiction

The UNCAC requires that States Parties establish jurisdiction with respect to the UNCAC offences committed in their territory or on board aircraft and vessels registered under their laws (article 42.1). States Parties are also required to establish jurisdiction in cases where they cannot extradite a person on the grounds of nationality (article 42.3), or for any other reasons (article 42.4). In addition, States Parties are invited to consider establishing jurisdiction in cases where their nationals are victimized, where the offence is committed by a national or stateless person residing in their territory, where the offence is linked to money laundering planned to be committed in their territory, or the offence is committed against the State (article 42.2).

Mandatory and non-mandatory obligations of the UNCAC as expressed in article 42 are partially complied with by the laws of Bangladesh. According to the *Penal Code, 1860*, the jurisdiction of the criminal courts of Bangladesh is very extensive. Every person is liable to punishment if s/he commits any offence within the territory of Bangladesh (section 2). At the same time, Bangladeshi citizens and persons on any ship or aircraft registered in Bangladesh are liable to be tried and punished by Bangladeshi courts if they commit any offence, even beyond the territory of Bangladesh (sections 3 and 4). However, domestic laws of Bangladesh do not establish jurisdiction in cases where a fugitive offender is not extradited.

In practice, the extra-territorial jurisdiction of the criminal courts of Bangladesh is hardly exercised because of an inadequate domestic regime on mutual legal assistance and other forms of international cooperation. To

make the extra-territorial jurisdiction of the criminal courts more effective, Bangladesh should have a stronger regime on extradition, enter into agreements and arrangements with other countries for assistance in criminal investigation and civil or administrative proceedings relating to corruption, and transmission of information on corruption; accordingly, the Government should establish enabling provisions in the procedural laws to effectively use these modes of assistance in judicial proceedings. It should be noted that in support of this end, Bangladesh is in the process of negotiating in regional forums like the South Asian Association for Regional Cooperation and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation.



Chapter 3 Criminalization and Law Enforcement (Articles 15–42)

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 15: States Parties are required to criminalize “bribery of public officials”, i.e., intentional promise/offering/giving to or solicitation/acceptance by any public official of an undue advantage in order that the public official act or refrain from acting in matters relevant to official duties.</p>	<p><i>Penal Code, 1860</i> <i>Prevention of Corruption Act, 1947</i></p>	<p>The <i>Penal Code, 1860</i> criminalizes taking by a public servant of gratification other than legal remuneration in respect of an official act (section 161), obtaining by a public servant of valuable thing without consideration from person concerned in proceeding or business transacted by such public servant (section 165) or any abetment, i.e., instigating or aiding, of any such taking or obtaining (section 165A);</p> <p>These acts are punishable criminal misconduct according to the Prevention of Corruption Act, 1947 (section 5);</p> <p>Accordingly, the mandatory requirement of UNCAC is duly fulfilled by the domestic legal regime.</p>	<p>Although domestic standards adequately criminalize active as well as passive bribery of national public officials, there exists no reliable consolidated data to assess their practical applications, implications and efficacy.</p>	
<p>Article 16: States Parties are required to:</p> <ul style="list-style-type: none"> criminalize “active bribery of foreign public officials 	<p>Domestic standards do not contain any specific penal provisions to deal with bribery of foreign public officials and officials of public international</p>	<p>Domestic standards are incompatible with the requirement of the UNCAC.</p>	<p>Since domestic standards do not contain any penal provisions regarding bribery of foreign public officials and officials of public international</p>	<p>Legal provisions may be introduced to address bribery of foreign public officials and officials of public international</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>and officials of public international organization;"</p> <ul style="list-style-type: none"> consider criminalization of "passive bribery of foreign public officials and officials of public international organizations." <p>Article 17: States Parties are required to criminalize "embezzlement, misappropriation or other diversion" if committed intentionally by a public official for his/her benefit or for the benefit of another person/entity in respect of any property/funds/securities/thing s of value entrusted to him/her by virtue of his/her position.</p>	<p>organizations.</p> <p><i>Penal Code, 1860</i> <i>Prevention of Corruption Act, 1947</i></p>		<p>organizations, the question of practical compliance and gaps does not arise.</p>	
		<p>The <i>Penal Code, 1860</i> criminalizes "criminal breach of trust by public servant" (section 409) and "dishonest misappropriation of property" (section 403). These offences, as their definitions indicate, include embezzlement, misappropriation or other diversion of property by a public official.</p> <p>The <i>Prevention of Corruption Act, 1947</i> states that criminal breach of trust and dishonest misappropriation of property, if committed by a public servant, are punishable criminal misconduct (section 5);</p> <p>Accordingly, the UNCAC requirement is duly fulfilled by the domestic legal regime.</p>	<p>In many cases, penal provisions corresponding to article 17 of the UNCAC are resorted to by prosecution agencies.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 18: States Parties are required to consider criminalization of “trading in influence”, i.e., intentional promise/offering/giving to or solicitation/acceptance by a public official or any other person of an undue advantage in order that the public official or that other person abuse influence with a view to obtaining from an administration or public authority of the State an undue advantage.</p>	<p><i>Penal Code, 1860</i> <i>Prevention of Corruption Act, 1947</i></p>	<p>The <i>Penal Code, 1860</i> criminalizes taking gratification in order to influence a public servant by corrupt or illegal means (section 162), taking gratification for exercise of personal influence with a public servant (section 163), obtaining by a public servant a valuable thing without consideration from a person concerned in proceedings or business transacted by such public servant (section 165) or any abetment (sections 164 & 165A);</p> <p>According to the <i>Prevention of Corruption Act, 1947</i>, obtaining by a public servant a valuable thing without consideration from person concerned in proceedings or business transacted by such public servant is a punishable criminal misconduct (section 5);</p> <p>Accordingly, the optional requirement of the UNCAC is duly fulfilled by the domestic legal regime.</p>	<p>There exists no reliable consolidated data to assess practical applications, implications and efficacy.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 19: States Parties are required to consider criminalization of intentional abuse of functions or position in violation of laws by a public official, while discharging official functions, for the purpose of obtaining an undue advantage for any person or entity.</p>	<p><i>Prevention of Corruption Act, 1947</i></p>	<p>According to the <i>Prevention of Corruption Act, 1947</i>, abuse of position, by corrupt or illegal means or by otherwise, by a public servant for obtaining or attempting to obtain for himself or for any other person any valuable thing or pecuniary advantage is a punishable criminal misconduct (section 5);</p> <p>Accordingly, the optional requirement of UNCAC is duly fulfilled by the domestic legal regime.</p>	<p>There exists no reliable consolidated data to assess practical applications, implications and efficacy.</p>	
<p>Article 20: States Parties are required to consider criminalization of intentionally committed "illicit enrichment", i.e., a significant increase in the assets of a public official that he/she cannot reasonably explain in relation to his/her lawful income.</p>	<p><i>Anti-Corruption Commission Act (ACC), 2004</i> <i>Prevention of Corruption Act, 1947</i> <i>Government Servants (Conduct) Rules, 1979</i></p>	<p>Domestic standards are compatible with the optional requirement of UNCAC;</p> <p>The ACC Act, 2004 criminalized "illicit enrichment" (section 27);</p> <p>According to the <i>Prevention of Corruption Act, 1947</i>, possession of pecuniary resources or of property disproportionate to known sources of income by a public servant or any of his/her dependents, for which no reasonable explanation is</p>	<p>In practice, the provisions contained in the ACC Act, 2004 and the <i>Prevention of Corruption Act, 1947</i> were not resorted to until 2007 and the provision of the <i>Government Servants (Conduct) Rules, 1979</i> until 2008. At present, these provisions are extensively being used leading to remarkable success in the fight against corruption.</p>	<p>The ongoing activism of the prosecuting agencies and the Government to deal with illicit enrichment should continue and, if required, be strengthened in the days to come.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 21: States Parties are required to consider criminalization of "bribery in private sectors".</p>	<p>Domestic standards do not contain any specific penal provisions to deal with bribery in the private sector.</p>	<p>offered, is a punishable criminal misconduct (section 5);</p> <p><i>The Government Servants (Conduct) Rules, 1979</i> contains disciplinary framework by which the cases of illicit enrichment of public servants can be dealt with (rule 13).</p>	<p>Since domestic standards do not contain any penal provisions regarding bribery in the private sector, the question of practical compliance and gaps does not arise.</p>	<p>Legal provisions may be introduced to address bribery in the private sector.</p>
<p>Article 22: States Parties are required to consider criminalization of embezzlement in private sector if committed intentionally in the course of economic activities by a person directing/ working in a private sector entity in respect of any things of value entrusted to him/her by virtue of his/her position.</p>	<p><i>Penal Code, 1860</i></p>	<p>Domestic standards do not meet the optional requirement of the UNCAC.</p> <p>The <i>Penal Code, 1860</i> criminalizes "criminal breach of trust" (section 406) and "dishonest misappropriation of property" (section 403);</p> <p>These offences, as their definitions indicate, include embezzlement of property by a person directing/ working in a private sector entity;</p> <p>As such, domestic standards are compatible with the optional requirement of the UNCAC.</p>	<p>Domestic penal provisions are rarely put into practice for punishing acts of embezzlement, misappropriation and other diversion of property in the private sector.</p>	<p>The Government should ensure that more attention is paid to prosecute embezzlement, misappropriation and other diversion of property in the private sector.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 23: States Parties are required to criminalize "laundering of proceeds of crime", i.e., any of the following acts if intentionally committed with the knowledge that the property concerned is the proceeds of crime:</p> <ul style="list-style-type: none"> • conversion or transfer of property for the purpose of concealing/disguising the illicit origin of the property or of helping any person involved in the commission of the predicate offence to evade the legal consequences; • concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property; and • acquisition, possession, or use of property. 	<p><i>Money Laundering Prevention Ordinance, 2008</i></p>	<p><i>The Money Laundering Prevention Ordinance, 2008</i> defines "money laundering" in such an extensive way that includes transfer, conversion, remittance or concealment of any property acquired through the commission of any predicate offence (section 2). Under this Ordinance, money laundering is a criminal offence (section 4);</p> <p>Accordingly, domestic standards are compatible with the UNCAC requirement.</p>	<p>Given that the <i>Money Laundering Prevention Ordinance, 2008</i> came into force in April, 2008, it would be too early to comment on its practical efficacy and implications.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 24: States Parties are required to criminalize intentional concealment or continued retention of property with the knowledge that such property is the result of any offence established in accordance with UNCAC but without having any participation in any such offence.</p>	<p><i>Money Laundering Prevention Ordinance, 2008</i> <i>Penal Code, 1860</i></p>	<p>According to the <i>Money Laundering Prevention Ordinance, 2008</i>, concealment of any property acquired through the commission of any predicate offence amounts to money laundering (section 2) and as such is punishable (section 4);</p> <p>The <i>Penal Code, 1860</i> criminalizes "dishonest or fraudulent removal or concealment of property" (section 424), "dishonestly receiving or retaining stolen property" (section 411) and "assisting in concealment of stolen property" (section 414);</p> <p>Under the <i>Penal Code 1860</i>, "stolen property" includes, <i>inter alia</i>, the property in respect of which "dishonest misappropriation" or "criminal breach of trust" has been committed (section 410);</p> <p>These different offences under domestic laws, if considered as a whole, meet, the UNCAC requirement.</p>	<p>The provisions of the <i>Penal Code, 1860</i> are not efficacious enough to bring all concealments to justice because they require the proof of "dishonesty" or "fraud" as a precondition for punishment. In this regard, the newly enacted <i>Money Laundering Prevention Ordinance, 2008</i> seems to reflect the spirits of the UNCAC.</p>	<p>It is expected that in the days to come the <i>Money Laundering Prevention Ordinance, 2008</i> would be an effective tool to deal with the offence of concealment.</p>
<p>Article 25: States Parties are required to criminalize any of</p>	<p><i>Penal Code, 1860</i></p>	<p>The <i>Penal Code, 1860</i> criminalizes the acts of giving</p>	<p>In practice, the offences corresponding to article 25(a)</p>	<p>It is recommended that witness protection</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>the following acts, if committed intentionally, in relation to the commission of UNCAC offences:</p> <ul style="list-style-type: none"> • use of physical force, threats or intimidation or promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding; and • use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official. 	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i> <i>Contempt of Courts Ordinance, 2008</i></p>	<p>false testimony (sections 193-196), causing disappearance of evidence (section 201) and destruction of a document to prevent its production as evidence (section 204);</p> <p>Section 7 of the MLPO, 2008 provides that obstruction or refusal to assist an investigating officer for money laundering constitutes an offence.</p> <p>According to Penal Code, interference with judicial proceedings can be tried under different penal provisions (sections 175, 178, 179, 180, 228);</p> <p>Furthermore, use of criminal force (section 352) and intimidation or threat (sections 506-507) are, <i>ipso facto</i>, punishable; use of criminal force to deter a public servant from discharge of his/her duty is an offence (section 353);</p> <p>Interference with judicial functions is also criminalized by the <i>Contempt of Courts Ordinance, 2008</i> (section 13);</p>	<p>of the UNCAC are effectively prosecuted. But, offences corresponding to article 25(b) of the UNCAC are largely not prosecuted because of a weak domestic regime on protection of witnesses.</p>	<p>mechanisms be strengthened under the existing domestic laws.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 26: Without prejudice to the criminal liability of natural persons committing UNCAC offences, States Parties are required to establish criminal, civil or administrative liability for participation in any such offence and prescribe effective, proportionate and dissuasive criminal or non-monetary sanctions, including monetary sanctions.</p>	<p><i>Penal Code, 1860</i></p>	<p>These offences under domestic laws, if considered as a whole, meet the UNCAC requirement.</p> <p>The definition of the term "person", as provided by the <i>Penal Code, 1860</i>, includes legal persons (section 11). Accordingly legal persons are amenable to criminal punishment for offences punishable with fine only; Their civil and administrative liability is acknowledged by the domestic legal regime;</p> <p>The punishments for corruption cases are effective, proportionate and dissuasive;</p> <p>Accordingly, domestic standards comply with the requirement of the UNCAC.</p>	<p>Since the domestic laws of Bangladesh do not contain any rule enabling the courts to presume constructive <i>mens rea</i> of legal persons, corporate bodies can easily avoid prosecution and conviction. As such, legal persons are practically not amenable to the jurisdiction of criminal courts.</p>	<p>Amendment of existing laws should be given a serious thought so that <i>mens rea</i> can be imputed on legal persons accused of committing the acts of corruption.</p>
<p>Article 27: States Parties are required to:</p> <ul style="list-style-type: none"> criminalize participation in any capacity such as an accomplice, assistant or instigator in any UNCAC offence; 	<p><i>Penal Code, 1860</i> <i>Money Laundering Prevention Ordinance, 2008</i></p>	<p>Participation in and attempting any offences corresponding to the UNCAC are punishable. However, preparation to commit offences is with few exceptions not punishable.</p>	<p>There exists no reliable consolidated data to assess practical applications, implications and efficacy.</p>	<p>There should be comprehensive research and continuing debates in the public sphere as to whether Bangladesh should criminalize preparation to commit an offence and if so, how.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<ul style="list-style-type: none"> consider criminalization of any attempt or any preparation for any UNCAC offence. 				
<p>Article 28: States Parties are required to enable its courts to infer "knowledge", "intent" or "purpose" from objective factual circumstances.</p>	<p>Criteria to infer "knowledge", "intent" or "purpose" is not regulated by statute.</p>	<p>To infer "knowledge", "intent" or "purpose" is a matter of fact and left to the courts' objective judgment based on factual circumstances. As such, domestic standards fully comply with the UNCAC requirement.</p>		
<p>Article 29: States Parties are required to establish a long statute of limitations period in which to commence proceedings for UNCAC offences.</p>	<p>There exists no statute of limitations prescribing a time limit for commencement of criminal proceedings.</p>	<p>Domestic standards fully comply with UNCAC requirement.</p>	<p>Although there exists no limitation period for initiation of criminal proceeding, courts always require a reasonable explanation if there is delay in initiating such a proceeding. If such delay is not reasonably explained to the satisfaction of court, benefit of doubt goes in favour of the accused.</p>	<p>The domestic standard is more prosecution-friendly than the UNCAC in the sense that criminal proceedings cannot be barred by limitations.</p>
<p>Article 30: In the case of UNCAC offences, States Parties are required to:</p> <ul style="list-style-type: none"> prescribe sanctions proportionate to the gravity of such offences; establish or maintain an appropriate balance 	<p><i>Constitution of the People's Republic of Bangladesh</i> <i>Government Servants (Discipline and Appeal) Rules, 1985</i> <i>Anti-Corruption Commission Act, 2004</i></p>	<p>Punishments prescribed for corruption related offences are proportionate to the gravity of those offences; Domestic laws do not prescribe any immunities or jurisdictional privileges for public officials which is</p>	<p>The substantive provisions of domestic laws are frequently put into practice.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>between any immunities or jurisdictional privileges accorded to public officials for the performance of their functions;</p> <ul style="list-style-type: none"> take appropriate measures to ensure that conditions imposed in connection with decisions on release pending trial/appeal of an accused take into consideration the need to ensure his/her presence at subsequent proceedings; consider establishment of procedures through which a public servant accused of any such offence can be removed, suspended or reassigned; consider establishment of procedures for disqualification of a person convicted of any such offence in holding public office or office in an enterprise owned, in whole or in part, by the State. 	<p><i>Public Servants (Dismissal on Conviction) Ordinance, 1985</i> <i>Local Government (Union Parishads) Ordinance, 1983</i> <i>Paurashava Ordinance, 1977</i> <i>Dhaka City Corporation Ordinance, 1983</i> <i>Chittagong City Corporation Ordinance, 1982</i> <i>Khulna City Corporation Ordinance, 1984</i> <i>Rajshahi City Corporation Act, 1987</i> <i>Sylhet City Corporation Act, 2001</i> <i>Barisal City Corporation Act, 2001</i></p>	<p>disproportionate to the need or efficacy of investigation, prosecution or trial;</p> <p>Conditions imposed in connection with decisions on release pending trial/appeal of an accused, being matters of judicial discretion, are not regulated by law;</p> <p>The Constitution disqualifies a person convicted of an offence involving moral turpitude and sentenced to imprisonment for a term of not less than two years from election to Parliament for a term of five years since release (article 66). Various other electoral laws contain similar provisions;</p> <p>On the whole, domestic standards comply with UNCAC requirement.</p>		

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 31: States Parties are required to take necessary measures to enable confiscation and identification, tracing, freezing or seizure for the purpose of confiscation, of:</p> <ul style="list-style-type: none"> • proceeds of crime derived from UNCAC offences or property the value of which corresponds to such proceeds; • property, equipment or other instrumentalities used in or destined for use in such offences; • property into which proceeds of crime are intermingled; • proportionate value of property into which proceeds of crime are intermingled; and • income or other benefits derived from proceeds of crime or from property into which proceeds of crime are transformed, converted or intermingled. 	<p><i>Criminal Law Amendment Ordinance, 1944</i> <i>Criminal Law Amendment Act, 1958</i> <i>Anti-Corruption Commission (ACC) Act, 2004</i> <i>Anti-Corruption Commission (ACC) Rules, 2007</i> <i>Money Laundering Prevention Ordinance, 2008</i></p>	<p>The ACC Act, 2004 allows confiscation of property which is acquired by illegal means or disproportionate to legal sources of income (section 27); Similarly, the <i>Criminal Law Amendment Act, 1958</i> empowers the court to confiscate the proceeds of corruption (section 9); The ACC Rules, 2007 allows the courts to order freezing or attachment of properties allegedly acquired by illegal means or disproportionate to the legal source of income even before the commencement of trial (rule 18). The <i>Criminal Law Amendment Ordinance, 1944</i> also contains similar provisions (section 4); The <i>Money Laundering Prevention Ordinance, 2008</i> empowers the courts to freeze, attach (section 14) or confiscate (section 17) the property of any person accused of money laundering; Accordingly, domestic standards reasonably comply with the UNCAC requirement.</p>	<p>For many years, these domestic norms remained virtually dormant. The massive drive against corruption initiated in 2007 activated them and accordingly, on many occasions, these norms have been applied.</p>	<p>The recent trend of freezing, seizure and confiscation, if continued in the long run, will constitute an effective deterrent and play preventing role in the fight against corruption.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 32: States Parties are required to:</p> <ul style="list-style-type: none"> take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses, experts giving testimony, victims and their relatives and other persons close to them; and enter into agreements or arrangements with other states for relocation of such persons. 	<p>There is no legal arrangement for protection of witnesses, experts, victims and their relatives and other persons close to them.</p>	<p>Domestic standards do not comply with the requirement of the UNCAC.</p>	<p>This non-compliance with the UNCAC goes against the legitimate interests of the prosecution.</p>	<p>It is recommended that the domestic standards are modified to meet the UNCAC requirement.</p>
<p>Article 33: States Parties are required to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning UNCAC offences.</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>In relation to reporting persons, section 28 of the MLPO, 2008 provides protection to the Government, any government official or any reporting organization from being sued or prosecuted, by any person that is affected or likely to be affected due to proceedings brought in good faith for the money laundering offences.</p>	<p>Since the <i>MLPO, 2008</i> came recently into force, it would be too early to comment on its practical efficacy;</p> <p>This non-compliance with regard to the other UNCAC offences contributes to the non-exposure of many cases of corruption.</p>	<p>It is recommended that the domestic standards are modified to meet the UNCAC requirement.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 34: With due regard to the rights of third parties acquired in good faith, States Parties are required to consider corruption as a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.</p>	<p><i>Contract Act, 1872</i> <i>Criminal Law Amendment Ordinance, 1944</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Domestic standards are compatible with the requirement of the UNCAC;</p> <p>The <i>Contract Act, 1872</i> provides that an agreement is void if any part of a single consideration for one or more of its objects is unlawful (section 24). Thus, corruption being unlawful, a contract cannot legally exist if its consideration amounts to corruption;</p> <p>Corruption amounting to <i>mala fide</i> may be sufficient to withdraw a concession or similar instrument or to seek other remedial action;</p> <p>According to the <i>Criminal Law Amendment Ordinance, 1944</i>, property procured by means of corruption, even if in the possession of a transferee unless s/he is a <i>bona fide</i> transferee for value, can be attached (section 6) and forfeited (section 13);</p> <p>Section 17(3) of the MLPO, 2008 also recognizes the right of third parties to property acquired in good faith.</p>		<p>The <i>Constitution of the People's Republic of Bangladesh</i> addresses the consequences of corruption from a wider context than the UNCAC. It obligates the State to create conditions in which persons shall not be able to enjoy unearned incomes. Therefore, development of preventive mechanisms to address the consequences of corruption is a constitutional duty of the Government.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 35: States Parties are required to ensure the right to seek compensation for damage suffered by victims of corruption.</p>	<p>Law of torts Code of Criminal Procedure, 1898</p>	<p>Domestic standards fully comply with the UNCAC requirement; The domestic legal system allows civil suits based on law of torts claiming compensation for any damage; Under section 545 of the Code of Criminal Procedure, 1898, trial courts as well as appellate or revisional courts can award compensation to victims.</p>	<p>There is hardly any precedent of using these domestic standards in favor of any victim of corruption.</p>	<p>To ensure better access of corruption victims to claim compensation, the amount of court fees should be reduced.</p>
<p>Article 36: States Parties are required to ensure the existence of specialized independent authorities for combating corruption through law enforcement.</p>	<p>Anti-Corruption Commission Act, 2004 Money Laundering Prevention Ordinance (MLPO), 2008</p>	<p>The Anti-Corruption Commission Act, 2004 establishes the Anti-Corruption Commission (ACC) as a specialized authority for combating corruption; The ACC has, according to sections 3 and 24 of the said Act, functional independence to perform its functions without any undue influence; The MLPO, 2008 established the Bangladesh Bank and the Financial Intelligent Unit as the regulatory body for</p>	<p>After its reconstitution in 2007, the ACC has showed remarkable success in its operational activities. However, to make it more effective, institutional feableness of some other institutions of national importance must be cured.</p>	<p>It is recommended that independence of the judiciary be safeguarded, the Office of the Ombudsman be established and the public accounts committee of the Parliament and the Office of the Comptroller and Auditor General (CAG) be reformed.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 37: States Parties are required to:</p> <ul style="list-style-type: none"> take appropriate measures to encourage persons who participate or have participated in an offence to supply information and provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds; and consider provisions for immunity from prosecution or mitigating punishment of any such person. 	<p><i>Criminal Law Amendment Act, 1958</i> <i>Code of Criminal Procedure, 1898</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>preventing and combating money laundering; Accordingly, domestic standards fully comply with the UNCAC requirement.</p> <p>Domestic standards comply with the UNCAC requirement in as much as an offender can be privileged with pardon in certain criminal cases;</p> <p>According to the <i>Criminal Law Amendment Act, 1958</i> (section 6(2)) and the <i>Code of Criminal Procedure, 1898</i> (sections 337 and 338), on fulfillment of certain conditions, an offender can be granted pardon;</p> <p>Section 7 of the MLPO, 2008 has criminalized obstruction or refusal to assist a concerned officer engaged in investigation under the Ordinance, failure to comply without reasonable grounds with a reporting obligation, and failure to supply information relating to money laundering;</p> <p>In May, 2007, the</p>	<p>In practice, law enforcement authorities do not receive sufficient cooperation.</p>	<p>The massive drive and campaign against corruption, initiated by the ACC in 2007, has inspired every/body to cooperate with law enforcement authorities.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 38: States Parties are required to take appropriate measures to encourage cooperation, particularly exchange of necessary information, between public authorities and investigating or prosecuting authorities.</p>	<p><i>Anti-Corruption Commission Act (ACC), 2004</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Government approved legislation on the establishment of a Truth and Accountability Commission. Once this Commission is established, persons enriched in an illicit manner shall be shown some leniency provided they make a voluntary disclosure about their corrupt enrichment.</p> <p>According to the ACC Act, 2004, public authorities are duty-bound to provide necessary information if the ACC requires (section 23);</p> <p>Section 23(2) of the MLPO, 2008 obliges the BB to provide information related to money laundering or suspicious transactions upon request from any investigating organization unless there is any bar under the existing laws or for any other cause;</p> <p>Domestic standards ensure cooperation of public authorities, if such cooperation is sought for. Accordingly, the UNCAC requirement is partially complied with.</p>	<p>There exists no reliable consolidated data to assess practical applications, implications and efficacy.</p>	<p>The public authorities should be brought under a reporting obligation to inform the prosecuting and investigating agencies about any transaction of corruption within their knowledge.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 39: States Parties are required to:</p> <ul style="list-style-type: none"> take appropriate measures to encourage cooperation between national investigating or prosecuting authorities and private sector entities, particularly financial institutions, relating to matters involving the commission of UNCAC offences; consider encouraging citizens and residents to report to national investigating or prosecuting authorities the commission of UNCAC offences. 	<p><i>Anti-Corruption Commission Act (ACC), 2004</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>According to the <i>ACC Act, 2004</i>, every person is duty-bound to provide necessary information if the ACC requires and failure to do so is a criminal offence (section 19);</p> <p>According to the <i>MLPO, 2008</i> any unreasonable refusal to cooperate with an officer concerned with investigating money laundering is a criminal offence (section 7);</p> <p>The <i>MLPO, 2008</i> identifies banks, financial institutions, insurance companies, money changers, companies or organizations remitting or transferring money, and any other organizations which conduct business with the approval of the BB as "reporting organizations" for the prevention of money laundering;</p> <p>Domestic standards ensure cooperation, if such cooperation is demanded by national authorities;</p> <p>Accordingly, the UNCAC requirement is partially complied with.</p>	<p>In practice, prosecuting and investigating agencies are receiving cooperation whenever they seek it but national authorities and the public sector are not extending voluntary cooperation due to some weaknesses in existing laws and policies.</p>	<p>Voluntary cooperation of national authorities and the sector can be encouraged by ensuring better protection of reporting persons and also by giving incentives for such cooperation.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 40: States Parties are required to ensure appropriate mechanisms to overcome obstacles that may arise out of the application of bank secrecy laws in the case of investigation of UNCAC offences.</p>	<p><i>Code of Criminal Procedure, 1898</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>The <i>Code of Criminal Procedure, 1898</i> (section 165) allows the investigating authority to overcome obstacles arising out of bank secrecy laws in cases of investigation, provided an order of the court is obtained to that effect. Accordingly, domestic standards are compatible with the requirement of the UNCAC;</p> <p>Under section 25 of the MLPO, 2008, reporting organizations are under a duty to provide the Bangladesh Bank (BB) with information about their clients and transactions on demand from the BB.</p>	<p>Since 2007, the ACC has filed many cases wherein they have substantially relied on bank information.</p>	<p>Bank secrecy laws have not posed any significant legal threat for the ACC.</p>
<p>Article 41: States Parties are required to consider adoption of measures as may be necessary to take into consideration any previous conviction in another State of an alleged offender to use such information in criminal proceedings relating to an UNCAC offence.</p>	<p><i>Evidence Act, 1872</i></p>	<p>Domestic standards do not meet the optional requirement of the UNCAC. According to section 43 of the <i>Evidence Act, 1872</i>, previous conviction of an accused by a foreign court is not, <i>ipso facto</i>, admissible in any judicial proceeding in Bangladesh.</p>	<p>Since domestic standards do not authorize the courts to consider conviction of an accused in a foreign country, the question of practical compliance and gaps does not arise.</p>	<p>Existing laws should be amended so that courts can take into consideration any previous conviction in another State of an alleged offender and use the same in criminal proceedings relating to an offence of corruption.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Laws and Practices	Remarks
<p>Article 42: States Parties are required to establish jurisdiction with respect to the UNCAC offences committed in their territory or on board aircraft and vessels registered under their laws and also in cases where they cannot extradite a person,</p> <p>States Parties are also required to consider the establishment of jurisdiction in cases where their nationals are victimized, where the offence is committed by a national or stateless person residing in their territory, where the offence is linked to money laundering planned to be committed in their territory, or the offence is committed against the State.</p>	<p><i>Penal Code, 1860</i></p>	<p>The UNCAC requirements are partially complied with by the laws of Bangladesh. According to the <i>Penal Code, 1860</i>, the jurisdiction of the criminal courts of Bangladesh is very extensive. Every person is liable to punishment if s/he commits any offence within the territory of Bangladesh (section 2);</p> <p>At the same time, Bangladeshi citizens and persons on any ship or aircraft registered in Bangladesh are liable to be tried and punished by Bangladeshi courts if they commit any offence, even beyond the territory of Bangladesh (sections 3 and 4);</p> <p>However, domestic laws of Bangladesh do not establish jurisdiction in cases where a fugitive offender is not extradited.</p>	<p>Extra-territorial jurisdiction of the criminal courts of Bangladesh is hardly exercised because of an inadequate domestic regime on mutual legal assistance and other forms of international cooperation.</p>	<p>It is recommended that the extradition regime of Bangladesh is strengthened and more agreements and arrangements are made with other countries for mutual legal assistance and that relevant domestic laws are amended accordingly.</p>

Chapter 4

International Cooperation

4.1 Extradition

4.2 Mutual Legal Assistance

4.3 Other Forms of International Cooperation

Matrix on compliance with articles 43-50

International Cooperation


To combat corruption, international cooperation is essential for successful efforts to prevent, investigate, prosecute, punish, recover and return illicit gains. Consequently, the UNCAC attributes considerable importance to this issue. Indeed, for Bangladesh to effectively fight corruption, energy and resources must be devoted to working with other countries in this endeavor. This chapter focuses on compliance and gaps in different areas of international cooperation, specifically extradition and mutual legal assistance, along with other forms of international cooperation.

4.1 Extradition

As offenders committing corruption related offences might flee to another jurisdiction to avoid prosecution, the extradition process is necessary to bring them to justice. Accordingly, article 44 of the UNCAC details obligations of the States Parties regarding extradition of alleged offenders; article 45 is also relevant to this issue as it addresses the transfer of sentenced persons.

Article 44: Extradition

The mandatory obligations under article 44 of the UNCAC are to grant extradition of offenders with respect to the UNCAC offences criminalized by both the States Parties concerned (article 44.1), or in cases where the UNCAC offences are not punishable by domestic laws, to regard all UNCAC offences as “extraditable offences” for the conclusion of extradition treaties (article 44.2). Furthermore, States Parties should not consider these offences to be “political offences” (article 44.4). States Parties that require a treaty basis for extradition may consider the Convention as the legal basis for extradition to another State Party regarding corruption offences (article 44.5) and must notify the Secretary-General of the United Nations on whether they will permit the Convention to be used as a basis for extradition to other States Parties (article 44.6(a)). Furthermore, they must seek to conclude extradition treaties with other States Parties if they do not use the Convention as the legal basis for extradition (article 44.6(b)). States Parties which take the Convention as legal basis shall recognize UNCAC offences as extraditable offences (article 44.7). The requested State Party may refuse extradition subject to its domestic law (article 44.8). States Parties are also required to simplify the evidentiary requirements and ensure the presence of the offender at proceedings (article 44.9). In the event of refusal on the grounds that the offender is its national, the State Party is required to submit the case to



competent authorities without delay for prosecution and cooperate in relation to procedural and evidentiary aspects to ensure the efficiency of such prosecution (article 44.11). If extradition is refused because the accused is the requested State Party's own national, the requested State Party shall consider enforcement of the sentence imposed by the domestic law of the requesting State Party (article 44.13). In the event of refusal, States Parties are required to safeguard the rights of the offenders and ensure fair treatment during proceedings (article 44.14). A State Party may refuse extradition based on apprehension of discriminatory treatment (article 44.15), but it may not refuse an extradition request on the sole ground that the offence involves fiscal matters (article 44.16). Moreover, before refusing extradition, the requesting State Party should be consulted and provided with opportunities to present its opinion and information relevant to its allegations (article 44.17).

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. Moreover, in the absence of any treaty, the Government may, through gazette notification, establish extradition

relations with any country and thus extend cooperation for extradition in the same manner as if there were a treaty. Extending cooperation for extradition through gazette notification is an important step towards compliance with the UNCAC provisions because it serves to bridge the gap created by the absence of extradition treaties in situations where extradition is needed to bring an offender to justice or track the proceeds of crime. With regard to practice, Bangladesh has yet to use its extradition mechanism for the extradition of corruption offenders. Over the years, only a few instances of extradition have taken place for other criminal offences; in particular, the Extradition Treaty with Thailand was used only once to return a fugitive offender.

The grounds for which extradition may be refused are contained in section 5(2) of the EA, 1974. According to said section, Bangladesh may refuse an extradition request from another State Party on grounds that (a) the offence in question is political in nature; (b) the offender has already been tried and/or sentenced and is serving sentence in Bangladesh; or (c) s/he may be subject to discriminatory treatment for reasons of race, religion or nationality. The EA, 1974 also maintains that there will be no extradition for offences punishable for less than twelve months. This clause in the EA, 1974 serves to protect the offender from extradition for flimsy offences. However, the definition of “political offence” is not clearly spelled out, which may allow an offender to use this clause to escape extradition.

The required procedures for evidentiary requirements are quite simple under the EA, 1974. Section 9 of the EA, 1974 provides that evidence for trial is acceptable if the relevant documents or copies are authenticated by a judge, magistrate or official of the state. The domestic laws in this respect comply with article 44.9 of the UNCAC which requires States Parties to simplify the evidentiary requirements at extradition proceedings. However, the extradition treaty with Thailand is more complicated and requires the requesting State Party to provide details of the extradition request, such as documents and other evidence linking the offender with the crime for which extradition is sought, the statement of the case against the offender, a copy of the warrant for arrest, and so on. Thus, although the EA, 1974 is compliant with the UNCAC, the extradition treaty is not. Therefore, in the interest of bringing an offender to justice and moving closer to compliance, extradition treaties should be simplified in line with the EA, 1974.

The matter of taking an offender into custody is detailed in section 11 of the EA, 1974 which empowers the Government to issue warrants to take an offender into custody for the purposes of surrendering him/her to a requesting party. However, the GoB is not allowed to extradite before the expiry of 15 days from the date of the offender being taken into custody.



If the extradition request is refused on the ground that the person sought is a national of the requested country, the UNCAC requires the requested country to submit a case against the offender without delay and cooperate on evidentiary and procedural aspects (article 44.11). There is no specific provision in the EA, 1974 to start proceedings without delay in such a situation. Under the ***Penal Code, 1860*** any competent court of Bangladesh has jurisdiction to prosecute a Bangladeshi national for an act which is an offence under domestic law, irrespective of the place of occurrence. Furthermore, the court is also allowed to collect evidence from a foreign country through evidence commissions under section 503(b) of the ***Criminal Procedure Code (CrPC), 1898***. Accordingly, there is no bar under the domestic law against commencing such proceedings or cooperating on evidentiary matters.

Domestic laws also ensure fair treatment of an offender. Article 31 of the Constitution of Bangladesh provides that any person is entitled to enjoy the protection of law and be treated in accordance with the law while in Bangladesh. The EA, 1974 also provides that bail under the CrPC will be applicable for the fugitive offender in the same manner as if s/he committed the offence in Bangladesh. Thus domestic laws are compatible with UNCAC provisions insofar as safeguarding rights and fair treatment of the offender is concerned.

There is no provision in the EA, 1974 which allows for the extradition of a Bangladeshi national to a foreign country only for the purposes of serving a sentence imposed by a foreign country. Moreover, in Bangladesh, foreign sentences are not enforceable. Consequently, there is a gap in compliance with article 44.13 of the UNCAC which states that if extradition, sought for purposes of enforcing a sentence, is refused because the person is a national of the requested State Party, the requested State Party shall consider enforcing the sentence. There are various reasons for not enforcing foreign criminal judgments, such as, differences in principles of domestic laws, variation in social and cultural practices and values, religious influence on domestic law, economic conditions, and sovereignty considerations. However, once the legal regimes of States Parties are in compliance with the UNCAC, their legal mechanisms for fighting corruption will be similar in nature, making it a waste of resources to retry a case for an UNCAC related offence. Accordingly, Bangladesh should consider including a provision for enforcing foreign criminal judgments, in particular, judgments of another State Party for an offence under the UNCAC.

The EA, 1974 empowers the GoB to stay extradition proceedings and discharge the offender if the Government is of the opinion that the case is

trivial in nature, was not made in good faith, or for other policy reasons. There is no specific requirement in the EA, 1974 that the court must consult with the requesting State Party before reaching such decision. However, during proceedings both the requesting State Party and the fugitive offender are allowed to provide opinions and information in support of their positions. Arguably, this is in accordance with article 44.17 of the UNCAC which provides that before refusing extradition, the requested State Party shall consult the requesting State Party and give an opportunity for the requesting State Party to present its opinion and provide information relevant to its allegation.


From the above analysis, it is evident that the gaps in compliance with respect to article 44 arise mainly from differences between domestic laws and the UNCAC regarding the recognition of extraditable offences, a lack of bilateral treaties that respond to extradition requests, and unenforceability of foreign sentences. The existence of such gaps thwarts any efforts to track down proceeds of crime and bring offenders to justice. As such, speedy elimination of these gaps is desirable. In this respect, recognizing all UNCAC offences as extraditable offences, concluding bilateral treaties as early as possible, and responding to extradition requests through gazette notification are effective steps towards compliance.

Article 45: Transfer of sentenced persons

Article 45 of the UNCAC encourages the existence of bilateral or multilateral agreements for transferring sentenced persons to their own territory to complete their sentences.

Bangladesh has yet to have any agreements with States Parties allowing the transfer of sentenced persons to their own territory to complete their sentences. Section 5(2)(g) of the EA, 1974 bars such transfer and prohibits the surrender of any fugitive offender who is serving sentence under any conviction until the end of his/her sentence. The extradition treaty with Thailand provides for the extradition of offenders against whom a judicial penalty has been pronounced; however, the treaty does not enable extradition in the event that such an offender has begun to serve his/her sentence in Bangladesh. This is in line with the domestic regime but does not reflect the UNCAC ambition contained in article 45.

Transferring offenders to their own country is important as it gives them a chance to reintegrate back into their society. Nevertheless, the prohibition in the EA, 1974 on transferring sentenced persons is likely rooted in other notable concerns, namely the fear that offenders may be subject to



mistreatment or would avoid punishment in their own country due to reasons such as political protection. However, the risk of sentence nullification can be protected against. One way to comply with the UNCAC provision and ensure that offenders serve out their sentences is to negotiate bilateral treaties on the issue of transfer of sentenced persons on a case by case basis. Consequently, Section 2(g) of the EA, 1974 should also be amended to allow for the transfer of sentenced persons on a case by case basis, depending on the severity of the case and the likelihood of mistreatment of the offender.


4.2 Mutual Legal Assistance

Article 46: Mutual legal assistance

Article 46 of the UNCAC requires States Parties to ensure the widest measure of mutual legal assistance (MLA) in investigations, prosecutions, judicial proceedings, and asset confiscation and recovery in relation to corruption offences (article 46.1). Specifically, it requires such assistance for the purposes of taking evidence from persons, identifying and tracing the proceeds of crime, providing documents and records, and recovery of assets (article 46.3) along with providing assistance in investigations, prosecution and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 (article 46.2). States Parties may provide information on criminal matters to other States Parties without prior request, where they believe that this can assist in inquiries, criminal proceedings or the formulation of a formal request from that State Party (article 46 paragraphs 4 and 5). Furthermore, States Parties may decline to render assistance on the ground of absence of dual criminality; however, a State Party may offer assistance in the absence of dual criminality through non-coercive measures (article 46.9(b)). States Parties are also required to notify the Secretary-General of the United Nations of their central authority designated for the purpose of article 46, as well as of the language(s) acceptable to them in this regard (article 46 paragraphs 13 and 14). MLA may be refused if such a request is likely to prejudice the requested country's sovereignty (article 46.21(b)). However, the UNCAC makes it clear that assistance cannot be refused on the grounds of bank secrecy (article 46.8) or for offences involving fiscal matters (article 46.22). Additionally, the UNCAC requires States Parties to apply paragraphs 9 to 29 of article 46 to govern the modalities of MLA in the absence of a mutual legal assistance treaty with another State Party (article 46 paragraphs 7 and 9-29). Finally, States Parties shall consider entering into bilateral or multilateral agreements or arrangements to give effect to or enhance MLA (article 46.30).

The Government through *Gazette Notification* (UN-SOC-6027/07, dated 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 MLA; additionally, Bangladesh has agreed to use English as the accepted language for the purpose of the Convention. The Secretary-General of the UN has also been notified on these matters; consequently, Bangladesh has complied with the requirements under article 26, paragraphs 13 and 14, of the UNCAC, which will create more opportunities for providing mutual legal assistance. Bangladesh can now respond to any request for MLA from a State Party if such request is made through the central authority and there is no bar in the domestic law against providing such cooperation. However, countries which are yet to nominate a central authority may not receive cooperation in the absence of a MLA agreement. Furthermore, there are some situations in which MLA may only be provided if there is a treaty allowing such cooperation, such as in cases requiring assistance for extradition.

Additionally, the GoB has taken steps to provide necessary legal provisions in the domestic regime to ensure widest MLA, particularly in relation to money-laundering offences. Section 26 of the ***Money Laundering Prevention Ordinance (MLPO), 2008*** provides that the Government, or in some cases Bangladesh Bank (BB), may sign memorandum of understanding (MOU), and bilateral or multilateral agreements with foreign countries and organizations to prevent money laundering. Once such agreements are signed, it will allow the Government or the BB to request and provide information in response to requests from other countries so long as it will not affect national security. Assistance can also be provided in relation to the forfeiture or transmission of property. Further, as section 3 of MLPO makes it clear that the provisions of this Ordinance will prevail over any other law, disclosure of information will not be barred by other restrictive laws on disclosure of information, namely the ***Official Secrets Act, 1923***, the ***Evidence Act, 1872***, the ***Government Servants (Conduct) Rules, 1979*** and the ***Rules of Business, 1996***, as long as such disclosure does not pose a threat to national security. Furthermore, the CrPC authorizes any investigating authority to have access to documents or information related to anything in a bank's custody. Thus, bank secrecy laws cannot impede criminal investigations. The Bangladesh Bank, in its capacity as the country's central bank, is authorized to have access to bank account information of any individual or company on demand; this authority can be used to facilitate investigations or proceedings. In addition, where there are formal understandings or agreements, the BB will be able to share information with other States.



Moreover, section 503(2B) of the CrPC provides limited allowances for seeking assistance to gather evidence through commissions which can examine witnesses abroad, but it does not contain provisions for seeking other types of MLA or for responding to incoming MLA requests for help with investigation, prosecution and judicial proceedings. However, under these domestic provisions, assistance can be provided for offences committed both by natural persons as well as legal entities.

Bangladesh is yet to have any mechanism for information sharing on criminal matters with States Parties. However, MLA for information sharing in South Asia can be provided on a real time basis through two SAARC mechanisms, namely the SAARC Drug Offence Monitoring Desk (SDOMD) and the SAARC Trafficking Offence Monitoring Desk (STOMD). Under this mechanism, Bangladesh informs the SDOMD and STOMD of any information relating to drug and trafficking offences that it considers helpful in controlling such crimes. Bangladesh should consider developing similar mechanisms among the UNCAC States Parties to combat corruption related offences.

Bangladesh now has the necessary legal basis for mutual legal assistance in relation to corruption related offences under the UNCAC. When MLA will be provided through the central authority, such assistance should be conducted following the procedural requirements and guidance provided in the different paragraphs of article 46. Bangladesh has recently initiated a number of MLA agreements and is quite up-to-date in adopting breakthrough methods of information sharing like the two SAARC mechanisms mentioned above. Further, the SAARC countries are also working on increasing regional cooperation to combat corruption. Nevertheless, the international mobility of offenders and the use of advanced technology, among other factors, make it more necessary than ever for law enforcement and judicial authorities to collaborate and assist the State Party that has assumed jurisdiction over the matter. Indeed, without such cooperation it may not be possible to gather evidence and/or locate either the proceeds of crime or the offender in time. Consequently, any information sharing constraints that still exist should be remedied as soon as possible. Bangladesh is somewhat behind with respect to providing MLA for all other aspects of criminal proceedings, such as investigation, prosecution, and judicial proceedings due to the absence of necessary legal provisions and bilateral or multilateral agreements. The gaps in compliance can thus be narrowed through incorporating provisions for MLA in the areas of investigation and prosecution in domestic laws; most importantly, Bangladesh should also negotiate more bilateral and multilateral treaties for MLA.

4.3 Other Forms of International Cooperation


To combat corruption effectively and provide both extradition and mutual legal assistance, other mechanisms of international cooperation are required, particularly with respect to investigation and law enforcement. The UNCAC emphasizes various mechanisms of international cooperation in the areas of investigation, proceedings and law enforcement.

Article 43: International cooperation

The UNCAC requires that States Parties cooperate in criminal matters, particularly in cases of extradition, mutual legal assistance, transfer of criminal proceedings and law enforcement, including joint investigations and special investigative techniques (article 43.1). Moreover, whenever dual criminality is necessary for international cooperation, States Parties must deem this requirement fulfilled if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties. The Convention makes it clear that the underlying conduct of the criminal offence need not be defined in the same terms by both States Parties, nor does it have to be placed within the same category of offence (article 43.2).

The Government of Bangladesh recognizes the importance of international cooperation in criminal matters, particularly in relation to extradition, MLA, transfer of criminal proceedings and law enforcement. Bangladesh may provide MLA through the central authorities as nominated under article 46. Additionally, the *Extradition Act (EA), 1974* provides a legal basis for cooperation for extradition.

The UNCAC explanation of the issue of “dual criminality” appears to be in line with the domestic provision to some extent. The UNCAC provides that if the underlying conduct is treated as an offence in both countries, the requirement of dual criminality will be fulfilled even if different terms are used between countries. In the explanation for section 4 of the *Penal Code, 1860* it is stated that “offence” includes every act committed outside Bangladesh, which if committed in Bangladesh would be punishable under the Code. Therefore, under the domestic law it is the nature of the act which is considered in classifying said act as an offence. Accordingly, if a person is accused of conduct which will amount to an offence in Bangladesh, the fact that the conduct is termed differently in another state will not bar providing cooperation, as long as necessary arrangements for cooperation are in place. However, as this domestic definition of offences only relates to offences under the Penal Code, the same meaning may not be given to offences under other corruption related acts/ordinances. Consequently, this issue of dual criminality should be



addressed by ensuring that there are clear provisions making all corruption associated acts qualify as “offences.”

The present legal regime complies with the UNCAC requirements to some extent. However, there are areas which need to be addressed, namely transfer of criminal proceedings, cooperation for law enforcement and investigation. Detailed discussion on these issues will take place in the following paragraphs.

Article 47: Transfer of criminal proceedings

States Parties are required to consider transferring prosecution of an offence established in accordance with the Convention to one another's proceedings in cases where such transfer is considered to be in the interest of the proper administration of justice, particularly where several jurisdictions are involved, for the purposes of concentrating prosecution.

In Bangladesh, there is no direct provision regarding the transfer of legal proceedings to another State Party. The requirement under this article is quite significant as corruption related offences are often committed in or through several jurisdictions which makes it more practical, efficient and fairer for all concerned parties to consolidate the case in one place. If there is no domestic provision in place related to the transfer of proceedings it will be difficult to try such cases. Accordingly, it is necessary for new legislative provisions to be introduced which allow the courts or the Government to have the power to transfer proceedings to another State Party in appropriate circumstances.

Article 48: Law enforcement cooperation

The UNCAC obligates States Parties to cooperate closely with one another to strengthen the channels of communication among their respective law enforcement authorities (article 48.1(a)), to undertake specific forms of cooperation in order to obtain information about persons and the movement of proceeds and instrumentalities of crime (article 48.1(a)(i),(ii)), to provide each other items or quantities of substances for analysis or other investigative purposes (article 48.1(c)), to exchange information concerning specific means and methods used in related offences (article 48.1(d)), to promote exchanges of personnel and other experts (article 48.1(e)), and to conduct other cooperation measures for the purposes of facilitating early identification of offences (article 48.1(f)). States Parties shall consider entering into bilateral agreements on direct cooperation between their law enforcement agencies, and in the absence of any such agreement, may consider the UNCAC as a basis for MLA (article 48.2). In

addition, States Parties shall cooperate to respond to UNCAC offences committed through the use of modern technology (article 48.3).


The membership of Bangladesh in the International Criminal Police Organization (INTERPOL) provides it with law enforcement assistance from other states. The Government uses such assistance to “identify and locate” offenders, including suspects of corruption related offences. As a SAARC member, such an exchange of information can be done through the SDOMD and the STOMD, to a limited extent. In addition, the Financial Intelligence Unit (FIU) of the Anti-Money-Laundering Department of the Bangladesh Bank received assistance from the United States for the installation of software to detect and analyze financial crimes. Furthermore, the Government has obtained assistance for investigation purposes from different international and national experts.

However, Bangladesh has not met the international standards in relation to controlling offences committed through the use of modern technology due to a lack of technology and resources. Since corruption related offences involve the use of modern technology, it is crucial that Bangladesh improve its capacity in this regard. Bangladesh can benefit from technological assistance, information and experience sharing, and training for capacity building from countries which already have adequate facilities in controlling offences involving modern technology. There is no agreement with any individual State Party regarding the exchange of information on methods of committing offences or for providing substances for investigation. Furthermore, domestic legislation has yet to comply with the UNCAC provisions related to ensuring law enforcement cooperation.

Early steps at removing hindrances to information sharing will help facilitate tracking down UNCAC offenders and thus prevent them from acting with impunity. Furthermore, the use of modern information and communication techniques would assist in this regard as well. Thus, as a step to becoming more compatible with UNCAC provisions, Bangladesh can sign MOUs to expand the ambit of cooperation and enter into agreements with other States Parties, particularly neighboring countries, pertaining to exchange of information on methods of committing offences.

Article 49: Joint investigations

The UNCAC requires that the States Parties consider bilateral or multilateral agreements or arrangements regarding the establishment of joint investigative bodies to conduct joint investigations, prosecutions and proceedings in more than one state. Furthermore, in absence of such agreements, States Parties may consider undertaking joint investigations on a case by case basis.



Bangladesh has not entered into any bilateral or multilateral agreements to establish a joint investigative body. However, such a body can be created on a case by case basis, depending upon requests by a State Party. The Government can also make requests to INTERPOL or to any specific country for joint investigation of a particular incident.

Formation of joint investigative bodies is important as elements of corruption related offences may concern and involve more than one state. Domestic laws differ across countries and as such can work as a barrier to investigations conducted by a particular state. Furthermore, the States Parties may also benefit from the experience, expertise, and investigation techniques of other countries through the formation of such bodies. Accordingly, Bangladesh should adopt legislative provisions allowing for the creation of joint investigative bodies and take practical steps to establish them.

Article 50: Special investigation techniques

A State Party must establish controlled delivery as an investigative technique available at the domestic and international level, if permitted by the basic principles of its domestic legal system (article 50.1); have the legal ability to provide on a case by case basis international cooperation with respect to controlled deliveries, where not contrary to the basic principles of its domestic legal system (article 50.3); and where appropriate, establish electronic surveillance and undercover operations as investigative techniques available at the domestic and international level (article 50.1).

Under section 97(a) of the *Telecommunication Act, 2001*, the Government may interfere with the communication of any user of any service provider in the interest of the security of the state or public order. Furthermore, the Rapid Action Battalion and the Detective Branch of the police have conducted undercover investigations at the domestic level. However, these provisions are more often implemented to facilitate domestic investigation rather than aid international cooperation. Accordingly, despite some laws in place, Bangladesh has yet to develop such complex investigation techniques as prescribed by the UNCAC. Such techniques are useful as corruption related crimes are often very complex, requiring long-term sophisticated investigation and infiltration to actually detect the crime and gather necessary evidence. As Bangladesh seeks to better equip itself in the fight against corruption, it would be helpful to seek outside assistance in the form of experts or international assistance to develop these special investigative capabilities.

Chapter 4 International Cooperation (Articles 43—50)

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>Article 43: State Parties are required to cooperate in criminal matters particularly in cases of extradition, mutual legal assistance, transfer of criminal proceedings, law enforcement including joint investigation and special investigative techniques;</p> <p>Dual criminality requirements are deemed fulfilled if the offence is criminalized by laws of both States Parties.</p> <p>Article 44: States Parties are required to:</p> <ul style="list-style-type: none"> • grant extradition of offenders; • regard all UNCAC offences as “extraditable offences” and not to consider these as “political offences”; • take the UNCAC as the legal basis for extradition or opt for compliance 	<p><i>Extradition Act (EA), 1974</i> <i>Penal Code, 1860</i></p> <p><i>Extradition Act (EA), 1974</i> <i>Constitution of the People’s Republic of Bangladesh</i> <i>The Code of Criminal Procedure (CrPC), 1898</i> <i>Penal Code, 1860</i></p>	<p>The Government recognizes the importance of international cooperation in relation to extradition, MLA, transfer of criminal proceedings and law enforcement.</p> <p>Bangladesh may provide MLA through the central authorities as nominated under article 46. Additionally, the EA, 1974 provides a legal basis for cooperation for extradition.</p> <p>Bangladesh has opted for bilateral treaties;</p> <p>Under the EA, 1974, both national and alien fugitive offenders can be extradited but an extradition treaty is necessary for this.</p> <p>So far, Bangladesh has entered into an extradition treaty only with Thailand;</p> <p>In absence of treaty, the Government may establish</p>	<p>The legal regime is compliant with the UNCAC requirements to some extent;</p> <p>The dual criminality requirement of the UNCAC is in line with domestic provisions to some extent.</p> <p>Extradition is to be included in MLA agreements currently under process;</p> <p>Extending cooperation for extradition through gazette notification is an important step towards compliance because it bridges the gap created by the absence of treaties in situations where extradition is needed;</p> <p>Bangladesh has yet to use its extradition mechanisms for</p>	<p>Clarification should be made relating to the issue of dual criminality.</p> <p>The list of extraditable offences in the Schedule of the EA, 1974 should be amended to include UNCAC offences;</p> <p>Bilateral extradition treaties should be negotiated as early as possible.</p> <p>Alternatively, it may respond to extradition requests through gazette notification;</p> <p>In the interest of bringing an offender to justice,</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>through bilateral treaties and notify the UN Secretary-General;</p> <ul style="list-style-type: none"> • simplify evidentiary requirements and ensure presence of offenders at proceedings; <p>In the absence of an extradition treaty the Convention may be treated as the legal basis for extradition;</p> <p>States Parties may refuse extradition requests;</p> <p>If extradition is refused because the requested offender is national of requested State Party, the UNCAC requires that requested country should submit a case against the offender without delay and cooperate on evidentiary and procedural aspects;</p> <p>If extradition is refused, a State Party shall consider enforcement of sentence imposed by laws of a requesting State Party;</p>		<p>extradition relations with any State Party through gazette notification and extend cooperation in same manner as if it were a treaty;</p> <p>Under Penal Code, any competent court of Bangladesh has jurisdiction to prosecute a Bangladeshi national for an act which is an offence under domestic law, irrespective of the place of occurrence;</p> <p>Domestic laws ensure fair treatment of offenders and protection under the law. Article 31 of Constitution of Bangladesh provides that any person, while in Bangladesh, is entitled to the protection of the law and be treated in accordance with the law;</p> <p>Bail under the CrPC will be applicable for fugitive offenders in same manner as if s/he committed the offence in Bangladesh;</p> <p>Foreign sentences are not enforceable in Bangladesh.</p>	<p>extradition of corruption offenders;</p> <p>The definition of "political offence" is not clearly spelled out;</p> <p>The EA, 1974 is compliant with the UNCAC in regard to simplifying evidentiary requirements but the extradition treaty (with Thailand) is not;</p> <p>There is no provision in EA for extradition of Bangladeshi nationals to a foreign country for purposes of serving sentence imposed by a foreign country;</p> <p>Foreign judgments are not enforceable in Bangladesh;</p> <p>There is gap in compliance with article 44.13 of UNCAC (requested State Party to consider enforcing sentence if extradition sought for enforcing a sentence is refused because the person is its own national).</p>	<p>evidentiary requirements of the extradition treaty with Thailand should be simplified in the lines of the EA, 1974;</p> <p>Bangladesh should consider the provision for enforcing of foreign criminal judgments for an UNCAC offence.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>If extradition is refused, States Parties are required to safeguard the rights of the offender and ensure fair treatment for the offender at proceedings;</p> <p>A State Party may refuse extradition on apprehension of discriminatory treatment;</p> <p>A State Party cannot refuse extradition on sole ground that the offence involves fiscal matters.</p>		<p>Under Section 5(2) of EA, 1974, Bangladesh may refuse extradition requests on grounds that the offence in question is political in nature; the offender has already been tried and/or sentenced and is serving sentence in Bangladesh; or s/he may be subject to discriminatory treatment; but not on the sole ground that it involves fiscal matters;</p> <p>The EA, 1974 maintains that there will be no extradition for offences punishable for less than twelve months;</p> <p>Procedures for evidentiary requirements are simple under the EA, 1974. However, provisions of the extradition treaty with Thailand are more complicated in this regard;</p> <p>Although there is no specific provision in the EA, 1974 to start proceedings without delay, there is no bar to commencing such proceedings and cooperating in evidentiary matters;</p>		

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>Article 45: The article encourages bilateral agreements for the transfer of sentenced persons to their own territory to complete their sentences.</p>	<p>No such agreement exists. <i>Extradition Act (EA), 1974</i></p>	<p>The EA, 1974 empowers the Government to stay extradition proceedings and discharge the offender if the case is trivial in nature or was not made in good faith. However, both the requesting State Party and fugitive offender are allowed to provide opinions and information supporting their position during proceedings.</p> <p>There is no provision for the extradition of a person serving a sentence in Bangladesh;</p> <p>Section 2(g) of the EA, 1974 bars the transfer of sentenced persons;</p> <p>Extradition is allowed in the treaty with Thailand for offenders against whom judicial penalty has been pronounced; however, this does not permit extradition for persons that have already begun to serve their sentence;</p> <p>The domestic law is not compatible with the UNCAC provision.</p>	<p>The UNCAC ambition is not reflected in the existing arrangement;</p> <p>The prohibition in the EA, 1974 on extradition may have arisen out of concern that offenders may be subject to mistreatment or would avoid punishment in their own country due to political protection.</p>	<p>The risk of sentence nullification can be protected against and the UNCAC provisions can be complied with if Bangladesh considers negotiating bilateral treaties on the issue of transfer of sentenced persons on a case by case basis;</p> <p>Section 2(g) of the EA, 1974 may be amended to allow transfer of sentenced person on a case by case basis.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>Article 46: The article requires the widest measure of mutual legal assistance (MLA) in investigation, prosecution, judicial proceedings, asset confiscation and recovery;</p> <p>Such assistance is required specifically for the purposes of taking evidence, tracing proceeds of crime and providing documents in the recovery of assets;</p> <p>States Parties may decline assistance on grounds of absence of dual criminality;</p> <p>A State Party may offer assistance in the absence of dual criminality through non-coercive measures;</p> <p>In absence of MLA, a State Party shall designate a central authority to receive requests for MLA and inform the UN Secretary-General accordingly;</p> <p>States Parties should consider entering into bilateral or multilateral agreements for MLA;</p>	<p><i>Gazette Notification (UN-SOC-6027/07, dated 27 April, 2008)</i></p> <p><i>The Code of Criminal Procedure (CrPC), 1998</i></p> <p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p><i>Officials Secrets Act, 1923</i></p> <p><i>Evidence Act, 1872</i></p> <p><i>Government Servants (Conduct) Rules, 1979</i></p> <p><i>Rules of Business, 1996</i></p>	<p>The Government through gazette notification nominated central authorities to provide MLA assistance to the States Parties for ensuring widest MLA;</p> <p>The Government or BB (in some cases) may sign MOU, and bilateral or multilateral agreements with foreign countries and organizations to prevent money laundering;</p> <p>Such agreements will allow the GoB or the BB to request/provide information in response to request from another State Party so long as it does not affect national security;</p> <p>The provisions of MLPO will prevail over other laws on disclosure as long as such disclosure does not threaten national security;</p> <p>Section 503 (2B) of CrPC provides limited provisions for MLA for evidence gathering through Evidence Commissions but does not contain provisions for other types of MLA;</p>	<p>The CrPC authorizes the investigating authority to have access to any bank related document/information. The BB is authorized to have access to bank account information;</p> <p>In addition, the BB will be able to share information with other States Parties where there are formal agreements;</p> <p>Bangladesh now has the necessary legal basis for MLA in specific corruption-related areas, specifically disclosure of information and forfeiture of assets;</p> <p>Bangladesh is somewhat behind in MLA for the other aspects of criminal proceedings such as investigation, prosecution, and judicial proceedings due to the absence of bilateral/multilateral agreements.</p>	<p>Gaps in compliance can be narrowed through amending domestic laws to include provisions for assisting in investigation and prosecution;</p> <p>Bangladesh should negotiate more bilateral treaties;</p> <p>Domestic laws should promote information sharing.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>MLA cannot be refused on the grounds of bank secrecy or for offences involving fiscal matters.</p> <p>Article 47: States Parties are required to transfer criminal proceedings for offences under the UNCAC to another State Party in the interest of proper administration of justice.</p>	<p>No legal provision</p>	<p>Bank secrecy laws in Bangladesh do not interfere with international criminal investigations;</p> <p>Domestic legislation is compatible with the UNCAC provision to a great extent.</p> <p>There is no direct provision for the transfer of legal proceedings to another State Party.</p>	<p>The requirement under this article is significant, as corruption related offences are often committed in several jurisdictions. Thus it is practical and fairer for all concerned to consolidate the case in one place.</p>	<p>New laws may be introduced which allow courts or the Government to transfer proceedings to another State Party in appropriate circumstances.</p>
<p>Article 48: States Parties are required to:</p> <p>strengthen the communication channels among respective law enforcement authorities to obtain information about movement of persons and proceeds of crime;</p> <p>provide each other items for analytical or investigative purpose and cooperate for facilitating early identification of offences;</p>	<p>Membership in INTERPOL allows indirect law enforcement assistance from other states. The Government uses such assistance to identify and locate offenders.</p>	<p>Bangladesh can exchange information on drug related offences through SDOMD and STOMD to limited extent;</p> <p>Also, the Financial Intelligence Unit (FIU) of the Anti-Money Laundering Department of the BB received assistance from the US for installation of software to detect and analyze financial crimes;</p>	<p>Bangladesh is yet to reach international standards in relation to controlling offences committed using modern technology;</p> <p>There are no agreements with individual States Parties on information exchange regarding UNCAC offences.</p>	<p>Bangladesh should improve its technological resource capacity. It can benefit from technological assistance, experience sharing, and training from countries which have adequate facilities for controlling offences committed through use of modern technology;</p> <p>It can sign MOUs and enter into agreements with other States Parties, particularly neighboring countries for exchange of information on</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>exchange information on specific means and methods used in related offences;</p> <p>promote exchange of personnel and other experts;</p> <p>cooperate to respond to the UNCAC offences committed through use of modern technology.</p> <p>Article 49: The article promotes the establishment of joint investigative bodies to conduct joint investigations in matters involving more than one State Party.</p>	<p>There is no provision in domestic laws for forming a joint investigation body.</p>	<p>The Government also obtained assistance from international experts for investigation purposes;</p> <p>There is limited compatibility with UNCAC.</p>	<p>There is no formal joint investigation body;</p> <p>The Government can make requests to INTERPOL or to any specific country for joint investigation of a particular incident.</p>	<p>methods of committing offences.</p> <p>Bangladesh could benefit from the experience and expertise of other countries through formation of such bodies. Existing laws should be amended to provide for joint investigative bodies.</p>
<p>Article 50: A State Party must establish controlled delivery as an investigative technique, have the legal ability to provide international cooperation with respect to controlled delivery and establish electronic surveillance and undercover operations as investigative techniques.</p>	<p><i>Telecommunication Act, 2001</i></p>	<p>The Government may interfere with the communication of any user or service provider in the interest of security of the State or public order.</p>	<p>The Rapid Action Battalion and the Detective Branch of the police conduct undercover investigations at domestic level;</p> <p>Bangladesh has yet to develop complex investigation techniques as prescribed by the UNCAC.</p>	<p>Bangladesh may seek international assistance and the help of experts to develop these special investigative techniques.</p>

Chapter 5

Asset Recovery

5.1 Laundering and Proceeds of Crime

5.2 Prevention and Detection of Proceeds of Crime

5.3 Recovery of Proceeds of Crime

Matrix on compliance with articles 14, 23, 51-59

Asset Recovery

The transfer of assets obtained illegally and disguised as such constitutes the bulk of corrupt activities and amounts to disguising public wealth for personal gains. Such activities are harmful to the country as well as the world. Nationally, it reduces the country's gross domestic product through leakages of its earnings. On a global scale, the proceeds of such illegal activities can be used to finance activities like terrorism. Accordingly, the UNCAC strives to recover such assets.


5.1 Laundering and Proceeds of Crime

Article 14: Prevention of money laundering

Under this article, the UNCAC requires that States Parties establish a comprehensive domestic regulatory and supervisory regime to deter money laundering (article 14.1(a)) and ensure that agencies involved in combating money laundering have the ability to cooperate and exchange information at the national and international levels (article 14.1(b)). Moreover, it also requires that States Parties consider: establishing a Financial Intelligence Unit (FIU) (article 14.1(b)); implementing measures to monitor cash movements across their borders (article 14.2); implementing measures to require financial institutions to collect information on originators of electronic fund transfers, maintain information on the entire payment chain and scrutinize fund transfers with incomplete information on the originator (article 14.3); and developing and promoting global, regional and bilateral cooperation among relevant agencies to combat money laundering (article 14.5).

Bangladesh has taken broad and effective initiatives to deter and detect all forms of money laundering. The Government recently enacted the *Money Laundering Prevention Ordinance (MLPO), 2008* which repealed the *Money Laundering Prevention Act, 2002*. The MLPO provides the Bangladesh Bank (BB) with the necessary powers and extensive responsibility to prevent and combat money laundering. It identifies banks, financial institutions, insurance companies, money changers, companies or organizations remitting or transferring money, and any other organizations which conduct business with the approval of the BB, as "reporting organizations" for the prevention of money laundering. The BB is authorized to monitor the activities of reporting organizations to combat and prevent money laundering. The reporting organization has a duty to provide information related to suspicious transactions or any information as required by the BB.

The MLPO also ensures that the BB has the necessary power to cooperate and exchange information at the national and international levels to control money laundering. Under section 23(2), the BB may share information with



the domestic investigating agencies. According to section 26(2), it can share information with any foreign country or organization with which there is a MOU or bilateral agreement. Additionally, section 24 of MLPO, 2008 provides for the establishment of a Financial Intelligence Unit (FIU) to prevent and control money laundering (details about the FIU are discussed in the section below on article 58).

Furthermore, Bangladesh has the needed mechanism for monitoring cash movements across the border. Cash (foreign currency) movement is controlled by the *Guidelines for Foreign Exchange Transaction (GFET), 1996* (Vol-1) issued by the BB; chapter 19 of the GFET contains rules for cash movement across the border. On behalf of the Government, the Customs Department enforces the rules.


At present, there is a lack of technological facilities for collecting information on electronic fund transfer. The Department of Currency Management and Payment System of the BB is responsible for monitoring the payment of financial institutions. The Department is also responsible for developing and running an efficient, secured and reliable payment system in Bangladesh. Since the BB does not have direct online connections with banks or other financial institutions, it has not been possible to collect information or monitor every electronic fund payment. However, the BB through its on-site and off-site inspections can monitor electronic fund transfers and collect information on payment chains. Moreover, in specific cases the BB, as the regulatory body, may require that financial institutions provide needed information relating to a particular payment. Nevertheless, to ensure regular monitoring and convenient scrutiny of electronic fund transfers, modernization of the system is essential. In this regard, the Payment System Division has been established under the Department of Currency Management and Payment System of the BB to work on modernizing the payment system. A three year project, the Remittance and Payments Partnership Project, was undertaken in October 2006 with a grant from the Department of Foreign and International Development, UK, to modernize the existing payment systems. The goal of this project is to build safe, fast and efficient remittances, to establish an Automated Clearing House that meets international standards, and develop a sustainable payment system in Bangladesh. It is hoped that by the end of 2009, the BB will be able to establish an efficient payment and settlement system based on international best practices which will also allow the BB to collect information, and monitor and scrutinize electronic fund transfers.

Money laundering plays an important role in carrying out corruption related offences; accordingly, the UNCAC gives emphasis on controlling said activity. The MLPO provides the necessary legal basis to combat money laundering and open avenues for global, regional and bilateral cooperation

in this regard. In 2005, Bangladesh became a party to the UN International Convention for the Suppression of Financing of Terrorism, making it now a party to all 13 UN conventions on suppressing and financing terrorism. Bangladesh is also a member of the Asia Pacific Group on Money Laundering. In addition, under section 26 of the MLPO, the Government, or in appropriate cases the BB, may sign memorandum of understanding (MOU), and bilateral or multilateral agreements with foreign governments or organizations to control money laundering. Once such MOUs or agreements are signed, the BB will be able to cooperate in information sharing and confiscation of stolen property and the FIU will be able to share information related to “suspicious transactions” with FIUs of other countries. However, the existence of a domestic legal basis alone is not enough to ensure cooperation. Given that, Bangladesh is in the process of initiating MOUs and agreements with different countries, which will create mechanisms for greater cooperation in combating money laundering.

Article 23: Laundering of proceeds of crime

The UNCAC requires that States Parties establish four offences related to money laundering. The first offence relates to the conversion or transfer of the proceeds of crime for the purpose of concealing or disguising the illicit origin of property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his/her actions (article 23.1(a)(i)). The next offence is the concealment or disguise of the nature, source, location, disposition, movement, ownership of, or rights with respect to the proceeds of crime (article 23.1(a)(ii)). The third offence is the acquisition, possession or use of proceeds of crime knowing, at the time of receipt, that such property is the result of crime (article 23.1(b)(i)). The fourth offence involves the participation in conspiracy to commit, or attempts to aid, abet, facilitate and counsel the commission of any of the offences prohibited by article 23 (article 23.1(b)(ii)). States Parties must apply these offences to proceeds generated by “the widest range of predicate offences” (article 23.2(a)). In addition, States Parties are required to criminalize any “predicate offence” in relation to the transfer of proceeds of crime (article 23.2(b)). However, dual criminality is necessary for offences committed in a different nation’s jurisdiction to be considered a predicate offence (article 23.2(c)). States Parties must furnish copies of their laws giving effect to article 23 and of any subsequent changes to such laws, or a description thereof, to the Secretary-General of the United Nations (article 23.2(d)). However, the Convention permits States Parties to not apply money laundering offences to those who have committed the predicate offence if the constitution or fundamental legal principles of those States do not allow the prosecution and punishment of an offender for both the predicate offence and the laundering of proceeds from that offence (article 23.2(e)).



Money laundering was declared an offence in Bangladesh through the enactment of the **Money Laundering Prevention Act (MLPA)** of April 2002. However, the Act had several shortcomings, particularly in relation to the definition of money laundering and an inadequate list of reporting agencies. As mentioned above, the **Money Laundering Prevention Ordinance (MLPO), 2008** was enacted, replacing the MLPA, 2002, to address those issues and bring the domestic law in line with the UNCAC requirements. Despite this, the circulars and guidance notes on prevention of money laundering issued by the BB under the MLPA, 2002 continue to be in effect.

The Ordinance defines “money laundering” in an extensive way to include the transfer, conversion, remitting abroad or bringing from abroad to Bangladesh the proceeds or properties acquired through the commission of a predicate offence for the purpose of concealing or disguising the illicit origin of the property or illegal transfer of properties acquired or earned through legal or illegal means (MLPO, section 2). Moreover, conducting a financial transaction with the intent to avoid a reporting requirement, engaging in activities so that the illegitimate source of funds or property can be concealed or disguised, and attempting and assisting in the above mentioned conduct will also amount to money laundering. Money laundering is a non-bailable criminal offence; the penalty can be up to seven years imprisonment and forfeiture of the property derived from predicate offence. Special courts established under the **Criminal Law Amendment Act, 1958** have jurisdiction to try cases of money laundering. Such courts can take cognizance of offences only at the written complaint made by the ACC.

The MLPO provides a list of 16 predicate offences, namely: corruption and bribery; counterfeiting currency; counterfeiting documents; extortion; fraud; forgery; illicit arms trafficking; illicit dealing in narcotic drugs and psychotropic substances; illicit dealing in stolen and other goods; kidnapping, illegal restraint, and hostage taking; murder, grievous bodily injury; woman and child trafficking; smuggling and unauthorized cross-border transfer of domestic and foreign currency; robbery or theft; trafficking in human beings; and migrant smuggling and dowry. The Ordinance also contains a provision to incorporate more offences through gazette notification. All of the predicate offences listed in the MLPO are separate offences under different legislation. Money laundering is an offence under the schedule of the **Anti-Corruption Commission (ACC) Act, 2004** and will be tried by special judges. Section 5(7) of the **Criminal Law Amendment Act, 1958** makes an exception to the joinder of charges and empowers special judges to try more than one offence charged in the same trial. Accordingly, with regard to legal action in Bangladesh, there is no bar against prosecuting both the predicate offence and the laundering offence even if the laundered property was acquired through the commission of the predicate offence.

The MLPO empowers the BB to supervise the activities of reporting organizations. Additionally, it authorizes the ACC to investigate all offences related to money laundering and take appropriate steps to address any problems related to the detection of money laundering. The MLPO requires reporting organizations to accurately identify customers and to report suspicious transactions to the BB. It also requires that reporting organizations preserve customer information while an account is open and to continue to keep such information for five years from the date the account is closed. A reporting organization must supply this information to the BB upon request and inform the BB of any suspicious transactions. The MLPO allows the BB to impose fines or in appropriate cases, cancel the license or inform the licensing authority of the reporting organization to take necessary action against the concerned reporting organization for failure or negligence.

Banks in Bangladesh are implementing procedures and “Know Your Customer” (KYC) practices as required by the MLPO. A detailed “*Guidance Note on Prevention of Money Laundering*” has been circulated among banks and financial institutions. Banks are also required to have an Anti-Money Laundering Compliance Unit in their head office and designated Anti-Money Laundering Compliance Officers on anti-money laundering (AML) issues in bank branches. The BB has held discussions with all Chief Compliance Officers about their obligations, along with conducting regular training programs for these officers. Additionally, the BB has heightened police interest in money laundering and terrorist financing. Regional workshops around the country have also been conducted with the BB instructors.

The Bangladesh Bank received 466 suspicious transaction reports since the MLPA was passed in 2002. Of these, the BB has referred 51 cases to the ACC and 21 to the Criminal Investigation Department (CID). Charge sheets/final reports have been issued in 158 instances, 78 of which are under investigation, while 121 are at the trial stage. Additionally, a few local banks were fined for non-compliance with the BB directives.

The MLPO has made progress in ensuring the necessary legal regime for controlling money laundering making the domestic legal system compatible with the requirements of the UNCAC. Despite this advancement, the GoB’s money laundering prevention regime requires strengthening to comply with international standards. Although Section 28 of MLPO contains a safe harbor provision, it does not protect all the reporting officials. Accordingly, legislation should include safe harbor provisions in order to protect reporting individuals, along with banker negligence accountability that would make individual bankers responsible for failure to report laundering activity. Additionally, the Government has yet to furnish copies of its laws giving effect to article 23, and subsequent

changes to such laws, to the Secretary-General of the UN. Accordingly, the Government should take initiative to make such notification.

Article 58: Financial intelligence unit

Article 58 of the UNCAC requires the establishment of a Financial Intelligence Unit (FIU) for the purposes of receiving, analyzing and disseminating reports of suspicious transactions to competent authorities, as well as for preventing the transfer and aiding in the recovery of proceeds of offences established within the Convention.

Section 24 of the MLPO provides the legal basis for establishing a Financial Intelligence Unit (FIU). A FIU was established within the Anti-Money Laundering Department (AMLDD) of the BB in March 2007. Officers from the AMLDD at various levels, from Assistant Director to Executive Director, are members of the FIU. The FIU aims to combat financial crimes and retrieve assets and money kept overseas by graft suspects. It focuses on receiving, analyzing and disseminating information to detect suspicious transactions. The FIU also disseminates information to law enforcement agencies so that they may conduct further investigation and commence proceedings in appropriate cases, along with using such information to trace, seize and confiscate the respective assets. Additionally, the AMLDD requires banks to have a reporting chain for suspicious transactions whereby the Chief AML Compliance Officers will in turn report such transactions to the FIU.

Under the existing laws, the BB may share information with domestic law enforcement agencies and other States Parties with which the Government or the BB has a MOU permitting such action. The FIU's effectiveness will be largely enhanced upon Bangladesh's membership into the Egmont Group, a coordinating body for the international consortium of FIUs that promotes and enhances international cooperation in AML and counter-terrorist financing. The Group, with its Secretariat in Toronto, Canada, has a membership of 106 FIUs. Preparations are underway to apply for membership in the Egmont Group. Bangladesh has fulfilled certain membership conditions, such as amendment of laws relating to money laundering and enactment of the ***Anti-Terrorism Ordinance, 2008*** which contains provisions for criminalizing terrorist-financing. Additionally, to become a member, Bangladesh needs sponsorship from two countries; Thailand, Malaysia and Mauritius have already assured Bangladesh that they will act as sponsors. Once Bangladesh becomes a member, the BB would be able to exchange information and expertise with FIUs of the other countries. Likewise, the FIU would play a key role in facilitating information sharing if there are MLAs between Bangladesh and other States Parties.

Bangladesh fully complies with the requirements of article 58 of the UNCAC and has taken a variety of steps toward both preventing laundering and aiding in the recovery of laundered property. Significant legislation includes the MLPO, which contains provisions for tracing, seizing, confiscating and subsequently returning assets that have been transferred abroad. Despite the comprehensiveness of the law, to be effective, the analytical capacities of the FIU would benefit from further upgrading. Particularly beneficial would be upgrading the current database and intelligence analysis system, which allows for the collection and analysis of suspicious transaction reports, as well as the dissemination of such information to relevant law enforcement agencies. A lack of training, limited resources, along with outdated computer technology, including no computer links with the outlying districts, continue to hinder progress. Additionally, if the FIU has access to the databases of other government agencies such as those of the Road Traffic Agency or Immigration and Customs, it will be able to conduct more effective analysis of suspicious transactions.

5.2 Prevention and Detection of Proceeds of Crime

Article 51: General provision

Declaring the return of assets as a fundamental principle of the Convention, the article requires States Parties to provide the widest measure of cooperation and assistance for the recovery of assets to another State Party.

There are strong allegations that a considerable amount of money has been siphoned from Bangladesh. Accordingly, the issue of asset recovery through international cooperation has been given top priority by the Government. In compliance with the UNCAC requirements, the Government has nominated the Ministry of Home Affairs and the Office of the Attorney General as the central authorities and has duly informed the Secretary-General of the UN that the central authorities are the responsible agents for requests of mutual legal assistance. In order to broaden the scope of cooperation, a new legal regime was introduced. The *Money Laundering Prevention Ordinance, 2008* allows the Government, or in some cases the BB, to sign memorandum of understanding (MOU), and bilateral or multilateral agreements with foreign countries to control money laundering and provide cooperation for forfeiture or delivery of laundered property. Moreover, a high powered Task Force on Repatriation of Siphoned Money has been formed to recover assets from foreign countries. The Task Force is also working on facilitating international cooperation for asset recovery.

Article 52: Prevention and detection of transfers of proceeds of crime

The UNCAC requires financial institutions of a State Party to verify the identity of customers or beneficial owners of high-value accounts, and to conduct enhanced scrutiny of accounts sought or maintained by public officials, their family members, and close associates (article 52.1). In addition, it requires public officials having foreign accounts to report their existence to the relevant authority (article 52.2(b)). States Parties must also ensure that their financial institutions (FIs) maintain transaction records of such persons for an appropriate period (article 52.3). States Parties are obligated to use their regulatory and oversight bodies to prevent the establishment of banks that have no physical presence or that are not affiliated with a regulated financial group (article 52.4). Additionally, States Parties are required to establish effective financial disclosure systems and provide appropriate sanctions for non-compliance, and to share that information with other States Parties when necessary to investigate, claim and recover proceeds of UNCAC offences (article 52.5). Moreover, States Parties must also consider taking necessary measures to require appropriate public officials having an interest in or authority over a financial account in a foreign country to report that relationship to the relevant authorities and to maintain proper records related to such accounts (article 52.6)


The MLPO, 2008 contains different provisions for the prevention and detection of the transfer of proceeds of crime. The BB, as the regulatory and supervisory authority, has advised banks to maintain an AML compliance policy through the issuance of the detailed *Guidance Notes on Prevention of Money Laundering* and various circulars on the prevention of money laundering. Banks and FIs are required to have an AML compliance unit in their head office and a designated AML Compliance Officer in each bank branch. The *Anti-Money Laundering Circular No. 2* (17 July, 2002) of the BB requires all banks and FIs to maintain the correct and complete records of customer identity and updated details of transactions. FIs have been advised to establish the identity of their customers and business relationships through KYC procedures. If the account holder is a public figure, the account will automatically become a “High Risk Account.” KYC profiles of such accounts are to be updated at least annually and checked for compliance. Since 2004, the BB has conducted training around the country for every bank’s headquarters on KYC practices. However, Bangladesh has yet to have a national identity card for all citizens and the vast majority of Bangladeshis do not have passports. Consequently, it is difficult to enforce effective customer identification requirements, though most banks have introduced referrals. Other than major cities, banking records are maintained manually with little technological support, although this is slowly changing, especially in head offices. Additionally, accounting procedures used by the BB may not conform to international standards in every respect. Still, the present Government has taken initiatives to

prepare national identity cards for every voter which can be used for other purposes too. Lastly, the MLPO does not have any specific provisions regarding financial disclosure of accounts to other States Parties. However, the MLPO allows the BB to sign MOUs with other countries with regards to financial crime investigation; accordingly, financial disclosure to other States Parties is possible where there are agreements on mutual legal assistance.

The *BB Circular No. 14* (25 September, 2007) requires enhanced security for accounts of Politically Exposed Persons (PEPs), i.e., public officials with prominent public functions in foreign countries or suspects of corruption. In compliance with the UNCAC provisions and the recommendations of the Financial Action Task Force (FATF), banks have been instructed to have risk management systems for identifying PEPs. Banks are further required to obtain approval from senior management before entering into business relationships with such persons, take reasonable measures for establishing sources of wealth and funds, and conduct ongoing monitoring of such relationships. Bangladesh has also responded to requests from the UN Sanction Committee to freeze financial accounts of black-listed persons and organizations. However, the scope of *Circular No. 14* is limited to foreign persons only; domestic PEPs and companies are outside its scope.

The strict onsite and off-site supervision procedures of the BB are largely compliant with the Basel Standards setup by the Basel Committee on Banking Supervision which encourages contacts and cooperation among its members and other banking supervisory authorities. The *BB Circular No. 7* (August 2005) provides clear measures for correspondent banking requiring that all banks follow detailed procedures to establish such relationships. This includes provisions for collection of information relating to management, business, location, anti-money laundering activities, monitoring and control systems of the respondent bank. Moreover, *Circular No. 7* categorically prohibits the establishment or continuance of relationships with “shell banks,” i.e., banks that do not have any activities or branches in the country where they are incorporated and that are not members of any regulated financial group.

With regard to reporting foreign accounts held by public officials, in accordance with the provisions of the ***Government Servants (Conduct) Rules, 1979***, public officials are under a duty to submit the details of their wealth, including bank accounts. Moreover, generally a Bangladeshi resident, i.e., a natural person, bank or firm residing in Bangladesh, is not allowed to open bank accounts in a foreign country. Only an Authorized Dealer (a bank authorized by the Bangladesh Bank to deal in foreign exchange under the ***Foreign Exchange Regulation Act, 1947***) is free to open and maintain foreign accounts following the rules under the



Guidelines for Foreign Exchange Transactions, 1996. Thus, the public officials are under a duty to report their foreign accounts and as such, the domestic regime complies with the UNCAC requirements.

The MLPO has successfully brought the domestic legal regime in line with the UNCAC requirements relating to the verification of identity of high valued customers, maintenance of transaction details, establishment of financial disclosure systems, and sharing of financial information. However, financial institutions should introduce electronic record keeping systems all over the country. It is hoped that full compliance with article 52 will not only allow Bangladesh to detect the transfer of proceeds of crime, but will also prevent incidents of corruption related offences.

5.3 Recovery of Proceeds of Crime

Article 53: Measures for direct recovery of property

The UNCAC obligates a State Party to allow another State Party to initiate civil actions in its court for the purposes of establishing title to property acquired through the commission of an offence under the UNCAC (article 53(a)). The courts must be empowered to order payment of compensation directly to such State Party (article 53(b)). Furthermore, States Parties must take necessary measures to permit their courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of a corruption offence (article 53(c)).


The domestic legal regime complies with the requirement of article 53 with respect to upholding the right to bring civil actions and ordering payment of compensation. Section 84 of the ***Code of Civil Procedure, 1908*** allows a recognized foreign State to initiate a civil suit to enforce a private right vested in the head of such State or in any officer of such State in his/her public capacity. This private right refers to the right of a foreign State against a private individual. Accordingly, under the existing domestic laws, a State Party will be able to initiate a civil action. Furthermore, if a State is allowed to be a party to a suit, the court will be able to make any order to its favor, including the payment of compensation. However, the domestic legal regime is silent on recognizing the legitimacy of ownership of another State Party. Absence of specific rules relating to recognition may create unnecessary obstacles and frustrate the process of disposing or recovering proceeds of corruption. Consequently, Bangladesh should consider introducing provisions with such effect.

Article 54: Mechanisms for recovery of property through international cooperation in confiscation

The UNCAC requires that States Parties: permit their authorities to give effect to an order of confiscation issued by a court of another State Party (article 54.1(a)); allow their authorities to order the confiscation of such property of foreign origin by adjudication of money laundering or other offences within their jurisdiction or by other procedures under domestic law (article 54.1(b)); sanction their competent authorities to freeze or seize property upon a freezing or seizure order issued by a competent authority of a requesting State Party concerning property eventually subject to confiscation (article 54.2(a)); and permit their competent authorities to freeze or seize property upon request when there are sufficient grounds for taking such actions regarding property eventually subject to confiscation (article 54.2(b)). States Parties should also consider allowing confiscation of property of foreign origin by adjudication of money laundering or other offences within their jurisdiction or by other procedures under domestic law without a criminal conviction, when the offender cannot be prosecuted by reason of death, flight, absence or in other appropriate cases (article 54.1(c)); and take additional measures to permit their authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (article 54.2(c)).

Section 26(3) of the MLPO empowers courts, upon request of the BB, to give effect to a confiscation order issued by a court of another State Party and permit confiscation of such property. Accordingly, the domestic legal regime fully complies with the requirements of article 54.1 paragraphs (a) and (b). Nevertheless, the MLPO only mentions “foreign court orders” for confiscation and is silent on seizure orders of a “foreign competent authority.” Accordingly, is it questionable whether the courts of Bangladesh will seize property in response to an order from a foreign competent authority.

In relation to freezing and seizure, the courts of Bangladesh have wide powers to freeze and seize property of a person who is accused or convicted of corruption related offences. Rule 18 of the ACC Rules confers power to the courts to order the freezing or attachment of a person’s property that is allegedly acquired by illegal means or is disproportionate to his/her legal source of income, even before the commencement of trial, at the request of an investigating officer of the ACC. Under section 14 of the MLPO, the courts may seize or freeze property situated within or outside Bangladesh of a person accused of money laundering on application by the ACC. Furthermore, property obtained through illegal means during procurement procedures or by any abuse of power can be frozen or attached by the courts under rule 15A of the *Emergency Power*



Rules, 2007. These domestic provisions allow the court to freeze or seize property of both accused and convicted persons situated within or outside of the country. Moreover, the court may also respond to a request of a State Party for cooperation regarding freezing or seizing property if such request is made by the central authority under article 46 of the UNCAC, to comply with the obligation under article 54.2(b).

The domestic law complies with the UNCAC requirement under article 54 in relation to giving effect to a foreign court's seizure order. However, there are still some areas, such as implementing a seizure order of a foreign competent authority or taking action in cases where prosecution has not begun, that have yet to be addressed. To ensure effective and smooth international cooperation Bangladesh should address all the gaps in the domestic legislation.

Article 55: International cooperation for the purposes of confiscation

Article 55 mandates States Parties to provide assistance to a wide extent to another State Party for confiscation of the proceeds of crime. A State Party is required to: submit requests for confiscation of proceeds of crime to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it (article 55.1(a)); present to its competent authorities an order of confiscation issued by a court with a view to giving it effect (article 55.1(b)); take measures to identify, trace, freeze or seize proceeds of crime, property, equipment or other instrumentalities (article 55.2); not construe the provisions of the article as prejudicial to the right of a bona fide third party (article 55.9); and furnish copies of their laws and regulations that give effect to the article and of any subsequent changes of such laws to the Secretary-General of the United Nations (article 55.5). If a State Party makes the existence of a treaty a condition to taking such steps, it shall consider the Convention as the sufficient treaty basis (article 55.6). However, a State Party is free to respond to confiscation requests in accordance with the provisions of its domestic laws or any bilateral or multilateral agreements with the requesting State (article 55.4). In addition, a State Party may refuse such requests or lift provisional measures on the basis that it did not receive sufficient and timely evidence or that the property is of a de minimis value (article 55.7). In case of refusal or lifting of provisional measures, the requested State Party shall give the requesting State Party an opportunity to present the reasons in favor of continuing the measures (article 55.8). Furthermore, paragraph 3 of the article 55 provides procedural requirements to be followed when a request is made pursuant to this article.

Section 26 of the MLPO allows the domestic courts to order whatever it deems appropriate, upon request from the BB, for the purposes of giving

effect to a confiscation order of the court of a foreign country with which Bangladesh has a MLA agreement. The MLPO is silent about identifying, tracing, freezing or seizing proceeds of crime in response to a request from a State Party. International cooperation in this regard comes within the ambit of the UNCAC expectation for MLA as stated in article 46.3(k). Thus, if a State Party makes a request to the central authority of Bangladesh, the central authority may take necessary steps to address the request.

In addition, the MLPO recognizes the right of a bona fide third party and provides procedures for such person to claim the property back if it is confiscated. Accordingly, the domestic provision is compatible with the UNCAC requirement under article 55.9 which emphasizes protecting bona fide third party rights.

Bangladesh has initiated practical steps in order to enhance international cooperation. A high powered Task Force on repatriation of siphoned money was set up in October, 2007, headed by the Governor of the BB, to work on recovering laundered assets through international cooperation. The Task Force includes members from the Chief Adviser's Office, Foreign and Home Ministries, Finance Division, National Board of Revenue, Bangladesh Police, ACC and Office of the Attorney General. For the time being, the Task Force agreed to sign MOUs with FIUs of countries which have large amounts of siphoned money from Bangladesh, rather than sign with all FIUs in the Egmont network. It is hoped that the Task Force will be effective in enhancing international cooperation for confiscation and asset recovery.

Bangladesh has yet to furnish copies of their laws and regulations that allow international cooperation for confiscation to the Secretary-General of the UN. Consequently, the Government should begin the process of making such notification along with other notification obligations. Furthermore, Bangladesh has not made or received any requests for confiscation of proceeds of offences to or from any State Party. It is desirable that if Bangladesh makes any request for confiscation, it would follow the procedural requirement under paragraph 3 of article 55. Although some provisions are in place, detailed rules relating to handling or refusal of confiscation requests have not been established. The actual procedure and practice will be developed in the future. Thus, Bangladesh largely complies with the UNCAC requirement of ensuring cooperation for the objective of confiscation. Cooperation for the purpose of confiscation has a vital role in asset recovery. Since Bangladesh has given priority to the issue of asset recovery, it should take more practical steps to enhance cooperation for confiscation. In order to achieve this, the GoB should enact procedural rules and where necessary, conclude bilateral agreements.

Article 56: Special cooperation

Article 56 requires States Parties to disclose information related to the proceeds of corruption to other States Parties on its own motion, for the purposes of assisting in the initiation or carrying out of investigations, prosecutions or judicial proceedings.

Section 26 of the MLPO, 2008 provides that the Government, or in appropriate cases the BB, may disclose information related to money laundering to a foreign country or organization with which Bangladesh has an agreement. Furthermore, under section 24 of the MLPO, the FIU will also be able to provide or request information from FIUs of other States Parties regarding a suspicious transaction where an agreement under the Ordinance is present. Thus, the present legal regime in Bangladesh provides for the disclosure of information related to money laundering to other States Parties where there is an agreement of mutual legal assistance. However, at present there is no obligation for disclosure of information related to the proceeds of offences without prior request from a State Party. The FIU should play an important role in this regard and should consider a policy for disclosure of information to other FIUs of its own accord.

Article 57: Return and disposal of assets

The Convention obligates cooperation among States Parties with respect to returning confiscated property to its prior legitimate owners (article 57.1) and to take measures to enable its competent authorities to return the confiscated property by taking into account the rights of bona fide third parties (article 57.2). States Parties may deduct reasonable expenses incurred for the confiscation process (article 57.4)) and may also consider the conclusion of agreements or arrangements for the final disposition of assets on a case by case basis (article 57.5). Furthermore, the requested State Party should return the confiscated property to a requesting State Party, prior legitimate owners, or victims of the crime as compensation, depending on the circumstances (article 57.3).

The domestic laws of Bangladesh, relating to the return of disposed property are in the developing stage. Section 26 of the recently enacted MLPO allows domestic courts, upon request from the BB, to return confiscated property to a foreign state with which Bangladesh has a MLA agreement. Moreover, the court may take into account the rights of bona fide third parties when confiscating property under section 17 of the MLPO. These provisions apply to property which are the proceeds of a specific crime, namely, money laundering. Bangladesh does not have any provisions for the disposal of proceeds for every offence under the UNCAC. It is unclear whether the provision under section 26 of the MLPO

will be equally applicable to the proceeds of other offences under the Convention. Additionally, the legal provisions are fairly new and have yet to be implemented by any court, making it difficult to comment on how the court will address issues like identifying legitimate owners and deduction of reasonable expenses. Bangladesh should consider clarifying the position of the present laws and fill gaps by enacting new provisions or rules relating to the disposal of confiscated property. Further, it may also consider concluding agreements for final disposition on a case by case basis.

Thus, as far as legal provisions are concerned, the domestic regime is largely in compliance with the UNCAC requirements. For a country like Bangladesh, which experiences a considerable amount of laundering of criminal proceeds, it is imperative that extensive cooperation is encouraged with regard to the return and disposal of assets. Consequently, Bangladesh will greatly benefit if it can effectively implement the UNCAC provision for cooperation with respect to return and disposal of property.

Article 59: Bilateral and multilateral agreements and arrangements

The UNCAC advocates the formulation of bilateral or multilateral agreements between States Parties to enhance effectiveness of international cooperation.

Under Section 26 of the MLPO, the Government, or in some cases the Bangladesh Bank, can sign memorandum of understanding, multilateral and bilateral agreements, and any other agreements which are recognized by conventions or international law, with other governments and organizations. Once such agreements are made, the Government or the BB will be able to share information relating to money laundering, provide cooperation for confiscation and disposal of property, and request for the return of property from another State Party. Moreover, formulation of bilateral or multilateral MLA agreements will open different avenues of international cooperation. Although Bangladesh now has the necessary legal basis for formulation of such agreements, it will not be able to reap any benefits until it actually concludes agreements for cooperation. Accordingly, Bangladesh should focus on completing these types of agreements or arrangements with other States Parties.

Chapter 5 Asset Recovery (Article 14, 23, 51—59)

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Article 14: States Parties are required to establish a comprehensive regulatory and supervisory framework to combat money laundering and ensure that agencies involved cooperate at the international and national levels.</p> <p>State Parties must also consider establishing a Financial Intelligence Unit (FIU) to:</p> <ul style="list-style-type: none"> • implement measures to monitor cash movements across borders; • require their financial institutions to collect information on the origin and payment chain of electronic fund transfers and scrutinize incomplete information on such transfers; and • develop and promote global, regional and bilateral cooperation among relevant 	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i> <i>Money Laundering Prevention Act (MLPA), 2002 (repealed)</i> <i>Guidance for Foreign Exchange Transactions (GFET), 1996 (Vol. 1)</i></p>	<p>Bangladesh has taken wide initiatives to detect/deter all forms of money laundering; The Bangladesh Bank (BB) is authorized to monitor activities of "reporting organizations" (banks, other financial institutes, money changers, organizations remitting/transferring money);</p> <p>Section 23(2) of MLPO allows the BB to share information with domestic agencies;</p> <p>Section 26(2) allows the BB to share information with States Parties/organizations with which a MOU exists;</p> <p>The MLPO empowers the BB to cooperate and exchange information at the national and international level;</p> <p>Section 24 of MLPO provides for establishing the FIU;</p>	<p>At present, there is a lack of technological facilities for monitoring and collecting information on electronic fund transfers.</p>	<p>Bangladesh is in the process of modernizing electronic payment system, initiating MOUs/agreements with different countries and joining the Egmont Group of FIUs.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>agencies to combat money laundering.</p> <p>Article 23: States Parties are required to establish four offences related to money laundering, specifically:</p> <ul style="list-style-type: none"> conversion/transfer of proceeds of crime for concealing the illicit origin of property; concealment of the nature/source/location/ownership of proceeds of crime; acquisition/possession or use of proceeds of crime knowing its nature; and participation/association with/conspiracy to commit/facilitate/counsel offences prohibited by article 23. <p>State Parties must furnish copies of their laws related to article 23 to the UN</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p><i>Money Laundering Prevention Act (MLPA), 2002 (repealed)</i></p> <p><i>Circulars and Guidance Notes</i> issued by the BB under MLPA.</p> <p><i>Criminal Law Amendment Act, 1958</i></p>	<p>Cross-border cash movement is controlled under the GFET, 1996; Section 26 of the MLPO provides the legal basis for global, regional and bilateral cooperation on money laundering.</p> <p>Section 2 of the MLPO defines money laundering as the transfer, conversion, remitting abroad or bringing from abroad to Bangladesh the proceeds or properties acquired through the commission of a predicate offence for the purpose of concealing or disguising the illicit origin of the property or illegal transfer of properties acquired or earned through legal or illegal means; Conducting or attempting a financial transaction to avoid a reporting requirement will also amount to money laundering;</p> <p>Money laundering is a non-bailable criminal offence with a penalty up to seven years imprisonment and</p>	<p>The Bangladesh Bank received 466 suspicious transaction reports since the MLPA was passed in 2002. Of these, the BB has referred 51 cases to the ACC and 21 to the Criminal Investigation Department (CID). Charge sheets /final reports have been issued in 158 instances, 78 of which are under investigation, while 121 are at the trial stage. Additionally, a few local banks were fined for non-compliance with the BB directives;</p> <p>Section 28 of the MLPO contains a safe harbor provision but it does not protect all reporting officials;</p> <p>The MPLO has made progress in making the domestic legal regime</p>	<p>Legislation should provide safe harbor provisions for reporting individual and promote banker negligence accountability;</p> <p>The Government should take initiative to furnish copies of domestic laws to the UN Secretary-General.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Secretary-General;</p> <p>States parties are allowed to not apply money laundering offences for offenders of predicate offences.</p>		<p>fines/forfeiture of property; Special Courts established under the <i>Criminal Law Amendment Act, 1958</i> have jurisdiction to try money laundering cases at the written complaint by ACC; The MLPO also provides a list of 16 predicate offences; there is no bar to prosecuting both the money laundering offence and the predicate offence; The MLPO empowers the BB to supervise activities of reporting organizations; The MLPO requires reporting organizations to identify customers accurately and to report suspicious transactions to the BB. The BB may impose fines or may cancel licenses for failure to retain or report data on suspicious transactions.</p>	<p>compatible with the UNCAC requirements. However, anti-money laundering schemes require strengthening to comply with international standards;</p> <p>The Government is yet to furnish copies of domestic laws to the UN Secretary-General.</p>	
<p>Article 51: The article requires the widest measure of cooperation and assistance for asset recovery to another State Party.</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i> Notification to UN Secretary-General</p>	<p>The Government has nominated the Ministry of Home Affairs and the Attorney General's Office as the central authority responsible for requests of</p>	<p>A high-powered Task Force on Repatriation of Siphoned Money has been formed to recover assets from foreign countries.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Article 52: The UNCAC requires financial institutions (FIs) of States Parties to verify the identity of customers or the beneficial owners of high-value accounts of public officials, their family members and close associates;</p> <p>Public officials that have foreign accounts are required to report it to the relevant authority;</p> <p>States Parties must ensure that their financial institutions maintain transaction records of such persons for an appropriate period;</p> <p>FIs are also discouraged from dealing with banks</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p><i>BB Guidance Note on Prevention of Money Laundering</i></p> <p><i>Anti-Money Laundering Circular No. 2 (July, 2002), the Bangladesh Bank</i></p> <p><i>Anti-Money Laundering Circular No. 7 (August 2005), the Bangladesh Bank</i></p> <p><i>Anti-Money Laundering Circular No. 14 (September 2007), the Bangladesh Bank</i></p> <p><i>The Government Servants (Conduct) Rules, 1979</i></p>	<p>mutual assistance and has duly informed the UN Secretary-General;</p> <p>The MLPO empowers the Government, and the BB where appropriate, to sign MOU/MLA to control money laundering and cooperate for forfeiture or transfer of laundered property.</p> <p>Circular No. 2 requires all banks and FIs to maintain the correct and complete records of identity and updated details of transaction;</p> <p>According to Circular No. 7, banks and FIs are required to follow detailed procedures before establishing correspondent banking;</p> <p>Under Circular No. 7, FIs are not allowed to establish or continue relationships with "shell banks," i.e., banks that do not have any activities or branches in the country where it is incorporated and not a member of any regulated financial group;</p>	<p>Bangladesh does not have a national identity card and most citizens do not have passports; as such it is difficult to enforce effective customer identification requirements, though most banks have introduced referrals. Other than in major cities, banking records are maintained manually with little technological support, although this is slowly changing;</p> <p>The scope of the Circular No. 14 is limited to foreign persons, domestic PEPs and companies are outside its remit;</p> <p>Cooperation regarding financial disclosure of accounts to other States</p>	<p>The present Government has taken initiative to prepare national identity cards;</p> <p>The financial institutions should introduce electronic record keeping system all over the country.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>that have no physical presence;</p> <p>States Parties are also required to have effective disclosure systems and provide appropriate sanctions for non-compliance;</p> <p>Public officials having accounts in a foreign country must report it to appropriate authorities.</p>	<p><i>Guidelines for Foreign Exchange Transactions, 1996</i></p> <p><i>Foreign Exchange Regulation Act, 1947</i></p>	<p>Following Circular No. 14 and in compliance with the UNCAC provision and the recommendations of the Financial Action Task Force, banks have been instructed to follow specific procedures in relation to Politically Exposed Persons (PEPs);</p> <p>The Conduct Rules requires public officials to submit the details of their wealth, including bank accounts;</p> <p>Generally a Bangladeshi resident is not allowed to open bank accounts in a foreign country;</p> <p>Banks and FIs are required to have an anti-money laundering compliance unit in their head offices and a designated Anti-Money Laundering Compliance Officer in each bank branch;</p> <p>Banks and FIs have been advised to establish the identity of their customers and business relationships through Know Your Client procedures.</p>	<p>Parties is possible only where agreement on mutual legal assistance exists. The MLPO allows the BB to sign MOUs with other countries with regards to financial crime investigation;</p> <p>The BB has advised banks to maintain an anti-money laundering compliance policy through the issuance of detailed <i>Guidance Notes on Prevention of Money Laundering</i>;</p> <p>Bangladesh has responded to requests from the UN Sanction Committee to freeze financial accounts of black-listed persons.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Article 53: States Parties are required to allow another State Party to initiate a civil action in its court to establish title to property acquired through commission of an UNCAC offence and courts should be empowered to order payment of compensation directly;</p> <p>States Parties must take necessary measures to permit their courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of a corruption offence.</p>	<p><i>The Code of Civil Procedure, 1908</i></p>	<p>Section 84 allows a recognized foreign State to initiate a civil suit to enforce a private right; The private right referred to recognizes the right of a foreign State against a private individual. Accordingly, a State Party will be able to initiate civil action under domestic laws. Further, if a State Party is allowed to be party to a suit, courts can make any order to its favor, including compensation.</p>	<p>There is no direct domestic legal provision on recognizing the legitimacy of ownership of another State Party.</p>	<p>Bangladesh should consider introducing provisions regarding recognition of the legitimacy of ownership.</p>
<p>Article 54: States Parties are required to permit their authorities to give effect to an order of confiscation issued by a court of another State Party and allow their authorities to order the confiscation of such property;</p> <p>States Parties must sanction their competent authorities to freeze or</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i> <i>Emergency Power Rules, 2007</i></p>	<p>Section 26 (3) of the MLPO empowers a court, upon request from the BB, to give effect to a confiscation order issued by a court of another State Party;</p> <p>Further, under the Emergency Power Rules, courts have wide power to freeze and seize property of a person accused or</p>	<p>The MLPO only mentions foreign court orders for confiscation; it is questionable whether courts will respond to an order from a foreign competent authority or take action in cases where prosecution has not begun.</p>	<p>New provisions regarding the response to an order of a foreign competent authority should be enacted.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>seize property upon a freezing or seizure order issued by a competent authority of another State Party;</p> <p>States Parties should also consider allowing confiscation of property of foreign origin by adjudication of money laundering or other offences within their jurisdiction or by other procedures under domestic law without a criminal conviction, when the offender cannot be prosecuted by reason of death, flight, absence or in other appropriate cases.</p> <p>Article 55: States Parties are mandated to provide assistance to a wide extent to another State Party for confiscation of proceeds of a crime;</p> <p>A State Party is required to:</p> <ul style="list-style-type: none"> submit requests for confiscation of proceeds of crime to its competent authorities for the purpose of obtaining 	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>convicted of corruption-related offences;</p> <p>The court may also respond to a request of a State Party for cooperation regarding freezing or seizing property if such request is made by the central authority under article 46.</p>		
<p>Article 55: States Parties are mandated to provide assistance to a wide extent to another State Party for confiscation of proceeds of a crime;</p> <p>A State Party is required to:</p> <ul style="list-style-type: none"> submit requests for confiscation of proceeds of crime to its competent authorities for the purpose of obtaining 	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Section 26 of the MLPO allows the domestic courts to order whatever it deems appropriate, upon request from the BB, for the purposes of giving effect to a confiscation order of the court of a State Party;</p> <p>In addition, the MLPO recognizes the right of a <i>bona fide</i> third party allowing such a person to claim the property back if it is confiscated.</p>	<p>The MLPO is silent about identifying, tracing, freezing or seizing proceeds of crime in response to a request from a State Party;</p> <p>Bangladesh has yet to furnish copies of their laws and regulations that allow international cooperation for confiscation to the Secretary-General of the United Nations;</p>	<p>The Government should begin the process of making such notifications to the UN Secretary-General along with other notification obligations;</p> <p>Bangladesh should enact legislation relating to identifying, tracing, freezing or seizing proceeds of crime in response to a request from a State Party.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>an order of confiscation and give effect to it or an order of confiscation issued by a court;</p> <ul style="list-style-type: none"> • take measures to identify, trace, freeze or seize proceeds of crime; • take the right of a <i>bona fide</i> third party into account; and • furnish copies of their laws and regulations that give effect to the article and of any subsequent changes of such laws to the Secretary-General of the United Nations; <p>A State Party may refuse such requests or lift provisional measures on the basis that it did not receive sufficient and timely evidence or that the property is of a <i>de minimis</i> value.</p>			<p>Bangladesh has initiated practical steps in order to enhance international cooperation. A high powered Task Force on repatriation of siphoned money was set up in October, 2007 to work on recovering laundered assets through international cooperation; Bangladesh has not made or received any requests for confiscation of proceeds from offences to or from any State Party.</p>	

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Article 56: States Parties are required to disclose information on the proceeds of offences to another State Party that may assist it in carrying out investigations, prosecutions or judicial proceedings.</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Section 26 of the MLPO, provides that the Government, or in appropriate cases the BB, may disclose information related to money laundering to a foreign country or organization with which Bangladesh has an agreement; Further, under section 24 the FIU will also be able to provide or request information from FIUs of other States Parties regarding a suspicious transaction.</p>	<p>At present there is no obligation for disclosure of information related to the proceeds of offences without prior request from a State Party.</p>	<p>The FIU should consider a policy for disclosure of information to other FIUs on its own accord.</p>
<p>Article 57: States Parties are obligated to cooperate with respect to returning confiscated property to its prior legitimate owners by taking into account the rights of <i>bona fide</i> third parties;</p> <p>States Parties may deduct reasonable expenses incurred for the confiscation process and may also consider the conclusion of agreements or arrangements for the final disposition of assets</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Section 26 of the MLPO allows domestic courts, upon request from the BB, to return confiscated property to a foreign state with which Bangladesh has a MLA agreement and the court may take into account the rights of <i>bona fide</i> third parties while confiscating property (section 17) However, these provisions apply to property which are the proceeds of a specific crime, namely, money laundering.</p>	<p>Bangladesh does not have any provisions for the disposal of proceeds from every offence under the UNCAC. It is unclear whether the provision of the MLPO will be equally applicable to the proceeds of other offences under the UNCAC.</p>	<p>Bangladesh should consider clarifying the position of the present laws and fill gaps by enacting new provisions or rules related to the disposal of confiscated property.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>on a case by case basis; Furthermore, the requested State Party should return the confiscated property to a requesting State Party, prior legitimate owners, or victims of the crime as compensation, depending on the circumstances.</p> <p>Article 58: The UNCAC requires the establishment of a Financial Intelligent Unit (FIU) for:</p> <ul style="list-style-type: none"> • receiving, analyzing and disseminating reports of suspicious transactions to competent authorities; and • preventing and combating the transfer and aiding in the recovery of proceeds of offences established under the Convention. 	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i> <i>Anti-Terrorism Ordinance, 2008</i></p>	<p>Section 24 of the MLPO provides the legal basis for establishing a Financial Intelligence Unit (FIU). A FIU was established within the Anti-Money Laundering Department of the BB in March 2007; The FIU is to receive, analyze and disseminate information to detect suspicious transactions as well as to trace, seize and confiscate the respective assets; Bangladesh has fully complied with the requirements of article 58 and has taken a variety of steps toward both preventing the laundering of property and aiding the recovery of such property.</p>	<p>The FIU does not have access to the databases of other government agencies such as those of the Road Traffic Agency or Immigration and Customs which would allow conducting more effective analysis of suspicious transactions; Bangladesh is yet to be a member of the Egmont Group, a coordinating body for the international consortium of FIUs; Bangladesh has fulfilled certain conditions to get membership into Egmont, such as amendment of laws relating to money laundering and enactment of the <i>Anit-Terrorism Ordinance, 2008</i>.</p>	<p>Despite the comprehensiveness of the law, to be fully effective, the analytical capacities of the FIU would benefit from further upgrading; Bangladesh should join the Egmont Group as soon as possible.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gaps between Law and Practice	Remarks
<p>Article 59: The UNCAC advocates the formulation of bilateral or multilateral agreements between States Parties to enhance effectiveness of international cooperation.</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p>	<p>Under section 26 of the MLPO, the Government, or in some cases the BB, can sign memorandums of understanding, multilateral and bilateral agreements, and any other agreements which are recognized by conventions or international laws, with other governments and organizations.</p>	<p>Once such agreements are made, the Government or the BB will be able to share information relating to money laundering, provide cooperation for confiscation and disposal of confiscated property, and request for the return of property from another State Party.</p>	<p>Bangladesh should focus on completing MLA agreements or arrangements with other States Parties.</p>

Chapter 6

Technical Assistance and Information Exchange

6.1 Training and Technical Assistance

6.2 Collection, Exchange and Analysis of Information on Corruption

6.3 Other Measures

Matrix on compliance with articles 60-62


Technical Assistance and Information Exchange

In order to effectively fight corruption, States Parties must take a multifaceted approach that not only includes reforms of law, but also involves enhancing practical capabilities related to the prevention and detection of, and recovery from, acts of corruption. Technical assistance must be available to the relevant public and private bodies in order to increase their capacity to take efficient measures. Training is necessary to equip government actors with the skills and knowledge to successfully implement corruption targeting laws and regulations. Furthermore, States Parties must actively engage in the research and monitoring of corruption, and share that information, to facilitate educated decision making and enable competent assistance to other nations. The aforementioned efforts not only provide support for practical compliance to the provisions of the UNCAC, but guarantee an environment hostile to acts of corruption.

6.1 Training and Technical Assistance

Article 60: Training and technical assistance

Under article 60, States Parties, to the extent of their need and capacity, are obligated to provide training and technical assistance to prevent and combat corruption. Suggested areas for training programs include effective measures to prevent, detect, investigate, punish, and control corruption (article 60.1(a)), capacity building for the development of strategic anti-corruption policies (article 60.1(b)), preparation of competent authorities for requests of mutual legal assistance (article 60.1(c)), evaluation and strengthening of institutions, public service management, and the management of public finances (article 60.1(d)), prevention and recovery of proceeds from offences established under the provisions of the Convention (article 60.1(e)), detection and restriction of the transfer of proceeds from corruption offences (article 60.1(f)), surveillance of the movement, transfer, concealment, and disguise of corruption related proceeds (article 60.1(g)), appropriate legal and administrative mechanisms designed to aid in returning proceeds of corruption (article 60.1(i)), and national and international regulations and languages (article 60.1(j)). Although there is a general mandate for States Parties to help one another with regard to technical assistance, specific encouragement is given to providing such assistance to developing countries' efforts to fight corruption (article 60.2). This technical assistance includes material support, training as prescribed in paragraph 1 of article 60, and exchange of relevant experience and specialized knowledge, which is intended to promote international cooperation in the areas of extradition and mutual legal assistance. Furthermore, States Parties are required to strengthen, as



needed, efforts to boost operational and training activities in both international and regional organizations and in the framework of bilateral and multilateral agreements (article 60.3). Additionally, article 60 contains a number of non-mandatory provisions encouraging international cooperation efforts related to research and evaluation, expert recommendations, regional and international conferences, and development funds.


The provision of training for anti-corruption purposes is expressly provided for by law. Section 17 of the Anti-Corruption Commission (ACC) Act, 2004 empowers the ACC to organize seminars, symposiums, workshops and similar measures on subjects within the ACC's jurisdiction. Furthermore, section 11 gives the ACC the ability to "perform any other work considered necessary for the prevention of corruption." To that end, last year the ACC conducted a two week training program for officers on corruption investigation that addressed practical issues such as how to draw up an enquiry report, how to conduct enquiry, and how to interrogate. This training was funded by Transparency International Bangladesh and involved outside experts. After the training there was noticeable improvement in the officers' performance, particularly with regard to report writing. Currently, plans are underway for a year long training program that would cover information technology, enquiry and investigation, white collar crime, and rights of the accused. This training, through funding from the Asian Development Bank, would be for all levels of staff and officials at the ACC. The ACC recognizes the importance of training, particularly the need for officers to be trained in investigation and enquiry as such abilities are vital for successful prosecution of offenders. In fact the main reason for the time lag between these two training programs appears to be a lack of resources, namely funding.

Another statutory provision on training to combat corruption exists in the Money Laundering Prevention Ordinance (MLPO), 2008. Section 23 vests responsibility in the Bangladesh Bank (BB) to give training to the staff and officers of the reporting organization and any other organization or institution that the BB considers necessary for the purposes of preventing and resisting crimes related to money laundering. The Bangladesh Bank Training Academy (BBTA) is an institution responsible for training at the BB. One of the prescribed objectives of the BBTA is to give training to BB officers and employees, as well as financial institutions and NGOs, to help them manage the BB's policies, rules, and regulations. Anti-Money Laundering (AML) training is provided for by the BB's Anti-Money Laundering Department (AMLDD). The AMLDD Citizen Charter states that the department is the designated body for training BB officers and employees, financial institutions, and other organizations involved in financial activities for the prevention of money laundering. In furtherance of training, the BB's Anti-Money Laundering Circular No. 2 obliges banks and financial

institutions to conduct proper training of officers to ensure adherence to the MLPO. One important effort undertaken by the BB has been training on its “Know Your Customer” (KYC) policy. The BB has gone throughout the country to each bank’s headquarters providing KYC training for the purpose of preventing money laundering through information gathering, identification of clients, and monitoring of their activities. Aside from KYC training, the BB is conducting anti-corruption training at all levels of banks and has been busy with training ventures involving other government ministries and bodies. The BB is also working on disseminating training abroad and has developed a program for preparing trainers. In addition, the BB and other government officials recently attended a training program in Switzerland sponsored by the World Bank on asset recovery which was found to be very useful. Relevant training has also been organized by the Bangladesh Public Administration Training Centre, which has organized workshops and seminars on corruption and its risks.

Despite laws in place, the presence of training bodies in various government institutions, and constructive efforts by some key government actors, compliance with article 60 has yet to be reached. Most training bodies do not provide programs on corruption related issues. Indeed, there are only a small number of specific training modules pertaining to corruption. Not only is Bangladesh not fulfilling its international obligations, but this dearth of training and technical assistance severely limits its prospects for a successful and sustainable campaign against corruption. Importantly, it is not a lack of will or motivation but a lack of resources that acts as an obstacle to implementing training programs. Undoubtedly, to overcome this, the GoB must prioritize providing or securing adequate funding for training programs, whether through the national budget or partnerships with donor agencies. Once funding is secured, problems in implementation will be easier to address.

With regard to anti-corruption training currently in place, there are some issues that should be addressed. Training tools and methodologies should be modernized and pro-active, imparting problem solving skills that will enable officials to curb corruption while still meeting the daily requirements of their post. Furthermore, targeted issue training would be useful, with practical guidance on how to fight corruption and implement legal provisions already in place. Relevant government actors must know the applicable policies and procedures as such knowledge helps prevent corruption and ensures effective practices in identifying, recording, and reporting offences. With regard to KYC training, it should be ensured that all relevant staff are trained as their position allows them to notice suspicious activity on a daily basis. Further, despite their removal from everyday transactions, supervisors and managers would benefit from training as it is essential that they understand their obligations, along with the duties of their staff and institution, under the law. If possible, experts,



national or international, should be involved in the development of training modules and their implementation. Moreover, monitoring of the efficiency and effectiveness of training programs would ensure that their audiences are receiving the appropriate education and skills. While developing its own government training program, the GoB should encourage training programs of domestic, regional, and international organizations, through monetary support and active participation.

In relation to legal structure, laws or regulations could also be amended or clarified to specify what kind of training should take place and to whom it should be directed to, along with other important details, to ensure that all relevant persons know what acts qualify as corruption offences, the penalties for these offences, and the proper procedures for investigation, reporting, and documentation. Additionally, entering into bilateral and multilateral agreements with regard to technical assistance is recommended as Bangladesh could benefit from the experience and knowledge of other nations. In particular, agreements for MLA and extradition should include provisions for technical assistance. Undoubtedly, until the domestic training situation is improved, it will be difficult for Bangladesh to offer the full range of technical assistance to other nations. Nevertheless, Bangladesh can still actively participate in such ventures through the offer of material support and in sharing its experience.

6.2 Collection, Exchange and Analysis of Information on Corruption

Article 61: Collection, exchange and analysis of information on corruption

Article 61 underscores the importance of both gathering and sharing information to combat corruption. The UNCAC requires that States Parties consider analyzing trends in corruption, along with the circumstances relating to corruption offences (article 61.1). States Parties are also obligated to contemplate sharing statistics, analytical expertise, and information, for the purposes of building common definitions, standards, methodologies, and an understanding of best practices (article 61.2). Additionally, States Parties are required to consider monitoring their policies and practices, along with evaluating their effectiveness and efficiency (article 61.3).


In preparation for the second Conference of States Parties (COSP) in Bali, Indonesia in January 2008, the GoB prepared the initial version of this report, both to share its progress with other States Parties and to show its commitment to fighting corruption. The report was widely distributed at the second CoSP and generated great interest by those in attendance. Furthermore, the Bangladesh delegation which attended the Conference

was eager to exchange information with other nations and held bilateral meetings with Indonesia, Pakistan, and Malaysia to confirm its cooperation and share experiences. In addition, a trilateral meeting took place between representatives of Bangladesh, Indonesia, and Kenya whereby the former two countries discussed with the latter their experiences in performing a legal analysis on compliance with the UNCAC. Both the actions of the delegation and the report itself suggest some satisfaction of the provisions of article 61.

Domestically, there are other mechanisms in place that should facilitate compliance with article 61. Section 17(f) of the ACC Act states that the ACC may perform research on corruption prevention and submit recommendations to the President based on its analysis of said research. Within the ACC there is a department devoted to research, analysis, prevention, and mass awareness. Unfortunately, the department has been unable to begin research and analysis as it does not have sufficient resources; particularly problematic is a lack of staff. However, plans are in place to get this wing of the department operational and once so, it will focus on the nature and incidents of corruption in Bangladesh to develop comprehensive understanding of corruption in the country. Monitoring of practices through a reviewing commission is expressly provided for in the ACC Act. Section 15 states that the commission, headed by the Chairman and with participation by the commissioners, will meet to determine whether the ACC is properly carrying out its duties. Furthermore, section 17(e) states that the commission is empowered to review the legal measures in place for preventing corruption and give its recommendations for implementation to the President.

The MLPO also brings Bangladesh closer to conformity with article 61. Section 23 of the MLPO designates the BB as the responsible body for supervising the activities of banks and financial institutions engaged in financial activities for the purposes of preventing money laundering. Furthermore, section 23 of the MLPO and the BB's Anti-Money Laundering Circular No. 2 provide for the analysis of suspicious transactions that may have a connection to money laundering for the purposes of prevention. Indeed, the BB received training and software from the United States for the purposes of analyzing suspicious transactions; however, it has faced some obstacles in utilizing the software due to implementation difficulties. Once fully operational, this software will allow for information sharing and will present and link pertinent information in a useful manner, which will help in the detection and prosecution of corruption related offences.

Monitoring is also provided for by section 23 of the MLPO, which empowers the BB to monitor and analyze occurrences of money laundering for the purposes of prevention. The BB has two methods for verifying practical compliance with its policies; the BB itself performs an



assessment with regard to compliance and it also requires banks, via their compliance officer, to fill out a self-assessment questionnaire. The bank's compliance officer sends the self assessment to their Internal Control Department and Central Compliance Unit for review. After review of the half yearly statement, it is sent to the AMLD of the BB (Anti-Money Laundering Circular No. 15). The MLPO contains provisions for sanctions if a bank is found to be non-compliant. Section 25 states that noncompliant banks will face fines and may have their registration or license cancelled; in addition, such behavior may affect their ratings. Consequently, with regard to practical review, the BB is actively monitoring satisfaction of its AML requirements. However, despite this well developed system of reviewing practical compliance with laws and regulations, there is yet to be a system for evaluating the policies themselves.

Undoubtedly, more government effort and resources must be devoted to the activities prescribed in article 61. No campaign can be successful without understanding exactly what one is combating. Analysis and information relating to trends and circumstances in corruption provides knowledge, which in turn generates tools to address the sources and dynamics of corruption. Information is essential to ensure that a sensible, realistic, and effective approach is in place; this information not only includes details of corruption incidents, but also a review of the legal mechanisms in place. Monitoring and evaluation of practices and policies are of significant importance as their results indicate whether the design of the anti-corruption system is functioning appropriately. Furthermore, the acuteness of these monitoring and evaluating activities correlate to the precision of the conclusions reached. If there are difficulties with the system, such precision will reveal whether it is the policies and laws or their implementation and practices that are at fault. Arguably, it is virtually impossible to have a focused successful plan of action against corruption if there is limited knowledge on the nature of corruption activities in the country and no mechanism for measuring whether government initiatives are performing satisfactorily.

6.3 Other Measures


Article 62: Other measures: implementation of the convention through economic development and technical assistance

Article 62 is devoted to other practical efforts States Parties must take to comply with the UNCAC. States Parties are required to take measures conducive to implementing the Convention through international cooperation (article 62.1). Furthermore, in coordination with other States Parties and international and regional organizations, States Parties are obligated to increase their cooperation with developing states to improve their capacity to fight corruption (article 62.2(a)), to enhance material and

financial assistance to developing countries to bolster their anti-corruption efforts (article 62.2(b)), to provide technical assistance to developing countries to aid them in implementing the Convention (article 62.2(c)), and to encourage and persuade other States Parties and financial institutions to assist in the aforementioned efforts (article 62.2(d)). If possible, these efforts should be without prejudice to existing foreign assistance commitments or financial arrangements at the bilateral, regional or international level (article 62.3).

The GoB has recently taken steps related to international cooperation to promote compliance to the Convention. In satisfaction of its obligation under article 6.3, a gazette notification (UN-SOC-6027/07, dated 27 April, 2008) has now established an authority to assist other States Parties in implementing and developing measures to prevent corruption. This authority consists of five government institutions, specifically the Ministry of Law and Justice, the ACC, the Ministry of Foreign Affairs, the Ministry of Home Affairs, and the Office of the Attorney General. These five bodies constitute one authority that is responsible for assisting other States Parties in implementing the UNCAC. These bodies may act in unison or may designate particular institutions to act depending on their collective decision on a proposal to work with another State Party. Furthermore, Bangladesh has now fulfilled its obligations under article 46.13 through the abovementioned gazette notification which designates a central authority responsible for requests of mutual legal assistance, namely the Ministry of Home Affairs and the Office of the Attorney General. These two developments are significant as previously, the main obstruction to international cooperation was that there was no authority to conduct such efforts.

Another important development with regard to Convention implementation through international cooperation is the MLPO 2008, which gives the Government and the BB power to make agreements with other countries or authorities to recover stolen assets (section 26). In support of this end, efforts are underway to detect assets and culprits abroad. Once offenders or assets have been detected and confirmed outside of the country, the GoB has a mechanism in place to ask for assistance from the relevant country. Moreover, the BB is working to sign agreements with the Financial Intelligence Units of other countries to facilitate information sharing. Such agreements have been drafted and are currently under review to ensure compliance with domestic law. In addition, the Ministry of Foreign Affairs has the authority to enter into mutual agreements with friendly countries. Such mutual agreements for international cooperation can be conducted only through diplomatic channels. Given how recently the GoB has been equipped to exercise efforts involving international cooperation, it is difficult to measure practical compliance; nevertheless, it is clear that Bangladesh is now furnished with the necessary legislation and is empowered to act.



Bangladesh has yet to give any help to other countries for corruption related offences, though it has extradited offenders for other crimes. It is unlikely that developed countries will have much interest in recovering stolen assets in the country as there is slim probability of such assets moving to a developing country like Bangladesh. Furthermore, as a developing country, it is understandable that Bangladesh has not taken significant steps toward compliance with that the latter paragraphs of the article. However, as Bangladesh gains expertise, experience, technical means, and other resources related to anti-corruption capabilities, it should actively take steps to help other developing countries in their fight against corruption. In the meantime, attendance at the Vienna Working Group meetings on the UNCAC would promote the aims of article 62; participation at said meetings would keep the Government up-to-date with regard to international developments and would strengthen domestic anti-corruption reform measures.

Chapter 6 Technical Assistance and Information Exchange (Articles 60—62)

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>Article 60: States Parties are required, to the extent of their need and capacity, to provide training and technical assistance to prevent and combat corruption;</p> <p>States Parties must help one another with regard to technical assistance, with particular emphasis on providing such assistance to developing countries' efforts to fight corruption;</p> <p>States Parties are obligated to strengthen, as needed, efforts to boost operational and training activities in both international and regional organizations and in the framework of bilateral and multilateral agreements.</p>	<p><i>Anti-Corruption Commission (ACC) Act, 2004</i> <i>Money Laundering Prevention Ordinance (MLPO), 2008</i> <i>Anti-Money Laundering (AML) Circular No. 2 (July 2002)</i>, Bangladesh Bank</p>	<p>The Government ministries, departments, and divisions have training institutes or centers;</p> <p>Section 4 of the MLPO vests responsibility in the Bangladesh Bank (BB) to give training to the staff and officers of the BB and other financial institutions for the purposes of preventing and resisting crimes related to money laundering;</p> <p>The AML circular obliges banks and financial institutions to provide proper training to officers to ensure adherence to the MLPO; Anti-money laundering (AML) training is provided for by the BB's Anti-Money Laundering Department (AML D). The AML D. Citizen Charter states that the department is the designated body for training BB officers and employees, financial institutions, and other organizations involved</p>	<p>The ACC conducted a two week training program on investigation last year for officers and is planning a year long training program that would cover information technology, enquiry and investigation, white collar crime, and the rights of the accused;</p> <p>The BB has gone throughout the country to each bank's headquarters providing KYC training;</p> <p>The BB is conducting anti-corruption training at all levels of banks and has engaged in training ventures involving other government ministries and bodies;</p> <p>The BB is working on disseminating training abroad and has developed a program for preparing trainers;</p> <p>Government officials recently attended a training program in Switzerland</p>	<p>One of the obstacles to implementing training is a lack of resources; to overcome this, the GoB should prioritize providing or securing adequate funding for training programs;</p> <p>Training tools and methodologies should be modernized and pro-active, imparting problem solving skills to equip officials to curb corruption while still meeting the daily requirements of their post;</p> <p>Targeted issue training would be useful, with practical guidance on how to fight corruption and implement legal provisions already in place;</p> <p>Monitoring the efficiency and effectiveness of training programs would ensure that their audiences are receiving the appropriate education and skills;</p> <p>Entering into bilateral and</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>Article 61: States Parties are required to consider analyzing trends in corruption, along with the circumstances relating to corruption offences;</p> <p>States Parties are obligated to contemplate sharing statistics, analytical expertise, and information for the purposes of building common definitions, standards, methodologies, and an understanding of best practices;</p> <p>States Parties are required consider monitoring policies</p>	<p><i>Anti-Corruption Commission (ACC) Act, 2004</i></p> <p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p><i>Anti-Money Laundering (AML) Circular No. 2 (July 2002), Bangladesh Bank</i></p> <p><i>Anti-Money Laundering Circular No. 15 (March 2008), Bangladesh Bank</i></p>	<p>in financial activities.</p> <p>Under Section 15 of the ACC Act, a review commission, headed by the Chairman, with participation by commissioners, will meet to determine whether the ACC is properly carrying out its duties;</p> <p>Section 17(e) of the ACC Act states that ACC may perform research on corruption prevention and submit recommendations to the President based on analysis of said research;</p> <p>Section 17(f) states that the commission is empowered</p>	<p>sponsored by the World Bank on asset recovery;</p> <p>Training has been organized by the Bangladesh Public Administration Training Centre (BPATC), which has organized workshops and seminars on corruption and its risks;</p> <p>There are only a small number of specific training modules pertaining to corruption.</p> <p>Within the ACC there is a department devoted to research, analysis, prevention, and mass awareness; however, the department has been unable to begin research and analysis due to a lack of resources, namely staff;</p> <p>The BB received training and software from the United States for the purposes of analyzing suspicious transactions; however, it has faced some obstacles due to difficulties implementing the software;</p>	<p>multilateral agreements for technical assistance is recommended; in particular, agreements for MLA and extradition should include provisions for technical assistance.</p> <p>More government effort and resources must be devoted to research and analysis of corruption;</p> <p>On top of strengthening monitoring of practices, it would be beneficial to have a system in place for reviewing the effectiveness and efficiency of the laws and policies.</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>and practices, along with evaluating their effectiveness and efficiency.</p> <p>Article 62: States Parties are required to take measures conducive to implementing the Convention, through international cooperation; States Parties are obligated to increase their cooperation with developing states to improve their capacity to</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p>Gazette Notification (UN-SOC-6027/07, dated 27 April, 2008)</p>	<p>to review the legal measures in place for preventing corruption and give its recommendations for implementation to the President;</p> <p>Section 4 of the MLPO designates the BB as the responsible body for supervising the activities of banks and financial institutions engaged in financial activities and empowers the BB to monitor and analyze occurrences of money laundering;</p> <p>The AML Circular No. 2 provides for the analysis of suspicious transactions that may be connected to money laundering.</p>	<p>The BB has two methods for verifying practical compliance with its policies; it reviews the bank's practices itself and requires banks to fill out a self-assessment questionnaire.</p>	
<p>Article 62: States Parties are required to take measures conducive to implementing the Convention, through international cooperation; States Parties are obligated to increase their cooperation with developing states to improve their capacity to</p>	<p><i>Money Laundering Prevention Ordinance (MLPO), 2008</i></p> <p>Gazette Notification (UN-SOC-6027/07, dated 27 April, 2008)</p>	<p>Through the gazette notification, the GoB has established an authority to assist other States Parties in implementing and developing measures to prevent corruption and designated a central authority responsible for requests of mutual legal</p>	<p>Efforts are underway to detect assets and culprits abroad;</p> <p>The BB is working to sign agreements with the Financial Intelligence Units of other countries to facilitate information sharing;</p> <p>The GoB has yet to give any</p>	<p>Given how recently the GoB has been equipped to exercise efforts involving international cooperation, it is difficult to measure practical compliance;</p> <p>The GoB should consider sending a representative to the Vienna Working Group meetings on the UNCAC;</p>

UNCAC Provisions	Domestic Legal / Regulatory Regime	Compatibility between UNCAC and Domestic Regime	Compliance and Gap between Law and Practice	Remarks
<p>fight corruption, to enhance material and financial assistance to said countries to bolster their anti-corruption efforts, to provide technical assistance to developing countries to aid them in implementing the Convention, and to encourage other States Parties and financial institutions to assist in the aforementioned efforts.</p>		<p>assistance; Under section 26 of the MLPO, the Government and the BB have the power to make agreements with other countries or authorities to recover stolen assets; On behalf of the Government, the Ministry of Foreign Affairs may to enter into mutual agreements with friendly countries.</p>	<p>help to other countries for corruption related offences.</p>	<p>As a developing country, it is understandable that Bangladesh has not taken significant steps toward compliance with that the latter paragraphs of the article.</p>

Chapter 7

Conclusions

Conclusions

The revised version of the report, “UNCAC: A Bangladesh Compliance & Gap Analysis,” is the result of an extraordinary effort of coordination and cooperation among all concerned government institutions of Bangladesh, the Institute of Governance Studies, BRAC University and the German Technical Cooperation. The report provides an analysis of the entire set of anti-corruption laws, institutions and processes of Bangladesh against the UNCAC standards. The report was presented by the Government of the People’s Republic of Bangladesh at the second Conference of States Parties in Bali in January, 2008 to convey the nation’s progress in implementing the UNCAC. Since that time, many developments in law and practice have taken place. The revised report has been updated with regard to these changes and is more comprehensive in scope. As such, it will boost the original objective of guiding and instructing anti-corruption reform programs undertaken by the Government and other stakeholders over the coming months and years.

Research and analysis indicate that the legal regime of Bangladesh is largely compatible with the standards and principles of the UNCAC. Recent legislation has increased this compatibility. However, a number of government initiatives in critical areas of governance are necessary to address weaknesses with regard to gaps in law and practice. Consequently, development of a time bound action plan to address challenges and improve practices is recommended. The following sections highlight essential areas of action which require attention to achieve successful compliance with the UNCAC.

Reforming Institutions

An anti-corruption framework exists in both the laws and institutions of Bangladesh. There are a number of anti-corruption laws and policies, with the recent *Money Laundering Prevention Ordinance, 2008* being particularly noteworthy. The Anti-Corruption Commission (ACC), an independent anti-corruption body, is also a significant player. Furthermore, recent initiatives taken by the Government for the reconstitution of several state institutions, including the Public Service Commission, the Election Commission and the formation of the Regulatory Reform Commission, provide a sound basis for the nation’s anti-corruption efforts. However, to fully utilize the laws in place, other key institutions must be reformed. A coherent approach to institutional reforms is necessary, particularly one that would address the issue of resources and resolve matters relating to the independence, accountability, effectiveness and efficiency of these institutions.



Promoting Integrity

Since its reconstitution in 2007, the ACC has been working with tremendous enthusiasm and activism, leading to increased public confidence. However, ineffective formal controls and a lack of social and citizen oriented anti-corruption accountability mechanisms have added to what could be termed as a “crisis of integrity.” This problem necessitates a long term process of change with the participation of a wide range of stakeholders through measures involving public-private cooperation and public awareness campaigns. Such a process will induce a cultural shift with respect to corruption as it encourages the adoption of citizen owned accountability mechanisms in Bangladesh. Joint initiatives, such as the launch of a nationwide anti-corruption campaign by the ACC with organizations like Transparency International Bangladesh, will set an example.

Additionally, the development of a National Integrity Strategy (NIS) will greatly aid efforts in promoting integrity. In 2007, the Government of Bangladesh agreed to design and implement a NIS through a comprehensive approach that aims to holistically improve integrity in both the public and private sectors of the State. This policy document sets out broad policy goals and areas for immediate action that the Government will undertake to promote honesty and transparency in the country. By September 2008, it is expected that the Government will prepare a more detailed NIS document that will address efforts that are needed in the public and private sectors to improve integrity.

Reforming the Public Sector

The regulatory regime governing issues of public sector recruitment, hiring, retention, promotion, conduct and training is thorough and wide-ranging. However, there are areas where existing rules and regulations could be reviewed, updated and upgraded to ensure government efficiency and effectiveness. The *Rules of Business, 1996* and the *Government Servants (Conduct) Rules, 1979* are two such regulations that have been cited as examples, the latter with a view to enhancing public sector integrity. The Government’s plan to formulate a National Integrity Strategy is expected to provide a vision for the development and implementation of reforms to promote good governance and combat corruption in Bangladesh. Such a strategy would surely take into account the areas identified by the report. Reforms in the funding of political parties and election processes are also key areas for enhancing transparency and integrity in the public sector. Additionally, the proposed changes to the *Representation of the People’s Order, 1972* will be instrumental in democratizing political parties and the manner in which they participate in elections.


Enhancing Capacity

A wide range of training is offered by various government institutions and training centers, including the Bangladesh Public Administration Training Centre, the ACC, and the Bangladesh Bank, some of which are specifically dedicated to corruption and governance related issues. However, there are a number of ways in which training and capacity building for public officials can be improved. Particularly useful would be the development of specific training modules and courses on anti-corruption issues, strategies and mechanisms. In addition, training tools and methodologies need to be modernized through a more problem solving approach, thereby strengthening technical proficiency and project management skills sufficient to meet the day to day demands of public officials. To make these advancements and encourage training in general, the GoB should make it a priority to grant or secure the requisite funds.

Furthermore, the Government's efforts will be strengthened through information gathering and sharing, thereby facilitating monitoring and analysis, which are essential for a successful campaign against corruption. The Bangladesh Bank and the ACC already are performing these activities, particularly with regard to monitoring practical compliance with the relevant anti-corruption laws. However, more resources should be devoted to analysis of incidents of corruption, along with monitoring the effectiveness of policies.

Implementing Reforms in Public Procurement

Public procurement and management of public finances are among the most vulnerable areas of public administration; as such, it has been a priority area for reform in Bangladesh. Procedures and regulations have evolved over the years and have been consolidated in recent times into a comprehensive regime comprised of the *Public Procurement Regulations, 2003*, the *Public Procurement Act, 2006* and the *Public Procurement Rules, 2008*. A key aspect of these reforms is a shift toward greater autonomy for procuring entities from the Cabinet and concerned ministries, as they have now been delegated the authority to award and approve contracts, within defined ceilings. Moreover, an institutional mechanism, the Central Procurement Technical Unit, has been created to ensure greater transparency and accountability. However, the application of the procurement regime has proven to be relatively inconsistent across the Government and within individual agencies. Moreover, implementation has been severely hindered by the lack of adequate resources within concerned agencies. The Public Procurement Reform Project II is expected to form a Management Information System that will serve the four most crucial sectors of the Government of Bangladesh, introduce e-governance in procurement, and establish a public/private partnership



with the involvement of beneficiary groups, civil society and NGOs, all of which will facilitate the proper implementation of the regulatory regime. Such measures will strengthen accountability, cut down associated costs and promote transparency.

Improving the Management of Public Finance

The Office of the Comptroller and Auditor General (CAG) is the constitutionally sanctioned mechanism that has been entrusted with the management of public finances and related oversight of all public institutions. Additionally, the *Parliamentary Rules of Procedure* provides a detailed framework for the presentation of the budget and discussions regarding it. Existing auditing standards and financial management rules are complimentary to the provisions of the UNCAC. However, separate internal audit departments are needed to advance the function and role of the CAG, which would address delays in the finalization and submission of annual reports to the President, thereby enabling timely corrective action.

Improving Criminalization and Law Enforcement

Bangladesh has yet to criminalize certain UNCAC offences; these include bribery of foreign public officials and officials of public international organizations, and bribery in the private sector. This shortcoming is adversely affecting the fight against corruption. To overcome this situation, criminalization of these acts deserves consideration and attention by lawmakers. It is encouraging, however, that after acceding to the UNCAC, Bangladesh amended its anti-money laundering legal regime. The newly enacted *Money Laundering Prevention Ordinance, 2008* duly reflects the spirits of the UNCAC.

So far as law enforcement measures are concerned, more attention should be paid to the practical application of legal standards in a more consistent manner. However, it is encouraging that in some cases, domestic standards are more prosecution friendly than the UNCAC; for example, there are no statutory limitations for criminal offences. With regard to the prosecution of public officials for corruption cases, jurisdictional privileges have been removed with the enactment of the *Anti-Corruption Commission Act, 2004*. Though significant efforts have been made in prosecuting offenders of corruption in recent times, over the years, many of the law enforcement measures remained underused. Another obstacle that should be remedied lies in the lack of adequate provisions to protect witnesses, experts, and victims.

Enhancing International Cooperation


Bangladesh has taken the option to cooperate with other States Parties on the basis of bilateral treaties with regard to extradition of offenders. The legal regime regarding extradition is governed by the ***Extradition Act, 1974***. Its various provisions detail extraditable offences as well as other conditions on extradition. Thailand is the only country with which Bangladesh has an extradition treaty, but additional agreements are currently being negotiated. It is recommended that the list of extraditable offences mentioned in the ***Extradition Act, 1974*** be reviewed to include the UNCAC offences.

With regard to mutual legal assistance, Bangladesh now has the legal basis to ensure the widest mutual legal assistance to other UNCAC States Parties as required by the Convention. Previously, there were provisions in place for seeking assistance in gathering evidence through commissions to examine witnesses abroad and for entering into agreements with foreign countries to control money laundering; however, these measures provided limited options for international cooperation. Recently, the nomination of a central authority for seeking and responding to requests of mutual legal assistance has vastly increased opportunities for international cooperation, particularly, among the States Parties. Nevertheless, domestic legislation in these respects still requires some amendments and improvements in order to clarify the procedural requirements and be fully compatible with the UNCAC provisions.

Strengthening Prevention and Detection of Laundering and Proceeds of Crime

Money laundering was first criminalized in Bangladesh by the ***Money Laundering Prevention Act (MLPA), 2002*** which applied to all forms of money laundering. However, there were a number of difficulties with the legal framework that it created; for example, the definition of money laundering was ambiguous. Additionally, other regulators, such as the Securities and Exchange Commission, who are in possession of financial information through annual business reports, were excluded from responsibility under the Act. The MLPA focused on banks and financial institutions and as such it did not address other trade based money laundering, i.e., other business establishments like property developers, high value dealers of jewelry, and car dealers. In light of these problems, the ***Money Laundering Prevention Ordinance, 2008*** was enacted, repealing the MLPA, to address the aforementioned issues.

With regard to prevention and detection of proceeds of crime, the report highlights the formation of the Financial Intelligence Unit (FIU) that operates as part of Anti-Money Laundering Department of the Bangladesh




Bank, the country's central bank. The FIU is entrusted with receiving, analyzing and disseminating information to detect suspicious transactions, as well as tracing and referring cases for prosecution to the Anti-Corruption Commission. However, its effectiveness will be largely enhanced once Bangladesh acquires membership into the Egmont Group. Bangladesh has already taken few steps to fulfill the requirements for becoming a member, which include enactment of the *Money Laundering Prevention Ordinance, 2008* and the *Anti-Terrorism Ordinance, 2008* which contains provisions criminalizing terrorist financing. Bangladesh should now take the last few steps to becoming a member of the Egmont Group. In addition, the Bangladesh Bank has undertaken efforts to prevent and detect the proceeds of crime, although for its actions to be more effective, capacity needs, such as upgrading its current database and intelligence analysis system, must be met.

Final Remarks

The aforementioned recommendations will undoubtedly place Bangladesh well on the road to compliance with the UNCAC; however, legal action in and of itself is not sufficient for successfully combating corruption. It cannot be over emphasized that any reform regime, including its auxiliary implementation framework, must be entrenched in the will of the stakeholders, both public and private, and above all, in the absolute wholehearted participation of the citizens of Bangladesh.

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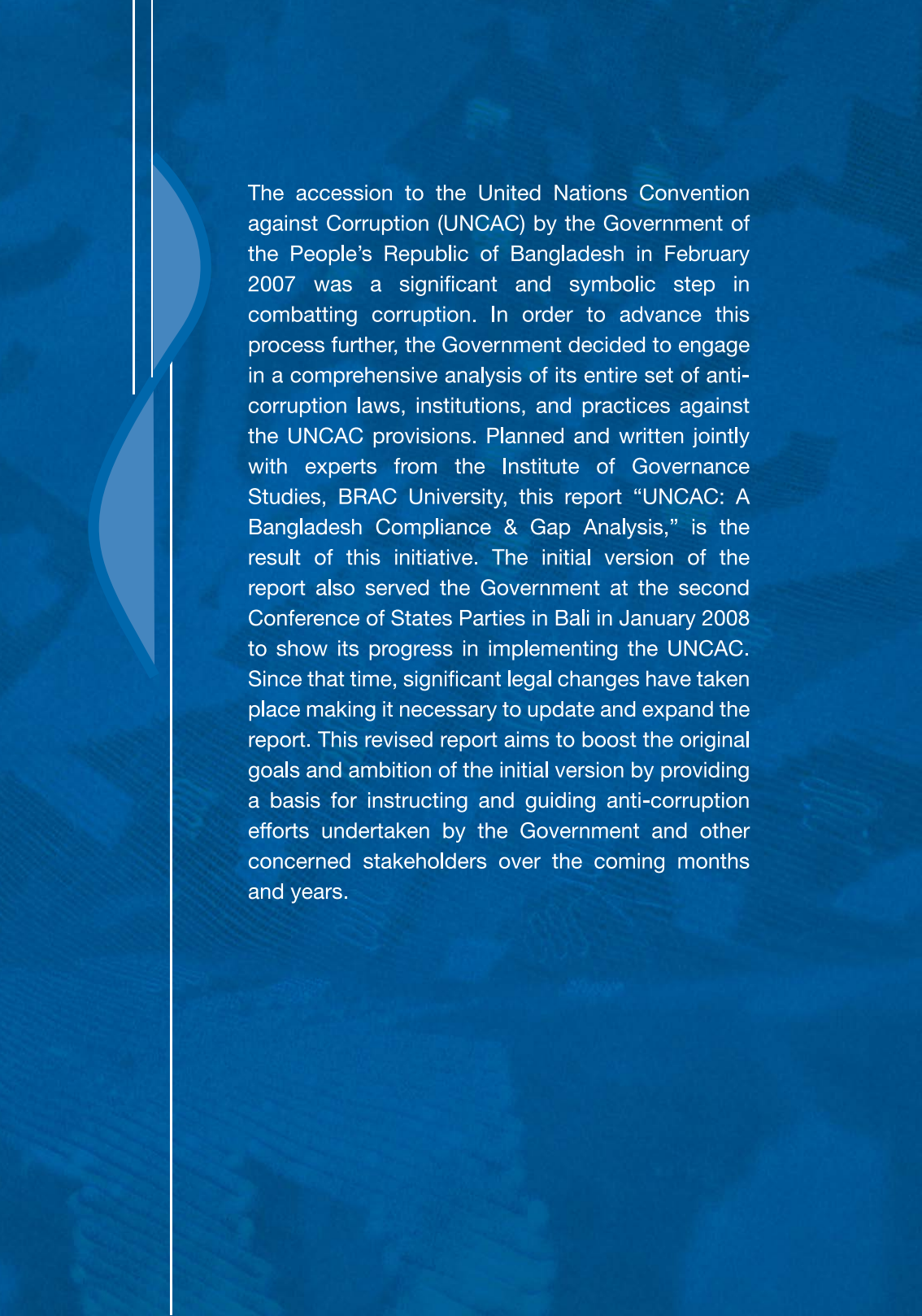
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The accession to the United Nations Convention against Corruption (UNCAC) by the Government of the People's Republic of Bangladesh in February 2007 was a significant and symbolic step in combatting corruption. In order to advance this process further, the Government decided to engage in a comprehensive analysis of its entire set of anti-corruption laws, institutions, and practices against the UNCAC provisions. Planned and written jointly with experts from the Institute of Governance Studies, BRAC University, this report "UNCAC: A Bangladesh Compliance & Gap Analysis," is the result of this initiative. The initial version of the report also served the Government at the second Conference of States Parties in Bali in January 2008 to show its progress in implementing the UNCAC. Since that time, significant legal changes have taken place making it necessary to update and expand the report. This revised report aims to boost the original goals and ambition of the initial version by providing a basis for instructing and guiding anti-corruption efforts undertaken by the Government and other concerned stakeholders over the coming months and years.