



Bribery & Corruption

First Edition

Contributing Editors: Jonathan Pickworth & Deborah Williams

Published by Global Legal Group

Bangladesh

Dr. Kamal Hossain
Dr. Kamal Hossain and Associates

Introduction

In a global report presented at the 12th International Anti-Corruption Conference in Guatemala (2006), in a section entitled “The Case of Bangladesh”, the country’s situation was succinctly described thus: “Bangladesh is a parliamentary democracy with a vibrant civil society... with a robust press, impressive development NGOs... a dynamic private sector, active public sector trade unions and a number of research centres, independent of government”... “however, over the years corruption has systematically eaten into the core of key public institutions. Commissions for awarding contracts, misappropriation of public funds, cuts in business deals, nepotism in recruitment, transfer and promotion, irregularities in bidding and procurement, manipulation of judicial functions, and fraud in tax assessment and collection are all routine...”¹

Over the years, Bangladesh has had the dubious distinction of being identified as one of the leading countries named in the Transparency International global corruption perception index, having headed the list for five consecutive years. Corruption was thus recognised as a major impediment to development, and as a challenge which faced the nation as it moved ahead towards the scheduled election in 2007. In the election held in 2008, combating corruption was a key issue.

United Nations Convention Against Corruption (UNCAC)

The UN Convention Against Corruption came into force in 2005. Bangladesh ratified the Convention in 2007, and took a number of steps to strengthen the existing anti-corruption legislation as well as to enhance the power of the Anti-Corruption Commission (ACC).² By the Anti-Corruption Commission (Amendment Ordinance) 2007, the ACC was empowered independently to commence an inquiry or investigation into any corruption case, and would no longer need to seek prior government permission for an inquiry or investigation against government servants. This raised the expectation that effective anti-corruption measures would be implemented following the election held at the end of December 2008, but that expectation remains unfulfilled.

Legal regime

There is 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, consists of: the *Bangladesh Civil Service Rules, 1981*; the *Bangladesh Civil Service Recruitment (Age Qualification and Examination for Direct Recruitment) Rules, 1982*; and the *Public Service Commission Ordinance, 1977*. Other laws which have provisions dealing with corruption are: *Essential Articles (Price Control and Anti-Hoarding) Act, 1953*; *Criminal Law Amendment Act, 1958*; *Bangladesh Essential Commodities (Storage, Keeping and Disposal) Order, 1973*; *Special Powers Act, 1974*; *Money Laundering Act, 2002*; *Anti-Corruption Commission Rules, 2007*; and *Emergency Powers Ordinance, 2007*.

The implementation of these laws lacks consistency in practice and deficiencies have been identified. 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 the agencies concerned.

Criminalisation and law enforcement

Bangladesh is a State Party to UNCAC and assumed the obligation to criminalise a wide range of acts of corruption (Articles 15-27) and to establish a series of procedural measures and mechanisms to support such criminalisation (Articles 28-41).

Criminalisation obligations encompass: bribery of national public officials; bribery of foreign public officials and officials of public international organisations; 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. With the exception of the offence of active bribery of foreign public officials and officials of public international organisations, and of passive bribery of foreign public officials and officials of public international organisations and bribery in the private sector, the offences identified above are criminalised in the domestic laws of Bangladesh.

The obligation under UNCAC of effective enforcement of the anti-corruption laws is acknowledged, but the actual practice over the last few years has been far from effective. 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 assistance from international development partners. The training provided aims to enhance the capacity of the workforce of the Commission in diversified areas to combat and prevent corruption effectively. 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, but an amendment seeking to restore the position as it stood before the amendment of 2007 was proposed in 2011, and is under consideration.

Bangladesh, as a State Party to the UN Convention, is committed to international cooperation for successful efforts to prevent, investigate, prosecute and punish corruption, and to recover and return illicit gains. Bangladesh has designated the Ministry of Home Affairs and the Office of the Attorney-General as the central authorities to receive and execute the requests for mutual legal assistance. The government has taken steps to provide necessary legal provisions in its domestic regime to ensure that the widest mutual legal assistance, particularly in relation to money-laundering offences, can be provided. The Money Laundering Prevention Act, 2009 provides for memoranda of understanding and for bilateral and multilateral agreements to be concluded with other states for mutual assistance to prevent money laundering.

Review of recent major cases of corruption

A review of major cases would show that effective measures to prevent corruption are yet to be taken. A review of highly publicised cases of major corruption in which inquiries have been demanded and some prosecutions have been instituted are summarised below, and include: (1) the Share Market Scam; (2) Bank Fraud involving Sonali Bank; (3) Bank Fraud involving Basic Bank; (4) the Padma Bridge irregularity in appointing of consultants; and (5) the Siemens Case.

Share Market: Massive market manipulations in 2010 resulted in a sharp plunge in share prices, which resulted in thousands of small individual investors losing their investments, while those who had allegedly manipulated the market made unprecedented levels of profit. A high-powered investigation committee found that massive manipulation had taken place, attributed in part to the failure of the

market regulators, which were influenced from powerful quarters. Reforms were recommended by the Securities and Exchange Commission: effective action was to be taken against those responsible, which is still awaited.

Sonali Bank Fraud: The State-owned largest commercial bank, Sonali Bank, was found to have huge withdrawals made from one of its branches, of the magnitude of Tk. 36.48bn (equivalent to US\$460m) allegedly as a result of collusion between its customer, the Hall Mark group of companies, and bank executives, which facilitated these massive withdrawals through forged documents. The Anti-Corruption Commission filed 11 cases against 27 bank and company executives in October 2012, and another 26 cases against five officials in December 2012.

Basic Bank: Inquiries held by the Central Bank revealed major irregularities in the operations of the State-owned Basic Bank, which resulted in the diversion of funds amounting to nearly Tk. 44bn (equivalent to US\$563m) between December 2009 and November 2012, by way of fictitious loans. The "loans" were given to non-existent companies with the alleged collusion of the senior management and the board of directors of the bank. The matter has been referred to the Anti-Corruption Commission by the Central Bank for appropriate action.

Padma Project: The Padma Project involved construction of a 6.5km bridge over the Padma river. The World Bank, which was expected to provide a loan of US\$1.2bn, suspended the loan in September 2012, and instituted investigations with regard to allegations of corruption in relation to the bidding process through which a Canadian company was appointed as consultant. An investigation is being carried out also by the Royal Canadian Mounted police, which is on-going. The Anti-Corruption Commission in Bangladesh is currently continuing its investigation with regard to appointment of the consultant firm, and has recommended prosecution of a number of persons, including senior government officials.

Siemens Bangladesh: Bribery in relation to projects awarded to Siemens AG and China Harbor Engineering company were the subject matter of cases in German and United States Courts. Siemens Aktiengesellschaft (Siemens AG), a German corporation, and three of its subsidiaries, pleaded guilty on 15th December 2008, to violations of and charges related to the Foreign Corrupt Practices Act (FCPA).³ Siemens had admitted that from 2001 to 2006 the company had facilitated its bribery scheme by engaging a local businessman as consultant, whose sole function was to launder bribe money to Bangladesh officials in exchange for favourable treatment by the Bangladesh Telephone Telegraph Board. The corrupt payments amounted to over US\$5m, in connection with which proceedings were instituted in Singapore for recovery of the proceeds.

Corruption and good governance

In a recent article on "Corruption and good governance", it was noted that the Chief Justice of Bangladesh had, in a recent address, linked corruption and the weakening regime of good governance.⁴

A World Bank report entitled: *Bangladesh: Country Assistance Strategy for the year 2011 to 2014*,⁵ presents an excellent overall assessment on aspects of governance which affect corruption. Some extracts from that assessment are given below:

- (1) *Bangladesh's system of political governance creates strong incentives that run counter to the interests of improving governance:*

Internal and external commentators alike stress that Bangladesh's political system continues to be marked by an extreme form of 'winner-takes-all' competition between the major parties, and a culture of confrontation that excludes political opposition from its legitimate place in a democratic polity. This political system has encouraged the ruling party to subordinate state institutions to its own interests rather than seeking to build effective institutions with internal checks and balances. This partisanship has affected personnel policies in many State institutions in the senior civil service, the judiciary, and in law enforcement agencies. Despite recent legislation which seeks to reform the internal workings of political parties, power has remained centralised in the hands of the party leadership.

- (2) *The government's actions have undercut progress on prosecution of corruption:*

The government had a stated commitment to having an independent ACC. It has moved to

weaken the institution. The Government endorsed amendments to the ACC Act which would substantially limit the Commission's autonomy and ability to investigate corruption. Thousands of cases were withdrawn by administrative decisions pending inquiry or prosecution, without reference to the ACC or any judicial process.

- (3) *The poor quality of public administration continues to be a significant obstacle to effective public sector performance:*

Public administration is characterised by weak policy coordination and implementation capacity, a poor incentive structure, serious capacity deficits, ineffective public financial management, and widespread corruption. The bureaucratic culture emphasises process over results or outcomes, with opacity often buttressing patron-client relationships. There has been increasing politicisation of the bureaucracy. This trend continued under the current government, which transferred hundreds of senior civil servants soon after taking office. Politicisation has led to a civil service where partisan affiliation rather than merit has become an important criterion for recruitment and career progression within the career service.

Acknowledgment

I would like to acknowledge the assistance of my associates, Dr. Sharif Bhuiyan and Qazi Ataul Osman, in collecting relevant materials.

Endnotes

1. *Towards a Fair World: Why is Corruption Still blocking the Way?*, a document presented at the 12th International Anti-Corruption Conference in Guatemala, 2006.
2. *UNCAC: A Bangladesh Compliance & Gap Analysis*, January 2008.
3. U.S. Department of Justice; 9th January 2009, Office of Public Affairs (+1) 202 514 2007 / (+1) 202 514 1888. A German court had earlier found Siemens guilty of such offences.
4. *Corruption and good governance*, The Financial Express, Dhaka, 7th February, 2013.
5. *The World Bank Country Assistance Strategy for the year 2011 to 2014*, 2010.

**Dr. Kamal Hossain****Tel: +8802 955 2946 / Email: khossain@citechco.net**

A Barrister-at-Law (Lincoln's Inn, 1959) and Senior Advocate of the Supreme Court of Bangladesh, Dr. Hossain was educated at the University of Oxford, England: (B.A. Honours in Jurisprudence), 1957; Bachelor of Civil Law, 1958; Doctor of Philosophy (International Law), 1964; and Visiting Fellow, All Souls College, Oxford (1975).

He was: Vice-Chairman, Bangladesh Bar Council 1989-1995; President, Supreme Court Bar Association 1990-1991; Dom Helder Camara Visiting Professor, Free University of Amsterdam (1997); Chairperson, Commonwealth Human Rights Advisory Commission (1993-1998); a Member of Parliament (1972-75); and Minister, Government of Bangladesh: Law (1972-73), Petroleum and Foreign Affairs (1973-75). He is: Chairman of the Bangladesh Legal Aid & Services Trust (1993-); a Member of the Advisory Council of Transparency International; and Vice-Chairman of the International Law Association.

Dr. Kamal Hossain and Associates

122-124 Motijheel Commercial Area, Dhaka - 1000, Bangladesh

Tel: +8802 955 2946, 956 0655, 956 4954 / Fax: +8802 956 4953 / URL: <http://www.khossain.com>