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Bangladesh: Curbing Corruption and Strengthening Governance

A Note on Strengthening Anticorruption Initiatives

I. Overview

There is a growing consensus among development practitioners about the importance of governance to poverty reduction and economic growth, although there remains disagreement about the direction of causality. Poor governance manifests itself in increased corruption, poor service delivery, weak accountability and a crisis in citizens' confidence in the state. In Bangladesh, the governance challenges are interconnected and span a wide range of issues: weak public financial management, low revenue mobilization, an inefficient and weak procurement system, inadequate electoral laws including unregulated election financing that limits and distorts political competition, weak formal accountability systems including a dysfunctional Parliament and Judiciary, a lack of transparency in government decision making, and the permeation of partisan politics through all public institutions. A concerted effort to tackle these problems will require reforming formal institutions, laws, and processes but also developing strong mechanisms for accountability through civil society and the media, and sustaining the national consensus that has emerged that reforms must be implemented. The new Caretaker Government (CTG) has started this process in earnest and is to be commended for initiating actions in rebuilding core public institutions including the Anticorruption Commission (ACC).

A multi-faceted approach is required to overcome Bangladesh's weaknesses and failures in governance, one which this note does not address in detail. The focus of this note is on strengthening anticorruption initiatives.¹

II. Anticorruption Efforts Need to be Prioritized

A major flaw in developing country efforts to curb corruption is the attempt to comprehensively address the problem on all fronts. Given the scarce resources of most developing countries for fighting corruption, any discernible impact over the short to medium term can only be achieved through strategic prioritization. This is doubly significant because citizens are typically impatient for results. Making early, discernible wins builds public support and helps sustain efforts over the longer term. Key priorities for the CTG could include among others the strengthening of the judiciary, laying the groundwork for right to information legislation, the mainstreaming of procurement reforms and the restructuring and strengthening of ACC.

The following section offers suggestions for (i) restructuring and strengthening the ACC and (ii) separating the judiciary from the executive and strengthening the foundations for its independence. The first enables government to move firmly and quickly on grand corruption; a task which is paramount in the quest to restore confidence in government. The second sends strong signals that court proceedings can no longer be as easily manipulated and, by implication, that corruption cases can and will be prosecuted effectively and fairly. One often overlooked pre-

¹ This note responds to a request for assistance regarding strengthening the Anticorruption Commission (ACC) and related corruption prevention efforts. If requested, a Governance Strategy Note covering broader issues can also be prepared.

requisite for an effective anti-corruption commission is a reasonably well functioning court system. An anticorruption commission investigates allegations of corruption and helps in the preparation of cases. Its task ends there; the rest depends on the efficiency and effectiveness of the courts.

III. Restoring Citizen Confidence in Government

(i) The Anticorruption Commission -- Getting It Right

Given Bangladesh's experience of the last few months, more effective checks and balances are needed to restore the confidence of citizens in the government. It should be noted at the outset that while a number of dedicated anticorruption agencies have been established throughout the world, their track record is poor, with only the bodies in Singapore and Hong Kong being considered unequivocal successes. Thus, strengthening the legal framework and access to information/transparency initiatives are arguably as important as reforming the ACC in terms of fighting corruption.

Bangladesh is at a historical cross road similar to Singapore and Hong Kong in the 1960s when confidence in the State appeared to be breaking down and posed a threat to investor confidence and political stability. In both cases, the government saw corruption as one of the major problems that needed to be addressed and opted for creating agencies dedicated to eradicating corruption, the Corruption Prevention and Investigation Bureau (CPIB) and the Independent Commission Against Corruption (ICAC) respectively.

Making the ACC Functional and Effective. Several factors have been key to the success of the CPIB and ICAC. Learning from these experiences, the Government of Bangladesh could focus on:

- **ACC's Mandate:** Mandates have to be carefully matched with realistic levels of funding. A gross imbalance between ex-ante mandates and ex-post funding has been a major flaw in most commissions. Typically, a law is passed that gives the commission extensive mandates but then budgetary resources are never enough to deliver on the mandates, resulting in failed expectations and damaged credibility. In Singapore, the government opted to limit the CPIB's activities primarily to investigation. In Hong Kong, the decision was to give the ICAC a more expansive mandate – investigation, education, and prevention. Not surprisingly, the ICAC has many times the number of staff of the CPIB and has required considerably more funding annually.
- **Legal Framework.** A robust legal framework is essential, and must be revised in aid of efforts to strengthen the ACC and corruption prevention more generally. The announcement of the CTG that Bangladesh will sign the United Nations Convention Against Corruption (UNCAC) could be used to catalyze a revision of the existing legal framework, to the extent feasible, to conform to the international standards embodied in the Convention. This might include provisions relating to money laundering; acts preparatory to corruption; provisions relating to international co-operation; financial institution regulation, processes for asset recovery and its return to its legitimate owners, state or private; prevention measures directed at both the public and private sectors; measures to provide protection to informants, witnesses, experts and their associates in relation to corruption offences. A number of bilateral development partners have some expertise with providing technical assistance to this end.

- **Staffing of ACC:** A competitive, merit-based selection/appointment/recruitment system for both commissioners and staff with special service rules to permit them to be compensated at rates reasonably competitive with the private sector.
- **Funding of ACC:** A predictable and sufficient level of funding to enable the commission to secure and maintain resources necessary to fulfill its mandates. The commission must have some degree of budget autonomy to be able to maintain its independence. If it must compete for budgetary allocations just like other government agencies then its capability and independence can be more easily compromised.
- **Formation of an Advisory Committee.** Based on the Hong Kong model, the GoB should consider creating an Advisory Committee comprising reputable representatives from civil society organizations and the public at large, that will scrutinize the work of the Commission and provide regular feedback on the effectiveness (or lack thereof) of the Commission's programs as well as on possible avenues for improvement. This leads to increased public confidence in the Commission's operations.
- **Code of Conduct.** The establishment of a detailed Code of Conduct identifying conflict of interest and other matters that may arise and providing Commissioners and other personnel with guidance on how they are to be resolved.
- **Disclosure of Assets and Liabilities.** An explicit legislative amendment through an ordinance requiring disclosure of assets and liabilities for Commissioners and staff and requiring publication of this information on the relevant website.
- **Monitoring Progress.**
 - Collection of key data to enable monitoring of progress including the statistics of all complaints lodged with the Commission or pursued on its own initiative (disaggregated by reference to type of offence, stage to which the complaint proceeded, etc), publication of an annual report as required by Article 29 of the Act (it must be presented to the President by March each calendar year), and the creation of a website where these data and information are posted and which the public can easily access.
 - Introduction of a third party monitoring system to assist the ACC in building in-house capacity for handling complaints, for conducting thorough investigations, and for preparing evidence in support of the prosecution of cases. A contract could be bid out competitively to the private sector (e.g. Price Waterhouse) that includes (a) the setting up a complaints handling mechanism to allow the public to report possible incidents of corruption, (b) the recruitment of a cadre of well trained investigators to help ACC staff in the conduct of actual investigations, and (c) the recruitment of a cadre of well trained lawyers to help ACC staff prepare sufficient evidence for cases to be prosecuted. Both (b) and (c) will help fast track the building of needed in-house capacity.
- **Manual for Policies and Procedures.** Development of a manual of policies and procedures in relation to the ACC's principal functions. For instance, in the matter of complaints, such a manual would specify the process by which complaints will be received, how they will be screened and designated for rejection or investigation and the relevant criteria used.

(ii) An Independent Judiciary – Making Prosecutions Credible

For corruption to be held in check, it is essential for the judiciary to have an adequate measure of independence from the executive and legislative branches of government. Key to achieving greater judicial independence in Bangladesh are:

- **Separation of Judiciary and Executive.** Fast tracking the separation of the judiciary from the executive and focus efforts to professionalize the selection/promotion/sanctions process for all judges (lower and higher). To this end, reconstitute the Judicial Commission and introduce a transparent process for selecting its members based on competence and integrity.
- **Funding of Judiciary.** Establishing a secure and sufficient level of budgetary funding that over time permits the judiciary to raise the compensation of judges and justices to levels commensurate with their stature in society.
- **Civic Monitoring.** Raising informal pressures on the judiciary through media scrutiny and public discussion by amending the existing contempt laws – this will enhance the transparency of court decisions and the accountability of judges through facilitating public discussion about, inter alia, executive interference in verdicts and allegations of corruption within the court system. Given the sheer number of cases that the courts have to handle, monitoring of judicial performance and outcomes can be very costly. To this end, media scrutiny and civil society based monitoring activities provide lower cost alternatives.

The CTG has already started this process by introducing an ordinance to this effect. The aforementioned actions would further strengthen this effort.

IV. The Right to Information – A Promising Avenue

The ability of the media and the public to access information held by public authorities will enable greater public scrutiny of government decision-making and policies and thus underpin and support the ACC and the Judiciary in their efforts to curb corruption. The GoB might consider the following initiatives to promote greater public access to information:

- Amend the **Official Secrets Act** in light of international best practice (without compromising legitimate areas for secrecy such as national security).
- Prepare the groundwork for **right to information legislation**: While Bangladesh’s public administration is not adequately equipped to implement robust right to information legislation, thorough reforms to the system of records management and archiving is certainly something that could commence immediately. This could pave the way for a right to information ordinance.
- Reforms to the **Government Servants Conduct Rules** (1979), clear enforcement of its provisions, and publication of disclosures on the Government’s website: Provide greater particularity to the requirements specified in the existing Rules which require civil servants to submit financial declarations on their assets and those of their immediate family members upon taking up their position in government. There should be a clear procedure established for periodic compliance, routine publication, and clear sanctions specified for false disclosure

or failure to disclose. Further, the CTG might consider preparing legislation (for immediate consideration of the next Parliament) pertaining to a separate regime regulating asset disclosure for senior civil servants, appointees to statutory or constitutional positions, and members of the judiciary and publication thereof on the Government's website.

- Enforce existing legislation, regulations and court decisions relating to the disclosure of election finance costs, the submission and publication of candidate information (disclosure of assets and liabilities, criminal records, sources of funding, business interests) and election funding costs, in addition to sanctions for failing to comply with the requirements of the Representation of People Order (RPO). The Caretaker Government's attempts to reform political governance, and the Election Commission's efforts to enforce existing electoral regulations, are good initiatives. Some thought could be given to strengthen the provisions of the RPO to ensure mandatory publication of information disclosed under section 44A on the Electoral Commission website, and to provide for an effective auditing process of the asset and expense declarations. Consideration might also be given to increasing limits on election expenses for contesting candidates to more realistic levels.