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National Integrity System Assessment: BANGLADESH

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PREFACE

Transparency International Bangladesh (TIB) has a vision of Bangladesh where government, politics, business, civil society and lives of the people would be free from corruption. Our mission is to catalyze and strengthen a participatory social movement to raise effective knowledge-based voice and demand for accountability. Our research, dissemination, campaign and advocacy initiatives are designed to strengthen institutions, laws and practices for efficient, transparent and accountable system of governance, and effective control of corruption.

One of the key strategic areas of TIB's research has always been the institutions of democracy and specialized pillars of governance and accountability, which constitute the National Integrity System (NIS), a collective of institutions and practices that are crucial to maintaining integrity and accountability in government, non-government and private sector. We have conducted a series of research, surveys and diagnostic studies on many such institutions, by which we have not only created demand, but also catalysed a number of significant legal, institutional and policy changes.

Against this background, the present study, the first ever effort to diagnose and analyze the strengths and weaknesses of the national integrity system in Bangladesh with a comprehensive approach is expected to add great value for stakeholders for three main reasons.

Firstly, it presents an in-depth analysis of the legal and resource capacity as well as governance, role and practice in each institution in a holistic frame that would facilitate comparative and mutually reinforcing exploration of strategic points for policy reform and institutional and behavioural change.

Secondly, as a part of cross-country research involving a number of parallel research under the same research framework and method it will enable learning and sharing among countries of South Asia and beyond.

And thirdly, and perhaps most importantly, as this study has been undertaken, though by coincidence, at a time when the Government of Bangladesh has adopted the National Integrity Strategy 2012 (*Jatiyo Shudhachar Koushol*), we understand and expect that it will provide extremely valuable support to the implementation process of the strategy. I may add that as a stakeholder and participant in the process that led to the adoption of the national integrity strategy TIB has undertaken another separate study to analyze the strengths and deficits of the strategy itself.

The present study has been completed thanks to the extraordinary efforts and commitment of Professor Salahuddin M Aminuzzaman and Prof Sumaiya Khair to whom TIB remains grateful. It has benefited tremendously by contributions of a distinguished Advisory Group. We have no words to express gratitude for their extremely valuable guidance. TIB is also grateful to a large number of key informants and other experts who helped us with the peer review and libel check. I also put on record my gratitude to colleagues in the TI Secretariat whose multi-dimensional support has made this study possible. Last but not least, I am grateful to my colleagues in TIB for their tireless contributions as usual. TIB will cordially welcome any comments, critique and suggestions the readers may have.

Iftekharuzzaman
Executive Director

EXECUTIVE SUMMARY

It is recognised that when institutions and sectors within the National Integrity System work together and in sync, they help engender an environment that promotes democratic governance and discourages corruption. The National Integrity System assessment provides a benchmark for analysing the robustness and effectiveness of a country's institutions of accountability in addressing corruption. The National Integrity System in Bangladesh broadly consists of the following institutions: Parliament, Executive, Judiciary, Public Administration (bureaucracy), Local Government, Police (law enforcement agency), Comptroller and Auditor General (supreme audit institution), Election Commission, Anti-Corruption Commission, National Human Rights Commission, Information Commission, Political Parties, Civil Society, Media, and Business.

Each of the institutions in the National Integrity System (NIS) is assessed in this report in terms of its *capacity*, *governance* and *role*. The assessment examines both the legal framework and the actual institutional practice, in an attempt to highlight the gaps between law and practice. The assessment is primarily qualitative and has relied on a combination of primary and secondary data, including relevant national legislation, secondary research and (including media reports), and key informant interviews. The research output has undergone a peer review and libel check and has been validated by the Advisory Committee set up to provide expert guidance to the research team.

The NIS in Bangladesh is characterised by a strong legal framework (albeit with a few exceptions) as opposed to a considerably weak practice profile. This suggests that despite the existence of reasonably sound laws, their implementation is largely inadequate and/or absent and a culture of non-compliance generally prevails. While the lack of political will has been a continuing stumbling block in the process of democratic and accountable governance in Bangladesh, there are other cross cutting issues that have a direct bearing on the current NIS which include weak oversight functions, insufficient resources, lack of incentives, dearth of technical and professional competence of concerned actors, politicisation, nepotism, and corruption and an absence of exemplary punishment for corruption leading to a culture of impunity/denial. This is exacerbated by low awareness of citizens of their rights and inadequate access to information.

The Office of the Comptroller and Auditor General has been assessed to be performing better than any other pillar. This is followed by the Executive and Civil Society. Interestingly, the governance dimensions of nearly all the pillars have been found to be low in comparison to dimensions of capacity and role. Given that the governance dimension is composed of the principles of transparency, accountability and integrity, a deficiency in these areas demonstrates a dearth in institutional checks and balances which essentially raises scope for abuse of power and corruption. Again, some pillars (e.g. media, civil society) have been assessed relatively strong by virtue of their roles in addressing corruption despite relative

weaknesses in terms of capacity and governance. This suggests that in spite of operational shortcomings, change is possible as long as there prevails a strong will to initiate the change.

An attempt is made below to capture in brief the status of each pillar within the Bangladeshi NIS:

Constitutional and legal provisions in Bangladesh provide for a strong **parliamentary** form of Government. However, confrontational politics, a poor parliamentary culture and the dominant attitude of the party in power and the culture of boycott by the opposition tend to mar the spirit and modality of the operational business of the Parliament. Parliamentary control over the executive is weak and evidence suggests that critical issues are rarely discussed in Parliament. Citizens are devoid of any means to hold elected representatives to account. MPs are reportedly engaged often in patronage distribution and corruption, undermining the law making responsibility.

The Prime Minister, being the exclusive depository of absolute power exercises authority over the **executive** branch of the government. Critics have labeled it as "Prime Ministerial authoritarianism". Division of power amongst the legislative, executive and judicial branches of the government has largely been uneven and dominated by the Prime Minister. There is no formal provision requiring asset disclosure by the head of state or government or cabinet members nor is there any effective restriction on Ministers and MPs involving in business with the government.

The issue of independence of the **judiciary** has received negligible recognition in political rhetoric, and despite formal separation of the judiciary from the executive, it has not met people's expectation of a truly independent institution since the subordinate courts continue to be influenced by the executive. The judiciary has increasingly been subjected to political manipulation under successive governments to the extent that its independence is found to be often compromised by controversial appointments, promotions, removals, and conduct of judges.

The **public administration** is heavily centralised in terms of service delivery, the setting of expenditure priorities, allocation of resources, procurement of goods and services, and the implementation of projects. It faces serious challenges including poor remuneration, weak accountability and corruption. Public officials have over the years been politicised. Consequently, large numbers of civil servants have been placed as Officers on Special Duty (OSD) by respective ruling parties on political considerations. Under this arrangement officials are not formally assigned any work but are nonetheless paid salaries from public money.

The integrity and recruitment procedures of public officials have been questioned. The promotion system is non-transparent and often based on arbitrary decisions of the government.

The Government of Bangladesh, from a policy perspective, has recognised the role of the **local government** as a vehicle for service delivery and good governance at the grassroots. In practice however, local government institutions are chronically resource poor, are subject to control by the central government, and bear features of 'deconcentration' than true decentralisation. LG activities lack transparency and accountability as the general people have no clue about their budget allocation system, income and expenditure and implementation of development and maintenance activities. Subject to direct and indirect control of the Members of the Parliament, LGI leadership is politicised and suffer from an image crisis for alleged corrupt practices.

The **police** force has over the years drawn flak for its failure to fully protect citizens and deviating from democratic policing. Instead of upholding the rule of law, the police have been indiscriminately used by governments and major political forces for self serving interests. Consequently, the police enjoy political patronage and impunity in the way they function. This state of affairs has impeded the independence of the police force, undermined accountability structures and led to deficit in public trust of their ability and willingness to function in the public interest.

Despite being a Constitutional body and a robust legal framework, the **Election Commission** has not been successful in establishing its credibility owing largely to political manipulation. While EC members are expected to be non-partisan, questions have been raised regarding their neutrality. Besides, its dependence on the government for preparing the electoral roll, setting electoral dates, maintaining law and order during elections and generally conducting the elections essentially divest it of autonomy in its work. It has often failed to address violation of electoral rules by candidates as local administration and political leaders tend to influence the electoral management process.

The office of the **Comptroller Auditor General** (CAG) acts as a major deterrent against inefficient and corrupt use of public money and it has been assessed to be delivering its role with relative success though its reports are not often effectively followed up by the relevant institutions. The CAG is free from any form of external influence (political, administrative) both from the Constitutional and practical perspectives. Transparency in activities and decisions of the CAG is practiced and all auditing is done openly and once placed before the Parliament, are made public. However, institutional factors, e.g., shortage of staff and an absence of a comprehensive audit law, often affect its performance. CAG's audit reports can be challenged by relevant agencies.

Dubbed as a "toothless tiger", the **Anti-Corruption Commission** is inflicted by structural, institutional and political factors which in essence have affected its overall performance and effectiveness. These include: lack of strong political will, inaction of the Commission in respect of allegations against ruling party men, unwillingness to initiate suo moto inquiries, absence of a capable prosecution team, inadequate

capacity to undertake research activities, lack of transparency and accountability. Its leadership quality and the degree of professional excellence, integrity and credibility of its staff have been criticised.

Despite being a statutory body, the **National Human Rights Commission** (NHRC) is deficient in terms of staffing, infrastructure and logistical support. The legal framework is inadequate in respect of ensuring transparency, accountability and integrity of the NHRC. Investigation is weak and largely unable to respond to the growing number of complaints. The NHRC is often confronted with non-cooperation from select organs of the government. Despite its efforts to raise human rights awareness and advocate for change, their impact on the ground is not particularly noticeable.

While public expectation of the **Information Commission** was high, it has not been particularly successful in proactively seeking information from the government and others on issues of national interest, processing appeals, coordinating RTI-related activities and identifying the challenges facing both the demand and supply sides of implementation of the RTI law. Indeed, the Commission's ability to effectively play its oversight functions is often compromised by weak leadership, lack of professional skills and non-cooperation by public authorities.

Political Parties are characterised by centralised decision-making, personalisation of internal party structures, absence of intra-party democracy. The ruling parties in Bangladesh have almost always focused on establishing their hegemonic control over the use of public resources to further their partisan interests under the facade of public interest. Despite an elaborate legal framework that provides the basis of democratic functioning of the political parties, compliance is weak. The political system has undergone a process of "criminalisation and commercialisation". Devoid of transparency, political party funds are collected under fear or favour.

The **civil society** is known for its significant contributions to the establishment of a sound democratic system by creating demand and exerting pressure on actors in governance and political parties to conform to democratic norms and practice and more importantly, ethics of fair play. Financial sustainability has been a persistent problem for CSOs as most organisations lack explicit strategies and directions for achieving financial independence and as such, are dependent on external grants for survival and continuity. The combination of 'flexibility' and 'control' in the laws guiding the formation and registration of organisations CSOs creates opportunities for the government to control CSO activities.

With growing diversification, the **media** is freer and more open. The regulatory framework, ambiguous and restrictive, effectively constrains media freedom on pretexts of national security, official secrecy, and contempt of court, amongst other things. Largely owned by big business houses, the media has become politicised over the years evident from often biased reports and analyses reflecting the corporate interest and competition. The absence of effective self regulatory

mechanisms erodes its accountability and integrity. While the media, particularly, private owned ones, are vocal regarding corruption of public officials, government irregularities, and other contentious issues, it also exercises a degree of self-censorship for fear of backlash by the government and political parties.

In Bangladesh, the legal framework related to the **business** sector is characterised by a combination of supportive and inconsistent regulations. Consequently, the establishment, operation and independence of private businesses have had a somewhat mixed experience. It is exceedingly difficult for a business to complain or file a lawsuit challenging government actions. Information on employees, investors, etc is not readily available. The sector's formal engagement in integrity initiatives has been sporadic and inadequate. Corruption in securing public contracts, utilities and licenses are commonplace.

RECOMMENDATIONS

Parliament

- Effective measures must be taken to make the parliament effective, especially to ensure healthy debate for accountable governance. The practice of parliamentary boycott must be stopped by law.
- A timeframe should be prescribed under the Rules of Procedure (RoP) for implementation of the recommendations of the Parliamentary Committees. Key committees such as, the Public Accounts Committee (PAC), should be chaired by opposition members. In forming Committees, special care should be taken to avoid conflict of interest.
- The professional capacity of the Parliament secretariat must be improved.
- The selection of the Speaker should be made through all-party consultation and consensus in order to protect his/her neutral image. Speaker should resign from party position if any. Deputy Speaker should be appointed from the opposition party
- The draft Code of Conduct Bill for MPs must be enacted as a law.
- Information regarding MP's income-expenditure, properties, loan, income tax, and information on legal cases and the usage of development funds must to be disclosed and updated on a regular basis.

Executive

- In order to ensure checks and balance in the role of the Executive, the Rules of Business governing it must be reformed.
- A law/rules must be adopted for further empowering the committee system to ensure and strengthen oversights on the executive and public bureaucracy.

Judiciary

- The judiciary must have complete financial and administrative independence from the executive branch of the government. Salary structures, benefits, etc., must be reviewed and determined in consonance with their status, experience, competence and performance.
- Appointments of Supreme Court Judges must be made by an independent body (e.g., a Supreme Judicial Commission or a collegium of judges) in concurrence with the Chief Justice and in conformity with prescribed rules developed in this respect.
- Strict compliance with codes of conduct by all judicial officers must be ensured including mandatory disclosure of income and assets updatable on annual basis. Breach of the code of conduct must be dealt with sharply and swiftly and decisions made public.

Public Administration

- A Civil Service Act must be enacted with provisions on transparency and independence in terms of civil service recruitment, promotion, career progression, integrity and accountability combined with a good balance of positive and negative incentives.
- A performance-based career planning system for the public sector employees must be developed.
- Public Officials must disclose information of wealth and assets and update annually.
- Government should consider the formation of a Governance Review and Reform Commission (GRCC) to examine and address the structural, managerial and behavioural issues affecting the performance of the public sector.

Law Enforcement (Police)

- The legal framework for the police force must be reformed to include extensive transparency, accountability, independence, professional integrity and no impunity provisions in police operations.
- The police must be kept free from political / administrative influence.
- Strict punishment must be ensured for police officials and staff who are guilty of corruption, human rights violation and other offences.
- The police must be incentivised and capacitated through increased resource allocation in terms of salaries and benefits, training, modern equipments, IT support, forensic facilities, etc.

Election Commission

- A Law specifying the eligibility criteria for appointments of EC members must be enacted.
- The EC must publish and regularly update for public information detailed statements on income, assets and liabilities of Commissioners and its employees.
- A framework for monitoring compliance with electoral laws, rules and regulations must be developed.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- Election disputes must be resolved fairly and expeditiously. The law must mandate the establishment of an adequate number of High Court benches to ensure quick disposal of election related cases.
- Election Commission must engage with stakeholders including political parties, civil society and media in all matters related to reform of the electoral law as well as policies relevant to conduct of elections.

Office of Comptroller and Auditor General

- The draft Audit Act must be adopted subject to consultation with stakeholders without delay.

- Resources in the form of adequate number of trained manpower, financial allocation, and logistical support must be enhanced in order for OCAG to achieve its goals.
- The OCAG must be given the legal mandate to follow up and ensure execution of the audit observations that it provides.
- Strict compliance with the Code of Ethics by OCAG officials must be ensured.

Local Government

- The government must formulate an inter-governmental fiscal transfer policy for effective distribution of resources among different tiers of LG to minimise/remove uncertainties and scope for political manipulation.
- A permanent Local Government Finance Commission may be considered to ensure objective distribution and allocation of public fund and to implement and monitor the proposed inter-governmental fiscal transfer policy.
- Rules and procedures must be developed to make LGIs more responsive to their constituents.
- Capacity of the LGIs must be strengthened by providing incentives for resource mobilisation at the local level.
- Steps must be taken to prevent manipulation of LGIs by Members of the Parliament.

Anti- Corruption Commission (ACC)

- The ACC must develop its own strategic plan to effectively deliver its mandate.
- The ACC must publish and regularly update for public information detailed statements on income, assets and liabilities of Commissioners and its employees.
- The ACC organogram must be re-examined to rationalize its staff strength. Initiatives must be taken to strengthen the investigative and prosecutorial capacity of the ACC.

- ACC Act must be reviewed to incorporate provisions aimed at making it truly independent and ensuring its effectiveness and internal accountability.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- ACC may consider forming a Citizens Advisory Committee consisting of prominent citizens of high integrity, credibility and acceptability from civil society to advise, monitor and evaluate key aspects of ACC's work.

National Human Rights Commission (NHRC)

- The NHRC must be an independent, vigilant and proactive force against human rights violations, unfettered by political and other considerations.
- The NHRC must publish and regularly update for public information detailed statements on income, assets and liabilities of Commissioners and its employees.
- The NHRC Act must be reviewed and necessary amendments incorporated in terms of the definition of human rights, the eligibility criteria of Commissioners, the Commission's powers to investigate human rights violation by disciplined forces.
- The capacity of the NHRC must be enhanced through training and skills for effective investigation, reporting and action.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.

Information Commission (IC)

- The top leadership of the IC must be strengthened in terms of requisite knowledge, experience and skills and ability to effectively play its oversight role.
- The IC must publish and regularly update for public information detailed statements on income, assets and liabilities of Commissioners and its employees.

- Initiatives must be taken to increase the visibility of the IC and enhance the capacity of its personnel to harness their skills for effective discharge of their role and functions.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- The IC must undertake research on RTI, impediments, openness, technologies, social needs, and public perceptions, so that it can keep pace with the changes taking place at home and beyond.

Political Parties

- Political Parties must inculcate the practice of internal democracy. The Party constitution must include a provision for transparency, disclosure and accountability of the Party Leaders to its members.
- Political Parties must not give Party membership to identified criminals or convicted persons (at least for a certain period after their punishment) with a view to decriminalising the country's political arena.
- Financial transactions and audit reports of political parties must be submitted to the Election Commission and disclosed in time as per law. Legal sanctions for non-compliance must be strictly executed.
- Political parties should be subjected to Right to Information Act.

Civil Society

- The regulatory framework for CSOs should be reviewed and harmonised to enhance the space needed for the sector's independent functioning, to avoid unnecessary duplication, overlapping, and ambiguities and incorporate standardized, simplified and flexible measures for their formation, registration and management.
- CSOs must ensure greater accountability and transparency in respect of their activities and finances. Self regulation should be introduced through the development of a sound governance body, efficient management system, effective supervision and monitoring and internal control.

- CSOs must adopt a policy of proactive disclosure about their operations and fund utilisation. Accordingly, audited financial reports and activity reports should be made available to the public at large.

Media

- The media must be free from the influence of the government, partisan politics, and other vested interested groups. The space for free media must be enhanced and protected.
- Clear and coherent policy and legislation must be adopted to help democratise and bring discipline to the media sector.
- There must be a transparent and logically coherent licensing regime for the media.
- The media must develop independent and voluntary codes of conduct affirming fair, balanced and accurate journalism.
- Legislation should provide for an independent body to guide and manage the public service broadcasting in radio and TV networks.

Business

- The Companies Act 1994 must be amended to streamline business start-up procedures, reduce constraints on company structure, facilitate the transition of large informal businesses to the formal sector and necessitate appropriate reporting mechanism.
- Pragmatic strategies must be adopted to enforce reporting and disclosure requirements prescribed in existing laws.
- A national business portal should be established at the office of the Registrar of Joint Stock Companies and Firms or Board of Investment to self-record basic business information on mandatory basis.
- Large public/private contracts and business deals of certain thresholds must be subjected to a systemic mandatory disclosure and monitoring. Business houses and their association should adopt voluntary practice of “publish what you pay” in their dealing with public institutions.
- Business persons in position of politics and public representation must not use such positions for profit-making.

It is recognised that a strong synergy between and amongst the NIS pillars is crucial for the system's overall effectiveness. Weaknesses in one or more pillars, particularly in the public sector, directly or indirectly affect the other pillars. Within the Bangladesh NIS, a dysfunctional parliament, an all-powerful executive, an exploited judiciary, and an increasingly politicised bureaucracy and police force have essentially eroded the checks and balances that are pivotal to good governance. Questions have been raised regarding the independence and credibility of the respective Commissions (EC, ACC, NHRC & IC) which have diluted public trust on these institutions. The absence of strong internal governance in political parties, civil society and the media likewise has exacerbated the governance challenges that confront the country's integrity system today.

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