

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

CIVIL SOCIETY REPORT

on the implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

**UNITED NATIONS CONVENTION
AGAINST CORRUPTION
IN BANGLADESH**

by Transparency International Bangladesh

Report prepared in support of the UNCAC Implementation Review Mechanism

Dhaka, 5 October 2023

Background & Context

- **United Nation Convention against Corruption (UNCAC) adopted in 2003, that came into force in 2005, is the first internationally accepted, legally binding universal convention**
- **187 countries have ratified UNCAC**
- **Bangladesh acceded to the UNCAC on 27 February 2007**
- **Implementation Review**
 - **Government Self-Assessment (including provisions of country visits, and civil society involvement)**
 - **Independent Review**
- **The first cycle of review of Bangladesh Chapters III and IV was completed in October 2011 (UNODC document no: CAC/COSP/2011/NGO.13)**
- **Second Cycle (current) ongoing: Chapter II and V**
- **The official review (self-assessment of the Government) process on-going**
- **This TIB review of progress of implementation of provisions under Chapter II and V is a contribution to the UNCAC implementation review mechanism**

Objectives

- **To review the initiatives and progress made in the implementation of UNCAC with specific reference to Chapter II & V**
- **To review the challenges against better progress**
- **To make recommendations for further improvement and better implementation of UNCAC**

Scope: Specific Articles covered

Chapter II (Corruption Prevention)

- preventive anti-corruption policies and practices (Article 5),
- preventive anti-corruption bodies (Article 6),
- public sector employment (Article 7.1),
- codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12),
- reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2),
- political financing (Article 7.3),
- public procurement (Article 9.1),
- the management of public finances (Article 9),
- judiciary and prosecution services (Article 11),
- private sector transparency (Article 12),
- access to information and the participation of society (Articles 10 and 13.1), and
- measures to prevent money laundering (Article 14)

Chapter V (Stolen Asset Recovery)

- anti-money laundering (Articles 52 and 58),
- measures for direct recovery of property (Articles 53 and 56),
- confiscation tools (Article 54),
- international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and
- the return and disposal of confiscated property (Article 57).

Method

- Followed the guidelines and report template for CSO reporting designed by the UNCAC Coalition and Transparency International
- Both primary and secondary methods of data collection were used
- Relevant laws, rules and regulations, publicly available government and non-government documents/reports, research reports, media reports, and relevant websites
- Key informant interviews with the related government and non-government stakeholders
- Article-specific checklists were used to collect information

Limitations

- Collecting information was the most difficult task
- Formal and informal restrictions of access to public offices and relevant documents
- Reluctance of relevant officials to provide data and/or agree to talk
- Covid-related social distancing aggravated the problem

Official Review (Government Self-assessment) Process

- **The UNCAC review team of the government, coordinated by the Legislative and Parliamentary Affairs Division of the Ministry of Law, Justice and Parliamentary Affairs with contributions of at least two dozen relevant government ministries and state institutions have been working on the Government Self-Assessment Checklist.**
- **A few civil society organizations were invited to a meeting held on 13 June 2023 to comment on a draft checklist presented at the meeting. Only TIB participated and made some instant comments**
- **Pursuant to a decision of the meeting TIB subsequently provided more detailed itemized written comments on the full draft on 28 June, 2023**
- **Initial contacts have been made for country visits (from Tajikistan & Comoros)**

Main findings

Provision	Progress	Challenges
<p>Preventive Anti-corruption Policies and Practices (Art. 5)</p>	<ul style="list-style-type: none"> • Establishment of a relatively strong and comprehensive legal and policy potential, for instance: <ul style="list-style-type: none"> ➤ Anti-Corruption Commission Act in 2004 ➤ Anti -Corruption Rules in 2007 ➤ National Integrity Strategy (NIS), 2012 ➤ Right to Information Act in 2009 ➤ Public Interest Information Disclosure (Provide Protection) Act in 2011 ➤ Public Procurement Rules in 2008 ➤ Anti-Money Laundering Act 2012, amended in 2015, Rules 2019 • Corruption identified as a major concern politically and governmentally including pronouncement of zero tolerance against corruption 	<ul style="list-style-type: none"> • Weak implementation and enforcement of laws, rules and regulations • The legal framework is also insufficient to address and criminalize private sector corruption and foreign bribery • Anti-Corruption aspirations compromised by some legal amendments and administrative decisions and actions

Provisions	Progress	Challenges
<p>Preventive Anti-Corruption Body or Bodies (Art. 6 and 13.2)</p>	<ul style="list-style-type: none"> • Establishment of Anti-Corruption Commission (ACC) as a specialized institution intended to act independently against corruption • Adoption of a meritocratic approach to the direct recruitment of ACC officials • ACC has its own service rules that includes code of conduct • The ACC's financial and budgetary status is considered sufficient, although dependent on the Ministry of Finance 	<ul style="list-style-type: none"> • Failure to meet the constitutional pledge of setting up the Office of Ombudsman • Political considerations in appointment of commissioners and senior officials of ACC since birth • Political and administrative challenges against independent functioning • The lack of skilled human resources to investigate increasingly sophisticated corruption • Lack of capacity to investigate financial corruption cases including illicit financial transfers • Complaint management of ACC is not transparent

Provisions	Progress	Challenges
<p>Public Sector Employment , Codes of Conduct, Conflicts of Interest and Asset Declarations (Art. 7.1, 7.2, 8.1, 8.2, 8.3 and 12)</p>	<ul style="list-style-type: none"> • Initiatives to build a legal and institutional framework <ul style="list-style-type: none"> ➤ Adoption of Bangladesh’s Civil Service Recruitment Rules in 1981. ➤ Sets of rules based on the Government Servants (Conduct) Rules of 1979. ➤ Enactment of the Civil Service Act in 2018 • Partial implementation of National Integrity Strategy in Public Administration • Abolishing the quota system for class I and class II jobs to establish a merit-based recruitment system; • Introduction of performance audit and grievance redress system; • Introduced the Public Administration Awards 	<ul style="list-style-type: none"> • The provision of requiring prior permission of the government in arresting public officials under investigation • Disclosure of assets of the public officials are not duly practiced. • Allegations of leakage of the questions in public exam papers; • Alleged irregularities and partisan political influence in the posting and promotion of civil servants; • Inefficiency and a lack of transparency and accountability.

Provision	Progress	Challenges
Political Financing (Art. 7.3)	<ul style="list-style-type: none">• Some legal provisions created to ensure transparency in political funding/donations and election financing (RPO provisions on party fund raising, audit of accounts, election campaign limit, etc);• The Election Commission is mandated to monitor election expenditures and take actions in case of non-compliance.	<ul style="list-style-type: none">• The legal framework is not robust enough to ensure desired level of transparency of political financing• Weak enforcement; non-compliance like violation of the limits of election expenses, mis-reporting of political and election finance are not held to account.

Provisions	Progress	Challenges
Reporting Mechanisms and Whistleblower Protection (Art. 8.4 and 13.2)	<ul style="list-style-type: none"> The legal framework is in place to protect whistleblowers. (Public Interest Information Disclosure Protection Act) 	<p>No enforcement and lack of awareness about the existence and benefits of the law</p>
Art. 10 and 13.1 – Access to Information and Civil Society Participation	<ul style="list-style-type: none"> An elaborate, strong legal framework exists to promote public access to information and proactive disclosure; The establishment of the Information Commission has created the opportunity to ensure accountability for non-compliance of due disclosure as per law; A vibrant civil society sector is engaged in promoting access to information in addition to their other areas of focus. Proactive disclosure of public interest related information is on the rise 	<ul style="list-style-type: none"> Inadequate implementation of the law to benefit information seekers; Capacity deficit Requests for information are often refused; lack of protection of information seekers when subjected to harassment; Media and civil society are often subjected to arbitrary and targeted restrictions. Much to be desired about the effectiveness of the Information Commission

Provisions	Progress made	Challenges
Public Procurement (Art. 9.1)	<ul style="list-style-type: none"> • A good legal and institutional framework is in place (Public Procurement Act 2006; Public Procurement Rules 2008) • E-GP in public procurement partially operational • Reduced time and cost of procurement • Increased vendor participation in public procurement 	<ul style="list-style-type: none"> • High value procurement not covered under E-GP • The nexus between the procuring entity and the contractors facilitates continued corruption in public procurement; • Failure to ensure truly open and competitive procurement process • Trends of monopolization and market capture

Provisions	Progress	Challenges
Management of Public Finances (Article 9.2 and 9.3)	<ul style="list-style-type: none"> • Elaborate institutional and legal framework for financial management • Introduction of an integrated financial management information system • Pre-budget sharing and consultation on the national budget 	<ul style="list-style-type: none"> • Budget transparency score has been declining - 30 in 2021, down from 58 in 2012, 47 in 2017 and 36 in 2019, as per Open Budget Survey 2021 • Official documents like periodic budget implementation reports including annual budget report and information on public works are not publicly available on time • ‘Whitening’ black money continues

Provisions	Progress made	Challenges
Judiciary and Prosecution Services (Art. 11)	<ul style="list-style-type: none"> • Constitution guarantees the independence of the judiciary; • Official separation of the judiciary from the executive • Establishment of the Bangladesh Judicial Service Commission • Many important steps to strengthen and modernize the judiciary judicial services • Public access to observe judicial procedures 	<ul style="list-style-type: none"> • The separation of the judiciary from the executive is still on paper • Corruption in the lower judiciary - a major concern • Appointment and removal of higher judiciary yet to independent • Continued government control of the lower judiciary • Inadequate infrastructure and logistical support, no integrated public prosecution service • Shortage of judges in both divisions of the Supreme Court and the lower judiciary; • No asset disclosure of judges and others involved in judicial service

Provisions	Progress made	Challenges
<p>Measures to Prevent Money-Laundering and Anti-Money Laundering (Art. 14, 52, and 58)</p>	<ul style="list-style-type: none"> • Creation of a potentially effective legal framework <ul style="list-style-type: none"> ➤ Enactment of the Money Laundering Prevention Act in 2002; further improvement with amendments in 2012 and 2015 ➤ Adoption of the Money Laundering Prevention Rules in 2019 • Several authorities have been designated by law to combat money laundering • Bangladesh Financial Intelligence Unit (BFIU), with its membership in the Egmont Group, has access to a wide range of opportunities for international cooperation 	<ul style="list-style-type: none"> • Lack of implementation and enforcement • The authority of the ACC has been grossly undermined; authority devolved to relevant agencies without ensuring coordination • Political influence hinders proper enforcement of the potential legal and institutional capacity • Capacity constraints in investigating and prosecuting increasingly sophisticated money-laundering offenses • Advantages of international cooperation in identifying and repatriating stolen assets remain untapped

Provisions	Progress	Challenges
<p>International Cooperation for the Purpose of Confiscation (Art. 51, 53, 54, 55, 56, 57 and 59)</p>	<ul style="list-style-type: none"> • Legal and institutional arrangements have been made; initiatives to facilitate avenues of cooperation, for the purpose of confiscation, have been taken • The Bangladesh Financial Intelligence Unit is mandated to play the key role in preventing and controlling money laundering in collaboration with other state agencies 	<ul style="list-style-type: none"> • Concern about growing illicit flight of money out of the country • Legal and institutional opportunities created for international cooperation to recover stolen assets are not being availed of sufficiently. • Very few concrete and coordinated steps are known to have been taken to prevent illicit outflows and to bring back the laundered money

Some related recent developments

- Like many other low-performing countries in terms of anti-corruption, there are concerns that Bangladesh is also increasingly moving towards restrictions on civic space, basic freedoms, and democratic and human rights.
- Concerns about the shrinking of space conducive for civil society, media and people at large to play an anti-corruption role consistent with Article 13 of the UNCAC have continued unabated.
- The new Cyber Security Act 2023 has been assessed to have reproduced similar repressive provisions as the Digital Security Act 2018, and hence created wide scope of use and abuse to control dissent, free speech, and free media.
- The Income Tax Bill 2023, by which ACC's capacity to access tax, income, wealth and other related data of individuals under investigation for alleged corruption have been subjected to court order, is considered have weakened capacity of the state to fight corruption.

Recommendations

- **Ensure full independence and upscaled professional capacity of the ACC and free it from political and bureaucratic influence**
- **Remove predicaments created by various legal and policy amendments to compromise the jurisdiction, scope and operational flexibility of ACC**
- **Restore authority of ACC to robustly investigate money laundering offences by appropriate amendments of the Anti-Money Laundering Act and Rules**
- **Complete the process of full separation of the judiciary free from executive and political influence. Make appointments of Supreme Court Judges by an independent body (e.g., a Supreme Judicial Council). Ensure strict compliance with codes of conduct by all judicial officers including mandatory and periodically updatable disclosure of income and assets**
- **Create a Public Prosecutor Cadre Service**

- **Remove existing legal and policy provisions that restrict the space for civil society and media to facilitate their active participation in anti-corruption reporting and other initiatives**
- **Ensure annually updatable disclosure of statement of income and wealth of public officials. Ensure compliance and effective actions in case of accumulation of income and wealth disproportionate with legitimate income**
- **Strengthen legal and institutional capacity to ensure integrity in public procurement at all levels by elimination of political and bureaucratic influence, collusion and syndication. Ensure universal application of the e-GP system for all categories volumes of procurement**
- **Set up the Offices of Ombudsman at national and sectoral levels;**
- **Ensure higher levels of budget transparency by timely disclosure of related documents like quarterly and annual budget implementation report and information on public works**

- **Build capacity of all public and non-governmental institutions to ensure proactive and on-demand disclosure of information and drive civic activism to enhance public interest and participation in the movement for access to information**
- **Ensure that the recruitment, posting and promotion process of civil servants is open, competitive and fair free from any factor other than professional capacity. Public institutions including the bureaucracy and law-enforcement agencies must be free from partisan political influence**
- **Adopt concrete measure to implement the law to protect disclosure of information (whistleblower protection), including awareness-raising campaigns**
- **Enhance transparency and accountability in financial management; and abolish the provision of whitening of black money, which is unconstitutional, discriminatory and corruption-friendly**
- **Upscale the level of professional skills and effectiveness of institutions and agencies mandated to prevent and control illicit financial transfers. Increase greater cooperation and coordination between them with particular emphasis on repatriation of stolen assets taking advantage of opportunities for international cooperation including mutual legal assistance**

Thank you