



Institutions of Accountability Series

THE ANTI-CORRUPTION COMMISSION: POLICY NOTE

Endemic corruption continues to stifle Bangladesh, as it has done since the nation's inception. Corruption has impeded our economic development, impaired investor confidence, prejudiced the development of public education and health, weakened our democracy and called into question the rule of law. It has brought Bangladesh to the brink of being a failed state. The former Bureau of Anti-Corruption (BAC) proved to be completely ineffective in stemming the tide. The new Anti-Corruption Commission (ACC), established on 21 November 2004, was dysfunctional until the arrival of the current Caretaker Government¹.

This Caretaker Government has brought political will, commitment and resources to the fight against corruption. It has assigned new leadership to the ACC, and has dedicated new resources to the investigation and prosecution of cases. In recent months, the ACC has launched numerous investigations and it has already started prosecuting high-profile politicians and public servants.

The Institute of Governance Studies (IGS) considers that the implementation of appropriate policy reforms is imperative. In order to strengthen the ACC in its pursuit of the mandated functions and for long-term sustainability, the following four thematic issues need immediate attention from the ACC, the government and other relevant stakeholders:

ISSUE 1: The ACC must be independent - to develop public trust, the ACC should be free of undue political, executive or private influence.

ISSUE 2: The ACC must be accountable - to promote government accountability, the ACC must itself be accountable.

ISSUE 3: The ACC must be effective - to maintain public trust, the ACC must be successful in developing and implementing its anti-corruption strategies.

ISSUE 4: The ACC must be efficient - to be sustainable, the ACC must maximize its use of limited resources.

IGS organized an international workshop aimed at developing stakeholder-driven, relevant, and practical policy recommendations.² This policy note follows the workshop discussions and the four main themes³ related to areas where the ACC could improve. The role of other institutions in strengthening the anti-corruption framework was also discussed.

In this policy note, we explain each of these policies and define the actions required to implement them. If not implemented, it is our opinion that corruption in Bangladesh will suffocate the nation in the future just as it has in the past.⁴ The series of recommendations

have been categorized as short, medium and long-term options, which could be a road map for policy makers and practitioners in implementing a reform agenda.

INDEPENDENCE

The Government should initiate measures to provide the ACC with financial, administrative and political independence provided by strengthening of the Anti-Corruption Commission Act, 2004 (ACC Act), ensuring budgetary independence, and securing non-partisan, professional staffing and leadership. The experience of the former Bureau of Anti-Corruption indicates that lack of independence has hindered the Bureau's effectiveness in fighting endemic corruption. The Bureau was under the Prime Minister's Office (PMO) and lacked operational independence. Independence of the ACC will ensure that its functions are not influenced deliberately or inadvertently by vested interests.

Policy Recommendation: Amendments of the ACC Act are required to ensure financial and operational independence from the Executive. These amendments include revision and inclusion of legal safeguards, as well as guiding principles that are designed to protect the Commission's independence.

Short-term options

Secure financial independence through a permanent source of funding. A long-term block grant could be provided by the Parliament at the beginning of each new term but the specific amount may be fixed in the annual budget and open to parliamentary debate.

Make available audit-exempt funds for certain operational activities.

Contract a neutral third party to conduct regular external audits.

Include appropriate provisions in the ACC Act to reduce the scope of judicial intervention, particularly by restricting the use of stay proceedings in higher courts.

Entrench the tenure of ACC Commissioners through constitutional amendments by revising sections 10 (which refers to the constitutional provision for securing tenure of the Commissioners), 24, 25 (which constrain the functioning of the ACC by other provisions or government bodies) and 34 (which requires the President to approve the rules of the ACC) of the ACC Act.

Opt for direct recruitment of staff rather than through the Public Service Commission (PSC), until the latter has been reformed and its scope of activities defined. Strengthen the prosecution unit of the ACC by recruiting an internal team of lawyers, who may be hired on a contractual basis at competitive rates. The compensation package of existing and new staff needs to be revised and innovative ideas (for example, credit points for future promotion on successful prosecution of corrupt individuals) explored, which will motivate staff to operate more efficiently but without compromising due process of law

Medium-term options

Balance the selection committee of the ACC Chairman and Commissioners with members from the public and private sectors. ACC leadership qualifications should essentially be merit-based.

Ensure participation of the Chairman in the selection of the two other Commissioners. This could encourage a more conducive team environment and effort. The selection criteria for both the selection committee and the ACC leadership can be developed in consultation with a National Search Committee.

Create transparency within the selection process of both the selection committee and

the ACC leadership by holding open hearings in which the public may attend as spectators but not participate in the proceedings (if holding open hearings seems implausible in Bangladesh, as an alternative, nominated names can be published in newspapers for public awareness and debate).

Stagger the appointments of the three Commissioners so that there is continuity of experience and expertise.

Subject the ACC leadership to impeachment and removal from office by the President on recommendation of the Supreme Judicial Council.

Long-term options

ACC should join the rank of other constitutional bodies such as the Office of the Comptroller and Auditor-General, Office of the Ombudsman, the Election Commission, and the Public Service Commission. This will require an amendment of the Constitution with two-third votes of the elected MPs.

ACCOUNTABILITY

The ACC should be accountable to the citizens of Bangladesh by conducting its affairs in a transparent manner and by enforcing stringent ethical standards in its financial and personnel management systems, including publishing its rules and ethical standards together with annual reports on performance. The Bureau of Anti-Corruption was accountable to the PMO and lacked transparency. The ACC, under the previous regime, failed in terms of accountability and transparency. Annual reports were not published and there was no formal mechanism in place to maintain internal accountability.

Policy Recommendation: Internal accountability principles are prescribed along with fine tuning of the existing external accountability mechanisms to improve the Commission's accountability. Participation of the civil society in the ACC is suggested to bring about transparency which in turn will reinforce accountability.

Short-term options

Specify the form and contents of the annual report in the ACC Rules and Regulations. The annual report should be sent directly to the Speaker of Parliament and disseminated through website, newspaper supplements, television/radio programs.

Create an *ad hoc* committee, under the direction of (at least) one of the ACC Commissioners, to devise the following:

- Rules and Regulations under the Act, including financial management and accountability policies which will determine the daily functions of the ACC
- A strategic plan (should be published and made available in the public domain) that will establish targets to be adhered to by the ACC and will include:
 - ◆ Code of Conduct for all staff (including leadership and lawyers)
 - ◆ Criteria for performance assessment
 - ◆ Media/Communications Policy

The committee may look at other institutions with strong internal accountability mechanisms such as the army, private sector entities (domestic) and other anti-corruption institutions worldwide and adopt those mechanisms appropriate for the ACC.

Secure a balance between transparency of the Commission's activities and protection of

sensitive information which is yet to be adjudicated upon and therefore could potentially damage individuals' reputation unfairly and cause irreparable damage. Therefore, a policy for the protection of sensitive information is necessary. Aggregated data should be published rather than case-specific data.

Medium-term options

Submit the annual report directly to the Speaker of Parliament and to a standing committee in Parliament.

Place the annual report before the Parliament by the Speaker and allocate time to ensure a thorough debate on the salient points of the report.

Have a practically designed website which will act as a window for disseminating ACC information to the public and improving its transparency.

Create a permanent oversight committee, composed of a wide cross-section of professional groups to ensure that the policies adopted by the *ad hoc* committee are implemented and enforced. This committee should report directly and only to the ACC Commissioners.

EFFECTIVENESS

The powers of the Commission should be sufficient to meet its mandate and should conform to the extent possible to international good practice. The ACC should publicly and annually measure its effectiveness by prioritizing its programs, setting benchmarks to chart progress and shortcomings, and identifying areas for improvement. The ACC does not (and the BAC did not) have such provisions to gauge its effectiveness.

Policy Recommendation: ACC should partner with public and private institutions to carry out its mandate. It will prioritize prosecution of cases, as success in this area may also serve as deterrent. Benchmark of success will guide the Commission toward effectiveness and will highlight the areas that need improvement.

Short-term options

Explicitly define corruption in the ACC Act and the offences that fall under the jurisdiction of the ACC.

Increase public awareness of the heavy risk and penalties that accompany corruption-based offences by utilizing NGOs, media, and civil society to educate the public on the consequences of corruption. Public mobilization through information sharing should counterbalance the lack of political will through strengthening preventative activities. The following institutions and/or mechanisms may be used for raising public awareness:

- Schools: through curriculum and student organizations.
- Website: by publishing wealth statements of public officials online.
- Business groups: involving the Chambers of Commerce.
- Database: by facilitating information-sharing among ACC, NBR, police, financial and other institutions involved in investigating corruption crimes.
- Religious establishments: by raising awareness and public opinion against corruption.

Partner with research institutions, business schools, and the Attorney General's office to build case studies related to corruption,

study management flaws and identify areas wherein corruption can originate.

Impose heavy punishment for corruption crimes while providing appropriate incentives to corruption fighters in the form of public recognition, efficiency bonus etc.

Follow a top-down operational strategy rather than bottom-up: the ACC should address grand corruption before moving on to petty corruption.

Avoid legal hindrances of investigations by training ACC staff on the legal requirements of investigative procedures.

Medium-term options

Contract a neutral body (e.g. a research institution or think-tank) to periodically review the ACC legislation to identify loopholes.

Conduct an annual survey of public perception of the ACC's activities and performance, e.g. perception of corruption control in Bangladesh, perception of ACC's performance in corruption control, perception of impartiality of ACC's investigations, perception of ACC's investigation powers

Long-term options

While focusing on high-level corruption, designate resources to prosecute petty corruption as it is corruption at the lower levels that inflicts the most suffering on the general public.

Continue public awareness raising activities.

EFFICIENCY

The ACC should establish comprehensive criteria to measure and report on internal efficiency of its operations, including the rate of disposal of old cases, the setting of time frames for handling citizen complaints and

new cases, the rate by which cases are prosecuted and the success rate of prosecutions.

Policy Recommendation: The ACC should take operational and policy decisions to embark on higher standard of efficiency in fighting endemic corruption. An internal operational procedure for disposing case backlog in a feasible manner should be in place.

Short-term options

Decide how much funding may be allocated to each pending case.

Dispose of former BAC cases pending with the ACC on a pro rata basis, perhaps by seeking assistance from retired judges/senior lawyers.

Amend the time frame for disposal of cases in the ACC Act to a more practical time frame, indicating clearly the consequence or action to follow if a case is not disposed of within the indicated time period. If prosecutions are rushed and principles of natural justice compromised then, at some point, the higher courts will declare them unlawful.

Medium-term options

Create a set of benchmarks to achieve efficiency (e.g. the following benchmarks based on the Singapore CPIB⁵):

- Cycle time - time taken to complete an investigation
- Completion rate - percentage of cases completed in a year
- Prosecution rate - percentage of cases resulting in prosecution
- Conviction rate - percentage of cases convicted in court

ROLE OF OTHER INSTITUTIONS

Using its role as the lead institution for preventing corruption, the ACC should introduce and sustain a major program of collaborative relationships with major public institutions involved in fighting corruption in order to support a nation-wide, well-coordinated and integrated approach to ending corruption in Bangladesh.

Short-term options

Hire attorneys to represent the Commission at competitive market rates to ensure that competent counsel are prosecuting ACC cases. Appropriate co-ordination should be established between the ACC and the Attorney General's office.

Incorporate zero tolerance policies concerning corruption in each department/ministry's mission statement.

Medium-term options

Create within the ACC a cell that facilitates cooperative working relationships among relevant institutions.

Create a Committee of retired Chief Justices to oversee the judicial process as well as identify and provide solutions in case of lapses at the judiciary level.

Long-term options

Build capacity within the ACC in areas that require specialization e.g. investigation.

Establish an internal control measure across all government departments and ministries to address most of the petty corruption.

Create anti-corruption units within each department and ministry to deal with petty corruption. These units will submit quarterly reports to the ACC detailing their activities.

Establish a Rapid Action Group (RAG) to investigate corruption within each government department and ministry.

Incorporate the National Integrity Strategy, currently in the process of preparation, into departmental and ministerial cultures, thus encouraging leadership from within.

CONCLUSION

The success of the ACC will depend on the political, social, and economic climate that allows it to work with adequate resources and in an independent manner. Without strong political backing of the government, the ACC can not accomplish its mission, despite the presence of internal support and sound leadership. A key component of creating credibility is the ACC's independence, which should be balanced with accountability through oversight mechanisms. In order to maintain a superior level of efficiency, the ACC must be properly informed of the mandates of its guiding legislation and be aware of how to proceed with its functions. In addition, the ACC must be given the appropriate powers to conduct effective investigations and prosecutions of crimes of corruption.

FOR FURTHER READING:

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* The IGS Policy Notes are available on the IGS website at www.igs-bracu.ac.bd

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¹ For our detailed analysis of the problems of this institution, see Institute of Governance Studies, 2007, Institutions of Accountability: The Anti-Corruption Commission, Dhaka: BRAC University.

² The workshop was organized on 13 and 14 May 2007 at which representatives from the ACC, judiciary, police, government, civil society, donor agencies, and international experts discussed possible policy options for the ACC. To prepare workshop participants, the IGS team prepared a background paper highlighting the history, current events, and challenges of the ACC. The background paper further discusses the recent changes in Bangladesh's political landscape and their impact on the ACC, including an analysis of the revised ACC and Special Powers legislation. Finally, the ACC is described within a larger comparative perspective based on lessons learned from other anti-corruption agencies. The IGS team concluded that a country-specific analysis of available resources from other anti-corruption agencies-including the legal framework, degree of independence and a country's state of governance and political will-is required to frame the best possible policy. Further the IGS team concluded that benchmarks for success should be defined to enable the ACC to meet reasonable expectations for its performance.

³ It should be said that there are other themes but the policy note will focus on the four stated ones.

⁴ Although various individuals and organizations were consulted, the IGS team takes sole responsibility for the findings and recommendations of this policy note.

⁵ The Corrupt Practices Investigation Bureau (CPIB) has played a pivotal role in curbing corruption in Singapore. CPIB firmly uphold the core values of teamwork, ability to be result oriented devotion to duty & daring, impartiality & innovativeness and tenacity of purpose.

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The Institute of Governance Studies, established in 2005, is affiliated with BRAC University, a private institution of higher education in Dhaka, Bangladesh. The University, established in 2001, has a goal to provide a high quality, broad-based education with a focus on professional development to equip students with the knowledge and skills necessary for leading the country in its quest for development.

The mission of the University - to promote national development process through the creation of a centre of excellence in higher education that is responsive to society's needs - is consistent with the long-term development objectives of its sponsoring institution, BRAC.



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