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Countries at the Crossroads 2011 - Bangladesh

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INTRODUCTION

Bangladesh continues to confront major challenges to fostering a culture of democracy, human rights, and the rule of law. Despite its return to constitutional democracy in 1991 after a series of military governments and strongman rule, the country still struggles to establish democracy among the political elite, who are hopelessly divided along partisan lines. Relentless bickering between the two rival political leaders, Sheikh Hasina Wazed of the Awami League (AL) and Khaleda Zia of the Bangladesh Nationalist Party (BNP), has brought the country to the brink of a total breakdown, particularly in 2007. Apart from philosophical differences – Bengali nationalism anchored in the principles of secularism on the part of the AL, versus Bangladeshi nationalism that supports the role of religion in constructing the national political identity for the BNP – personal enmity and a reluctance to come to terms with democracy have created an environment of mutual distrust that prevents political forces from collaborating and cooperating with each other, organizing collective actions, rationalizing the allocation of scarce resources, and making public institutions work for the common good.

Bangladesh plunged into a major political crisis in late 2006, when the BNP-dominated coalition government failed to reach an agreement with the 14-party AL-led Grand Alliance over the formation of a caretaker government to hold parliamentary elections in January 2007. The mainstream opposition took to the streets and the situation eventually deteriorated to political anarchy in December 2006 marked by widespread rioting and killing of political party members by rival groups. Taking advantage of the widespread political violence and deteriorating security situation, the military quietly seized power on January 11, 2007, and President Fakhruddin Ahmed declared a state of emergency. After taking over, Ahmed's military-controlled caretaker government cancelled a parliamentary election scheduled for that month and began a long process of reforming the country's electoral system and election commission, establishing legislation related to campaign finance and electoral transparency. Almost 18 months after the military takeover, the country held what were generally regarded as free and fair elections on December 29, 2008, bringing Sheikh Hasina's AL-led alliance to power.

However, the return of democracy has failed to establish institutions based on accountability, good governance, human rights, and the rule of law. Sheikh Hasina's administration has shown little interest in the creation of a rule-based structure of governance and has further politicized the civil bureaucracy and judiciary, created new opportunities for abuse of power, and weakened the ability of independent watchdog institutions, such as the Anti-Corruption Commission, to hold public officials accountable for their actions. In recent years, the country has also witnessed increased government intolerance of dissident voices, including trade unions, registering their concerns in a democratic manner.

ACCOUNTABILITY AND PUBLIC VOICE

After declaring a state of emergency in 2007, the caretaker government took measures to restore the Bangladesh Election Commission's credibility as a nonpartisan body. In association with the military and the United Nations Development Program (UNDP), the BEC spent almost 18 months preparing for the December 2008 parliamentary election. The commission created a new voter registry with some 81 million voters, 12 million less than the previous registry

created by its controversial predecessor. The commission also undertook a massive campaign to produce picture identification cards, a first in the history of Bangladesh.

The military's quasi-authoritarian experiment ended with the much-anticipated parliamentary election on December 29, 2008. Despite some procedural irregularities, domestic and international election observers found that the results reflected the will of the voters.¹ Sheikh Hasina's AL-led grand alliance achieved a landslide victory, with 262 seats in the country's 300-seat parliament (popularly known as the *Jatiya Sangsad*). The AL platform emphasized elimination of corruption,² promotion of judicial independence and impartiality, establishment of the rule of law, and de-politicization of the civil administration. The party's election manifesto also promised to strengthen the National Human Rights Commission and enhance press freedom, including by ending intimidation and persecution of journalists.³

In a break from the past, the election was relatively peaceful, possibly due to supervision by 50,000 troops, 75,000 police, and 600 members of the Rapid Action Battalion (RAB), along with other security forces. Nevertheless, the Election Violence Education and Resolution (EVER) program monitored violence in 40 of the country's 64 districts and reported some 110 incidents of election-related violence, causing bodily injuries to about 336 people.⁴

Prior to the election, the caretaker government amended the Representation of People's Order Ordinance (RPO) 2008, which barred loan defaulters and corrupt politicians from contesting elections. Some elites have used their political and personal connections to borrow massive sums of money from nationalized commercial banks, only to subsequently willfully default on their loans. Because of their political connections, these loan defaulters have historically enjoyed a high degree of impunity. Successive military and civilian governments and a network of unholy political alliances with mainstream political parties have given elites extensive leeway to default on loans and evade legal action.⁵ Despite the strong anticorruption rhetoric, the caretaker government ultimately yielded to the pressure of mainstream political parties and significantly relaxed enforcement of the newly amended and more stringent RPO.⁶

In the end, major political parties were able to nominate about 130 candidates for the 2008 parliamentary election who were either loan defaulters or had defaulted on their utility service bills.⁷ Indeed, the RPO failed fundamentally to improve the election culture. According to a FEMA study, the BEC's inability to strictly enforce the RPO allowed political parties to "ignore and flout laws with impunity" in the 2008 parliamentary election.⁸ Although the BEC theoretically enjoys political autonomy vis-à-vis the government, it often operates under the influence of the executive and is not adequately equipped to enforce electoral laws and regulations. Due to lack of enforcement, major political parties routinely violate existing electoral laws to win elections, including through vote-rigging, intimidation, and tampering with vote counting.⁹

The amended RPO also had little impact on campaign spending limits, which it set at \$20,000. A large number of candidates spent at least three times that amount, and after extravagant election campaigns candidates were easily able to avoid submitting reports or providing information on their funding sources, which reportedly included big business, corrupt individuals, and industrialists who expected big political favors in exchange.¹⁰ Bangladesh had no defined provision for submitting election expense reports until 1996, and then some 95 percent of candidates in the 1996 parliamentary election did not bother to submit an expense report to the BEC.¹¹

Sheikh Hasina's administration has taken some measures, mainly nonlegislative, to enhance government accountability primarily through the "Framework of National Integrity Strategy" approved by the caretaker government in October 2008. The strategy is designed to ensure that the executive branch is "transparent, responsive, and accountable to people and the Parliament." The framework also underscores the need for an independent judiciary and an efficient and impartial public service.¹² However, not much has been done to translate such lofty promises into concrete action. The parliament is not yet capable of holding the prime minister, cabinet ministers, and other political executives accountable for their actions, partly because to date it has been little more than a rubber-stamp for the executive. Opposition members are either marginalized because of the prevailing "winner takes all" culture or focus more on confrontational politics than holding the executive accountable through fair, nonpartisan debate. Although the parliament chooses the president, that position remains largely ceremonial.

Impartiality and efficiency in the civil service are also a challenge, as "partisan allegiance" is often the chief characteristic for career advancement. Senior bureaucrats appear to spend much of their time supporting the ruling party, which is necessary to ensure timely promotion to lucrative and meaningful positions, yet no concrete measures have yet been taken to liberate the civil service from this partisan influence. Media reports claim that dozens of senior officials have either been promoted or made "officers on special duty" (OSD) "on the basis of political considerations" in recent years,¹³ casting profound doubt on the possibility of a civil service based on responsiveness, honesty, and integrity. The country's judicial system faces similar challenges in acting as a check on executive power (see Rule of Law).

Civil society associations, especially nongovernmental organizations (NGOs), play a critical role in offering alternative solutions to issues of inequality, discrimination, and poverty. By broadening the mainstream development agenda, they have successfully increased legitimacy for antipoverty programs that are rooted in the priorities and realities of the poor. Many NGOs have succeeded in involving marginalized communities, including women and landless peasants,

in decision-making processes. However, retaining their autonomy vis-à-vis the government is increasingly becoming challenging for those NGOs and advocacy groups that question the policies and practices of the ruling party. The March 2011 dismissal of Nobel laureate and political critic Dr. Muhammad Yunus as the managing director of Grameen Bank makes it apparent that the current government has little patience for dissident voices. Yunus's removal suggests that the current government will not hesitate to push forward state frontiers to maintain its control over civil space. The creation of the National Social Commission in April 2009 was also seen as a political move by the government to control both NGOs and the flow of foreign funds directed at different NGO programs, as the commission, composed of different government agencies, was given the power to cancel NGO registration.¹⁴ As of March 15, 2011, the commission cancelled the registration of 550 NGOs allegedly involved in corruption, antigovernment activities, patronizing militant organizations, and misuse of foreign funds.¹⁵

Despite repeated promises to promote freedom of expression, government actions in the last two years raise serious questions about its commitment to press freedom. Newspapers and TV stations must obtain government permission to operate, and the government can cancel publication rights at its discretion. The government has shut down two TV stations – Channel One and Jamuna TV – canceled the publication rights of the Bangla daily newspaper *Amar Desh*, and indirectly interfered with the publication of news items and editorials highly critical of government policies and programs. It has also made decisions to block Facebook and Youtube without reasonable grounds.¹⁶ In addition, the government has significant control over several broadcast media outlets and owns the only national terrestrial channel, the public BTV. The government's long pattern of harassment of *Amar Desh* continued when it shut the paper down in June 2010. It also engaged in extensive legal harassment of the editor, Mahbubur Rahman, who is known to be a close ally of opposition leader Mrs. Khaleda Zia and a former energy adviser to the BNP government. Rahman was arrested on charges of fraud and defamation in June 2009. He was held on charges of sedition and reportedly tortured while in custody, then sentenced to six months' imprisonment on charges of contempt in another case.

A regional human rights organization claims that "the government has been suppressing the media in fear of criticism of its own actions that threaten the democratic process and the upholding of the rule of law in Bangladesh."¹⁷ Criminal libel laws were used to silence voices critical of the government and key members of the ruling party. Draft legislation was proposed in December 2009 to prevent the arrest of editors, journalists, and other media actors for defamation charges, but the promising reform has not yet passed and arrests continue. Like previous governments, the AL government continues to intimidate pro-opposition journalists through arbitrary detention and prosecution. One local media freedom organization documented dozens of attacks and instances of intimidation in 2009 alone, most of which went unpunished.

The government's increasing conflict with the media is in part due to the partisan role played by a large number of media outlets. After returning from a recent trip to Bangladesh, an International Press Institute observer noted: "The vast majority of Bangladeshi newspapers have clearly taken a stand in favor of one of the two major political parties. Media independence is difficult to find in Bangladesh, where the external pressures on media outlets are numerous and strongly influence content."¹⁸ Media owners and advertisers, which include government agencies, also have a great deal of influence over the content of publications by exercising their monetary power to shape news coverage. A great majority of media owners are businesspeople who are more interested in maximizing profit than developing a "thorough understanding of the intrinsic values of the media profession."¹⁹ Moreover, since the state no longer has a monopoly on print and electronic media, it now depends on advertising campaigns either to reward those media outlets that favor its programs and policies or to punish pro-opposition media outlets by depriving them of government-sponsored advertisements.

Recent proliferation of information and communication technologies, including the internet, has enabled democratic engagement for people in Bangladesh. The state only occasionally mediates access to the internet, especially when it wants to block particular views for political and cultural reasons. However, this marginal intervention is perhaps due to the fact that internet penetration is particularly low, at less than 1 percent of the population.

CIVIL LIBERTIES

Bangladesh's return to constitutional democracy provided some optimism for a gradual improvement in its rather dismal human rights record, yet significant change has not taken place. Extrajudicial killings by security forces, deaths in police custody, harassment of political opponents, arbitrary arrest and detention, and the use of the lower judiciary to serve partisan interests of the ruling party all continue. Despite the government's promise to stop and investigate extrajudicial killings, about 229 people died either in "crossfire" (exchange of gunfire between security forces and alleged criminal gangs) or in police custody in 2009; many of them were known to police for their alleged involvement with various criminal activities. Local and international human rights groups documented many of these deaths as arbitrary killings by law enforcement agencies, especially by RAB. For example, according to a report by legal aid and human rights NGO Ain o Salish Kendra, of the total, 147 people were killed by police and RAB. Between April and June 2010, the same organization reported 20 deaths in different prisons.²⁰

While government reports attribute most extrajudicial killings to crossfire, government organizations make little effort to properly investigate the causes of death and the government has shown continued reluctance to hold accountable those responsible. The number of people

killed in crossfire and other events increased to 180 in 2007, when the military-backed caretaker government was in power. Extrajudicial killings had been even more frequent under the Zia leadership in 2005, when some 377 people were reportedly killed in crossfire and police custody.²¹

Unwarranted arrest, detention, and torture in custody to obtain a forced confession remain serious concerns. Opposition party members, journalists, union leaders, and political activists are often subjected to warrantless arrest and brutal physical torture. The government continues to use the Special Power Act of 1974 and Section 54 of the Criminal Procedure Code to arrest without a warrant and to deny the right to bail. These laws also indirectly allow law enforcement agencies to torture detainees during interrogations. According to Human Rights Watch, "the bodies of those who are killed by RAB and the police regularly have physical marks and injuries indicating that they were subjected to torture."²²

The recent arrests of both Moshrefa Mishu, president of the Garments Workers Unity Forum (GWUF), and well-known opposition member of parliament Salauddin Quader Chowdhury ignited a debate about the country's culture of impunity for the wealthy and powerful. Mishu was arrested without warrant on December 14, 2010, and denied bail. Advocacy groups claim that the government targeted Mishu for fighting for the rights of apparel workers. Chowdhury was arrested on December 16, 2010, and was tortured in police custody.²³

Both were held in custody until April 2011. These high-profile cases reveal the gross abuse of power by police; ordinary citizens experience similar police brutality and harassment that often go unnoticed.

The government's handling of the mutiny by members of Bangladesh Rifles (BDR), the country's border security guard unit, also raises serious questions. In February 2009, some BDR members participated in an uprising to protest poor salary and benefits and the abuse of power by senior officials, who are recruited from the regular army and who allegedly treat the BDR as an inferior organization. The mutineers killed 74 people, including 58 army officers. After their surrender, security forces reportedly killed between 59 and 78 BDR soldiers in revenge.²⁴

Human Rights Watch documented extensive evidence of torture on the bodies of those who died or were detained.²⁵ The government formed a three-member committee to investigate allegations of killings of BDR personnel in police custody, but while the committee's report acknowledged two deaths as a result of torture, it did not attribute guilt, and the government has done virtually nothing else to address the allegations. Human rights groups questioned the prospect for fair trials of the BDR mutineers, as confessions were reportedly obtained through severe physical torture.²⁶

Prison conditions remain poor despite some recent attempts, especially by the caretaker government, to improve the prison environment. Almost all prisons are overcrowded and lack acceptable sanitary facilities. The inmates are not properly nourished and most prisons lack adequate medical facilities. Rampant corruption in the prison system is partly to be blamed for the inhumane conditions.

The National Human Rights Commission, which the caretaker government established through the 2007 Human Rights Commission Ordinance, has yet to emerge as an effective body to protect human rights. The commission has a broad mandate that includes monitoring Bangladesh's human rights record, issuing summons, and resolving violations through mediation and conciliation. The current government has done very little, however, to genuinely empower the commission to undertake these tasks. As of the end of 2010, the organization remained only semi-functional.

Combating terrorism appears to be an AL government priority. Political violence and attacks by Islamist extremist groups reached a climax in August 2005, in a series of bombings across the country. The government banned two of the largest extremist groups in 2005 and continued a heavy crackdown into the following year. While these efforts were quite effective in disabling the extremist organizations, the threat of terrorism remains a legitimate if somewhat lessened concern. In addition to passing the 2009 Laundering Prevention and Anti-Terrorism Act, the current government constituted a high-level committee on Anti-Money Laundering and Counter Terrorism Financing headed by the finance minister and banned a number of religious organizations for their alleged involvement in terrorist activities. It also instructed law enforcement agencies to act swiftly and decisively against all terrorist groups.

A 2010 U.S. State Department report claims that Bangladesh remains a source and transit country for human trafficking. Thousands of people are trafficked each year by criminal groups for the purposes of forced labor and commercial sexual exploitation. Although the state has taken some measures to address human trafficking, it has not passed any law to criminalize forced labor, nor has it increased efforts to prosecute traffickers.²⁷

Discrimination and violence against women remain a major impediment to gender equity in Bangladesh. One women's rights organization noted that 2010 was the worst in three years in terms of violence against women, including steep increases in reported rapes, acid attacks, dowry-related violence, torture, and other attacks against women.²⁸ The criminal justice system often lets perpetrators go unpunished, especially if they are members of the ruling party or well-connected individuals who offer bribes in exchange for impunity.²⁹ Victims and their families often must contend with ongoing violence on the part of perpetrators in an effort to dissuade them from lodging formal complaints. Indeed, nine men were killed for protesting violence

against women and girls in 2010 alone.³⁰ Despite its rhetoric, the government has not undertaken serious efforts to address violence against women and gender discrimination.

About 88 percent of Bangladesh's population is Muslim. Hindus constitute another 10 percent and Christians, Buddhists, and indigenous communities make up the remainder. While Bangladesh has a long history of religious tolerance, minority groups have experienced political and social discrimination in the recent past. In response, the AL government has taken concrete measures to ensure that ethnoreligious minority groups can freely practice their faiths, have equal access to government jobs, and play a role in national decision-making bodies, including the cabinet, though they still remain underrepresented. In a landmark August 2010 ruling, the Supreme Court struck down the fifth amendment to the Constitution, which had allowed for the formation of religious political parties. The verdict laid the foundation for restoring secularism as a state principle in the Constitution and was wholeheartedly welcomed by various secular forces, including ethnoreligious minorities, as it concretized the possibility of removing Islam as the religion of the state.

An increase in attacks against minorities was reversed in 2009, when the AL government established a more pro-minority stance. This new approach included increased police protection of groups like the Ahmadiyya sect, a community of 100,000 that had been the target of extremist attacks by those who consider Ahmadis to be heretics. The AL administration has also appointed members of religious minorities to leadership positions in the government. All of these efforts are part of the AL's broader priority to promote secularism as a constitutional principle.

The government has been similarly focused on improving the rights of minority groups, though much work remains to be done. The government's decision to pull the military out of the Chittagong Hill Tracts (CHT) in July 2009 was enthusiastically endorsed by different ethnic communities that have been fighting for peace, security, and autonomy since the mid-1970s. Many saw the withdrawal of the military as an indication of the AL's willingness to work closely with different ethnic groups in the CHT in order to put forward a pragmatic, mutually agreeable agenda for peace. The administration has also reconstituted the Land Commission to resolve land disputes in the CHT and approved the Vested Property Return (Amendment) Act 2009 for restoring property that was seized from religious minorities.

The Bangladesh Constitution guarantees the right to form associations and unions, but repressive measures against garment worker trade unions, who are demanding improvements in working conditions, have revealed a major inconsistency in the government's labor rights policy.

Sheikh Hasina's administration put itself at odds with trade unions when, instead of mediating disputes between the apparel workers and garment industry owners, the government used law enforcement agencies to harass union leaders, arrest them, and file criminal charges against some.³¹ The AL government's decision to go after trade union leaders who campaigned for decent minimum wage ignited a debate not only about the irrelevance of existing laws that often favor employers, but also about the role of a democratically-elected regime in protecting vulnerable workers from manipulative practices of industries and business conglomerates.

Freedom of assembly improved considerably in 2008 with the end of extensive restrictions that had been in place under emergency rule after the dissolution of the caretaker government. However, although the right to freedom of assembly now exists under the law, civil rights groups continue to question the government's use of excessive force to suppress protests. For example, the brutal police attack on renowned academic and activist Professor Anu Muhammad and other conservationist protestors in September 2009 drew widespread criticism.

RULE OF LAW

After years of fierce debate and delays, the military-backed caretaker government formally announced the separation of the country's subordinate judiciary from the executive on January 16, 2007. The Code of Criminal Procedure (Amendment) Ordinance finally came into effect on November 1, 2007, a decision welcomed by civil society organizations and lawyers as the first step toward an independent judiciary. Under the new law, the Supreme Court appoints all lower court judges and judicial magistrates and holds them accountable for their actions, as opposed to appointment by the Ministry of Establishment, headed by the prime minister, which previously had given the executive branch political control over the lower courts.

Nevertheless, direct and indirect political influence often makes it difficult for judges to make impartial, fair decisions based on the evidence and the law. The government's decision to send two judges into retirement in accordance with Section 9(2) of the Public Servants (Retirement) Act of 1974 on July 30, 2009, was an example of the political use of existing laws to punish judges who are unwilling to listen to the executive.³²

Despite the attempt to make the judiciary functionally independent, controversy surrounding the appointment of judges – especially the Chief Justice and other judges in the High Court, one of two divisions of the Supreme Court – continues to polarize the country. Appointment of Supreme Court judges, which is done by the president after extensive consultation with the prime minister, continues to be politicized. Serious questions were raised when President Zillur Rahman appointed Justice A.B.M. Khairul Haque, a judge of the Appellate Division of the Supreme Court, as the 19th Chief Justice of Bangladesh on September 26, 2010. The lack of clarity of Article 95 of the constitution, which entrusts the president with the power to appoint the chief justice (the most prestigious position in the country's judicial system) but falls short of

explaining the consultation process for the appointment, leaves plenty of room for political maneuvering. It was alleged that, in selecting Haque, the president superseded two senior judges of the Appellate Division. The Supreme Court Bar Association (SCBA), headed by members affiliated with opposition parties, condemned the "supersession of the two judges senior to the newly appointed chief justice. They [the pro-opposition office-bearers] termed the appointment as politically motivated and added that it tarnished the image of the apex court."³³ Pro-government lawyers, however, hailed the president's decision.

The separation of the judiciary from the executive has not changed the practice of appointing additional judges to the High Court based on political considerations; some observers claim that the politicization of the judiciary begins at this stage. Article 98 of the constitution does give the president the power to appoint additional judges to the High Court Division when seats of additional judges are vacant, and it is alleged that successive AL and BNP governments have appointed party loyalists to these posts. For instance, the leaders of the SCBA protested the BNP decision to appoint 19 additional judges to the High Court Division in 2004, a move they argued was politically motivated. Similar questions were raised in early 2010 when the AL government appointed 17 additional judges to the High Court Division. Two of the newly appointed additional judges became the center of political controversy, which led to the refusal of the former chief justice to administer the oath to advocates Ruhul Quddus and M. Khasruzzaman.³⁴ Critics view political appointments as an attack on the independence of the country's judicial system, limiting its ability to rule against the executive in politically-controversial cases.³⁵

Moreover, the 2008 advent of a democratically-elected regime has not changed the country's longstanding tradition of appointing party-affiliated lawyers as public prosecutors.

Following the practices of the past, the AL government quickly replaced the entire group of public prosecutors with members or genuine supporters of the governing party, who allegedly devote much of their time to the protection and promotion of partisan political interests. According to a report published by the Asian Human Rights Commission, the political appointment of public prosecutors often ensures "that the judicial process serves the interest of the government as much as possible and perverts the course of justice."³⁶ A national household survey conducted between June 2009 and May 2010 identified the judiciary as the most corrupt service sector in the country. Corruption is pervasive throughout the judiciary, including in the High Court. Some 88 percent of people who turned to the judicial system became the victim of widespread corruption.³⁷ Corruption and partisan politics are two of the main reasons why people are often denied access to justice, as they do not have access to independent counsel and fair trials.

In 2009, the AL government began a massive plan to withdraw what it considered to be politically-motivated cases filed against politicians and others under the code of criminal procedure, regular penal code, and the Anti-Corruption Commission Act. A committee was set up under the leadership of Quamrul Islam, state minister for law, justice, and parliamentary affairs, to review applications for such cases.³⁸ As of March 2011, the committee had withdrawn some 4,687 cases, most of which involved members of the ruling party.³⁹ At its first meeting the committee dropped 12 corruption cases against Prime Minister Sheikh Hasina as well as other cases filed against senior party leaders, known party supporters, and their relatives. The committee has come under sharp criticism for reversing the significant inroads the caretaker government had made in targeting official corruption in favor of political considerations. For example, the committee has been reluctant to drop criminal charges filed against opposition party leaders and has refused to withdraw charges against journalists and human rights activists. This includes journalist Jahangir Alam Akash, whom the caretaker government reportedly falsely accused of protesting extrajudicial killings.

The armed forces' role in government came to a formal end with the December 2008 election, and the post-emergency civilian regime in Bangladesh seems to enjoy a great deal of autonomy vis-à-vis the military for the exercise of government authority. However, lack of effective oversight mechanisms,⁴⁰ involving both state and civil society associations, continue to make it challenging for the country to hold security forces accountable for their actions. Civilian bodies with a clear mandate for protecting ordinary citizens from institutional acts of violence and coercion are virtually nonexistent or nonfunctional in Bangladesh. The oversight bodies that exist, such as the judiciary through the penal code and civil courts, lack adequate power to monitor the arbitrary exercise of force by security sectors, including the military, police, and RAB. Civil society groups and the media also have difficulty ensuring that security forces respect basic human rights and freedoms. Governments often turn a blind eye to media reports and protests organized by credible, nonpartisan civil society associations that demand democratic control over the country's security forces, in part due to the ruling party's excessive reliance on security forces, especially RAB and police, to serve its parochial interests. The political use of law enforcement agencies coupled with political patronage of security officials have also negatively affected the ability of security forces to operate in a manner that is consistent with their constitutional mandate.⁴¹

In the last few years, the country has made very little progress in either enforcing property and contract rights or facilitating private economic activity by developing a reliable and effective legal system. The World Bank's Country Policy and Institutional Assessment (CPIA) rating gives Bangladesh a score of 3.0 on a 6-point scale in the property rights and rule-based governance category. Bangladesh also ranks poorly in the World Property Index, with only 20 points of a possible 1,000.⁴² The AL government has taken some measures to amend the Vested Property

Act, which traditionally allowed the state to unjustly confiscate property from individuals deemed enemies of the state.⁴³ There have been some reports of Bengali-speaking settlers encroaching on tribal lands in the CHT, though land seizure does not appear to be a problem elsewhere in the country.⁴⁴

ANTICORRUPTION AND TRANSPARENCY

Bangladesh's struggle to encourage pro-poor economic growth continues as corruption remains pervasive throughout government and society. Public and private sector institutions suffer from corrupt practices that severely undermine the prospect for fostering a culture of good governance. Corruption is so widespread that most people now view it as a fait accompli. This was not the case after the military takeover in January 2007, when the military-backed caretaker government began prosecuting corrupt politicians, high-level government officials, and business magnates. The caretaker government also embarked on a massive reform agenda aimed at making government bureaucracies more efficient, accountable, and transparent. Although critics viewed the caretaker government's institutional reform program as part of the military's standard populist narrative of patriotism and nationalism, it took concrete measures to empower the Anti-Corruption Commission (ACC) to pursue corrupt organizations, institutions, and individuals and obtain convictions against them. However, the country's return to electoral democracy changed the political landscape in such a way that institutional reform in general, and tackling rampant corruption in particular, was no longer a top priority. The AL government's focus seems to have shifted to regime consolidation rather than strengthening of public institutions. As noted above, the Sheikh Hasina administration moved to withdraw a large number of corruption cases filed by the ACC against the party's senior leadership, making it evident that curbing high-level corruption is not the government's immediate concern.

The office of the comptroller and auditor general of Bangladesh has not yet emerged as an independent institution capable of holding government leaders and institutions accountable for the inappropriate use of public funds. It does not have a fully developed complaint mechanism to deal with allegations of the misuse of public resources. Although civil servants and elected officials, including the president and prime minister, are required to declare their income and assets, no real effort is made to obtain objective and fact-based information to ensure the empirical validity of the disclosures. The Mahbubur Rahman case discussed above highlights the challenges faced by journalists in serving as reliable sources of information on public sector corruption.

On April 26, 2010, the cabinet approved a set of proposals for amending the anticorruption law designed to bring the ACC under the political control of the government. The ACC will now report to the president (who acts almost entirely under advisement of the prime minister) and will need government permission before it files a case against any government official. Provisions are also made for the government to appoint the ACC's secretary. Initiating and filing a corruption case will be much more challenging due to the stipulation that filing a false case may land an official in jail for five years. Political observers and the international donor community, including the EU and the World Bank, believe that such political measures to control the ACC will significantly weaken it. For instance, Iftekhar Zaman, executive director of Transparency International Bangladesh, claimed that the "ACC's accountability will be affected by political influence if it is made accountable to the president. This is because in parliamentary democracy, the president acts on all the issues in consultation with the Prime Minister."⁴⁵ The World Bank commented, "Bangladesh government's move to amend the Anti-Corruption Commission Act will weaken the independent anti-graft watchdog and undermine its ability to investigate corruption."⁴⁶

The weakening of the ACC could also negatively impact the country's ability to create a competitive market and favorable investment climate. Civil bureaucrats and political officeholders are likely to take unfair advantage of the country's cumbersome license regime, which requires companies to go through a rather lengthy and costly process of government approval. In the absence of functional and developed e-governance (which is currently under development with the support of UNDP), business groups will have to make arrangements for face-to-face encounters with public officials that will almost inevitably facilitate bribe solicitation.⁴⁷ Corrupt officials will also find it relatively easier to maintain the country's dysfunctional public contracting culture, in which "reports of corruption in the awarding of public and private tenders are frequent. Collusion between political leaders and bureaucrats in public contracting occurs in order to favor particular bidders."⁴⁸

Bangladesh still has a relatively large number of state-owned enterprises (SOEs) in such sectors as agriculture, finance, industry, power, gas, transportation, trade, and water. Despite recent efforts to improve their governance structures, many of the SOEs are poorly managed, inadequately monitored, and badly regulated. The absence of effective oversight mechanisms, including performance assessment systems, makes it easier for both managers and boards of directors to use SOEs to their own personal gain.

In a significant effort to increase transparency, the government passed a Right to Information Act in July 2009 that mandates public access to all information held by public bodies. The act simplifies the fees levied for acquiring information and grants greater independence to the Information Commission, which oversees implementation and promotes the law. The Access to Information Program (A2I) is designed to connect citizens and public sector institutions, which will set the stage for Bangladesh to introduce procedures for access to government information.

Ordinary citizens and business organizations currently face a huge challenge in finding reliable, timely, and comprehensive data on government documents, programs, and activities such as the government's financial operations, its procurement practices, and public sector accounts.⁴⁹ Parliamentary committees and civilian watchdog groups remain weak or ineffective in demanding transparency and greater accountability in government activities. In an encouraging move, Prime Minister Sheikh Hasina's "Digital Bangladesh" program theoretically opens up some concrete possibilities for increased transparency; while the current emphasis of this program is on boosting the use of information and communication technology in order to create a knowledge-based economy, the concept of "Digital Bangladesh" has great potential for creating new structures through which the government can make information on its policies and functions, including fiscal and economic decisions, readily available to the public at large.⁵⁰ The country has also made some initial progress in building accounting and fiscal reporting standards set by the International Monetary Fund. However, much needs to be done to improve transparency in the country's fiscal affairs.

Recommendations

- Electoral spending limits on political parties and election candidates should be strictly enforced. The BEC must be equipped with adequate resources to audit election expenses as well as to prosecute all violators regardless of their party affiliation and social status.
- A new empirically-driven performance evaluation system should be introduced to end political patronization of civil administration.
- Immediate actions need to be taken to criminalize all forms of custodial torture. This may include repealing Article 46 of the Constitution as well as Sections 132 and 197 of the Code of Criminal Procedure.
- A Supreme Judicial Commission should be created to deal with the appointment of judges. The commission should be entrusted with the responsibility for both identifying and recommending suitable individuals to the president.
- Recent decisions to amend the Anti-Corruption Commission Act designed to weaken the power of the Anti-Corruption Commission must be reversed to ensure the ACC's complete political independence. The ACC should be made accountable to a special parliamentary committee representative of different political parties with members known for their integrity.
- The government must take actions, including further strengthening the office of the comptroller and auditor general, to increase transparency in public procurement, financial management, and public expenditures.

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