

**Background Paper for the 7<sup>th</sup> Five Year Plan of the Government of Bangladesh:  
*Governance and Justice***

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DRAFT NOT FOR CIRCULATION

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## Executive Summary

**The purpose of this paper is to provide guidance to the 7<sup>th</sup> Five Year Plan (FYP) on governance, including justice.** Governance has become as a major public priority in Bangladesh. Strengthening the institutional framework for sustainable development at all levels has emerged as one of the crucial areas to be addressed in the 7<sup>th</sup> FYP.

**The Government of Bangladesh has stated its goal of becoming a Middle Income Country as part of its Vision 2021.** In order to provide guidance regarding governance, the paper compares a variety of governance indicators for Bangladesh and two groups of countries: Low Income Countries and lower Middle Income Countries. Lower Middle Income Countries are those with between \$1,045 and \$4,125 GNI per capita, while Low Income Countries have below \$1,045 GNI per capita. In 2013, Bangladesh had \$900 GNI per capita.

**Table 0-1 Comparison of Governance Indicators (WGI) between Bangladesh and Income Groups in 2013**

<i>Worldwide Governance Indicator in 2013</i>	<i>Lower Middle Income Countries</i>	<i>Low Income Countries</i>
Control of Corruption	<b>Below</b>	<b>Above</b>
Government Effectiveness	<b>Below</b>	<b>Above</b>
Political Stability & Absence of Violence	<b>Below</b>	<b>Below</b>
Rule of Law	<b>Below</b>	<b>Above</b>
Voice and Accountability	<b>Below</b>	<b>Above</b>
Regulatory Quality	<b>Below</b>	<b>Below</b>

*Source:* Author analysis of Worldwide Governance Indicators, 2014.

**Overall, for four of the six WGI indicators, Bangladesh falls above the average for Low Income Countries in 2013, but none of the indicators for Bangladesh exceeds the average for lower Middle Income Countries.** As seen in Table 0-1, Control of Corruption in Bangladesh rates just above the average for Low Income Countries, but far below lower Middle Income countries. On Government Effectiveness, Bangladesh rates above the average for Lower Income Countries, but still below the average for lower Middle Income Countries. The indicators for Political Stability and the Absence of Violence show that Bangladesh rate far below the average for both the Low Income Countries and the lower Middle Income Countries. The measure for the Rule of Law shows erratic performance in Bangladesh that falls between the average for Low Income Countries and lower Middle Income Countries. Voice and Accountability is the only indicator in which Bangladesh scores close to the average of lower Middle Income Countries. Regulatory Quality is the second of the indicators where Bangladesh measures not just below the rating of lower Middle Income Countries, but also slightly below the rate of Low Income countries. In a comparison of the Corruption Perceptions Index between South Asian countries, Bangladesh shows steady improvement over the last decade, though it still rates second from the bottom in the region. As such, in order to look like a Middle Income Country in terms of governance, Bangladesh must improve along all fronts. The challenge is greatest in terms of Regulatory Quality and Political

Stability & the Absence of Violence. This governance paper does not focus on these two aspects, however, which are mainly sectoral challenges.

**In order to track government performance and actions under the 6<sup>th</sup> Five Year Plan, the plan presented a set of governance results indicators.** The indicators under the 6<sup>th</sup> Five Year Plan changed between the original plan and the Mid Term Review. According to the Mid Term Review, the GoB exhibited mixed performance in the governance outcome indicators, as seen in Table 0-2.

**Table 0-2 Performance under the Indicators of the Mid Term Review of the 6<sup>th</sup> Five Year Plan**

<b>Indicators</b>	<b>Base-line Year</b>	<b>Figures (FY13)</b>
Average Number of Bills Passed per year	37 8 <sup>th</sup> National Parliament	54 9 <sup>th</sup> National Parliament
Average Parliamentary Attendance	57% 8 <sup>th</sup> National Parliament	58% 9 <sup>th</sup> National Parliament {First Fifteen Session}
Proportion of Elected Representatives Female	2% 8 <sup>th</sup> National Parliament	6% 9 <sup>th</sup> National Parliament
% of Gross NPL in Public Banks	14.08	28.8 (Sept 2013)
Income Tax as a % GDP	2.9	3.4 (2013)
Case Disposal Rate {Civil} (%)	7.91 (2011)	8.23 (2012)
Case Disposal Rate {Criminal} (%)	42.98 (2011)	42.33 (2012)
Weighted Average National Disposal Rate (%)	33.34 (2011)	32.24 (2012)
Case backlogs in the formal justice system (lower and upper judiciary)	1.8 million (2010)	2.7 million (May 2013)

*Source:* Legal office of the Parliament, Bangladesh Bank and Ministry of Finance, Supreme Court, MoLJPA, as presented in the Mid Term Review, 2014.

**The 6<sup>th</sup> FYP presents 72 different actions in 14 different categories for the GoB to undertake as relates to governance.** In order to plan for the future, our team looked to the past to determine the success of the plan in driving government initiatives related to governance. In this exercise, our team rated each activity as 1. Completed, 2. Partly Completed and 3. Not Completed. The sources included government and other expert sources, with information gathered through interviews.

**Table 0-3 Intended and Actual Actions for Governance under the 6<sup>th</sup> Five Year Plan**

		<i>Total Activities</i>	<i>Fully Completed</i>	<i>Partly Completed</i>	<i>Not Completed</i>	<i>% Fully Completed</i>
1.	<b>Making parliamentary process effective</b>	3	0	0	3	0.0%
2.	<b>Controlling corruption</b>	3	0	2	1	0.0%
3.	<b>Strengthening the Election Commission</b>	1	1	0	0	100.0%
4.	<b>Judicial Reforms</b>	11	1	6	4	9.1%
5.	<b>Promoting E-governance</b>	7	5	2	0	71.4%
6.	<b>Improving project implementation capacity</b>	8	1	5	2	12.5%
7.	<b>Improving sectoral governance</b>	2	0	1	1	0.0%
8.	<b>Enhancing transparency and access to information</b>	5	0	5	0	0.0%
9.	<b>Public administration capacity development</b>	9	0	5	4	0.0%
10.	<b>Devolution to local governments</b>	6	0	5	1	0.0%
11.	<b>Reforming planning and budgetary processes</b>	6	0	2	4	0.0%
12.	<b>M and E</b>	7	4	2	1	57.1%
13.	<b>Results framework</b>	3	1	2	0	33.3%
14.	<b>Third party monitoring of the Sixth Five Year Plan</b>	1	0	1	0	0.0%
	<b>TOTAL</b>	<b>72</b>	<b>13</b>	<b>38</b>	<b>21</b>	<b>18.1%</b>

Source: Author calculations, 2014.

**The completion rate to date for the total number of governance actions in the 6<sup>th</sup> FYP is rather low.** As seen in Table 0-3, the data suggest that, while government has undertaken a number of governance initiatives, the plan has not directed many of them; the 7<sup>th</sup> FYP should explicitly address this challenge. One important step is to focus by reducing both the number of categories and the number of activities in the 7<sup>th</sup> FYP. Gender represents a key theme that is largely neglected in the 6<sup>th</sup> FYP and should be strongly addressed in the 7<sup>th</sup> FYP.

### **Proposed Activities for the 7th Five-Year Plan:**

#### **Area 1: Justice**

##### **Formal Justice Institutions**

Several activities from previous FYP should still be completed during the period of the 7<sup>th</sup> FYP, with the first slightly revised:

1. Establish a clear, transparent criteria and process for the recruitment of Supreme Court judges; the salary scale of lower and higher court judges should reflect the South Asian regional norm.
2. Introduce a computerized court case recording and tracking system and make the information accessible to citizens through websites.

Other activities for the 7<sup>th</sup> FYP include the following:

1. Establish “Case Management & Coordination Committees” for civil and criminal matters at the district level. Such a mechanism will emphasize the working of the ‘system’ rather than just being concerned with the performance of ‘individual’ agencies.
2. Create a new justice sector-wide committee, which will provide a national coordination mechanism including the senior-most actors in the justice sector in order to instill ownership from different stakeholders.
3. Bar Council should take effective steps to sensitize lawyers and complete some reform initiatives ensuring the accountability of the lawyers and also to maintain integrity.
4. Violence against women should become a key focus of local justice institutions, requiring greater investment in capacity at the district and upazila level, as well as the effectiveness of one-stop crisis centers where VAW victims are taken, and awareness of the Domestic Violence Act (2010) among both local officials and the public.

### **Semi-Formal and Informal Justice Institutions**

1. Scaling-up and strengthening of the village courts – formulation and implementation of a national strategy together with an investment plan to ensure greater access to the disadvantaged sections of the population
2. Encourage citizens, particularly in rural areas, to avail NGO-mediated shalish in order to resolve disputes without resorting to formal justice institutions.

### **Access To Justice**

1. National Legal Aid Services Organization (NLASO) capacity increased, through management systems and procedures, as well as human resources, particularly in supporting the poor and women
2. NLASO to develop a strategy of engaging with NGOs and other government agencies to promote access to justice; through this partnership, they will set targets for jointly providing quality legal aid, especially for the poor, women and marginalized, with each agency transparently reporting on their own activities
3. The NLASO should appoint District Legal Aid Officers in all 64 districts.
4. Create a legal basis for ADR, building on the current legislation, to establish an extra tier of mediation under ADR
5. Further capacity building for ADR at the local level regarding mediation, as well as public awareness

## **Area 2: Building Government Administrative Capacity**

### **Public Administration**

1. Civil Service Act: the enactment of a Civil Service Act is a critical first step for achieving Vision 2021 as outlined in the Perspective Plan, providing the foundation for removing excessive partisan influence in the appointment of civil servants. Once the Public Employee Act is passed, it should be fully implemented. The act should include the following:
  - a. Developing greater opportunities for on-the-job training and classroom-based training with linkage between training and criteria for career advancement.

- b. Revising the civil servants' code of conduct to address issues of corruption, accountability and performance, including consideration of an effective asset declaration regime.
  - c. Developing a clear terms of reference for civil servants, thus promoting accountability.
  - d. Reforming civil servants' performance evaluation through emphasis on establishing clearer annual work objectives and performance on these objectives and greater differentiation of annual evaluations and having promotion depend more directly on performance evaluations.
  - e. Revising the civil service payment system to allow for less compression of pay and retention of persons with unusual, needed skills, as well as streamlining the system of benefits.
  - f. Institutionalizing the citizen's charter to provide regular feedback on public services.
  - g. As a new area, increase the quota for female recruitment into the civil service, especially the higher levels of the civil service, also ensuring their participation in the decisions regarding recruitment. Generally, undertake a thorough review of the quota system in order to promote merit-based recruitment.
  - h. Drafting rules for recruitment to allow for increased recruitment laterally into mid-level and higher-level civil service positions, modernization of testing for new recruits; this should be properly balanced against the incentives of highly qualified new recruits.
2. Reform the Public Service Commission: A number of steps are needed to prevent political influence in the recruitment of civil servants; the GoB should establish transparent recruitment process for appointees, have financial autonomy in terms of its budget, and make itself more transparent to the public in its activities.

New initiatives include the following:

1. Performance management for ministries: Integrating performance measures for ministries that allow government to set targets and track performance against those targets will prove critical for guiding the work of civil servants. Such targets should in part be based on the activities laid out in the Five Year Plan. The mechanisms used by the Government of India may provide guidance in this regard.
2. Citizen feedback/ public grievance redress: The Government should establish mechanisms for citizen feedback regarding government performance. These measures will provide citizens with the opportunity to provide information to senior management on front line service providers. If implemented in a relevant, efficient and responsive manner, it can represent a powerful tool for improving government performance at the local level. The mechanisms used by the Government of India may again provide guidance in this regard.
3. Transparency of vacancy and recruitment information, especially for women: Each ministry should provide information on civil servant positions, vacancies, recruitment, etc., including the amount of time to create the post and the date in which the post became vacant. MoHFW has provided much of this vacancy information online, though it is not updated. Similarly, tracking recruitment according to gender, with publicly available information, will allow accountability regarding the gender quotas, and encourage efforts to recruit, retain and even promote women. A more complete database

for government ministries is needed, especially in those ministries that face extensive vacancies and challenges in finding qualified recruits, particularly women.

## **Public Financial Management**

1. Public Investment Management, particularly under ADP. Three steps remain from the 6<sup>th</sup> Five Year Plan and have yet to be implemented, with suggested language being the following:
  - a. Strengthen the project selection mechanism that 1. Allows only well-design projects with the highest chance of resulting in high economic return should be selected based on long-term affordability and 2. Limits the number of new projects entering the ADP
  - b. Strengthen project design and appraisal capacities. One activity is that all projects that go to the Planning Commission must provide a proper appraisal report along with sound analysis that shows the consistency and relevance of the project to sectoral/ economy-wide objectives, strategies and policies. The appraisal report will do proper economic and financial analysis of the proposed project, do gender and environmental analysis as relevant, and show an implementation plan while providing clear evidence of implementation capacity.
  - c. Rationalize the existing ADP portfolio. One activity is that the Government will do a proper review of all approved and active projects in the pipeline in cooperation with the line Ministries. The review of this portfolio stock will seek to clean out dormant or irrelevant projects and help line ministries close the projects that are facing implementation problems through restructuring or through other relevant interventions. The results of this exercise will be shared with the cabinet for endorsement and approval.
2. Financial Management
  - a. Introduce a modern Financial Management Information System (FMIS) capable of producing timely, comprehensive and reliable financial statements in line with international accounting and reporting standards (cash IPSAS, GFSM 2001)<sup>1</sup>.
  - b. Creation of a more comprehensive, centralized Treasury Single Account linked to FMIS
  - c. Formal approval and introduction of a GFSM compliant Chart of Accounts. This has been done and submitted for approval, but requires the commitment of policy makers.
3. MTBF: The GoB should follow through on implementation of the MTBF through:
  - a. Removal of demarcation between non-development and development budgets and gradual joint programming of capital and recurrent spending.
  - b. Institutionalization of a more strategic and policy based approach to budgeting, including through further rollout of Medium Term Strategy and Business Plans.

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<sup>1</sup>Note: This may or may not be IBAS ++. Since there has been some work done, it is an obvious starting point, but in many cases around the world bespoke systems have taken a long time to deliver the expected results. The existence of commercial off-the-shelf products as well as the possibility of a customized open source solution should be explored before further investments in IBAS ++. It is critical that there is greater exposure of senior policy makers in the government to (a) the extent of the “problem” with the current IBAs and IBAS++ proposals, and the range of options available and indeed being pursued around the world to solve these problems.



- c. Further development of line ministry FBEs<sup>2</sup> to prioritize spending based on available fiscal space.
4. Budget and budget execution transparency:
    - a. Publication of a citizens' budget immediately after the budget speech
    - b. Greater transparency of public finance data in user-friendly and editable formats, such as through an Open Data Portal.
  5. Audit systems:
    - a. The GoB should make all recent audit reports public on its website in a user friendly and accessible format, as well as clearly indicate how these audits have been followed up, particularly in holding the officials involved accountable.
    - b. Comptroller and Auditor-General is made a truly independent body with appropriate budget discretion and authority over human resources and a separate audit cadre

### **Area 3: Representation, Participation and Accountability RTI/ Access to Information**

1. IC will:
  - a. Increase its ability to track data at different levels (national, district & upazila) on RTI applications, responses, appeals and decisions
  - b. Enhance proactive disclosure through the adoption of proactive disclosure policies by different ministries, particularly those that enjoy a high level of government-citizen interface
  - c. Undertake an audience (e.g., farmers, women, students people with disabilities) survey & analysis to identify a target-group specific communication strategy
  - d. Establish partnerships with civil society organizations and media to promote public awareness of RTI Act
2. Cabinet Division's Coordination and Reform Unit will:
  - a. Facilitate RTI strategic partnerships among different stakeholders (e.g., IC, Ministry of Information, different line Ministries, District administration, civil society organizations & private sector entities)
  - b. Promote capacity building of civil servants, particularly the Designated Officers, through traditional and on-line means
  - c. Initiate legislative & policy changes in order to establish record management systems among Government agencies in relation to the RTI Act

### **Enhancing Integrity**

Previous activities should be renewed in the 7<sup>th</sup> FYP include:

1. Anti-Corruption Commission will be put on a more sustainable footing by providing it with clear independence to carry out investigations and prosecute
2. Implement institutional capacity building for the ACC and develop the professional skills

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<sup>2</sup>Credible Forward Baseline Estimates (FBEs) are still missing in Bangladesh. FBEs are a crucial design feature of a well-functioning MTBF, as they provide a baseline for spending estimates so that fiscal space can be estimated and spending priorities made in line with the top-down budget system.

- of the ACC officials in combating and preventing corruption
3. The Government will initiate a sustained campaign to create public awareness and education in preventive measures, creating the right conditions for the public sector to enhance public service delivery

Additional activities include the following:

1. Develop anti-corruption strategies for critical sectors, including an implementation plan that may include the creation of anti-corruption cells in every government department
2. Implement the whistleblowers law
3. Review and strengthen the criteria and process of appointments of Chairmen and members of various constitutional and statutory commissions, such as PSC, ACC, HRC & ECB
4. Further expand procurement initiatives including e-Procurement and PROMIS: e-Procurement to be rolled out in more agencies (current plans expand to 4, and might increase to 8 by the end of the FYP period), and IMED to further expand the online procurement performance monitoring system (PROMIS) (again, current plans are for 4 and might increase to 8 by the end of the FYP period).

### **Parliamentary Oversight**

Actions from the 6<sup>th</sup> FYP to make the parliamentary process effective that should be implemented in the 7th FYP that include the following:

1. Increasing the number of hearings open to the public, particularly of important budgetary committees such as the Public Accounts committee
2. Promoting standards for policy debate, in terms of allowing time and space for parliament (and if possible experts and other stakeholders such as established think tanks) to give opinions on policies, with the public generally informed regarding these processes

Newly proposed activities include the following:

1. Develop mechanisms to ensure timely responses to recommendations from the Public Accounts Committee, and provide easily accessible and comprehensible data for the public, including a progress report from the PAC
2. Build on the existing capacity of the Parliamentary Secretariat, and ensure effective implementation of the Parliament Secretariat Act 1994 & Rules

### **Civil Society**

This document does not provide any new set of recommendations for Civil Society, though it reiterates what the Perspective Plan and the Sixth Five Year plan emphasized.

The perspective plan stated that –*“The implementation of the Perspective Plan envisages the full commitment of will, skill, and resources from all stakeholders to developing the nation into a middle-income country by 2021. The government will make the long-term perspective a central element of the decision making process and service culture. But the government alone cannot achieve the Vision. It will have to be a collective effort in which the private sector, civil society, and all other stakeholders will share responsibility to reshape the nation’s future. The consultative process in formulating the Plan must continue throughout the implementation holding Vision 2021 not as a destination in itself*

*but a journey. The Plan will no doubt inspire great vision but the challenge is not to let it fall short of expectations due to implementation failures.”*

The perspective plan also emphasizes the role of CSOs in implementing development agenda at the grassroots – *“There is also an appropriate role for civil society and NGOs in supplementing and promoting development at the grassroots and ensuring that the fruits of development are equitably shared. The civil society organizations can discharge this role by coordinating their programmes with the national policy framework and acting in a fully transparent and accountable manner.”*

In the Sixth Five Year Plan the government furthermore put emphasis on inclusion of CSOs in implementing various development agendas including child labor, social protection, food security, among others. The document also stated the importance of integral approach to ensure the implementation of the plan.

### **A Special Section on Human Rights:**

The following broad elements need to be addressed at the **policy level**:

1. Undertake an objective assessment of the current human rights situation through a multi-stakeholder, participatory approach involving civil society, human rights bodies and the government to serve as the foundation for designing policies and action plans with a human rights based orientation and to ensure legitimacy and ownership of the process and outcome.
2. Invest in raising awareness, building capacity and convincing concerned stakeholders within the government about the benefits of reform.
3. Create an oversight mechanism to monitor the successful implementation of public policies with a human rights based approach.
4. Create a culture of human rights by raising public awareness of enforceability of rights through formal or informal education.

On a more **operational level**, the following proposals may be considered:

1. There is a need to decentralize the application of the writ jurisdiction as envisaged in the Constitution in order to facilitate enforcement of fundamental rights by the common man.
2. The law regulating the National Human Rights Commission contains provisions that essentially limit the independence of the Commission’s power of investigation.
3. Initiatives should be undertaken to link demand and supply activities, particularly from the perspective of vulnerable groups’ (e.g., women, children, minorities, indigenous communities) ability to access information and claim rights through formal justice systems, and the capacity of formal mechanisms to deliver appropriate services.
4. NHRC should be more strengthened. The current legal provisions should be further analyzed.

**The proposed targets under the draft results framework for the 7<sup>th</sup> FYP are the following:**

**Table 0-4 Proposed Indicator Targets for Governance in the 7<sup>th</sup> Five Year Plan**

<b>Indicator</b>	<b>Most Recent</b>	<b>Target (2020)</b>
# RTI requests with a response from Government	11,000 (2013)	14,000
# cases prosecuted by ACC	TBD (2013)	TBD
Establish and apply Civil Service Act	No	Yes
Average percentage cost overrun for ADP projects completed	TBD (FY 14)	15%
For PAC recommendations based on OCAG audits, % of funds returned and adjusted	37.1% (9 <sup>th</sup> Parliament)	50.0%
Case backlog	2,861,003 (2013)	2,800,000
# of legal aid cases, especially for the poor, marginalized and women	19,000 (2013)	35,000

**The GoB must seek out methods to ensure that the various activities are completed.**

One method is to institute a system of performance management using the indicators in the 7<sup>th</sup> FYP to provide clear performance measures for ministries. Key to this system is to not only establish a set of indicators, but to develop a system to hold ministries accountable for achieving results.

## I. Introduction

**The purpose of the paper is to provide background information to the Government of Bangladesh to develop the 7<sup>th</sup> Five Year Plan (FYP) on governance, justice and human rights.** The paper therefore identifies actions to be taken by the Government of Bangladesh (GoB) to be implemented during the 7th FYP period.<sup>3</sup> The paper also includes an overview of governance in Bangladesh and an assessment of governance actions in the 6<sup>th</sup> Five Year Plan period.

**Strengthening the institutional framework for sustainable development at all levels has emerged as one of the crucial areas to be addressed in the 7<sup>th</sup> FYP.** According to public perception surveys, governance and governance related issues are a major public priority (Asia Foundation/ The Daily Star, 2013; IGS, 2010).<sup>4</sup> Institutions are not stand-alone entities. They interact with, affect and are affected by other organizations, agencies and institutions along the same levels and across different scales (from global to local). The consequences of this interplay and how to manage it for effective and coherent governance is a major agenda item for policy recommendations.

**Focusing on governance and justice, including democratic governance, is critical for development.** Democracy has an intrinsic value for development, particularly in regards to the participation of citizens in decisions that affect their lives, an idea that is described by Amartya Sen in his seminal work, *Development as Freedom*.<sup>5</sup> Democratic governance also has a functional value for achieving development outcomes, as national goals can only be achieved if institutions work. Direct and indirect participation of citizens can help public institutions achieve these goals, as they hold them accountable and provide important local information (World Bank, 2004).

**Bangladesh has made progress on a number of fronts in governance, but much work remains.** The achievements on governance activities under the 6<sup>th</sup> Five Year Plan are described in this paper. Female representation in Parliament, the establishment of the Information Commission and the Anti-Corruption Commission, represent notable progress. However, these institutions require increased efforts, along with a number of other necessary reforms and investments needed to improve governance. The analysis in

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<sup>3</sup> To do this exercise, the paper pulls heavily on the Perspective Plan of Bangladesh. However, the overall vision for this plan is not well defined and measurable as relates to governance, partly due to the nature of governance. As a result, in the future, our team recommends further work in the overall vision for improving governance in Bangladesh.

<sup>4</sup> While public perception surveys do not specifically measure governance, they do emphasize the public desire for improvement of public services in such areas as electricity and water – as well as continued improvement in health and education, and the reduction of corruption. The improvement of public services requires a focus on governance in those sectors.

<sup>5</sup> "the opportunities that people have to determine who should govern and on what principles, and also include the possibility to scrutinize and criticize authorities, to have freedom of political expression and an uncensored press, to enjoy the freedom to choose between different political parties, and so on. They include . . . opportunities of political dialogue, dissent and critique as well as voting rights and participatory selection of legislators and executives."

the paper suggests that progress in governance is needed in order to achieve Middle Income Status

**The paper proceeds as follows.** Section 2 presents the overall governance trends according to data such as the Worldwide Governance Indicators (WGI) and the Corruption Perceptions Index, and includes a comparison with Middle Income Countries. Section 3 provides an overview of intended and actual actions presented in the 6<sup>th</sup> Five Year Plan. Section 4 outlines recommended actions and indicators to be completed in the 7<sup>th</sup> Five Year Plan, including three areas: 1. Justice; 2. Building Government Administrative Capacity; and 3. Representation, Participation and Accountability. Section 5 discusses the Results Framework and potential steps to ensure the activities of the 7<sup>th</sup> FYP are completed.

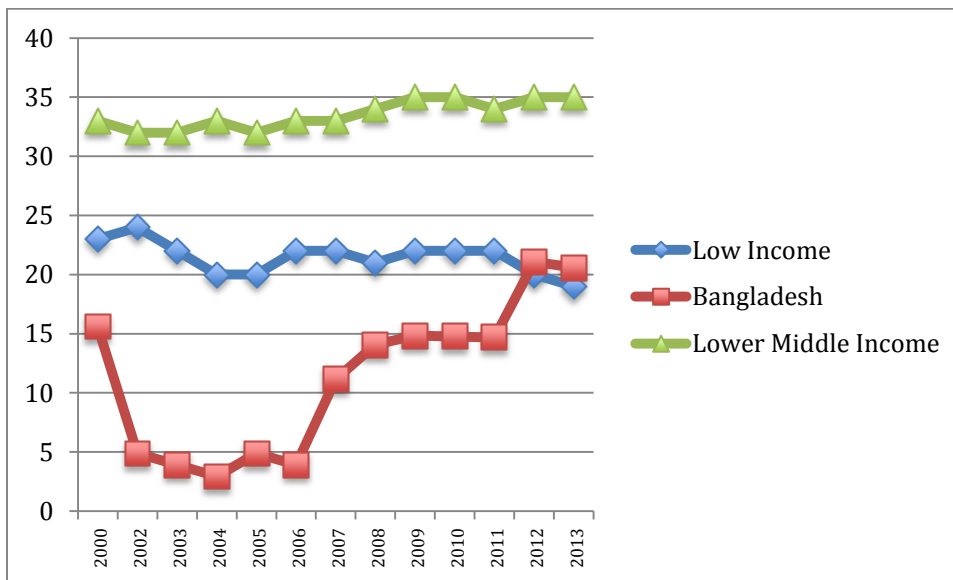
## II. Governance in Bangladesh Compared to Middle Income Countries

The Government of Bangladesh has stated its goal of becoming a Middle Income Country as part of its Vision 2021. This goal means that it should have crossed the Middle Income Country threshold of \$1,045 GNI per capita, and requires continued growth rates of over 7.5 percent per year.

In order to provide guidance regarding governance, this section compares a variety of governance indicators for Bangladesh and two groups of countries: Low Income Countries and lower Middle Income Countries. The indicators are from the Worldwide Governance Indicators of the World Bank, of which there are six: Control of Corruption, Government Effectiveness, Political Stability and Absence of Violence, Rule of Law, Voice and Accountability, and Regulatory Quality. There are complex arguments as to which of these areas is necessary for economic growth, which is the main determining factor for Middle Income Country status; this report does not go in depth in these, simply presenting an overall comparison between Bangladesh and these country groups.

Bangladesh currently falls in the Low Income Country category, but aspires to move into the Middle Income Country Category. Lower Middle Income Countries are those with between \$1,045 and \$4,125 GNI per capita, while Low Income Countries have below \$1,045 GNI per capita. In 2013, Bangladesh had \$900 GNI per capita.

Figure II-1 Control of Corruption in Bangladesh and Countries by Two Income Groups

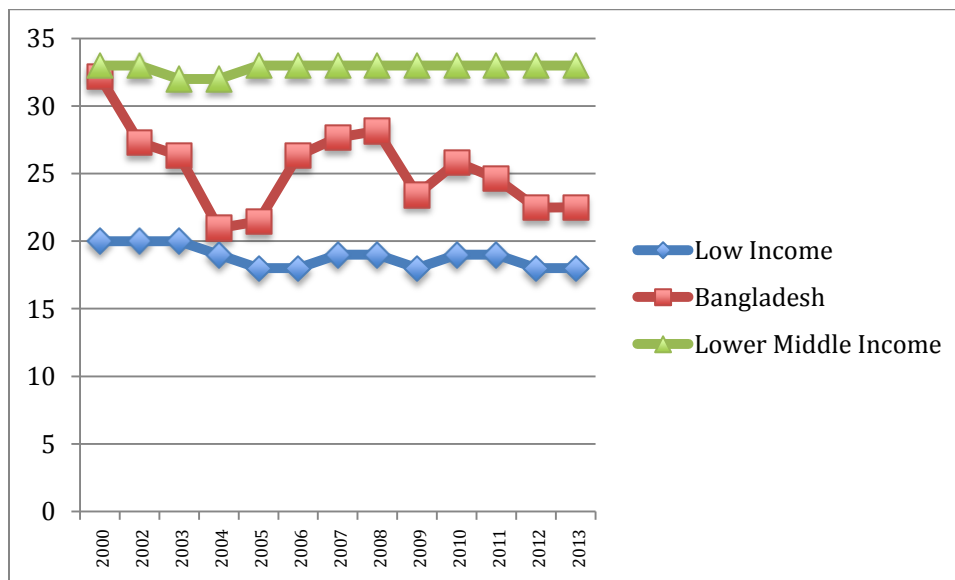


Source: Author analysis of Worldwide Governance Indicators, 2014.

Control of Corruption in Bangladesh rates just above the average for Low Income Countries, but far below lower Middle Income countries. The performance of

Bangladesh in implementing systems of control of corruption is presented in Figure II-1. There have been notable increases in recent years, particularly from 2006 to 2007, and again from 2011 to 2012, though this has slightly declined from 2012 to 2013. The improvements likely derive from the establishment of the Anti Corruption Commission (ACC) as well as the activities of the Office of the Comptroller and Auditor General and Public Accounts Committee. However, there is much improvement needed in order to catch up to the average level of Control of Corruption found in lower Middle Income Countries. To sustain these improvements may require further strong efforts from the GoB, particularly the ACC, who must establish their strength and independence.

Figure II-2 Government Effectiveness in Bangladesh and Countries by Two Income Groups

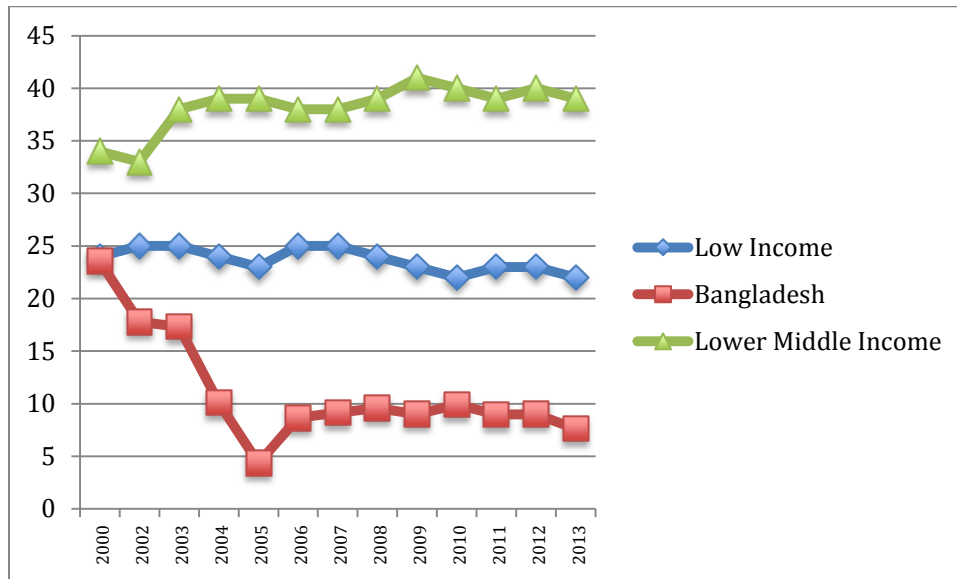


Source: Author analysis of Worldwide Governance Indicators, 2014.

**On Government Effectiveness, Bangladesh rates above the average for Lower Income Countries, but still below the average for lower Middle Income Countries.** The comparison is presented in Figure II-2. The trends are mixed, but generally have decline from a peak of 32.2 in 2000 to 22.5 in 2013. The politicization of the civil service and lack of comprehensive mechanisms to ensure meritocratic recruitment, postings and promotions in the civil service are likely areas that push the rating downward. The quota system deserves particular attention, as it influences the ability of the GoB to select the most qualified candidates; the system should also be analyzed in the context of promotions. The rating is notably above that of the average for the Low Income group at 18.0 in 2013, but requires much improvement to reach the lower Middle Income average at 33.0.



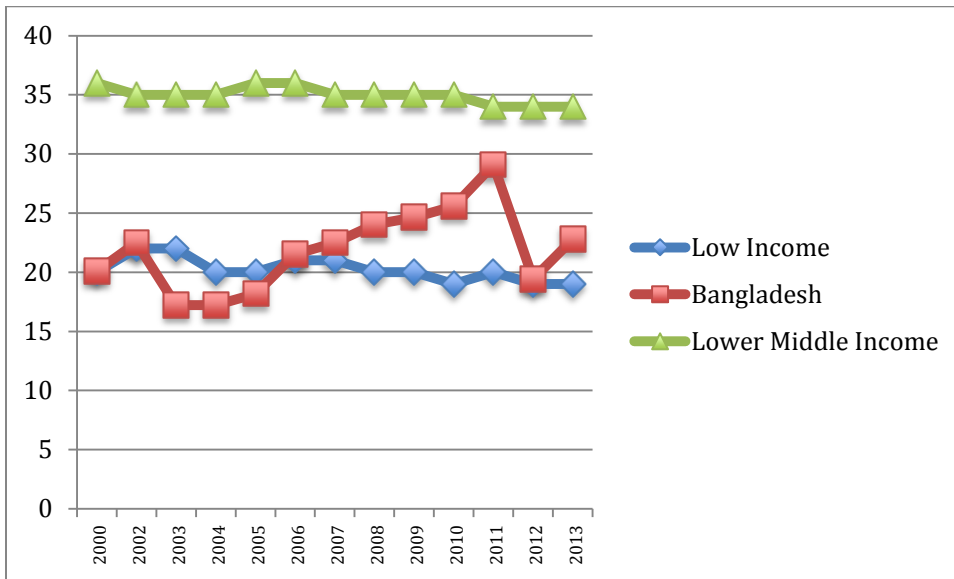
Figure II-3 Political Stability & Absence of Violence in Bangladesh and Countries by Two Income Groups



Source: Author analysis of Worldwide Governance Indicators, 2014.

**The indicators for Political Stability and the Absence of Violence show that Bangladesh rates far below the average for both the Low Income Countries and the lower Middle Income Countries.** Figure II-3 shows the trend for Bangladesh since 2000, with a decline from 23.6 in 2000 to 7.6 in 2013. Electoral violence and frequent hartals, along with the unpredictability at election time appear to have brought this indicator down. Finding a broad political consensus amongst political stakeholders and the population as a whole is one key element to raising this score. The frequent outbursts of political violence that continue to date are indicative of the lack of consensus thus far. The rating for 2013 is below that of Low Income Countries at 22, as well as lower Middle Income Countries at 39.

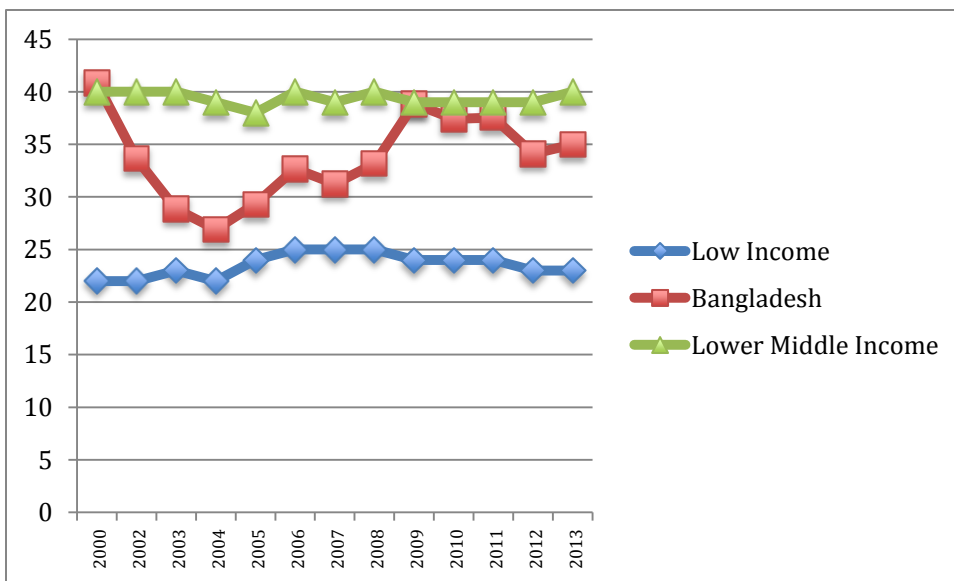
Figure II-4 Rule of Law in Bangladesh and Countries by Two Income Groups



Source: Author analysis of Worldwide Governance Indicators, 2014.

**The measure for the Rule of Law shows erratic performance in Bangladesh that falls between the average for Low Income Countries and lower Middle Income Countries.** Figure II-4 shows the general trends since 2000. Despite steady increase from 2003 to 2011, there has been a decline in the most recent years. The 2013 level of 22.8 is superior to the average for Low Income Countries at 19, but lower than the average Rule of Law measure for lower Middle Income Countries at 34.

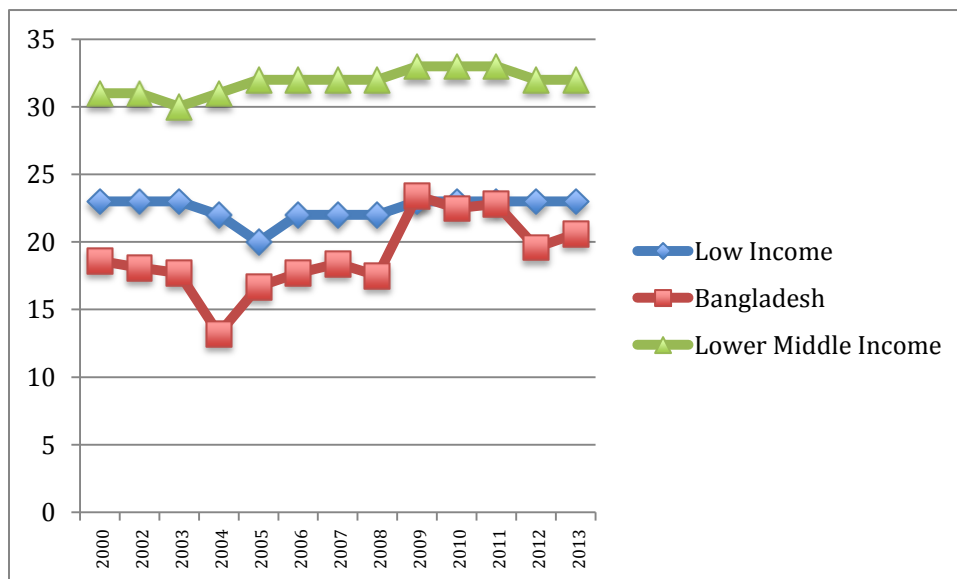
Figure II-5 Voice & Accountability in Bangladesh and Countries by Two Income Groups



Source: Author analysis of Worldwide Governance Indicators, 2014.

**Voice and Accountability is the only indicator in which Bangladesh scores close to the average of lower Middle Income Countries.** The trends are presented in Figure II-5. Performance has been mixed over the last decade, with a large decline from 2000 to 2004, and increases in the late 2000s, and a slight decrease in recent years. However, the overall positive performance in Bangladesh at a rate of 35 is close to that of lower Middle Income Countries, at 40. Such positive performance may be due to the integrity of the elections, especially those in 2009, in with the introduction of the voter ID cards, as well as the vibrant media in Bangladesh. It is unclear what implication the elections of January 2014 may have for this indicator, including the need for further political inclusiveness and trust between political actors.

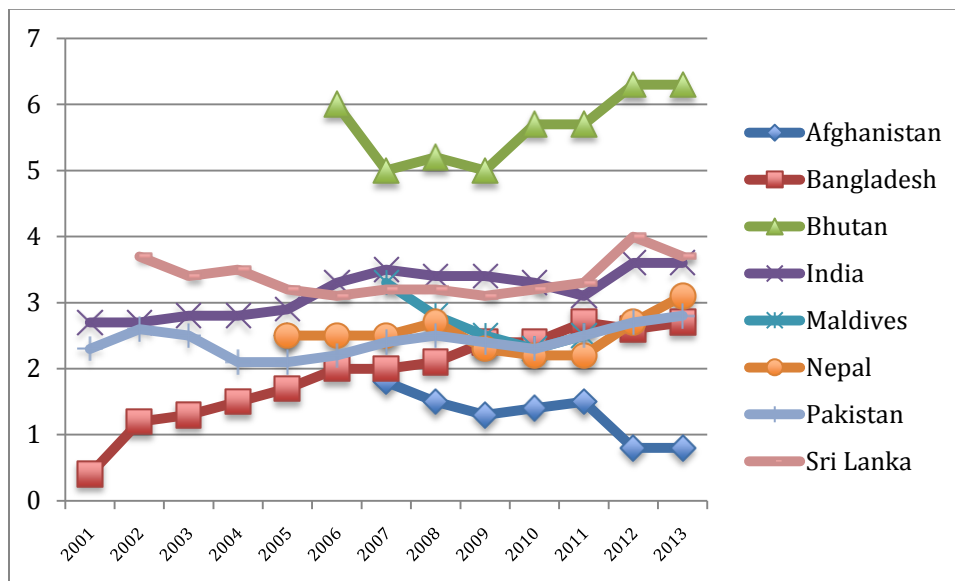
**Figure II-6 Regulatory Quality in Bangladesh and Countries by Two Income Groups**



Source: Author analysis of Worldwide Governance Indicators, 2014.

**Regulatory Quality is the second of the indicators where Bangladesh measures not just below the rating of lower Middle Income Countries, but also slightly below the rate of Low Income countries.** Figure II-6 presents the performance on this indicator since 2000, where Regulatory Quality primarily refers to the business and labor policies and regulations in place. Bangladesh showed slight improvement from 2009 to 2011, falling below those rates in 2013. Despite the relatively high growth rates over the last decade, the Regulatory Quality rating for Bangladesh is currently at 21 while the average for Low Income Countries is 23. Improvement on this indicator is needed in order for the government to outsource certain functions to the private sector, or to regulate the quality of the existing private sector, which is pervasive. For example, nearly half of all primary schools are not government primary schools, while nearly all secondary schools are non-government. Ensuring the quality of education in these schools is needed from government if it can do so effectively. Similarly, the GoB must ensure that business regulations are rationalized to serve a public purpose instead of making business unnecessarily complex.

Figure II-7 Corruption Perceptions Index in the South Asia Region



Source: Author analysis of CPI, 2014.

**In a comparison of the Corruption Perceptions Index between South Asian countries, Bangladesh shows steady improvement over the last decade, though it still rates second from the bottom in the region.** Figure II-7 presents this broadly recognized indicator for the eight countries in the South Asia region. Bangladesh scored 0.4 out of 10 in 2001, which increased to 2.7 in 2013, a substantial improvement over time. However, when compared with other South Asian countries, it rates a bit lower than Pakistan, at 2.8 in 2013, and substantially better than Afghanistan at 0.8. Such indicators suggest further efforts are needed, particularly by the ACC in its activities, as mentioned above.

**Overall, for four of the six WGI indicators, Bangladesh falls above the average for Low Income Countries in 2013, but none of the indicators for Bangladesh exceeds the average for lower Middle Income Countries.** Two of the six fall below the average for Low Income Countries – Regulatory Quality and Political Stability & the Absence of Violence. Meanwhile, for the CPI, Bangladesh has shown steady improvement since 2001, but still rates the second lowest in the region in 2013.

**As such, in order to look like a Middle Income Country in terms of governance, Bangladesh must improve along all fronts.** The challenge is greatest in terms of Regulatory Quality and Political Stability & the Absence of Violence. This governance paper does not focus on these two aspects, however. Regulatory quality is primarily a sectoral issue in areas such as business and labor regulation, and health and safety standards. The analysis suggests that sectors must therefore address this area. Also, Political Stability & the Absence of Violence relates primarily to the politics of the

country, which is outside the scope of this paper and requires an improved political settlement in Bangladesh among major political actors.

### III. Performance in Governance Indicators and Activities from the 6<sup>th</sup> Five Year Plan

#### Indicators in the 6<sup>th</sup> FYP

In order to track government performance and actions under the 6<sup>th</sup> Five Year Plan, the plan presented a set of governance results indicators. These indicators did not capture all activities included in the document. There were just six presented indicators, while the plan had fourteen areas with planned activities.

Table III-1 Governance Results Indicators under the Original 6<sup>th</sup> Five Year Plan

Governance Outcomes		Indicators	Baseline	Target 2011	Target 2015	Source
Democratic Governance		Number of ministry oversight hearings held by the Parliament	0 (2010)	TBD	TBD	TBC
Service Delivery	Good governance reforms institutionalized at all levels and institutional capacity of public institutions enhanced	% difference between actual primary expenditure and budgeted primary expenditure in real terms	9.6% (2010)	8%	5%	CAG
		% of contracts awarded within the initial bid validity period for key agencies (RHD, LGED, BWDB, REB)	30% (2010)	40%	60%	Agency's M & E Reports
		% of Local Government Institutions' share of public expenditures	0% (2010)	0.50%	2%	LG Annual Audits
Justice and Human Rights		Number of Case backlogs in the formal justice system (lower and upper judiciary)	1.8 million (2010)	TBD	TBD	Supreme court/ MLJPA
		Number of UPR agreed Human Right principles institutionalized in national policy frameworks	0	0	6	TBC

The indicators under the 6<sup>th</sup> Five Year Plan changed between the original plan and the Mid Term Review. The original plan focus was on democratic governance, service delivery and justice and human rights. However, the Mid Term Review replaced the emphasis on service delivery with economic governance. It also increased the number of indicators for both democratic governance and justice and human rights. According to the activities of the original 6<sup>th</sup>FYP, such a transformation is permitted, as “The results of the annual reviews will be shared with the cabinet and used to determine changes in plan goals, targets, strategies and policies as necessary...” The changes in the results framework did, however, suggest a shift in emphasis of the activities under the 6<sup>th</sup>FYP, given that three of nine new indicators focused on parliament, and four of the nine new indicators dealt with judicial case management, as opposed to one for each in the previous plan. The changes in the results framework also suggest that the government may require support in developing and tracking indicators.

**Table III-2 Revised Governance Results Indicators under the Mid Term Review of the 6<sup>th</sup> Five Year Plan**

		<b>Variables</b>	<b>Source</b>
<b>Democratic Governance</b>	Good governance reforms institutionalized at all levels and institutional capacity of public institutions enhanced	Proportion of the Female Elected Representatives	Legal Office Parliament
		Number of Bills Passed per Year	
Average Parliamentary Attendance		Legal Office Parliament	
<b>Economic Governance</b>		% of Gross NPL in Public Banks	Bangladesh Bank
		Income Tax as a % GDP	NBR
<b>Justice and Human Rights</b>		Weighted Average National Disposal Rate	Supreme Court Registry
		Case Disposal Rate {Criminal}	Supreme Court Registry
	Case Disposal Rate {Civil}	Supreme Court; MoLJPA	
	Case backlogs in the formal justice system (lower and upper judiciary)	Supreme Court; MoLJPA	

**According to the Mid Term Review, the GoB exhibited mixed performance in the governance outcome indicators.** The change in indicators is presented in Table III-3. Improvement was mainly found in the democratic governance indicators, in which the number of bills passed and the portion of elected female representatives increased markedly. Parliamentary attendance increased only slightly, from 57 percent to 58 percent. The percentage of non-performing loans increased from 14.08 to 28.8 percent in 2013, a significant increase over a relatively short period of time, while the percent of income tax of GDP improved from 2.9 in FY 2010 to 3.4 percent in 2013. The average case disposal rate overall decreased, even while the civil case disposal rate went up. The overall judicial case backlog increased from 1.8 million in 2010 to 2.7 million in 2013.

**Table III-3 Performance under the Indicators of the Mid Term Review of the 6<sup>th</sup> Five Year Plan**

<b>Indicators</b>	<b>Base-line Year</b>	<b>Figures (FY13)</b>
Average Number of Bills Passed per year	37 8 <sup>th</sup> National Parliament	54 9 <sup>th</sup> National Parliament
Average Parliamentary Attendance	57% 8 <sup>th</sup> National Parliament	58% 9 <sup>th</sup> National Parliament {First Fifteen Session}
Proportion of Elected Representatives Female	2% 8 <sup>th</sup> National Parliament	6% 9 <sup>th</sup> National Parliament
% of Gross NPL in Public Banks	14.08	28.8 (Sept 2013)
Income Tax as a % GDP	2.9	3.4 (2013)
Case Disposal Rate {Civil} (%)	7.91 (2011)	8.23 (2012)
Case Disposal Rate {Criminal} (%)	42.98 (2011)	42.33 (2012)
Weighted Average National Disposal Rate (%)	33.34 (2011)	32.24 (2012)
Case backlogs in the formal justice system (lower and upper judiciary)	1.8 million (2010)	2.7 million (May 2013)

*Source:* Legal office of the Parliament, Bangladesh Bank and Ministry of Finance, Supreme Court, MoLJPA, as presented in the Mid Term Review, 2014.

### **Activities in the 6<sup>th</sup> FYP**

**The 6<sup>th</sup> FYP presents 72 different actions in 14 different categories for the GoB to undertake as relates to governance.** The categories are quite diverse, ranging from transparency to justice to project implementation. The actions themselves vary in complexity as well, with some dictating the simple assignment of responsibilities and others initiatives requiring the coordinated actions of several Government agencies. Positive execution of any given action may or may not yield a general improvement in the given area, as many actions require other further action in order to be effective.

**In order to plan for the future, our team looked to the past to determine the success of the plan in driving government initiatives related to governance.** In this exercise, our team rated each activity as 1. Completed, 2. Partly Completed and 3. Not Completed. The sources included government and other expert sources, with information gathered through interviews.



**Table III-4 Intended and Actual Actions for Governance under the 6<sup>th</sup> Five Year Plan**

		<i>Total Activities</i>	<i>Fully Completed</i>	<i>Partly Completed</i>	<i>Not Completed</i>	<i>% Fully Completed</i>
1.	<b>Making parliamentary process effective</b>	3	0	0	3	0.0%
2.	<b>Controlling corruption</b>	3	0	2	1	0.0%
3.	<b>Strengthening the Election Commission</b>	1	1	0	0	100.0%
4.	<b>Judicial Reforms</b>	11	1	6	4	9.1%
5.	<b>Promoting E-governance</b>	7	5	2	0	71.4%
6.	<b>Improving project implementation capacity</b>	8	1	5	2	12.5%
7.	<b>Improving sectoral governance</b>	2	0	1	1	0.0%
8.	<b>Enhancing transparency and access to information</b>	5	0	5	0	0.0%
9.	<b>Public administration capacity development</b>	9	0	5	4	0.0%
10.	<b>Devolution to local governments</b>	6	0	5	1	0.0%
11.	<b>Reforming planning and budgetary processes</b>	6	0	2	4	0.0%
12.	<b>M and E</b>	7	4	2	1	57.1%
13.	<b>Results framework</b>	3	1	2	0	33.3%
14.	<b>Third party monitoring of the Sixth Five Year Plan</b>	1	0	1	0	0.0%
	<b>TOTAL</b>	<b>72</b>	<b>13</b>	<b>38</b>	<b>21</b>	<b>18.1%</b>

**The completion rate to date for the total number of governance actions in the 6<sup>th</sup> FYP is rather low.** A summary of actions is presented in Table III-4, with the complete evaluation provided in Annex 1. Overall, our analysis suggests that just 13 of the 72 activities were completed, 38 partly completed and 21 not completed. In other words, up until the completion of this paper in November 2014, just 18.1 percent of activities have been fully completed. The only category in which the full set of activities was completed was the election commission category, which had only one action point. Overall, a small majority of activities were partly completed.

**The data suggest that, while government has undertaken a number of governance initiatives, the plan has not directed many of them; the 7<sup>th</sup> FYP should explicitly address this challenge.** In other words, the challenge is not necessarily coming up with the technically sound activities for the FYP as relates to governance, but rather seeking out activities in which the conditions are conducive for implementation. The final section of this paper provides some recommendations in terms of providing enhanced incentives for implementation.

**One important step is to focus by reducing both the number of categories and the number of activities.** The poor execution suggests that the attention of government is scattered, with a need to simplify the actions and ensure a more concentrated approach to governance. As such, the recommendations presented are fewer in number, with a more succinct set of activities.

**Gender represents a key theme that is largely neglected in the 6<sup>th</sup> FYP and should be strongly addressed in the 7<sup>th</sup> FYP.** Explicitly working on gender issues, as well as using a gender sensitive lens for other work areas, is needed for a broad and inclusive development of Bangladesh. A number of gender sensitive areas are highlighted in the analysis and activities below. However, further development of data systems and extensive research are needed to ensure gender sensitivity in the FYP, to expand on the activities and indicators that may be used.

## IV. Proposed Activities for the 7th Five Year Plan

**This section presents the proposed activities in the governance and justice related areas.** These include four areas: 1. Justice; 2. Building government administrative capacity; 3. Representation, participation & accountability; and 4. A special section on human rights. In each section we provide a brief description of the area and its current state in Bangladesh, actions taken to date by the government, and propose activities for the 7<sup>th</sup> Five Year Plan. These proposed activities, which build on the Vision 2020 Strategic Plan, emerge from an extensive process of stakeholder consultation and an analysis of existing government plans (including important steps in the 6<sup>th</sup> FYP not yet taken), while using the knowledge and common sense among the authors regarding the various government sectors. The stakeholder consultation included four sessions with government, civil society, academics and development partners, as well as separate consultations with over 40 individuals. Unfortunately, given the diversity and complexity of issues, it is difficult to provide a short summarized list of actions. There are also many actions that should be taken in related issues, such as the elections, criminal justice sector and covering various human rights issues, while governance is a cross-cutting concern that should be prioritized within each government sector.

### Area 1: Justice

#### Formal Justice Institutions

##### I. Introduction

**Globally, there is an increasing recognition of the need to promote justice as part of the development agenda.** While the MDGs have been successful at achieving some of the basic development outcomes necessary, the quality of institutions has limited the achievements thus far. As a result, the current Open Working Group of the United Nations, which seeks to establish the Social Development Goals, has several goals that are related to justice and governance.

**Bangladesh scores relatively low in Rule of Law compared to many other South Asian countries.** As described in Section 2, WGI score increased slightly from 20.1 in 2000 to 22.8 in 2013, which is the third lowest score in the region after Afghanistan and Pakistan.

**The governance of the formal judicial sector of Bangladesh has emerged as an increasing concern.** The formal courts are overwhelmed, with a case backlog of 2,861,003 cases in 2014. Analyses of judicial appointments have suggested that political affiliation plays an increasingly important role in the selection process (IGS, 2010). Perception surveys of citizens regarding public services also suggest that both the judiciary and the police have high rates of corruption. According to a Transparency

International survey of citizens (TIB, 2012)<sup>6</sup>, among the main government services, 75.8 percent of citizens experience corruption in law enforcing agencies, 59.0 percent in land administration and 57.1 percent in judicial services. The independence of the judiciary has been further undermined by the recent 16th amendment to the constitution, which allows Supreme Court judges to be removed by parliament.

**Another indication of the poor rule of law is the prevalence of legal issues in the general population.** According to a 2009 nationally representative survey, the majority of citizens observe the following offences as occurring often.

**Table IV-1 Citizen Perceptions of Common Types of Legal Issues**

Type of Issues	% of respondents
Land related disputes	47
Theft	44
Quarrel	41
Family conflict	21
Robbery	16
Dowry related	7
Child marriage	3

Source: UNDP Village Courts Baseline Survey, 2010.

N = 10,016

**Table IV-2 Perceptions of Problems Facing Women based on Survey**

	% of respondents
Problems of dowry	46.0
Poverty	37.7
Violence by husbands	35.6
Lack of health care	20.4
Violence by family members	18.9
Physical violence	16.5
Mobility restrictions	14.7
Difficulty getting a job/ work	12.8
Lack of access to education	12.2
Lack of security	11.9

N = 3,632

Source: NHRC, 2011.

<sup>6</sup> <http://www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf>

**Table IV-3 Perceptions of Most Common Forms of Violence against Women based on Survey**

	% of respondents
Violation related to dowry demands	68.5
Beatings by husband/ family members	62.6
Physical Abuse	43.3
Sexual harassment (including eve teasing)	20.3
Mental violence or cruelty	16.5
Sexual abuse	16.1
Economic violence	14.9
Polygamous marriages	14.6
Acid attacks	12.2
Trafficking in women	10.1
Don't know	5.5
Others	3.6
Victim of Fatwa	2.1

N = 3,632

Source: NHRC, 2011.

**Survey work also highlights the numerous problems experienced by women in Bangladesh, particularly in the forms of illegal dowry demands and intra-family violence.** Table IV-2 and Table IV-3 provide the breakdown of survey respondents to a nationally representative survey on gender issues. These two most common issues have clear implications for legal empowerment work, in terms of the need for further efforts to address them. Other common forms of problems experienced by women include physical abuse and lack of health care.

**The formal justice system suffers from a variety of common limitations.** They are overwhelmed, with a case backlog of nearly 3 million cases. As mentioned, perception surveys of citizens regarding public services also suggest that both the judiciary and the police have high rates of corruption. According to a Transparency International survey of citizens (TIB, 2012)<sup>7</sup>, among the main government services, 75.8 percent of citizens experience corruption in law enforcing agencies, 59.0 percent in land administration and 57.1 percent in judicial services.

**The formal justice system is also biased against the poor and women in several usual ways.** First, the courts are located in district capitals; if the poor live in rural areas, they must travel long distances. Second, they are expensive; even if lawyer fees are covered by a legal aid organization, the poor still must face the costs of logistics to appear in court (travel, lodging, food, time away from work), and also the costs of providing proper documentation. As discussed below, the latter costs can be extremely high when property cases appear in court. Third, judicial decisions can take years, given the enormous backlog of cases. Fourth, judgments are often not implemented, whether due to the weakness of the administration or the strength of the interests involved.

<sup>7</sup> <http://www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf>

## II. Government activities to date

### **Actions from the 6<sup>th</sup> FYP focused on judicial reforms include the following:**

- Appointment of an Ombudsman with sufficient staff as guaranteed by the Article 77 of the Constitution.
- Establishing clear, transparent criteria and process for the recruitment and selection system ensuring competent judges are selected.
- Ensuring that the incentives in terms of pay and service conditions are appropriate to create an environment for dedicated services.
- The Judicial Service Commission and its Secretariat will be equipped to monitor the performance of all judges and undertake evaluation on the basis of objective criteria.
- Improving the work environment in the courts with proper office equipment and required support staff.
- Establishing a separate pay commission to formulate a separate salary structure for officials of judicial services reflecting the nature of their job and consistent with public sector compensation policy.
- Similar to the case with other public officers, introducing a system where judges have to reveal assets and properties belonging to them and their family members at the time of entry, during the tenure intermittently and after leaving the office.
- Streamlining administrative procedure of the court so that they are easily understood, and arbitrary decision-making by court staff is minimized.
- Introducing a computerized court case recording and tracking system and make the information accessible to people through the website<sup>8</sup>.

**Thus far, GoB performance in terms of following through with the above actions is mixed.** None of the above actions have been fully completed. Five activities have been partly completed, four not completed.

## III. Priority Actions

### **Several activities from previous FYP should be completed still during the period of the 7<sup>th</sup> FYP, with the first slightly revised:**

1. Establish a clear, transparent criteria and process for the recruitment of Supreme Court judges; the salary scale of lower and higher court judges should reflect the South Asian regional norm.
2. Introduce a computerized court case recording and tracking system and make the information accessible to citizens through websites.

### **Other activities for the 7<sup>th</sup> FYP includes the following:**

1. Establish “Case Management & Coordination Committees” for civil and criminal matters at the district level. Such a mechanism will emphasize the working of the ‘system’ rather than just being concerned with the performance of ‘individual’ agencies.
2. Create a new justice sector-wide committee, which will provide a national

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<sup>8</sup> Note that the two other justice planned actions will be dealt with in the subsequent sections, on informal justice systems and access to justice.

coordination mechanism including the senior-most actors in the justice sector in order to instill ownership from different stakeholders.

3. Bar council should make effective steps to sensitize lawyers and take some reform initiatives ensuring the accountability of the lawyers and also to maintain integrity.
4. Violence against women should become a key focus of local justice institutions, requiring greater investment in capacity at the district and upazila level, as well as the effectiveness of one-stop crisis centers where VAW victims are taken, and awareness of the Domestic Violence Act (2010) among both local officials and the public.

## Semi-Formal And Informal Justice Institutions

### I. Introduction

**In Bangladesh, informal and semi-formal institutions feature prominently in justice at the local level.** Informal justice institutions refer to those justice institutions that fall outside the rubric of the traditional state, such as courts and the police. According to the survey in UNDP (2010), 78 percent of respondents claimed that citizens approach village leaders in order to settle disputes, while 68 percent claimed that citizens approach the UP Chairman/ or other members. Just 20 percent perceived that citizens sought justice through filing a case in court.

**The informal justice system is made up of two main institutions, while the third is a hybrid of the formal and informal.**

- “Traditional” Shalish – local leaders
- NGO Shalish – local leaders, supported by NGOs
- Village Courts – UP politicians according to law

The first form of shalish generally occurs at the village level, where recognized leaders hold an informal meeting to resolve the dispute or address an offence. Given its informality, this form of shalish can take on a number of forms. The NGO shalish is another informal justice institution. The type of support that NGOs provide to the shalish varies, but the most in-depth and well known of the activities is from the Maduripur Legal Aid Association (MLAA).<sup>9</sup> The village courts are another form of shalish, though more formalized by legislation.

**Currently, village courts are becoming more common and developing further.** The government has passed the Village Courts (Amendment) Act in 2013. It is also completing the village courts project since 2009 in 350 Union Parishads, supported by UNDP and the EU, executed in UPs of Bangladesh, and expected to be scaled up nationwide.

### II. Government activities to date

**A single action regarding informal justice was presented in the 6<sup>th</sup> FYP:**

- Alternative dispute settlement mechanisms will be strengthened by regulating them with formal and traditional laws. Formal alternative dispute resolution mechanisms could be attached to courts or to government agencies, such as land and labor boards.

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<sup>9</sup> The village court is a shalish in which UP members are selected to be a part of the shalish panel. The chair of the panel is the UP chair, while each of the two parties chooses one UP member on the panel, as well as another recognized citizen, adding up to five panel members. If the case is related to the interest of minor and women, then a member of the panel must be a woman. Under the village courts legislation, the courts may handle minor crimes and civil cases valued at a maximum of BDT 75,000.



**This action was partly complete.** The government has passed the Village Courts (Amendment) Act in 2013, increasing the civil cases that they may handle to a value maximum of BDT 75,000. The National Legal Aid Services Organization has been established in all districts and national Legal Aid offices have been provided the power to facilitate ADR. Land and labor boards are still nascent.

### III. Priority Actions

**The government should follow through with the previous planned action, and expand upon it.**

1. Scaling-up and strengthening of the village courts – formulation and implementation of a national strategy together with an investment plan to ensure greater access to the disadvantaged sections of the population
2. Encourage citizens, particularly in rural areas, to avail NGO-mediated shalish in order to resolve disputes without resorting to formal justice institutions.

## Access To Justice

### I. Introduction

**Justice is a cross-cutting development issue that refers to the ability to claim basic rights and have access to dispute resolution.** Freedom from exploitation and violence, land rights, access to services and promotion of equality each has a component of justice. Women's rights and justice are fundamentally intertwined, while justice is critical for economic growth, as the ability of the wealthy to take possession of the property of the poor is a commonly recognized development challenge, and a frequent source of conflict. Furthermore, the lack of justice accentuates inequality in the society, and promotes the exploitation of the majority of the population. As a result, improvements in justice outcomes are needed for sustained economic growth to take place.

**Citizens generally have access to some form of justice institution, but it is unclear both how those institutions are and whether the poor and marginalized groups specifically have access to them.** According to the survey in UNDP (2010), 78 percent of respondents claimed that citizens approach village leaders in order to settle disputes, while 68 percent claimed that citizens approach the UP Chairman/ or other members. Just 20 percent perceived that citizens sought justice through filing a case in court. Unfortunately, surveys have not focus specifically on the justice experiences of the poor thus far.

**The formal justice system is also biased against the poor and women in several ways.** First, the courts are located in district capitals; if the poor live in rural areas, they must travel long distances. Second, they are expensive; even if lawyer fees are covered by a legal aid organization, the poor still must face the costs of logistics to appear in court (travel, lodging, food, time away from work), and also the costs of providing proper documentation. As discussed below, the latter costs can be extremely high when property cases appear in court. Third, judicial decisions can take years, given the enormous backlog of cases. Fourth, judgments are often not implemented, whether due to the weakness of the administration or the strength of the interests involved.

**The informal justice sector can be biased against the poor as well.** The traditional shalish is a dynamic institution with no fixed rules, most easily defined by the fact that community leaders are involved (Golub, 2003). Moreover, they tend to enforce norms, often in contradiction with the law. These norms may discriminate against women and the poor (Golub, 2003; Maru and Das, 2010). They also occasionally offer severe punishments for crimes. A related criticism of the traditional shalish is that it has little appreciation of rule of law and serves as an enforcer of often retrogressive norms (Maru and Das, 2010; BRAC, 2006). Others view the shalish as a highly biased institution in which the panel members represent the wealthy and powerful of the area, and rarely rule against their peers (Bode and Howes, 2002).

### II. Government activities to date

**The 6<sup>th</sup> FYP has one action that is directly related to access to justice:**

- Enable NGOs to work to facilitate access to the judicial system by the poor, women and vulnerable people and in building awareness among them.

**GoB has completed this action.** Government has provided support in terms of permitting NGOs to accomplish many legal aid activities. However, it is still commonplace for citizens to lack access to well functioning justice institutions.

III. Priority Actions

1. National Legal Aid Services Organization (NLASO) capacity increased, through management systems and procedures, as well as human resources, particularly in supporting the poor and women
2. NLASO to develop a strategy of engaging with NGOs and other government agencies to promote access to justice; through this partnership, they will set targets for jointly providing quality legal aid, especially for the poor, women and marginalized, with each agency transparently reporting on their own activities
3. The NLASO should appoint District Legal Aid Officers in 64 districts.
4. Create a legal basis for ADR, building on the current legislation, to establish an extra tier of mediation under ADR
5. Further capacity building for ADR at the local level regarding mediation, as well as public awareness

## Area 2: Building Government Administrative Capacity

### Public Administration

#### I. Overview of Public Administration in Bangladesh

**Improving the quality of public administration is critical for boosting growth and equality in Bangladesh.** The international literature confirms the importance of an independent and meritocratic bureaucracy for growth (Evans and Bauch, 1999). Similarly, a highly capable public administration can reduce inequality through improved quality of services for the poor, better targeting of social safety nets and increased access to justice.

**However, the quality of public administration in Bangladesh has not increased markedly over the last decade, and has even decreased according to some measures.** One such measure is the ‘government effectiveness’ indicator<sup>10</sup> of the Worldwide Governance Indicators. Bangladesh scored at 32.2 in 2000 in government effectiveness, declining to 22.5 in 2012. In the South Asia region, only Pakistan and Afghanistan rate below Bangladesh, with Nepal, India, Sri Lanka, Maldives and Bhutan rating even higher. The government effectiveness indicator in 2012 even declined from the start of the 6<sup>th</sup> Five Year Plan, in 2010, when Bangladesh rated at 25.8.

**One reason for the lack of progress in the quality of public administration is the need for structural reform, which is partly obstructed by strong vested interests.** Whereas the Government of Bangladesh increased its score on Integrity through such actions such as the creation of the Anti Corruption Commission, such changes are not so easily made with the civil service. In this case, the GoB must make distinct modifications to the way an existing institution works, representing a change to the way the entire institution functions. Reports have also highlighted the strong vested interests that resist such steps, which partly explains why it is so difficult to transform the civil service (IGS, 2008; World Bank, 2005). The GoB should further explore reducing the number of ministries, as well as streamlining the unnecessary creation of civil service jobs.

#### II. Government Action to Date

**The need for profound reforms in the civil service has been a frequent recommendation in Bangladesh.** A variety of major public reports have been

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<sup>10</sup> “Government effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.” (World Bank, 2013)

conducted since independence, calling for a variety of changes to public administration. Annex 2 reproduces a summary of the conclusions from a variety of government commissions on the topic. Unfortunately, while a number of projects to support the civil service have been undertaken over time, a number of actions remain.

**Removal of partisan influence has particularly been highlighted in the Perspective Plan of Bangladesh (2010-2021).** It states the following:

Vision 2021 on good governance enjoins that institutions of the State and Administration will be freed from partisan influence. The basis of appointment and promotion will be performance, commitment, efficiency, honesty and loyalty to the Republic. The civil service/bureaucracy has a distinguished record of professionalism and commitment, which has suffered erosion because of politicization. During the Perspective Plan period, the Government will make all out efforts not only to revive but also enhance competence and professional ethics in the civil service using sanction for performance.

**The following is the list of planned actions under the 6<sup>th</sup> Five Year Plan:**

- Drafting, consultations, and passage of the Civil Service Act and implementing regulations.
- Drafting rules for recruitment to allow for increased recruitment laterally into mid-level and higher level civil service positions, modernization of testing for new recruit batches.
- Revising rules for the formation of the Public Service Commission to minimize opportunity for political influence, and other measures to increase its capacity (prior to completion of the current term of Commissioners)
- Developing greater opportunities for on-the-job training and classroom-based training with linkage between training and criteria for career advancement.
- Revising the civil servants' code of conduct to address issues of corruption, accountability and performance, including consideration of an enhanced asset declaration regime.
- Strengthening and clarifying the Rules of Business so that civil servants could work with clear terms of reference promoting accountability.
- Reforming civil servants' performance evaluation through emphasis on establishing clearer annual work objectives and performance on these objectives and greater differentiation of annual evaluations and having promotion depend more directly on performance evaluations.
- Revising the civil service payment system to allow for less compression of pay and retention of persons with unusual, needed skills, as well as streamlining the system of benefits.
- Institutionalizing the citizen's charter to provide regular feedback on public services.

**The government has undertaken some notable initiatives to date regarding public administration.** This includes designing a Performance Based Evaluation System (PBES) under which an Annual Performance Report (APR) format has been finalized. The system was piloted in the Ministry of Public Administration in 2012. The GoB has also begun to establish a performance management initiative, in order to ensure that

Ministries and Departments must report on their activities against targets. Similarly, GoB has begun to establish mechanisms of citizen feedback.

**However, none of actions to support public administration proposed under the 6<sup>th</sup> Five Year Plan have been fully executed.** Five of the nine planned activities have been partly completed, while four of the nine have not been made any significant progress. The major initiatives planned include the first and third presented above: the passage of a Civil Service Act and reform of the Public Service Commission.

**While numerous reports on the civil service emphasize the importance of passing a civil service act, it still has not been presented and approved by parliament** (IGS, 2008; World Bank, 2005; World Bank, 1996). The government has drafted and completed consultations of a civil service act, which is now called the Government Employee Act, but it has not yet been passed. The draft is currently sitting with the cabinet, awaiting approval so that it may be passed on to parliament. After being approved, implementation of the act will present a new challenge for the GoB.

**This act should be reviewed in terms of its gender sensitivity.** Enhancing the gender quota is a first step, though such efforts are particularly needed in the upper levels of the civil service. Also, improving the working conditions of women, in such areas as child care, maternity leave and mechanisms to deal with sexual harassment, are required.

**Similarly, major changes have not been implemented in the Public Service Commission, such as revising the rules.** Several fundamental reforms are needed to ensure the independence of the PSC, such as a transparent recruitment process for appointments, financial autonomy in terms of its budget, outside scrutiny of recruitment such as by parliament, and transparency to the public in its activities (IGS, 2008).

### III. Priority Actions

**In order to achieve the goals outlined in the Perspective Plan of Bangladesh, and the removal of partisan influence in particular, several steps are necessary.** Actions remaining from the 6<sup>th</sup> Five Year Plan that should be prioritized during the next plan include:

1. **Civil Service Act:** the Civil Service Act is a critical first step for achieving Vision 2021 as outlined in the Perspective Plan, providing the foundation for removing excessive partisan influence in the appointment of civil servants. Once the Public Employee Act is passed, it should be fully implemented. The act should include the following:
  - a. Developing greater opportunities for on-the-job training and classroom-based training with linkage between training and criteria for career advancement.
  - b. Revising the civil servants' code of conduct to address issues of corruption, accountability and performance, including consideration of an enhanced asset declaration regime.
  - c. Developing a clear terms of reference for civil servants, thus promoting accountability.
  - d. Reforming civil servants' performance evaluation through emphasis on

establishing clearer annual work objectives and performance on these objectives and greater differentiation of annual evaluations and having promotion depend more directly on performance evaluations.

- e. Revising the civil service payment system to allow for less compression of pay and retention of persons with unusual, needed skills, as well as streamlining the system of benefits.
  - f. Institutionalizing the citizen's charter to provide regular feedback on public services.
  - g. As a new area, increase the quota for female recruitment into the civil service, also ensuring their participation in the decisions regarding recruitment. Further review of the quota system is also needed.
  - h. Drafting rules for recruitment to allow for increased recruitment laterally into mid-level and higher-level civil service positions, modernization of testing for new recruit batches; this should be properly balanced against the incentives of highly qualified new recruits.
2. **Reform the Public Service Commission:** A number of steps are necessary for reform to prevent political influence in the recruitment of civil servants; the GoB should establish transparent recruitment process for appointees, have financial autonomy in terms of its budget, and make itself more transparent to the public in its activities.

**However, the GoB should also continue to support new initiatives as well, in order to ensure a results-oriented civil service.** These steps will serve to hold the civil service accountable and should therefore allow for improved performance overall. The Government of India is successfully implementing the first two of these steps.

1. **Performance management for ministries:** Integrating performance measures for ministries that allow government to set targets and track performance against those targets will prove critical for guiding the work of civil servants. Such targets should in part be based on the activities laid out in the Five Year Plan. The mechanisms used by the Government of India may provide guidance in this regard.
2. **Citizen feedback/ public grievance redress:** The Government should establish mechanisms for citizen feedback regarding government performance. These measures will provide citizens with the opportunity to provide information to senior management on front line service providers. If implemented in a relevant, efficient and responsive manner, it can represent a powerful tool for improving government performance at the local level. The mechanisms used by the Government of India may again provide guidance in this regard.
3. **Transparency of vacancy and recruitment information, especially for women:** Each ministry should provide information on civil servant positions, vacancies, recruitment, etc., including the amount of time to create the post and the date in which the post became vacant. MoHFW has provided much of this vacancy information online, though it is not updated. Similarly, tracking recruitment according to gender, with publicly available information, will allow accountability regarding the gender quotas, and encourage efforts to recruit, retain and even promote women. A more complete database for government ministries is needed, especially in those ministries that face extensive vacancies and challenges in finding qualified recruits, particularly women.





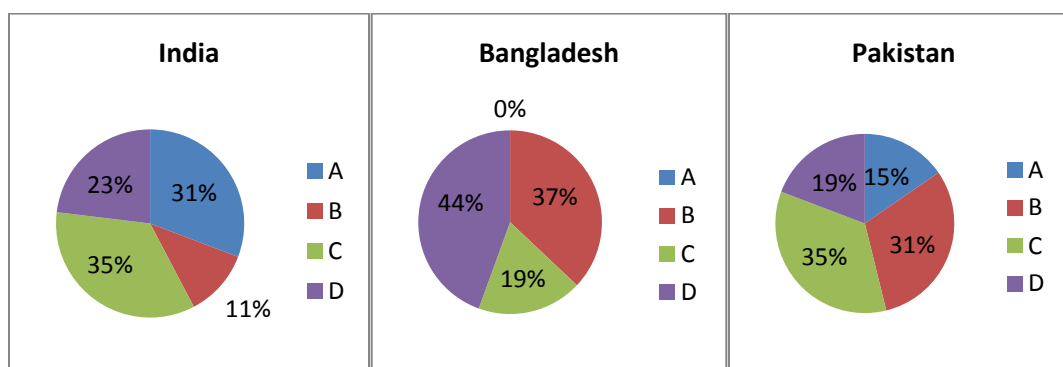
## Public Financial Management

### I. Overview of Public Financial Management in Bangladesh

**Public financial management (PFM) represents the fiscal backbone of the Government, and is therefore critical for all government functions.** The general objectives of PFM are fiscal discipline, spending allocation for priorities (allocative efficiency) and good value for money (technical efficiency).

**The quality of PFM in Bangladesh has improved in some respects, but there are several fundamental PFM areas that require change.** Unfortunately, there is no comprehensive assessment of PFM in Bangladesh completed recently. One measure of PFM is the Public Expenditure Financial Assessment (PEFA), which was completed in both 2006 and 2011, which was the first year of the implementation of the 6<sup>th</sup> Five Year Plan. The PEFA includes 31 measures of a variety of aspects related to PFM.<sup>11</sup> Bangladesh showed improvement for 14 of these measures, and worsened in 10 of them when comparing 2006 and 2011. Also, Bangladesh rates 58 out of 100 in the Open Budget Index of 2012, reflecting some level of budget transparency. It rates higher than Sri Lanka and Nepal, the same as Pakistan, and less than India and Afghanistan.

Table IV-4 PEFA Score Comparison (Percentage Breakdown of Grades by Country)



**There are a number of PFM challenges in Bangladesh.** A few of the major challenges are: the lack of an integrated development and recurrent budget; the low capacity of institutions who have responsibility for budget preparation; delays in producing financial reports, with the inability of the existing Financial Management Information System (FMIS) to produce timely (and accurate) financial statements in line with international standards, or to fully automate and integrate core budget preparation, execution, accounting and reporting; the fact that hundreds of upazilas are still not connected to the

<sup>11</sup>Credibility of the budget, Comprehensiveness and Transparency, Policy-Based Budgeting, Predictability and Control in Budget Execution, Accounting, Recording and Reporting, External Scrutiny and Audit, and Donor Practices.

existing IBAS system, leading to manual record keeping; and the need for improved quality of audit reports that indicate the full extent of leakage in critical sectors. The overall low level of government expenditures in comparison to the economy leads to a “tight fiscal situation” in terms of per capita investments, which makes the drive for efficiency in public expenditures a critical element of development strategy.

**Further improvements to PFM are needed in strengthening public investment management, particularly as relates to Annual Development Programme (ADP).** In the 2013/14 budget year, 29 percent of government spending was dedicated to ADP. However, the program suffers from a number of limitations, including: (i) limited links between strategic development objectives and the Annual Development Program (ADP); (ii) the development of a project pipeline based on an approval process outside of the budget cycle that does not reflect the budget constraint (overloading of ADP); (iii) substantial delays in project execution, resulting in time and cost overruns; (iv) persistent under-execution of the ADP; and (v) insufficient allowance for the cost of operations and maintenance in project planning.

**Overall, progress on PFM has proceeded at a slow pace, due to several factors such as the number of steps required for impact, the interests involved, and the need for coordination.** Implementing MTBF has proven challenging, partly due to the need to build up planning capacity in ministries and to fundamentally change the way in which they plan and budget from year to year. MTBF must also be implemented, not just in the Ministry of Finance, but also across ministries. ADP represents the largest source of funding for public procurement contracts in Bangladesh, of which commercial interests are keen to take advantage.

## II. Government Action to Date

**PFM-related activities have been highlighted in the 6<sup>th</sup> Five Year Plan.** Such activities focus on planning and budgeting aspects of PFM, including the following:

- The Sixth Five Year Plan already makes a fundamental shift in the planning process by making the public investments as indicative and focusing much more deeply on growth, employment and poverty reduction strategies, policies and programs. This indicative plan will serve as a living document through instituting a system of annual review of development performance and plan implementation. The performance review will focus on implementation of strategies and policies and look at broad economy-wide and sectoral outcomes rather than simply at financial progress of publicly funded investment projects. The results of the annual reviews will be shared with the cabinet and used to determine changes in plan goals, targets, strategies and policies as necessary in light of the changing global and local economy and the results of the plan implementation.
- The capacities of line ministries will be substantially strengthened to do proper planning and budgeting in the context of the implementation of the MTBF. Line ministries will need to ensure that proposed projects and programs are consistent with the objectives and framework of the Sixth Plan.
- Project approval process will be strengthened and streamlined to reduce delays and proliferation of tiny projects.

- Project approval at the Planning Commission level will be substantially strengthened. All projects that go to the Planning Commission must provide a proper appraisal report along with sound analysis that shows the consistency and relevance of the project to sectoral/economy-wide objectives, strategies and policies. The appraisal report will do proper economic and financial analysis of the proposed project, do gender and environmental analysis as relevant, and show an implementation plan while providing clear evidence of implementation capacity.
- Proliferation of projects and long implementation lags are a perennial problem. The Sixth Plan will seek to break this logjam by doing a proper review of all approved and active projects in the pipeline in cooperation with the line Ministries. The review of this portfolio stock will seek to clean out dormant or irrelevant projects and help line ministries close the projects that are facing implementation problems through restructuring or through other relevant interventions. The results of this exercise will be shared with the cabinet for endorsement and approval.
- The technical capacities of the Ministry of Finance and the Planning Commission will be substantially strengthened through proper staffing and training to ensure the timely implementation of the Sixth Plan and the MTBF. All efforts will be made to strengthen coordination between these two core ministries with a view to avoiding duplication, overlap and delays.

**Of the six PFM-related activities in the 6<sup>th</sup> Five Year Plan, the Government primarily focused on one: capacity building to support implementation of the MTBF.** Capacity building exercises have been undertaken, though in general, such activities are less difficult to accomplish to major structural changes, and do not face much opposition from a variety of interests. Reforms, such as to the process of selection for Annual Development Plan projects, would be more likely to face challenges in implementation given the financial implications.

**A number of other PFM-related activities were completed.** These activities did not appear in the 6<sup>th</sup> Five Year Plan. They include the design of an integrated budget and accounting system (iBAS++), the roll-out of a Medium Term Budget Framework (MTBF) to line ministries, the decision on a new budget classification structure to ensure compliance with international standards and an upgraded government debt management system.

**However, while these important steps have been taken, others remain in order for these systems to be fully effective.** The five priority areas include: improving public investment management, enhancing the GFMS, enhancing the MTBF, fiscal transparency and enhanced audits functions.

### III. Priority Actions

1. **Public Investment Management**, particularly under ADP. Three steps remain from the 6<sup>th</sup> Five Year Plan and have yet to be implemented, with suggested language being the following:

- a. Strengthen the project selection mechanism that 1. allows only well-design projects with the highest chance of resulting in high economic return should be selected based on long-term affordability and 2. limits the number of new projects entering the ADP
- b. Strengthen project design and appraisal capacities. One activity is that all projects that go to the Planning Commission must provide a proper appraisal report along with sound analysis that shows the consistency and relevance of the project to sectoral/ economy-wide objectives, strategies and policies. The appraisal report will do proper economic and financial analysis of the proposed project, do gender and environmental analysis as relevant, and show an implementation plan while providing clear evidence of implementation capacity.
- c. Rationalize the existing ADP portfolio. One activity is that the Government will do a proper review of all approved and active projects in the pipeline in cooperation with the line Ministries. The review of this portfolio stock will seek to clean out dormant or irrelevant projects and help line ministries close the projects that are facing implementation problems through restructuring or through other relevant interventions. The results of this exercise will be shared with the cabinet for endorsement and approval.

## 2. Financial Management

- a. Introduce a modern Financial Management Information System (FMIS) capable of producing timely, comprehensive and reliable financial statements in line with international accounting and reporting standards (cash IPSAS, GFSM 2001)<sup>12</sup>.
- b. Creation of a more comprehensive, centralized Treasury Single Account linked to FMIS
- c. Formal approval and introduction of a GFSM compliant Chart of Accounts. This has been done and submitted for approval, but requires the commitment of policy makers.

## 3. MTBF: The GoB should follow through on implementation of the MTBF through:

- a. Removal of demarcation between non-development and development budgets and gradual jointly programming of capital and recurrent spending.
- b. Institutionalization of a more strategic and policy based approach the budgeting, including through further rollout of Medium Term Strategy and Business Plans.
- c. Further development of line ministry FBEs<sup>13</sup> to prioritize spending based on available fiscal space.

## 4. Budget and budget execution transparency:

- a. Publication of a citizens' budget immediately after the budget speech
- b. Greater transparency of public finance data in user-friendly and editable formats, such as through an Open Data Portal.

## 5. Audit systems:

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<sup>12</sup>Note: This may or may not be IBAS ++. Since there has been some work done, it is an obvious starting point, but in many cases around the world bespoke systems have taken a long time to deliver the expected results. The existence of commercial off-the-shelf products as well as the possibility of a customized open source solution should be explored before further investments in IBAS ++. It is critical that there is greater exposure of senior policy makers in the government to (a) the extent of the "problem" with the current IBAs and IBAS++ proposals, and the range of options available and indeed being pursued around the world to solve these problems.

<sup>13</sup>Credible Forward Baseline Estimates (FBEs) are still missing in Bangladesh. FBEs are a crucial design feature of a well-functioning MTBF, as they provide a baseline for spending estimates so that fiscal space can be estimated and spending priorities made in line with the top-down budget system.

- a. The GoB should make all recent audit reports public on its website in a user friendly and accessible format, as well as clearly indicate how these audits have been followed up, particularly in holding the officials involved accountable.
- b. Comptroller and Auditor-General is made a truly independent body with appropriate budget discretion and authority over human resources and a separate audit cadre

Note that procurement recommendations are presented below in the Enhancing Integrity section.

## Area 3: Representation, Participation and Accountability

### RTI/ Access to Information

#### I. Introduction

**In the Sixth Five-Year Plan, one of the priority areas was transparency and the establishment of a robust right to information (RTI) regime.** The underlying rationale for a heavy emphasis on RTI was to improve the state of governance through greater transparency and accountability. As stated in the Sixth Five-Year Plan, “The [RTI] Act, and the right to information that [it]...guarantees are potentially a powerful tool that supports the public to hold state institutions and governments to account, supports increased transparency in the workings of state institutions, and empowers citizens to seek information in the public interest.”

**The Information Commission (IC), established under the RTI Act, has largely overseen the implementation of the Act.** It has somewhat increased the level of awareness of citizens’ statutory rights to information; however, lack of clear understanding makes people file a relatively small number of submissions requesting information. Under the Act, any institution in receipt of funds from the State is obliged to disclose information to the citizens, both when requested and in a proactive manner, with only limited exception. The IC has also encouraged various non-profit organizations to either jointly or independently undertake training of Designated Officers, now numbered in thousands and continuously growing, as they are being appointed and replaced by various entities under the RTI Act.

**The state of transparency, as measured by the level of implementation of RTI Act, is rather unsatisfactory.** Generally, low levels of awareness of the RTI Act among members of the public (in 2013, the Nielson Group conducted a survey for the World Bank), lead to the submission of very few RTI requests. The majority of the people are not aware (77%) of the RTI act. Surprisingly, 96% of Designated Officers mentioned that they did not receive RTI applications. The IC annual reports note that many of the requests submitted under the RTI Act actually related to general information requests.

**A number of other factors limit the proper implementation of the RTI act,** including the lack of public awareness, the weak practice of documentation at the local level, the low capacity of local government officials as Designated Officers, and the centralized implementation undertaken thus far.<sup>14</sup> Another factor is the bureaucratic norms, partly

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<sup>14</sup> A recent survey (Nielsen, 2012) revealed some 72% of Designated Officers were unaware of their duties under the Act. The Nielsen survey also suggests that 28% of Designated Officers have received training on RTI, primarily from the Information Commission, The survey shows that BPATC and other institutions are also conducting such training. However, such numbers are likely to diminish, with no government-wide or other major initiatives to train officers in RTI. The majority of the respondents (88%) do not have documentation practice. It can be assumed that since most of them did not receive RTI applications, so they did not have to practice documentation such as

established by previous legislation, that suggest that sharing information may endanger government operations or undermine the authority and interest of the state and its officials.

## II. Government activities to date

**The Information Commission has undertaken a number of initiatives since its inception.** The Ministry of Information and the Information Commission have formulated required rules and regulations, respectively, and Designated Officers have been appointed by various organizations. The IC has successfully involved the media, particularly electronic, to encourage citizens to take advantage of the newly established right to access information.

**Actions from the 6<sup>th</sup> FYP as regards enhancing transparency and access to information include the following:**

- Establishing a central office for providing support to, and overseeing implementation of, proactive disclosure of information required by the RTI Act by all Government agencies;
- Ensuring that Government agencies have duly appointed designated information officers with corresponding training and equipment to carry out their functions
- Integrating training on right to information into overall civil service training
- Providing the human and technical resources for the Information Commission to carry out all of its appellate and other responsibilities, including capacity to monitor overall compliance with provisions of the RTI Act.
- Developing facilitation centers through public-private partnerships to help direct the filing of information requests in conjunction with the Digital Bangladesh agenda.

**These actions have shown a relatively positive implementation record.** The GoB has partly implemented all five actions however the effectiveness and proper utilization and implementation remain a question. As discussed above, RTI is still in its infancy in Bangladesh and requires further development. The Designated Officers in different ministries and departments also lack proper knowledge of the Act and associated rules and regulations. They lack an understanding of their responsibilities.

## III. Priority Actions

**Over the next four years (2015-2018), coinciding with the 7<sup>th</sup> Five-Year Plan, a detailed strategy document, known as ‘Connecting Government with Citizens’, will be implemented under the leadership of the Cabinet Division.** The next 5-Year Plan should ensure and oversee successful implementation of the various activities outlined

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keeping record of RTI applications received, date, information provided, number of application denied, reasons for denial etc.

below by the Cabinet Division constituted Working Group. The strategy has identified some key priority activities and under the overall leadership of the Cabinet Division, who will bring together the relevant stakeholders and undertake an oversight role but the IC, as the independent statutory institution, will play the lead role. The implementation of 'Connecting Government with Citizens' has already started with the formation of district advisory committees (Gazette notification dated 11<sup>th</sup> September 2014/27Badro 1421) to be chaired by the Deputy Commissioners and composed of 14 other members. The mandate of such advisory committee is to effectively implement the RTI Act at the district level by raising awareness among citizens, coordinating with governmental and non-governmental organizations on RTI activities and assist the Information Commission with investigation and resolution of RTI related disputes. Proper care should be taken to the effect that such roles are in line with the existing laws, and no duplication occurs as well.

**Particular actions should consist of the following:**

3. IC will:
  - a. Increase its ability to track data at different levels (national, district & upazila) on RTI applications, responses, appeals and decisions
  - b. Enhance proactive disclosure through the adoption of proactive disclosure policy by different ministries, particularly those which enjoy a high level of government-citizen interface
  - c. Undertake an audience (e.g., farmers, women, students people with disabilities) survey & analysis to identify target-group specific communication strategy
  - d. Establish partnerships with civil society organizations and media to promote public awareness of RTI Act
4. Cabinet Division's Coordination and Reform Unit will:
  - a. Facilitate RTI strategic partnership among different stakeholders (e.g., IC, Ministry of Information, different line Ministries, District administration, civil society organizations & private sector entities)
  - b. Promote capacity building of civil servants, particularly the Designated Officers, through traditional and on-line means
  - c. Initiate legislative & policy changes in order to establish record management systems among Government agencies in relation to the RTI Act



## Enhancing Integrity

### I. Introduction

**The issue of enhancing integrity has been pre-eminent since the mid-1990s, and Bangladesh has been consistently scored low in the CPI, though this has improved over time.** As mentioned in Section 2, Bangladesh's measure of anti-corruption in the Worldwide Governance Indicators has increased from 15.6 in 2000, to 21.1 in 2012. The previously low ratings not only created a poor image of Bangladesh internationally but it has discouraged investors, both domestic and overseas from investing in Bangladesh, given its huge human resource advantage. The scourge of corruption has particularly hindered the development of infrastructure, which is an essential pre-condition for vigorous industrialization and planned urbanization. Corruption also has a gendered impact as well, with women from relatively poorer households often bearing the brunt of some forms such as corruption in health care.

**The Anti-Corruption Commission (ACC), established under the 2004 Anti-Corruption Act, has been fighting to bring corruption down to a relatively tolerable point.** The increasingly prominent activities of the ACC have played a role in improving the CPI score of Bangladesh over the past decade. Further efforts are needed to establish the ACC as an independent and effective institution.

**In 2012 the Cabinet adopted the National Integrity Strategy (NIS) - *Jatiyo Shuddachar Koishol* - an all-encompassing strategy providing an integrated multi-pronged approach to increasing integrity in the various spheres of Bangladeshi life.** In the 6<sup>th</sup> Five-Year Plan it was stated: "Bangladesh acceded to the UN Convention against Corruption in 2007. To support the Convention's implementation, the National Integrity Strategy was designed as a multi-sector national anti-corruption plan, which the Government will finalize and implement over the next five years." The 7<sup>th</sup> Five-Year Plan will encompass the period when NIS will be further entrenched as it is now the keystone strategy to promote integrity in Bangladesh. These efforts will require sensitizing the entire society through widely planned interventions, and strong commitments of public functionaries.

**The adoption of NIS should be seen as a major paradigm shift beyond just focusing on the Anti-Corruption Commission.** This approach relied on 'prosecution' as the major tool to punish citizens involved in misdemeanor in public, private and non-profit sectors. The implementation of NIS is a clear signal that the Government of Bangladesh intends to take a more holistic and long-term approach to the establishment of good governance by putting in place different mechanism within different institutions and sectors to enhance integrity in Bangladesh. The NIS provides a clear roadmap for various institutions, both state and non-state in nature. Under 'state' specific recommendations are provided for institutions such as, the Parliament, Bangladesh Election Commission, Comptroller & Auditor General, Attorney General, Public Service Commission, Ombudsman, Executive and Public Administration, Judiciary, Local

Government and finally the Anti-Corruption Commission. In terms of non-state actors, the NIS addresses family, educational institutions, civil society, political parties, NGOs, private sector and media. While the NIS will contribute towards the goal of good governance, it cannot achieve this alone, requiring efforts on a number of fronts including political areas.

## II. Government activities to date

**There have been notable actions from the GoB, especially in reference to the ACC.**

According to the Annual Report 2013 (p. 41):

- (i) ACC disposed of 1,598 cases by Special Judge Courts (ACC 811 - 50.75%)(BAC 787 – 49.25%)
- (ii) Conviction – 690 cases
- (iii) Rate of conviction – ACC 47.1% & BAC 39.14%

ACC has developed a communication strategy (known as the ACC Communication Strategy 2015-2019). According to the strategy, “It represents a blue print for commitment and action by the various stakeholders to fight against corruption. It aims at systematic and cognizant reshaping of the ACC’s prevention of corruption program at national and field level.” The main message of the strategy is that “corrupt officials will be identified, investigated, prosecuted, sanctioned and their illegally acquired assets will be confiscated.” This strategy will become part of the 5-year strategy of ACC, which will also take into account ACC’s responsibility under the National Integrity Strategy. The strategy also contains performance indicators to measure success under the three heads of (i) Corruption Prevention & Education (ii) Public Relations and (iii) Investigations and Prosecutions. The strategy also contains a detailed implementation plan. Such actions may contribute in raising public awareness and bring media to question corrupt activities. Gradually this may trigger a movement within the society against corruption or corrupt personnel.

**Actions from the 6<sup>th</sup> FYP on controlling corruption include the following:**

- Anti-Corruption Commission will thus be put on a more sustainable footing by providing it with clear independence to carry out investigations and prosecute, but with high levels of accountability to other public authorities to ensure that its actions are unbiased and in the public interest.
- The Government will initiate a sustained campaign to create public awareness and education in preventive measures, creating the right conditions for the public sector to enhance public service delivery.
- The Government will put in place some key reforms, such as introducing legislation and practices that will enhance the transparency of fiscal operations of the government.

**To date, GoB has only partly completed the first two actions, and is yet to undertake the third.** Such a track record means that it has not followed through on any of the three activities thus far.

**In reality, due to the institutional deficiency and huge burden of work, the ACC has**

**not been able to fulfill its mandate adequately.**In addition to this there are internal and external factors that also hinder the implementation. The ACC needs to undertake research and translate that into policy initiatives and preventive tools, such as codes of conduct and manuals for different government servants, scale-up its preventative activities by increasing the number of prevention committees at the District and Upazila level. Presently, Corruption Prevention Committees have been formed in 6 Divisions and 22 integrated Districts. There are 420 such committees at Upazila/Thana level (out of a total of 484 Thanas) all over the country. Integrity units (*satata sangha*) have been formed in secondary schools with the aim to involve the younger members of the community. There are around 12,000 such units in the country but to have real impact on the large youth population the ACC has to increase its effort. This also requires more resources.

### III. Priority Actions

**Each of the previous Anti-Corruption activities should be renewed in the 7<sup>th</sup> FYP. These include:**

1. Anti-Corruption Commission will thus be put on a more sustainable footing by providing it with clear independence to carry out investigations and prosecute
2. Implement institutional capacity building for the ACC and develop the professional skills of the ACC officials in combating and preventing corruption
3. The Government will initiate a sustained campaign to create public awareness and education in preventive measures, creating the right conditions for the public sector to enhance public service delivery

**Additional activities include the following:**

1. Develop anti-corruption strategies for critical sectors, including an implementation plan that may include the creation of anti-corruption cells in every government department
2. Implement the whistleblowers law
3. Review and strengthen the criteria and process of appointments of Chairmen and members of various constitutional and statutory commissions, such as PSC, ACC, HRC & ECB
4. Further expand procurement initiatives including e-Procurement and PROMIS: e-Procurement to be rolled out in more agencies (current plans expand to 4, and might increase to 8 by the end of the FYP period), and IMED to further expand the online procurement performance monitoring system (PROMIS) (again, current plans are for 4 and might increase to 8 by the end of the FYP period).
5. Initiate a public awareness campaign with a particular focus on youth.

## Parliamentary Oversight

### I. Introduction

**Parliamentary oversight is a critical aspect of holding the Executive including the government administration accountable.** Parliamentary committees scrutinize the activities of government ministries, in terms of their spending, policy, staffing and other aspects. Within Bangladesh, a well functioning system of parliamentary oversight has the potential for improving the focus and impact of government activities, as well as ensuring integrity in spending. It also provides an avenue for citizens to make their voices heard via their parliamentary representatives.

**In Bangladesh, parliamentary committees have increased their level of activity over time, particularly under the 9<sup>th</sup> Parliament, but the Parliamentary Accounts Committee recommendations require greater responsiveness from government agencies.** At the close of the 9<sup>th</sup> Parliament, standing committees conducted approximately 2,000 meetings, with over 16,000 recommendations sent to ministries. The Parliamentary Accounts Committee (PAC), which responds to reports from the Office of the Comptroller and Auditor General (OCAG), has become particularly active. During the 9<sup>th</sup> Parliament, the PAC discussed 6,740 audit objections, settling over 4,100 audit objections that represented an estimated BDT 150.96 billion. The main committee, who conducted 129 meetings, and four sub-committees, who conducted 123 meetings, completed these activities. However, according to the OCAG Annual Report of 2013, over BDT 256.0 billion had yet to be recovered as relates to audit objections settled with ministries. Such an imbalance in funds recommended for recovery versus those actually recovered suggests that further efforts are needed to ensure that recommendations from the PAC require a response from government agencies. The fundamental problem is that the parliament neither has any say over the government budget, nor any committee discuss or submit any proposal to the government on the national budget. Usually the budget sessions are long but these discussions do not provide any recommendation for change or edit rather it approves the budget. In summary there is no budgetary accountability mechanism within the parliament.

**Parliamentary oversight is still limited due to a series of factors, including the independence of parliamentary committees, the capacity of parliamentary staff and the responsiveness of ministries to parliamentary recommendations.** As mentioned, parliamentary committees make recommendations to which the ministries fail to react, meaning that the ability of parliament to hold them accountable is also limited. Similarly, the committee proceedings are not open to the public, nor are the minutes generally available. There are not yet rules that require ministry representatives to appear before the parliamentary committees. Moreover, the independence and capacity of the committees are sometimes limited. Further focus should be placed on the level of participation from female parliamentarians in these committees as well.

### II. Government activities to date

**According to the indicators outlined in the Mid-Term Review of 2014, GoB has made advances in terms of democratic governance.** These improvements are outlined in Section 3 of this document. Improvement was mainly found in the democratic governance indicators, in which the number of bills passed and the portion of elected female representatives increased markedly. Parliamentary attendance increased only slightly, from 57 percent to 58 percent.

**Actions from the 6<sup>th</sup> FYP to make the parliamentary process effective include the following:**

- Increasing the number of hearings open to the public, particularly of important budgetary committees such as the Public Accounts committee
- Promoting standards for policy debate
- Ensuring greater cross-party representation in standing committees and encouraging multi-party participation in formal reviews of Government actions

**None of the activities outlined in the 6<sup>th</sup> FYP have been completed to date, though, as noted above, there have been strong efforts to increase the level of activity of the parliamentary committees.** Our team could find little evidence that the GoB had taken steps to implement the above actions.

**In the medium and long term, the Parliament should seek to improve along several dimensions.** Government should increase the capacity of the Parliamentary secretariat, which could be done through implementation of its strategic plan. Furthermore, increasing the independence of Parliamentarians is critical, and as such, a constitutional amendment and revisions to the rules of procedure are needed to allow MPs to act independently, as well as possibly a paper describing the separation of powers. Further scrutiny of the Privileges Committee is also needed.

### III. Priority Actions

**Actions from the 6<sup>th</sup> FYP to make the parliamentary process effective that should be implemented in the 7<sup>th</sup> FYP include the following:**

1. Increasing the number of hearings open to the public, particularly of important budgetary committees such as the Public Accounts committee
2. Promoting standards for policy debate, in terms of allowing time and space for parliament (and if possible experts and other stakeholders such as established think tanks) to give opinions on policies, with the public generally informed regarding these processes

**Newly proposed activities include the following:**

1. Develop mechanisms to ensure timely responses to recommendations from the Public Accounts Committee, and provide easily accessible and comprehensible data for the public, including a progress report from the PAC
2. Build on the existing capacity of the Parliamentary Secretariat, and ensure effective implementation of the Parliament Secretariat Act 1994 & Rules

3. Build the existing capacity of the Parliamentary Standing Committees to work more independently to ensure their role as the main oversight organ of the parliament, as well as ensure the participation of female parliamentarians.
4. Make public the committee proceedings public which are not related to the issues of national security or national interest. The minutes could be made available at the parliament website.
5. Enhance the capacity of the Public Accounts Committee to effectively review audit reports.

## Civil Society

### I. Introduction and Overview

**Bangladesh has developed a state of the art civil society, composed of world-renowned non-governmental organizations (NGOs), vibrant community-based organizations (CBOs), research institutions and media.** They have played a critical role in improving service delivery, particularly to the poorer sections of our vast population; increased accountability by encouraging the participation of citizens; and generally enhanced transparency within the society by bringing issues into the public domain. The continued progress of civil society is vital because it can significantly contribute to the establishment of a sound democratic governance system by exerting pressure on the various actors in the governance and political arena to bring about qualitative improvement in the lives of citizens.

**Civil society plays a critical function in terms of promoting democracy and good governance.** “Theory, evidence and donor policy agendas relating to governance all stress the vital role for a vigorous, independent media and an active civil society....under the right conditions, media and civil society can be expected to act as watchdogs of governance....Bangladesh’s development NGOs are globally renowned for service delivery to the poor, but until recently their impact on governance has been more muted.” (SOG, 2006, p. 93) But this situation has changed since mid-1990s as NGOs and ‘activist’ civil society organizations (CSOs) have become more and more vocal on governance issues. The relationship between successive governments and civil society can best be described as ‘temperamental’ and subsequent experience of the main actors can be described as that of a ‘roller coaster’ ride. This makes it even more important that Bangladesh develop a more sustainable government-civil society relationship to build on the firm foundation that has been laid for future development of Bangladesh.

**In Bangladesh the support of the international development community has steadily increased.** “Bangladesh provides an interesting exception to the wider global discourse on NGOs.” (SOG, 2006, p.93) The share of total aid has risen from 14% in the early 1990s to around 25% [in 2006] and their share of grant aid has increased almost four-fold since 1991 [till 2006]. Due to greater financial sustainability of the major NGOs in Bangladesh their activities have increased manifold and on average there are now 15 NGOs or NGO branch offices in each Thana across the country. Their activities encompass varied sectors, such as microcredit, education and health. Over the last couple of decades the service delivery NGOs have complemented government services. This is reflected in the various Five-Year Plans, which envision significant contribution from the NGOs, particularly in reaching the extreme poor. It is to be noted that a significant amount of “external resources to NGOs are currently estimated to be earned via contractual arrangements with Government from multilateral agencies.” (SOG, 2006, p.94)

**Another notable indicator in terms of civil society development, particularly NGOs, is the fact that they have become less dependent on donors.** “The number of communities served by NGOs doubled in the five years up to 2000, whereas aid to NGOs grew considerably more slowly....As the first BINGO (BINGO studies were undertaken in 2000 – these were reviews of the activities and impacts of the big NGOs funded by DFID Bangladesh who commissioned the studies) study showed, while donor grants accounted for 94% of the total income of the 11 big NGOs in 1989-1990, this figure was only 35% by 1998-1999.” (SOG, 2006, p. 94)

**A significant development that has happened since the mid-1990s is the closer engagement of civil society organizations with the issue of governance.** The advent of democracy in Bangladesh created an environment that encouraged NGOs and civil society organizations to undertake research and advocacy on governance. Organizations, such as, Centre for Policy Dialogue (CPD), Transparency International Bangladesh (TIB), Ain O Salish Kendra (ASK), Manusher Jonno Foundation (MJF), Bangladesh Legal Aid Services Trust (BLAST), Shujon, and many others are now involved in governance related research and advocacy.

**We endorse a similar approach to the 6<sup>th</sup> FYP and the Perspective Plan, which recognize the importance of civil society, and do not make particular recommendations.** The state has to discharge its responsibility by creating a conducive and enabling environment in which civil society can perform its important ‘watch-dog’ role. This objective can be mainly achieved through a transparent regulatory framework, which will enable the civil society actors to operate without fear or state interference. Therefore, the 7<sup>th</sup> 5-Year Plan refrains from making specific recommendations, and remains faithful to the precedent set by the 6<sup>th</sup> FYP.

The perspective plan stated that – *“The implementation of the Perspective Plan envisages the full commitment of will, skill, and resources from all stakeholders to developing the nation into a middle-income country by 2021. The government will make the long-term perspective a central element of the decision making process and service culture. But the government alone cannot achieve the Vision. It will have to be a collective effort in which the private sector, civil society, and all other stakeholders will share responsibility to reshape the nation’s future. The consultative process in formulating the Plan must continue throughout the implementation holding Vision 2021 not as a destination in itself but a journey. The Plan will no doubt inspire great vision but the challenge is not to let it fall short of expectations due to implementation failures.”*

The perspective plan also emphasize the role of CSOs in implementing development agenda at the grassroots – *“There is also an appropriate role for civil society and NGOs in supplementing and promoting development at the grassroots and ensuring that the fruits of development are equitably shared. The civil society organizations can discharge this role by coordinating their programmes with the national policy framework and acting in a fully transparent and accountable manner.”*



In the Sixth Five Year Plan the government also put emphasize on inclusion of CSO in implementing various development agendas including child labor, social protection, food security, among others. The document also stated the importance of integral approach to ensure the implementation of the plan.

## A Special Section on Human Rights

Human rights constitute an important aspect of national and international political agenda as they require governments to conform to acceptable standards of behavior in their treatment of and interaction with citizens on the one hand, and affect the relationship governments with other states and relevant international fora. A democratic society is characterised by rule of law, democratic governance and protection of human rights where each component defines itself, complements and depends on the others for its meaning.<sup>15</sup> Despite that the rule of law is one of the basic features of the legal system of Bangladesh and the external facets of democratic governance appear to be in place, legacies of an authoritarian past seem to have left an ineradicable mark on the nation that effectively impedes the emergence of a culture of human rights and democratic values. Notwithstanding that the State is legally and morally obliged to protect citizens' human rights, initiatives in this regard are constantly thwarted by deficits in governance, absence of accountability, impartiality and transparency in decision-making, partisan and weak law enforcement and a confrontational political culture.

### **Human Rights Violation in Bangladesh: A Brief Overview**

Bangladesh has witnessed grave violations of human rights at different stages of its history. This section highlights the key rights issues/areas for an understanding of the trends, patterns and types of human rights violation.

#### ***Right to Information and Freedom of Expression and the Press***

Despite having a Right to Information law, the right to information is often curtailed by anti-disclosure laws like the Official Secrets Act 1923, Government Servants Rules 1979, Evidence Act 1872, Rules of Business 1996, and the Oath Affirmation of Secrecy. The culture of secrecy obstructs citizens from accessing relevant information, participating in decision-making and holding actors in governance accountable. It also undermines service delivery and coordination of development initiatives. The government has on occasion tried to suppress dissent through arrest of Bloggers, bans on public assemblies or closing of media outlets. Opposition parties were refused permission to hold public meetings several times. Freedom of expression is sometimes curtailed by executive orders of censorship.<sup>16</sup> Journalists face intimidation and physical violence from both state and non-state actors, legally as well as extra-legally when they cover stories of human rights violations. Freedom of the media is curtailed by threats of closure and/or change of management. Contempt orders by the court are also used as a means of suppressing freedom of the press. In 2006, the Bangladesh Tele-Communication (Amendment) Act 2005 empowered security agencies to record telephonic communications ostensibly for ensuring public safety. Subsequent amendment to the Act in 2013 provides blanket immunities to law enforcing agencies for arrest of any person on grounds that might broadly interpreted as activities the state or public interest. Similarly, the National Broadcast Policy 2014 has immense possibilities to curb the independence of the media.

#### ***Right to life, liberty and security***

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<sup>15</sup> Davidson, Scott, *Human Rights*, Open University Press, Buckingham et.al., 1993, p. 165.

<sup>16</sup> *Ibid*, p.39.

Bangladesh has acquired an infamous reputation for alleged extra judicial killings by law enforcement agencies operating under special security laws at various stages of the country's history. Although the government often claims that members of the law enforcement agencies have been penalized for abusing their powers, the outcome has never been made public. Despite legal bars to the use of torture, physical and psychological abuse consisting of beating, electric shocks, intimidation, etc. by law enforcement agencies during arrest, interrogation and remand are commonplace. The government rarely charges, convicts or punishes those who are responsible for these atrocities, thereby promoting a culture of impunity. Fear of reprisals discourages individuals from filing criminal charges against law enforcement agencies. It is common for the police under political governments to resort to mass arrests of ordinary citizens for their involvement in political demonstrations and public protests. Arrests are arbitrarily carried out under section 54 or Section 167 of the Criminal Procedure Code without appropriate warrants. Due process is not observed as the conditions stipulated under these laws in respect of informing detainees of the grounds of arrest within the legally stipulated time of 24 hours of arrest. A new trend of enforced disappearances and abductions often resulting in death, has started which has reached alarming proportions. Such occurrences have created fear and desperation amongst citizens and affected families many of whom allege the involvement of law enforcement agencies in the process.

### ***Right to shelter***

While rural-urban migration by people in search for better opportunities has been on the rise, there has not been any corresponding strategy to cope with the large-scale population movement from the rural areas to the urban centers. During political governments it is political patronage that determines the distribution of land and housing; as such, the privileged classes, e.g., the military, police, members of parliament, bureaucrats and property developers benefit from the land and housing schemes of the government. Despite clear constitutional provisions to prevent forced evictions, as well as High Court judgments directing the Government to provide proper notice and undertake rehabilitation measures before displacement, slum demolitions/evictions are undertaken time to time.

### ***Women and Children***

Divorce, polygamy, child custody, maintenance, rape, physical torture, dowry violence, misguided religious sanctions (*fatwas*), citizenship, and discriminatory practices are some of the major issues that dominate the women's rights agenda in Bangladesh. Women's rights are often compromised by religious extremists who believe that women's emancipation would threaten the social fabric that is largely characterised by patriarchal norms. Moreover, whenever there is a conflict between culture and law, the former invariably prevails. For example, despite legal sanctions against child marriage, the practice could not be purged entirely. Similarly, notwithstanding anti-dowry laws, the practice of dowry demands and subsequent reprisal for non-payment continues.

Children universally constitute a category of human beings who are amongst the most vulnerable and in need of special protection. Although children are entitled to fundamental rights in the same way as adults, they are often circumscribed in accessing and enforcing those rights owing to their inherent powerlessness that stems largely from their physical and mental immaturity. Indeed, socio-cultural realities also play an important role in determining children's lifeworlds. Children are confronted with multi-dimensional challenges including child labour, deprivation of their liberty by way of illegal incarceration, harassment and physical abuse, sexual exploitation, early marriage, lack of schooling and educational opportunities and lack of proper birth registration.

### ***Persons with disability***

Considered a social and economic encumbrance, people with disabilities experience prejudicial treatment in terms of family entitlements, learning opportunities, health services, equal opportunities in employment and personal security, all of which are essential prerequisites to the development of individual capacities. Continuing concerns include the continued application of discriminatory laws (such as the Lunacy Act 1912 which infringes the rights of persons with intellectual disabilities and persons with mental illness), the lack of enforcement of laws, slack service delivery and attitudinal problems of people regarding persons with disabilities.

### ***Prisoners***

Jails in Bangladesh are characterized by overcrowding, unsanitary, unsafe and unhygienic conditions. Reports of children being held in jails, foreign prisoners being detained beyond the expiry of their sentences, persons with mental illness being imprisoned for prolonged periods, and under-trial prisoners lacking legal aid led to repeated directives from the High Court Division to remedy the situation but with very little effect. Interventions of the High Court in the long run proved effective in restraining the use of bar fetters on prisoners, in calling upon the Government to release foreign prisoners, in transferring children from jails to juvenile correction centres and arranging for their release.<sup>17</sup>

### ***Workers***

The most common violations in the industrial sector include failure to provide a job contract, formal appointment letters, delays in payment of wages, failure to pay for overtime hours, failure to provide maternity leave and inadequate childcare facilities. In recent years, employer negligence has resulted in numerous workplace injuries and numerous deaths through fire and building collapse. The rights to assembly and to association are frequently flouted, and the use of violence and intimidation by law-enforcing agencies to suppress workers' protests is not uncommon. Due to weak and inefficient regulatory structures and enforcement machinery, the rights and protection provided in the labour laws are not implemented properly. Redress through labour courts or other legal means has not been easy for the workers.

### ***Ethnic, religious and linguistic minorities***

The estimated 2.5-3 million indigenous peoples of Bangladesh, popularly known as *Adivasis* (early settlers in the plains) and *Paharis* (hill people in the Chittagong Hill Tracts) constitute at least 45 distinct ethnic and linguistic groups that face continuing oppression in terms of land encroachment and eviction, often in the name of development (eco-parks, plantations, construction of infrastructure), discrimination in employment opportunities, access to justice and protection of the law. Land grabbing is a pervasive occurrence and those who seek to resist land expropriation risk arrest, ill-treatment and often, death.<sup>18</sup> Over the years the ethnic minority peoples have been suffering from a strong sense of social, political and economic exclusion, fear and insecurity, loss of cultural identity and social oppression. The vulnerability of ethnic minority groups is sustained by the continued lack of their representation and participation in state policies, processes and programmes, even in the ones that specifically address ethnic minority issues.

### ***Refugees***

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<sup>17</sup> Office of the United Nations Resident Coordinator in Bangladesh, 2007, *op.cit.*, p.38.

<sup>18</sup> Human Rights Forum on UPR Bangladesh, 2008, *op.cit.*, p.13.

Government attitude and action with regard to Rohingya refugees have not altered greatly given their denial/reluctance to grant asylum to Rohingyas arriving from Myanmar, quite often claiming that they were actually illegal economic migrants. Despite reassurance by the UNHCR that they were indeed refugees, they are denied registration and on occasion arrested by the police and imprisoned under the Foreigners' Act.<sup>19</sup> Rohingyas continue to experience other violations such as abuse, rape, assault, deprivation of food, lack of medical care, education and opportunity to earn a livelihood.

### **Human Rights within the Legal Framework of Bangladesh**

The history of Bangladesh reveals progressive struggles for democracy and representation in an attempt to ensure human rights, the rule of law, equality and justice. The war of liberation in 1971, which was fought to secure the right to self-determination, essentially marks the beginning of human rights activism in Bangladesh. The Constitution acts as a bulwark against abuse of civil and political rights. It provides fundamental rights that guarantee *inter alia* equality before law and equal protection of law, protection of life and liberty and prohibits discriminatory treatment and forced labour. The Constitution also guarantees rights during arrest, detention, trial and punishment. Specific liberties of speech and expression, movement, association and assembly, trade and occupation, religion and property, security of home and privacy are also guaranteed. Indeed, the fundamental rights envisaged in the Constitution of Bangladesh are reflections of many of the basic provisions of the Universal Declaration of Human Rights. Taken together, these rights pave the way for a just, free and egalitarian society.

Undeniably, the guarantees to civil, political and social rights are crucial for creating conducive conditions for the development of the potential of human beings, which in turn is vital for a democratic polity.<sup>20</sup> Fundamental rights, in essence, constitute a general standard to be maintained by every government in the common interest of the people. The object of fundamental rights is not simply to ensure inviolability of certain essential rights against political changes, but also to impress upon the people the fact that they have attained a new level of national existence.<sup>21</sup>

There are however, exceptions to the protection of the fundamental rights guaranteed by the Constitution. For example, Article 45 states that no action can be taken to challenge derogation of fundamental rights in respect of any provision of a disciplinary law relating to members of a disciplined force. This saving clause is limited to the purpose of ensuring proper discharge of duties of the members of the disciplined force or maintenance of discipline in that force. In practical terms disciplined force connotes any force engaged in the defence of the country or the maintenance of the law and order. Again, the declaration of an emergency shall automatically suspend the fundamental rights guaranteed by Articles 36-40 and 42<sup>22</sup> and any law made during the emergency shall not be void because it is consistent with any of the fundamental rights envisaged in the aforementioned articles. The suspension of these fundamental rights shall remain in force so long as the emergency is not formally lifted.

The Constitution also sets out the fundamental principles of state policy which require the State to ensure *inter alia* women's participation in national life, free and compulsory education, public

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<sup>19</sup>US State Department Report 2009, *op.cit.*, 2010.

<sup>20</sup> Choudhury, Dilara, *Constitutional Development in Bangladesh. Stresses and Strains*, University Press Limited, 1994, p. 173.

<sup>21</sup> Tope, T.K., *Constitutional Law of India*, Eastern Book Company, India 1988, p.32.

<sup>22</sup> The fundamental rights envisaged in these articles are freedom of movement, freedom of assembly, freedom of association, freedom of thought, conscience and speech, freedom of profession or occupation, and right to property respectively.

health, equality of opportunity, work as a right and duty, rural development and promotion of local government institutions and respect for international law. Although theoretically considered to be unenforceable as according to Article 8(2) the Fundamental Principles of State Policy, unlike the Fundamental Rights, shall not be enforceable in court, it declares at the same time that these principles shall-- a) be fundamental to the governance of the country, b) be applied by the state in the making of laws, c) be a guide to the interpretation of the Constitution and other laws of the country, and d) form the basis of the work and state and of its citizens. Moreover, Article 47(1) of the Constitution maintains that no law shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the fundamental rights, if Parliament in such law (including, in the case of existing law, by amendment) expressly declares such provision is made to give effect to any of the fundamental principles of state policy. It is clear that Constitution has maintained a fine balance between fundamental rights and fundamental principles of state policy where they appear to supplement each other in bringing about social change and ensuring democratic governance. Accordingly, the Supreme Court has, on a number of occasions, upheld these fundamental principles in protecting economic and social rights of citizens. It has been argued that judicial enforcement is not the only means of enforcing a particular rule; public opinion is often an effective mechanism for enforcing certain principles. This is in conformity with the idea of popular sovereignty where accountability to enforce these principles is left to the political process.<sup>23</sup>

Legislative developments in the area of human rights have been fairly robust in Bangladesh. In addition to inheriting some colonial laws (e.g. *The Penal Code, 1860, The Criminal Procedure Code, 1898, Child Marriage Restraint Act, 1929, The Children (Pledging of Labour) Act, 1933, The Suppression of Immoral Traffic Act, 1933, The Dissolution of Muslim Marriages Act 1939, and The Vagrancy Act, 1943*), the post independence period saw the enactment of laws some of which contained specific provisions pertaining to human rights (e.g. *The Special Powers Act, 1974, The Extradition Act, 1974*) and some which more directly impinged on human rights (e.g. *The Children Act, 1974, The Dowry Prohibition Act, 1980, The Suppression of Repression against Women and Children Act, 1995*).

From 2000 onwards, a plethora of human rights focused laws and amendments to earlier laws began to emerge. These include--

- i. The Suppression of Repression against Women and Children (Amendment) Act, 2000
- ii. The Suppression of Acid Crimes Act, 2002
- iii. The Acid Control Act, 2002
- iv. The Labour Act, 2006 (amended in 2009)
- v. The Information Technology & Communication Act, 2006 (amended in 2013)
- vi. The Right to Information Act, 2009
- vii. The National Human Rights Commission Act, 2009
- viii. The Citizenship (Amendment) Act, 2009
- ix. The People's Representation (Amendment) Act, 2009
- x. The Consumer's Rights Protection Act, 2009
- xi. The Code of Criminal Procedure (Amendment) Act, 2009
- xii. The Anti-Terrorism Act, 2009
- xiii. The Domestic Violence (Protection and Prevention) Act, 2010

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<sup>23</sup> Haque, Muhammad Ekramul, "Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh", in *Journal of the Faculty of Law, The Dhaka University Studies Party F*, Vol. XVI, No.1, June 2005, pp.45-80, at p. 79.

- xiv. Small Ethnic Groups Cultural Institution Act, 2010
- xv. The Whistleblower Protection Act, 2011
- xvi. The Prevention and Suppression of Human Trafficking Act, 2012
- xvii. The Pornography Control Act, 2012
- xviii. The Children Act, 2013 (replaced the 1974 Act)
- xix. The Safe Food Act, 2013
- xx. The Parents' Care Act, 2013
- xxi. The Rights of the Persons with Disabilities and their Protection Act, 2013
- xxii. The Torture and Custodial Death (Prevention) Act, 2013
- xxiii. The Overseas Employment and Migrant Workers Act, 2013

The progress in the enactment of these various laws is indicative on the one hand, of Government willingness to protect citizens' human rights and on the other signifies state compliance with obligations under various international laws to which Bangladesh is Party. However, the real challenge lies in effective and dispassionate implementation of the laws, an area that has time and again been compromised.

### **Obligations under International Human Rights Standards**

Within one year of its independence, Bangladesh applied for membership at the United Nations. On 17 September 1974, Bangladesh became the 136<sup>th</sup> member of the United Nations and as such, adhered to the Universal Declaration of Human Rights (UDHR) 1948.<sup>24</sup> Indeed, adherence by Bangladesh to the UDHR is manifest in the Preamble of the Constitution of Bangladesh which pledges that

...it shall be the fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political and social, will be secured for all citizens.

Respect for international law is also evident from Article 25 of the Constitution which reinforces Bangladesh's resolution in the Proclamation of Independence to abide by the United Nations Charter. Furthermore, that Bangladesh is committed to protection of human rights (at least in theory), is evident from its accession to or ratification, over the years, of almost all the key international human rights instruments, which include:

- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- Convention on the Elimination of all Forms of Discrimination against Women, 1979 and its Optional Protocol, 2000
- Slavery Convention, 1926 Protocol amending the Slavery Convention, 1953
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956
- Convention for the Suppression on Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

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<sup>24</sup> The UDHR is recognised as a statement of general principles expounding the meaning of the phrase 'human rights and fundamental freedoms' envisaged in the UN Charter. For more, please see Shon, L.B. 'A Short History of United Nations Documents on Human Rights', in *United Nations and Human Rights*, New York, 1968, p.71.

- Convention on the Rights of the Child 1989 and its two Optional Protocols, 2001
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- Convention on the Political Rights of Women, 1952
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of Persons with Disabilities 2006 and its Optional Protocol
- Convention against Corruption, 2003
- Rome Statute of the International Criminal Court, 1998
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

Bangladesh is also a Party to a number of core ILO Conventions that impinge on human rights. These include:

- Forced Labour Convention (No. 29), 1930
- Convention on the Right to Organise (Agriculture) (No. 11), 1921
- Convention on the Right to Freedom of Association and Protection of the Right to Organise (No.87), 1948
- Convention on the Right to Organise and Collective Bargaining (No. 98), 1949
- The Indigenous and Tribal Populations *Convention*(No. 107), 1957
- Convention on the Elimination of Worst Forms of Child Labour (No.182), 1999

The act of ratifying or acceding to an international Convention essentially demonstrates a State's willingness to adhere to the provisions enshrined therein, manifest from the promulgation of national laws in conformity with international legal standards. In the event such laws already exist at the time of ratification of a given convention, it is expected that the former will be amended in line with international commitments. While legislative developments in this area in recent years indeed constitute one indicator of state compliance with international human rights obligations, indicators demonstrating effective implementation of the laws continue to fall short of the desired expectation. Reporting obligations before the treaty bodies have likewise fallen short of expectations given inherent delays in reporting process.

### **Human Rights in National Policies**

Mention of human rights in government policies is quite often perfunctory and rhetorical with no concrete strategic directions for effective implementation. The Sixth Five Year Plan 2011-2015 of the government recognises the importance of judicial reforms, access to information, corruption control and protection of human rights, but the references are light touch and broad-based. It also alludes to rights of women and children, minorities, people with disabilities, poor and vulnerable groups and calls for their empowerment. While the Perspective Plan 2010-2021 avoids direct reference to human rights, it does dwell on broad approaches for eradication of poverty, inequality and human deprivation. It appears from these policies that have received tentative treatment by policymakers who have by and large shied away from addressing human rights in more tangible ways.

The Government has approved the Women Development Policy 2011 with provisions for equal rights of men and women in the family, society, and work places. The policy also envisages women's full control on their earned property, credit, land, inheritance, and market management.



It calls for removing all kinds of discrimination against women and provisions contradicting CEDAW. However, actual implementation of the policy has remained elusive.

The Government has adopted the National Child Labour Elimination Policy in 2010 the broad objective of which is to withdraw children from all types of child labour including hazardous and obnoxious works. The policy directs that until child labour is completely eliminated some intermediary measures should be introduced in both the formal and informal sectors. The Government has also approved the National Child Policy 2011 that encapsulates measures for ensuring children's well-being before and after their birth as well as throughout the period of their growth by ensuring their physical, mental and social development. This policy expands the provisions of the earlier Children Policy of 1994 and attempts to adopt a rights-based approach in addressing children's issues ranging from health, education and recreation to protection from violence and exploitation.

### **Institutional Mechanisms for Human Rights**

#### ***The Supreme Court***

The incorporation of fundamental rights into a constitution does not by itself ensure rule of law and protection of human rights. There is a need for a concrete and constitutionally mandated mechanism to give effect to these rights. The Judiciary in Bangladesh has two levels, the Supreme Court comprising of the High Court Division and the Appellate Division and the Subordinate Courts. The Supreme Court is empowered to review legislative enactments and executive actions to assess whether they are compatible with Constitutional provisions. It has the jurisdiction to hear writ petitions and issue necessary directives to ensure justice to victims of civil rights violations. Law and order situation within the country is maintained by the police administration under the direct control of the Ministry of Home Affairs. A Public Prosecutor is appointed by the Government from members of the District Bar at every administrative district for the administration of criminal justice.

The High Court Division of the Supreme Court has the power under Article 102 (1) of the Constitution to pass necessary orders for the enforcement of fundamental rights envisaged in the Constitution (Articles 26-43). Under Article 44 (1) of the Constitution, one has the right to move the High Court Division for the enforcement of fundamental rights. An aggrieved person may resort to five different types of writs namely orders in the nature of *prohibition*, *mandamus*, *certiorari*, *habeas corpus* and *quo warranto* (Article 102 of the Constitution) in seeking relief from the High Court Division. Writs of *certiorari* and *prohibition* are intended to prevent public functionaries from exceeding their power. The writ of *mandamus* compels public functionaries to do what they are legally bound to do when they are refusing to do it. The writ of *habeas corpus* ensures that no person is detained or confined without lawful justification or in an unlawful manner. The writ of *quo warranto* is directed to ensure that no one occupies a public office without lawful authority.

In addition to writ jurisdiction, the High Court Division enjoys inherent power under Section 561-A of the *Code of Criminal Procedure* that allows it to pass any order deemed necessary by it to prevent abuse of the process of any court or for the ends of justice. The inherent jurisdiction of the High Court Division, which remains intact even during Martial Law, is a crucial tool for the protection of fundamental human rights.

#### ***National Human Rights Commission***

Pursuant to the *National Human Rights Commission Ordinance* the long-awaited National Human Rights Commission came into effect on September 1, 2008. The Commission has the

mandate to receive and investigate allegations of human rights violations and if proved, settle the matter or refer it to Court/relevant authorities, as the case may be.

### ***Law Commission***

Pursuant to the *Law Commission Act 1996*, a Law Commission has been established to identify causes of delay in court cases, recommend enactment of new laws or amendment/repeal of existing laws. Despite doing some interesting work, the Law Commission but lacks visibility and has largely failed to capture the attention of the law and policy makers.

### ***National Legal Aid Services Organisation (NLASO)***

Recognising inherent difficulties that impede poor people's access to justice, the Government enacted the *Legal Aid Act* in 2000 under which a National Legal Aid Services Organization has been set up to provide legal aid services to the poor and the disadvantaged.

### ***Office of the Attorney General***

The Government formulated the *Government Attorney Services Ordinance, 2008* for the establishment of a permanent government attorney service. The purpose is to appoint, train, retain and administer Government Law Officers to ensure effective representation of the Government in the judicial process in the (i) Supreme Court and (ii) District Courts, including civil and criminal cases in the *Upazila* (sub-district) level. Additionally, a Government Attorney Department has been set up for effectively dealing with court cases and performing other duties on behalf of the state in the expectation that new system will ensure transparency and accountability and dispensation of justice in a fair and impartial manner.

### ***Anti-Corruption Commission (ACC)***

In February 2004, the Parliament passed the Anti-Corruption Commission Act which sought to establish an independent agency for combating corruption in the country. Unfortunately, since its inception, the ACC demonstrated a lack of initiative and remained virtually inoperative. The reconstitution of the Anti-Corruption Commission (ACC) has been a priority for the 2007-2008 Caretaker Government, which made the ACC central to its drive against corruption. The Anti-Corruption Commission Act 2004 was revised along the lines of the Emergency Power Rules 2007 to reinforce the effectiveness of the Commission.

### ***Information Commission***

The Government has set up an Information Commission composed of three members pursuant to the Right to Information Act of 2009. The Commission's mandate is to protect citizens' right to information and is accordingly, empowered to receive complaints in the event of denial or withholding of information. Progress has been slow in terms for the Commission's work and it is yet to demonstrate its effectiveness.

### ***Office of Ombudsman***

The Constitution of Bangladesh (Article 77) provides for the office of Ombudsman who shall exercise such powers and perform such functions as the Parliament may, by law, determine. This includes the power to investigate any action taken by a Government Ministry, a public officer or a statutory public authority. An Ombudsman Act was enacted in 1980 for setting up the Office of Ombudsman but has not materialised yet.

### **Gender Responsive Measures**

The fact that the government attaches significant importance to gender dimensions in human rights is manifest from the wide range of initiatives undertaken to address women's issues. To

begin with, amongst the plethora of human rights focused laws, there exist a considerable number of laws that pertain exclusively to women's security and protection. For example, special laws like *The Suppression of Repression against Women and Children (Amendment) Act, 2000*, *The Suppression of Acid Crimes Act, 2002*, *The Acid Control Act, 2002*, *The Citizenship (Amendment) Act, 2009*, *The Domestic Violence (Protection and Prevention) Act, 2010*, *The Prevention and Suppression of Human Trafficking Act, 2012* and *The Pornography Control Act, 2012* have been promulgated pursuant to state commitment to protect women against inequality and harm.

Various institutional measures have at the same time been undertaken to safeguard women's rights.<sup>25</sup> In view of escalating incidents of violence against women, the Government has established One-Stop Crisis Centers (OCC) at medical colleges in six divisions to provide, in collaboration with selected NGOs, assistance to victims of violence. The One Stop Crisis Centers operate as independent units in the hospitals, functioning in close collaboration with the emergency wards. They provide integrated services spanning medical, social and legal support and aid survivors in having their cases filed directly by police officers attached to the centre. In addition, there is a police desk for receiving complaints and investigating cases. DNA Profiling Laboratories have been established to facilitate the forensic work of OCCs, particularly in rape cases, for effective and evidence-based prosecution of perpetrators of violence.

Interventions of the higher judiciary have culminated in some positive developments in the VAW realm. In June 2013, the High Court ordered the appointment of female doctors, nurses and other staff in all government hospitals to conduct the medical tests on women subjected to rape<sup>26</sup> pursuant to which a notice has been published by DGHS regarding appointments of female doctors and MLSS in Medical College Hospitals/ sadar hospitals, general hospitals and other government hospitals.<sup>27</sup> In October 2013, the High Court declared 'two-finger test' undertaken upon women and girl rape victims to be unlawful and a violation of fundamental rights as guaranteed by the Constitution. The HC also asked the government to prepare a comprehensive guideline that would govern the way various actors treat rape victims. According to media reports, the Health Ministry has drafted a new guideline in this context which, approved and implemented, will make it mandatory for the police to record a rape victim's statement within three hours of being approached and hospitals to conduct medical examination without police reports. The draft also nullifies the "two-finger test," and labels the test as unscientific and horrendous.<sup>28</sup>

Safe homes and shelters for vagrant women and children and victims of gender based violence have been set up. While the Police Headquarters and select police stations host a Special Cell for Women, there is a *Nari Nirjatan Protirodh* Cell at the Ministry of Women and Children's Affairs which provides counseling and assistance to victims of violence against women in legal proceedings. Similar provisions are available in the Department of Women's Affairs and National Women's Organization (*Jatiyo Mahila Shangstha*). A monitoring cell has been established at the Police Headquarters in the capital to prevent and monitor clandestine movements of women and children for illegal and immoral purposes. More recently, the Government has set up a National

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<sup>25</sup> Parts of this section are drawn from draws on Khair, Sumaiya, *Gender-based Violence and Women's Access to Justice: A Legal Review* prepared for BRAC Development Institute (BDI), 2012.

<sup>26</sup> Dhaka Tribune, <http://www.dhakatribune.com/law-rights/2014/apr/20/hc-male-doctors-cannot-test-rape-victims>

<sup>27</sup> <http://www.dghs.gov.bd/index.php/en/home/898-about-appointing-female-doctors-and-mlss>

<sup>28</sup> Dhaka Tribune, <http://www.dhakatribune.com/law-rights/2014/apr/10/new-guidelines-end-two-finger-rape-test>

Trauma Counselling Center (NTCC) to cater to the mental health needs of women and children who are victims of violence. Many of these measures have been undertaken under the *Multi-Sectoral Programme on Violence against Women* supported by the Danish Government. Beginning in 2001, this programme has been instrumental in getting the government to recognise VAW as a complex issue that required a holistic approach.

A number of initiatives have been undertaken by the Government to monitor the status of violence against women and prescribe measures for speedy disposal of VAW cases. The “Nari Nirjaton Protirodh Cell” established at the Police Headquarters for receiving specific cases and complaints involving violence against women collects VAW data from all districts on a monthly basis. The Government has also set up an Inter-Ministerial Advisory Committee to review the cases of violence against women received through Department of Women’s Affairs field offices, assess the cases that were disposed of and the reasons for those not being disposed of. Committees have also been set up at the district and thana levels, under the stewardship of the Deputy Commissioner and the Thana Nirbahi Officer respectively and the Women’s Affairs Officer for receiving cases and complaints. It is incumbent upon the Deputy Commissioner to furnish monthly reports on VAW in the districts including the thanas to the Women’s Affairs Division.<sup>29</sup>

The Bangladesh Police has established a Women Investigation Division under Dhaka Metropolitan Police in 2011 to investigate cases related to violation of women’s rights. Victim Support Centers and shelter homes have been set up in 6 divisional headquarters for providing food, medicine, clothes, legal aid, and rehabilitation opportunities to oppressed women and children. Community Policing Forums have also been set up under the police reform initiative to deal with VAW cases. A Hotline Number has been introduced for providing information and offering quick response to VAW complaints. Supported by the Multi-Sectoral Project on Violence against Women (MSPVAW) under Ministry of Women and Children Affairs (MOWCA), this service is available during office hours (9am-5pm).

Bangladesh has made considerable progress in addressing the problem of trafficking in women and children. Awareness campaigns and increased vigilance by concerned agencies have raised the number of arrests and prosecutions of perpetrators of human trafficking. Measures also exist for monitoring trafficking in women and children. There is an Inter-Ministerial Case Monitoring Committee, the primary function of which is to select certain pending cases related to the trafficking of women and children, and make a special effort to deal with them quickly. The efforts of the Committees culminated in the expeditious trial and disposal of a significant number of cases related to human trafficking. This model has been replicated at the district level in the form of District Monitoring Committees that also select a minimum of pending cases, and monitor them regularly for quick resolution. The National Anti-Trafficking Committee led by the Secretary of the Ministry of Home Affairs monitor the progress of the activities undertaken by the various ministries and departments to combat trafficking. In addition, there is the Government-NGO National Coordination Committee comprising of representatives from the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of Women and Children Affairs, the Attorney General’s Office and various NGOs implementing programs to combat trafficking.<sup>30</sup>

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<sup>29</sup> Yusuf, Rizwana, *Massive Capacity Building at the Management Level for Effective Police Action on Violence against Women*, Institute of Hazrat Mohammad (SAW),

<sup>30</sup> See Huda, S. ‘Trafficking and Prostitution in Bangladesh - Contradictions in Law and Practice’, in Hughes, D and Roberts, C, *The Coalition Against Trafficking in Women* (1999), available at <<http://www.uri.edu/artsci/wms/hughes/mhvbang.htm>>

The Ministry of Home Affairs has set up a separate website for information on trafficking in women and children. There also exists a Rescue, Recovery, Repatriation and Integration (RRRI) Taskforce under Ministry of Home Affairs for strengthening the synergies between GoB-NGO initiatives for combat trafficking in women and children. The government has formed Counter Trafficking Committees (CTC) from the Union Parishad level to the district level for preventing human in women and children and monitoring the practice. The Police Headquarters also house a specialised unit for monitoring human trafficking throughout the country. It maintains a database of cases on trafficking on the basis of information received from all districts. This unit prepares reports on the closing of cases, the recovery and rehabilitation of trafficked persons, and follow up and repatriation of trafficked persons and submits them to the Ministry of Home Affairs regularly.<sup>31</sup> In September 2014, the Cabinet has approved a proposal to sign a memorandum with neighboring India for the rescue, repatriation and rehabilitation of victims of human trafficking. According to the memorandum, the whole process will be done with the help of law enforcing agencies and non-governmental organizations (NGOs).<sup>32</sup>

A Monitoring Cell has been set up in 2009 under the auspices of the Ministry of Home Affairs to monitor acid violence cases and to ensure their speedy and effective disposal. Headed by the Joint Secretary (police) of the Home Ministry, this Monitoring Cell has representation from other relevant government ministries, police headquarters, public prosecutor's office and NGOs working with VAW. The work of the Monitoring Cell at the Home Ministry is supplemented by the Acid Case Monitoring Committee which has been established at the Police Headquarters which monitors the investigation process of the acid violence cases and ensures active engagement of the public prosecutors in trials of acid violence cases.<sup>33</sup>

### **Justice for Women: Institutional Impediments**

Notwithstanding the commendable developments in the realm of addressing VAW cases, they are beset with inherent weaknesses that undermine their effectiveness. For instance, the number of One Stop Crisis Centers is inadequate for catering to the rising incidents of violence against women. The process of accessing their services is complicated and they lack skilled human resources that are necessary to effectively respond to survivors' needs. The Hotline Service is not available 24 hours which greatly limit its potential to assist women in distress. The law enforcement agencies are unfamiliar with the new anti-trafficking law and are largely unable to use it effectively in the absence of the Rules of Procedure that have not been drafted yet. Despite that the Inter-Ministerial Case Monitoring Committee on trafficking has been functioning with reasonable regularity and effectiveness, many of the Counter Trafficking Committees are non-functional.<sup>34</sup> Although the Acid Case Monitoring Committee has convened several meetings since inception, its work is impeded by irregular meetings, absence of members, and slack and delayed implementation of the Committee decisions. Finally, since many of these initiatives have been spearheaded with donor support, their continuance after the withdrawal of external support appears highly untenable.

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<sup>31</sup> International Development Law Organization (IDLO), *Strengthening the Legal Protection Framework for Girls: Bangladesh Country Report*, Rome, 2010, p.47.

<sup>32</sup> Daily Star, <http://www.thedailystar.net/cabinet-approves-mou-with-india-to-rescue-trafficking-victims-39701>

<sup>33</sup> Source: Acid Survivors Foundation.

<sup>34</sup> *Universal Periodic Review (UPR)*, joint submission to the UN Human Rights Council by BNWLA and 100 Coalition members, October 2012, p.5.

There is a marked reluctance amongst the law enforcing agencies to assist women in distress. It is common for the police to trivialise women's problems and there is a general disinclination to investigate incidents of violence on the apparent absence of sufficient grounds for intervention. As such, complaints by women often go unrecorded and evidence becomes hard to establish. Arrests of male suspects despite formal identification by female victims are rare and where offenders come from an influential background, inaction on the part of law enforcing agency is even more evident. Legal measures for protecting women are at times in direct contrast to the interests of the victims; for example, victims of rape or trafficking often find themselves in jails instead of the perpetrators. It is further inferred that investigations and prosecutions in cases involving women victims are rarely conducted with sensitivity to the victim concerned.<sup>35</sup> It is further alleged that women who bring complaints against their family or relatives, are often dissuaded by the police from filing an FIR or even a GD and coerce them instead into reaching a settlement with the opposite party. The women are reminded of the negative social consequences of not entering a “mutual settlement.”<sup>36</sup>

There is a dearth of active and committed lawyering which is fundamental to effective prosecution of crimes against women. Public prosecutors are advocates who represent the state and play a critical role in the administration of justice by effectively prosecuting offences. Indeed, public prosecutors are oath bound<sup>37</sup> to be ‘vigilant in the protection of human rights and [sic]to work towards building a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for citizens’. They have an obligation not only to ‘convict but to see that justice is done’. This spirit is also reflected in the *UN Guidelines on the Role of the Prosecutors 1990* which clearly provide that prosecutors must be impartial in their work, protect public interest, act with objectivity, ensure legality of the investigation and supervise the execution of court decisions. Indeed, this entails a high level of commitment, training and skills that would facilitate the role of public prosecutors.

Judges are by and large content on focusing on penal laws in adjudicating VAW cases with very little focus on state obligations under international law. Although many international laws instruments have significant local relevance, their implications are not formally recognised by most judges, primarily because they honestly believe that lower court judges have nothing to do with international human rights instruments.<sup>38</sup> This is largely due to ignorance of the concerned judges of the scope and content of international instruments and the manner in which they may be interpreted and applied in domestic jurisdictions. Even where, judges are knowledgeable on the subject, they are content to settle matters simply on the basis of national laws without referring to international human rights law. However, there is growing evidence of judicial activism whereby judges are increasingly referring to international human rights instruments in interpreting and applying domestic laws. Consequently, precedents are being set with emphasis on the relevance of international human rights law.

### **Civil Society Actors for Human Rights**

A key feature of the Bangladesh experience has been the plurality of drivers in initiating demand for change in the law and policy environment and government decision-making processes. While

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<sup>35</sup> Pereira, Faustina, *Towards Pro-Women Policing in Bangladesh*, 2005, p.7 available at <http://www.undp.org.bd/library/reports/Faustina%20Pereira-report%20on%20pro-women%20policing.pdf>

<sup>36</sup> Ibid., p.10.

<sup>37</sup> *Cannons of Professional Conduct and Etiquette* adopted pursuant to The Bangladesh Legal Practitioners and Bar Council Order 1972.

<sup>38</sup> Hoque, Ridwanul, *Training Manual for Judges and Prosecutors on Violence Against Women*, JATI and IOM, Dhaka, 2011, p. 11.

the political economy in the post independence era in Bangladesh was primarily dominated by three major urban-based actors, namely, the bureaucracy, the military and the political leadership, newer elements soon emerged as additional players in what now constitutes ‘civil society’ in the form of organized and autonomous groups trying to influence the state.<sup>39</sup> These actors liberally refers to everything from local level citizens’ initiatives and activist groups to institutionalized, non-government organizations, business associations, and other interest groups. It is said that civil society is neither organized for power, which is the basic characteristic of a state, nor for profit, which is a key consideration of business organizations; in essence, it is the sum total of individual and collective initiatives for achieving a desired common public good.<sup>40</sup>

Bangladesh has a vibrant civil society that comprises both organized professional groups like NGOs, media,<sup>41</sup> specific constituencies (e.g., women), research institutes, think tanks and international development partners as well as unorganized citizen’s groups, like the rural population. It is the civil society that actually reflects the concerns of the nation. Comprising of varied sections of the public, the civil society of Bangladesh is known for its significant contributions to the establishment of a sound democratic system. It is the civil society that played a historic role in envisaging and gaining independence of the country. It now looks to the nation for the establishment of democratic values, good governance, human security, rule of law and economic stability. It is the civil society that today exerts pressure on political parties to conform to democratic norms and practice and more importantly, ethics of fair play.

**NGOs:** There has been a huge proliferation of organizations in Bangladesh that are engaged in *inter alia* educating citizens about their legal and constitutional rights, promoting the rule of law, human rights and good governance, providing legal aid services to disadvantaged groups for accessing justice, fighting corruption, tackling trafficking in women and children, addressing violence against women, encouraging grassroots political participation, strengthening local government, advocating for an independent media, mobilizing for law and policy reform, ensuring environmental justice and seeking to politically and economically empower the poor, women, children, indigenous peoples and people with disability. NGOs comprised of public interest lawyers hold the Government accountable for their actions/inactions and generally concentrate on resisting the infringement of citizen’s fundamental rights as guaranteed by the law and the Constitution. Some of the frontline rights-based NGOs include *inter alia* *Ain O Shalish Kendra* (ASK), Bangladesh Legal Aid and Services Trust (BLAST), *Madaripur* Legal Aid Association (MLAA), *Odhikar*, Bangladesh Women’s Lawyers’ Association (BNWLA), Bangladesh Environmental Lawyers’ Association (BELA), and Bangladesh *Mohila Parishad*.

**Media:** A free media is said to create an informed polity and informed media is able to hold the government accountable, flag human rights violations and raise awareness of citizens. There has been a phenomenal growth of private satellite TV channels and radios. The electronic media, particularly, private owned ones, are vocal regarding corruption of public officials, government irregularities, social violence and other contentious issues. Talk shows and discussion programmes highlight contemporary issues with politicians, civil society, academicians, and business entrepreneurs as guests. State-owned TV channels and radios also carry special features

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<sup>39</sup> Blair, Harry, “Civil Society, Democratic Development and International Donors” in Jahan, Rounaq (ed.), *Bangladesh. Promise and Performance*, The University Press Limited, Dhaka, 2002 (second impression), pp. 181-217, at pp.192-193.

<sup>40</sup> Dholakia, Amit, “Civil society and the regeneration of India’s democracy: potential and limits” in Panandiker, Pai and Tripathi, Rahul (eds.), *Towards Freedom in South Asia. Democratization, Peace and Regional Cooperation*, Konark Publishers Pvt. Ltd, New Delhi, 2008, pp. 81-93, at p. 87.

<sup>41</sup> Rahman, Hossain Zillur, “Bangladesh 2015: Crossing miles....”, *The Daily Star*, March 06, 2006.

on gender issues, civil liberties and non-discrimination. More recently, the internet has enabled a large number of people, particularly the urban educated class and the non-resident Bangladeshis, to access Bangladeshi media. Media has given the civil society, think tanks and research bodies an opportunity to engage in public debates on socio-legal and political issues ranging from corruption and acid violence to helping the disabled and promoting education. These partnerships have led to a notable rise in reporting and coverage of crimes and human rights violations.<sup>42</sup>

**Think Tanks:** Lately, debates on good governance, rule of law and human rights have received new impetus from research institutes and think tanks for example, the Centre for Policy Dialogue (CPD), Power and Participation Resource Centre (PPRC) and Institute for Governance Studies (IGS) of BRAC University (now BIGD--Brac Institute for Governance and Development) as they introduced, through publications, media and public dialogue, detailed national agendas into the public domain.<sup>43</sup> These activities have greatly contributed, by way of policy research and analysis, and public dialogues, to the development of informed domestic constituencies, particularly, but not exclusively, of educated elite groups. However, advances in this area have been slow as only a handful of such bodies research on human rights and good governance issues.

**Donors:** International donors, bilateral agencies and development partners have been playing a major role in pushing the agenda for good governance and human rights in Bangladesh through assessments, research and publication and engagement with both the government and civil society (NGOs, think tanks). Donor-driven reforms have primarily focused on technical and capacity issues. They have tenaciously stressed on the importance of anti-corruption measures, human rights and access to justice, human security, law and order, police and judicial reforms, democratization and development of local government capacities for improved governance.<sup>44</sup> The expansion of discourses on human rights and democratic governance has in effect attracted increased donor funding for activities geared towards creating informed constituencies, generating demands and triggering law and policy reforms. There is a general consensus now that legal empowerment is critical for poverty alleviation. Donor agencies are increasingly focusing on the idea of legally empowering poor and disadvantaged groups to enable them to use the law to name wrongs, claim entitlements and improve their economic status. It is all about ensuring that laws and policies are implemented in ways that will assure the poor and disadvantaged groups of protection of their fundamental rights and entitlements. Legal empowerment also connotes a rights-based approach to development as it uses legal services to help the poor learn, act on, and enforce their rights to protect assets and resources as a means of alleviating poverty.

Notwithstanding pro-active engagement by the civil society, the danger that political parties might take control over it instead of the other way round cannot be ruled out wholly. Indeed, there are indications that business houses and NGOs have been co-opted by political parties just like other professional groups.<sup>45</sup> It is reported that major political parties have attempted to penetrate civil society organizations; while the primarily rights-based, advocacy and service delivery oriented NGOs managed to escape partisan control, there were others, including professional associations of doctors, engineers, lawyers, university teachers and cultural activists, which succumbed to political enlistment.<sup>46</sup> Though relatively free from external influence, the media, at least those owned by reputed business houses with distinct political bias, are not

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<sup>42</sup> IGS, 2006, *op.cit.*, p.106.

<sup>43</sup> *Ibid.*, p. 2.

<sup>44</sup> Khair, Sumaiya, *Towards a Fairer World: Why is Corruption Still Blocking the Way? Bangladesh Case Study*, Transparency International, Berlin, 2006, p.15.

<sup>45</sup> Blair, 2002, *op.cit.*, p.215.

<sup>46</sup> IGS, 2006, *op.cit.*, p.20.



immune from constraints that impede attempts at objective journalism. Finally, the growing influence of international development partners in the country's policy-making and governance and the even more perturbing tendency of the government to accommodate groups with vested interests, ostensibly in national interest, have considerably eroded state autonomy and its sovereign control over policies and governance techniques.

## **Challenges to Human Rights**

The absence of democratic governance, political integrity and strong institutional framework with adequate checks and balances have far reaching implications for the human rights of citizens and their engagement with the justice sector. In Bangladesh it is not so much the lack of laws that triggers human rights violation and that too, with impunity, but rather a deep-seated irreverence for the rule of law. Impunity in Bangladesh signifies the infringement of laws and rights and a complete disregard for the due process of law without having to face, much less, suffer punishment for wrongs or crimes committed despite clear evidence of guilt. Indeed, when wrongful acts escape punishment or censure and are repeated without fear or hesitation, it implies a tacit approval by the state authorities of the morality of the acts. In such a situation, the relationship between the state and its citizens, people's perception of state institutions and the manner in which the state engages with citizens have serious consequences for their human rights. This section discusses the major challenges that perceptibly erode human rights in Bangladesh.

### *i. Limiting judicial independence*

The independence of judiciary is fundamental to the accessibility, objectivity, transparency and ability to protect the fundamental rights of citizens and the legitimate interests of the state.<sup>47</sup> While the judiciary was compromised every time a military government came to power, it has also experienced interference from other organs of the state, political influence and corruption during successive political governments. Appointments of Supreme Court judges, Public Prosecutors and Attorney Generals have often been questioned for lacking in transparency. No longer guided by experience and efficiency the appointments of the Public Prosecutor and others in his office are no longer guided by efficiency and experience. Such appointments increasingly rely on partisan affiliations.<sup>48</sup> The politicization of the judiciary is said to have serious implications for rule-based governance; it minimizes judicial accountability, impedes judicial activism, and renders public interest ineffective.<sup>49</sup> Courts controlled by political forces tend to serve rather than curb abuses of state power; this can influence both the laws and the processes of adjudication and enforcement.<sup>50</sup>

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<sup>47</sup> Cheema, Shabbir, G. *Building Democratic Institutions. Governance Reforms in Developing Countries*, Kumarian Press Inc. Bloomfield, USA, 2005, p.173.

<sup>48</sup> It is common trend for political governments to appoint members from politically backed lawyers' forums as Public Prosecutors. For example, during 1996 Awami League period the Public Prosecutor was a member of *Shammilito Ainjibi Parishad* (Awami League backed White Panel), during the BNP rule from 2002, the Public Prosecutor belonged to *Jativotabadi Ainjibi* Forum (BNP backed Blue Panel) and the Public Prosecutor under the current Awami League government is from *Shammilito Ainjibi Parishad* (Awami League backed White Panel).

<sup>49</sup>*Ibid.*

<sup>50</sup>Decker, Klaus, Sage, Coroline and Stefanova, Milena, *Law or Justice: Building Equitable Legal Institutions*, 2006, p.5 available at [http://siteresources.worldbank.org/INTWDR2006/Resources/4773831118673432908/Law\\_orJustice\\_Building\\_Equitable\\_Legal-Institutions.pdf](http://siteresources.worldbank.org/INTWDR2006/Resources/4773831118673432908/Law_orJustice_Building_Equitable_Legal-Institutions.pdf)

Notwithstanding, there are numerous examples of good work by the judiciary that can be drawn upon to offset the criticisms. Activist judges in the High Court Division, in response to public interest litigation by individuals and human rights activists/organizations, and sometimes *suo motu*, have often issued appropriate writs to remedy a legal wrong or enforce a legal obligation. Judicial intervention has largely revolved around key issues that include *inter alia* slum evictions, indiscriminate use of security laws, executive excesses, arbitrary arrest by law enforcement agencies and torture in police remand. There are also cases that have addressed for example, the issue of imprisonment of and violence against women in 'safe custody', incarceration of children with adults, gender-based discrimination, sexual harassment of women and girls, environmental concerns, minority rights, environmental challenges, prohibiting *ad hoc* religious injunctions (*fatwas*) and discriminatory recruitment policies of the government.

### ***Anti-people policing***

The integrity of the legal system is impaired when law-enforcing agencies miscarry their duties and misuse the power vested in them by law. When the law enforcer becomes the law breaker, it is not only an assault on the law but it also bars effective policing and makes the already challenging task of law enforcement more difficult.

The police administration is characterized by indifference to people's needs massive corruption, inefficiency, partiality, serving the interest of the party in power through intimidation, initiating false cases, arbitrary arrest of innocent people, excesses and maltreatment (torture, cruel, inhuman and degrading treatment) of detainees/ under trial persons or suspects (in police custody) while interrogating and violation of laws and ethical principles in the matter of investigation of occurrences of death in police custody, presently poses a serious threat to the law and order situation in Bangladesh. Consequently, the police are no longer viewed as the custodian of peace and security but rather, as perpetrators of crimes and human rights violations against citizens. The reluctance on the part of the police to function without bribes or pressure from some higher authority has virtually privatized state security services in favour of the rich and influential.

Irregularities committed by the police adversely affect the administration of justice. It is reported that the police often prepare weak and unsubstantiated First Information Report (FIR) or entirely remove evidence indicating the commission of a non-bailable offence from an investigation report in order to facilitate the granting of bail to the accused; conversely, they often play a negative role for frustrating bail petitions for women and children, even where there is clear evidence that indicate that the cases against them are false.<sup>51</sup> Most of the irregularities occur during the filing of the First Information Report, which has to be signed by the complainant. It is quite common for police officers to dictate what is to be written in the FIR, apparently because many complainants do not know how to read and write. This is followed by information taken from witnesses, known as '161 statements' and the collection of evidence. At this stage, also, great irregularities occur. A great deal of police manipulation takes place during the taking of '161 statements', since these are signed by the investigating officer and not by the person making the statement. At the same time, medical examinations in the case of rape and murder are hidden and medical officers become corrupt, often due to pressure from above and collusion of police officers. There is a growing concern that the police have not only failed to maintain law and order but have actually become one of the principal perpetrators of crime and violence. Instances

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<sup>51</sup>Nazrul, Asif, "Administration of Criminal Justice: Laws and Practice Related to Bail" in PPRC, *Unbundling Governance. Indices, Institutions, Process,,Solutions. Bangladesh Governance Report 2007*, Dhaka, 2007, pp. 69-73, at p. 72.

of rape of women in police custody have for years dogged the criminal justice administration in Bangladesh.

Extortion and toll collection by the police in the service sector are commonplace and the police are known to share the spoils with their immediate superiors in the official hierarchy. Media reports are replete with stories of police excesses and accumulation of wealth beyond their means. Findings from a TIB household survey in 2010 reveal that 96.6% among the surveyed households experienced harassment and corruption during interacting with or receiving services from law enforcing agencies. The households reported bribery (41.5%) as the most prevalent form of corruption practiced by the law enforcement agencies. Other forms of corruption by law enforcing agencies include misbehavior (21.5%), threat of torture (10.7%), arrest without warrant or case (8.0%), filing of false FIR/charge sheet (6.7%) and negligence in filing cases (4.3%). Most of these irregularities were reportedly committed by the police.<sup>52</sup>

There is a marked disinclination of the government to punish perpetrators of violence who are on their payroll. Any step towards disciplinary action against corrupt police officers is frustrated by intensive political pressure. The provisions prescribed in the Police Act for punishing police officers for neglecting or miscarrying their duties are rarely used. Moreover, the extensive moneymaking power of the police adds to the culture of malpractice. The situation is augmented as the incentive and punishment structure in police administration is based more on their servitude to people with power and influence rather than on their service to the community. It is reported that where exceptionally punishment is meted out to police officers, it is usually aimed at mid and lower police officials and never the officers at the top.

Policing operations, including criminal investigations, lack transparency as they are often manipulated by the rich and powerful including influential political leaders,<sup>53</sup> resulting in injustices in determining who will be charged and for what crime.<sup>54</sup> The police are given to fabricating cases and distorting facts while recording complaints with the intention of extorting money from targeted individuals and/or to set the actual offender free.<sup>55</sup>

#### *ii. Excesses by special security forces*

The creation of elite law enforcement forces has been another prominent and rather disturbing feature of the administration of justice in Bangladesh. Alleged extra judicial killings by the elite security forces like Cheetah, Cobra, and more recently, Rapid Action Battalion, (popularly known as RAB) through strategic exercises like ‘Operation Clean Heart’ have been criticized for infringing the fundamental rights to life and liberty enshrined in the Constitution. ‘Operation Clean Heart’ was a strategy adopted by the army/specialized security forces in 2002 to systematically eliminate terrorists and criminals; the circumstances in which these deaths occurred were dubious as the cause of death was invariably put down as heart failure. This trend was followed by a series of deaths apparently in ‘cross-fire’ when apprehended criminals attempted to escape from police custody or in armed encounters between the police and criminal gangs. Operation Clean Heart was later wound up in January 2003 and all acts committed under it indemnified by the Indemnity Act 2004.<sup>56</sup>

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<sup>52</sup> Transparency International Bangladesh, *Corruption in the Service Sectors: National Household Survey 2010*, pp.11-12.

<sup>53</sup> Asian Human Rights Commission, 2010, *op.cit.*, p. 29.

<sup>54</sup> *Ibid.*, p.36.

<sup>55</sup> *Ibid.*

<sup>56</sup> Farooqi, M.I., “Armed Police Battalions Ordinance. A Hybrid Law”, *The Independent*, 11 March 2005.

RAB, a composite force comprising members of the police, army, air force and the paramilitary was created through The Armed Police Battalions (Amendment) Act 2003 for curbing crime and terrorism. Dressed in black uniforms, black head scarves and dark glasses, this battalion generally exuded fear and professionalism. Starting their drive on 14 April 2003 RAB reportedly killed more than 700 people.<sup>57</sup> A qualitative difference between the earlier heart attack method and the more recent cross-fire method is that the victims in the former were not shot and presumably succumbed to death as a result of torture and as such, the deaths may not have been necessarily premeditated; in the latter case since the army is trained to finish off the enemy, they chose to kill their targets so as not to leave a job half-done.<sup>58</sup>

As protests against such killings escalated at home and abroad, Bangladesh witnessed the emergence of an entirely new phenomenon, namely ‘enforced disappearances’. Critics of police and RAB and human rights activists believe that this phenomenon has simply replaced the practice of extra judicial killings—in the latter the absence of a dead body ostensibly mitigates the need to account for the death of the concerned individual/s.

One of the more troubling aspects of RAB operations is the sacrifice of transparency, accountability and due process in the interest of securing law and order. Indeed, it has been pointed out that by combining the role of judge, jury and executioner, RAB breaches the most fundamental principle of a democratic order—the separation of powers.<sup>59</sup> Besides, their operation procedures offer RAB personnel wide scope for pursuing personal agendas as opposed to what they have been legally mandated to do. RAB has allegedly become involved with petty crimes such thievery and armed robbery—worse still, the culture of impunity has become so entrenched that victims, scared of backlash from the government, are unable to seek redress for the wrongs committed by RAB.<sup>60</sup>

### iii. *Repressive laws*<sup>61</sup>

State law and its processes have historically and sociologically remained an alien phenomenon, a process typified by the police, the jail, the black-coated lawyers, the bureaucracy, the revenue official. More concretely, law particularly to the poor and the less powerful is a negation of freedom and justice and an embodiment of arbitrariness and cruelty.<sup>62</sup> It is the poor who are more likely to be arrested on grounds of suspicion, handcuffed and roped like animals, locked up and beaten up, produced before the magistrate at will, jailed for years without trial, raped in custody or dead in police encounters. Thus, legalized discriminatory rules and practices reinforce unequal power relations and traditional biases against the poor and the marginalized. Indeed, criminal behavior has often been associated with higher levels of inequality.

The continuity of colonial legislation in some countries also engenders a culture of legal dualism that legitimizes actions that are inconsistent with constitutional guarantees of fundamental human

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<sup>57</sup> Please see <http://bdinn.com/articles/more-than-700-extra-judicial-killings-since-formation-of-rab/> and <http://www.bangladeshchronicle.net/index.php/2014/02/us-suspends-rab-training-for-extra-judicial-killings/>

<sup>58</sup> Rahman, Shah Muhammad Mushfiqur, “RAB: Eradicating Crime or Crimes of the State”, available at <http://www.askbd.org/RAB/RAB.htm>

<sup>59</sup> Abdullah, Abu, “One and a Half Cheers for RAB”, *The Daily Star*, 14 March 2005.

<sup>60</sup> Rahman, Shah Muhammad Mushfiqur, *op.cit.*

<sup>61</sup> This section heavily relies on Khair, Sumaiya, *Legal Empowerment for the Poor and the Disadvantaged: strategies, Achievements and Challenges*, Colorline, Dhaka, 2008, pp. 35-38, 45-46.

<sup>62</sup> Baxi, Upendra, “Legal Mobilization and the Needs of the Rural Poor”, *Inhuman Wrongs and Human Rights Unconventional Essays*, Har Anand Publications, New Delhi, 1994, pp.95-110, at p.95.

rights. For example, a magistrate has the statutory power to prevent a public assembly which essentially infringes the right to freedom of assembly under the constitution. In such a situation, the legal system demonstrates a “split personality with liberal constitutional provisions and authoritarian statutes existing within the same legal field”.<sup>63</sup> The resulting confusion makes it difficult to know one’s rights, introduces arbitrariness in law enforcement, and enables the powerful to choose which system to apply.<sup>64</sup> The substantive laws applied in the courts have their roots in the colonial legal framework and as such, are outdated and far removed from current constitutional principles. Designed to centralize power in the executive, these laws have very little scope for demanding accountability or securing citizen’s rights.

Although law is crucial in ensuring the rights of an individual, many laws actually reinforce social and material subordination of specific disadvantaged groups including women. For example, the law in Bangladesh institutionalizes male dominance over women in areas of marriage, divorce, inheritance, guardianship and citizenship of children, immigration, and in some instances, labor and employment. Within the patriarchal ideology of the state and the law, sexual violence by the husband over his wife as in marital rape is not a crime since it would amount to a diminution of patriarchal rights.<sup>65</sup> Indeed, while cruelty is often a ground for dissolution of marriages, the institution of marriage clearly remains the hub of gender based violence. In essence, therefore, law thus plays a crucial role in underpinning discrimination against women by maintaining a sexual stratification along gender lines and limiting women’s access to economic and political resources.

Law as a site for protection of rights is also questioned when it is found to abdicate in favour of traditional customary laws when the latter is in conflict with progressive secular laws. Physical violence involving public flogging/stoning of women for apparent transgression of social and religious norms--for example, by committing adultery, is often carried out pursuant to opinions of religious leaders and clerics and their interpretation of personal laws. Since rural poor are generally illiterate and gullible, they lack the nerve to question such action and instead conform to the ritualistic verdicts.

Then there are laws that legitimize arbitrary arrest and detention on mere suspicion of anti-state activities. Ironically, even when martial law was lifted some regressive measures like the Special Powers Act, preventive detention and emergency powers were retained. Provisions in the *Code of Criminal Procedure, 1898* (Section 54) and the *Special Powers Act, 1974* in Bangladesh entitle the police to arrest anyone without a warrant for breach of peace and mere suspicion of acts subversive to the state. While the law requires those taken into custody to be produced before the Magistrate within 24 hours of their apprehension, this is not done in practice. There is also the antiquated *Vagrancy Act, 1943* under which the police are empowered to indiscriminately pick up beggars, street children and the homeless and commit them to state custody for creating public nuisance. In other words, the letter of the law actually criminalizes the poor for being homeless and destitute.

#### *iv. Absence of good governance*

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<sup>63</sup> Anderson, Michael R., *Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs*, IDS Working Paper 178, Sussex, 2003, p.14.

<sup>64</sup> The World Bank, *World Development Report. Attacking Poverty 2000/2001*, Oxford University Press, Washington D.C., 2000, p.104.

<sup>65</sup> Baxi, Upendra, “Legal Mobilization and the Needs of the Rural Poor”, *Inhuman Wrongs and Human Rights Unconventional Essays*, Har Anand Publications, New Delhi, 1994, pp.1-17, p.13.

While by and large people envision the state as a defender of law and order and a provider of essential services, there is growing evidence of the inefficiency and non-responsiveness of governance structures of the state. The Constitution of Bangladesh emphasizes on good governance in the civil bureaucracy, epitomized by an accountability and professional ethos in furtherance of the public good. Actors in governance are expected to be transparent, fair, impartial, professional, incorrupt and impervious to the party in power and be committed to the people's welfare.

Good governance ensures that those who are responsible for making decisions about public services and for delivering them can be identified and held to account for their actions/inactions. Unfortunately, corruption, nepotism, and lack of transparency and accountability among public officials are some of the recognized factors that have been consistently eroding governance standards, structures, and institutions in Bangladesh. The practice of back door lobbying by influential and resourceful individuals essentially weakens regulatory and accounting controls over activities of public officials. While public officials indeed have a strong influence on policy making, direct acts of omission or commission like, suspended or undelivered services, rent seeking, etc., demonstrate their lack of concern and commitment towards public good. Efforts to democratize decision-making in local governments have been half-hearted and fragmented with successive governments experimenting with their own version of local government. The growth and development of democratic local self-governments have been hindered by the dominance of the civil bureaucracy, dependence on the central government for funds and uncertainties of tenure and functions of local government authorities.

While bureaucratic malaise is invariably been attributed to the low salaries and lack of incentives, politicization of the system over the years has systematically eroded the integrity of public functionaries. Despite that bureaucrats are essentially 'public servants', their unconcealed allegiance to distinct political parties as manifest from recent trends of senior bureaucrats joining politics immediately after the completion of leave preparatory to retirement and vying for membership in the parliament, actively undermines their professional ethos. Many bureaucrats use their offices to do ground work in their respective constituencies for winning in the parliamentary elections. They are also known to cultivate relations with political parties of their choice to secure their candidatures.

#### v. *Political violence*

Political violence, which has grown dramatically in Bangladesh, is yet another feature of mal-governance. Attempts by the Opposition to unseat the Government has traditionally premised around confrontational techniques that include strikes, *hartals*, sieges and more seriously, parliamentary boycotts. Such a tendency has been perceived as a fall-out of the struggles against the British in 1947 when political parties, lacking democratic order, chose to engage in adversarial tactics. Political parties are known to perpetrate violence against opponents, conduct armed battles, attack photo/journalists, and newspaper offices, damage public property, burn public transport (trains, buses, rickshaws, taxi-cabs, scooters, etc.) and public vehicles and manhandle pedestrians and office-goers. A grenade attack on a political meeting of Awami League in 2004 killed two of the party's prominent leaders.

The involvement of political parties in extra-legal activities is also commonplace. There is a general inclination to cultivate hired groups of hoodlums, popularly known as '*mastans*', who work individually or collectively for political parties. It has been common for both ruling parties and oppositions at different stages of the country's political history to resort to utilizing armed musclemen to further/fulfill their political goals. Protected by their political affiliations these *mastans* carry out killings, extortion, intimidation, threats and violence which has a serious impact on the law

and order situation in the country. In the circumstances, distinctions between politically motivated murders and purely criminal acts become indistinct due to the active involvement, with impunity, of many politicians and party activists in organized crime.<sup>66</sup> Despite that political parties are the chief patrons of *mastans*, they do not profess any particular political ideology or pledge allegiance to any particular political party; consequently, they are known to frequently switch to the side that offers the maximum material benefit. This symbiotic and perverse relationship between political leaders and criminal elements not only criminalizes politics but also devalues the rule of law and democratic governance.<sup>67</sup>

The abuse of political power is also perceived when influential quarters use the police for personal gain. These include bureaucrats, businessmen, black money holders and black-marketers many of whom have active links with politicians.<sup>68</sup> The police are used extensively in furthering corrupt practices. Consequently, they enjoy the shared protection of the administration and people with political clout when they engage in corrupt activities. Ironically, debates about breakdown of law and order in the country have also been divided along party lines. It is common for the ruling party and the opposition during every political regime to accuse each other for perpetuating lawlessness in the country. Accusations range from actual complicity in criminal activities to harboring and assisting terrorists and manipulating the rule of law and the judiciary to the advantage of respective governments.

One of the more pathetic manifestations of political malevolence is the systematic exploitation of university students. It all begins with the entry of young students into the political cadres at the universities and culminates in their involvement with armed politics. Members of the student cadres are known to extort commissions from shops, construction companies and business establishments in different areas under threat of violence. Students' engagement in party campaigns quite often leads to militant encounters between rival student cadres on university and college campuses. Apart from the fact that these inter-party feuds frequently result in strikes, suspension of classes and postponement of examinations that essentially disrupt normal academic development, they also result in mindless killing of students. Sadly, the concept of student politics which had originally been driven by ideologies of moral engagement, public service, constructive debate and social change has now become synonymous with senseless killing and criminal behaviour.<sup>69</sup>

### **Democratic Governance for Human Rights**

It is often argued that linking democracy with human rights is not accurate given that human rights focuses on individual rights and redress of injustices whereas democracy is a system of the government, which is complex and politically volatile.<sup>70</sup> But where democratic deficits and absence of good governance not only generate deficiencies in food, shelter, health-care, education and employment, but also detrimentally affects human, fundamental and legal rights of citizens, the link between democracy and the right of the people to pursue a life with dignity and fulfillment cannot be undermined. As stated in the Vienna Convention "Democracy is based on the freely expressed will of the people to determine their own political, social and cultural

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<sup>66</sup>U.S. State Department Report on Human Rights in Bangladesh, 1997, p.4.

<sup>67</sup> Ahmad, Ahrar , "Bangladesh between Promise and Reality: Current Tendencies and Historical Explorations", in Ali, Ashraf et al. (eds.), *Development Issues of Bangladesh II*, The University Press Limited, Dhaka, 2003, pp. 41-69, at p. 51.

<sup>68</sup> Ahmad, Muzaffer for Transparency International Bangladesh Chapter, undated, p.7.

<sup>69</sup> Ahmad, Ahrar, *op.cit.*, p.50.

<sup>70</sup>Rosental, Andres, "Promoting Democracy: Moving Beyond the Rhetoric" in Munoz, Heraldo (ed.), *Democracy Rising. Assessing the Global Challenge*, Lynne Rienner Publishers, Boulder et al., pp. 23-29, at p.24.

systems and their full participation in all aspects of their lives". As such, democracy and human rights share a commitment to the ideal of equal political dignity for all.<sup>71</sup> It is increasingly recognized that democratic practices of governance along with easily accessible mechanisms and legal institutions for redress of human rights and other grievances are essential for improving the lives of the citizens in meaningful ways.

Indeed, 'governance' is simply not about structured organs of a state. More significantly, it is about the quality of governance, which expresses itself through traits of accountability, transparency, efficiency, empowerment, participation, sustainability, equity and justice. Since the attributes of good governance are the outcome of the institutional behaviour of various organs, any analysis of the qualitative aspects of good governance has to cover the functions of all the organs in different contexts.<sup>72</sup> Similarly, the rule of law does not signify a single, unified good but is premised on (i) a government bound by law and subject to restraints in the exercise of its power, (ii) equality before the law, (iii) maintenance of law and order, (iv) effective and efficient judicial rulings, and (v) protection of human rights and individual dignity.<sup>73</sup> Indeed, these elements in practice do not always function in tandem with one another and this is when democratic governance falters.

While good governance has been defined varyingly involving context specific indicators, the most appropriate definition in the context of the present study would be-- "how democracy functions—how citizens participate in society; how they are represented in government through elections; how they participate in decision-making; how checks and balances protect individuals from state power; and how local, regional, developed governments provide greater opportunities for the state to respond to the needs of the citizens"<sup>74</sup> Put simply, good governance essentially comprises mechanisms, processes and institutions through which citizens articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.<sup>75</sup>

A critical form of resistance to democratic governance is the prevalence of semi-authoritarian, or "hybrid" regimes where the existence of some formal democratic processes, such as elections, masks (often, in part, to legitimise) the reality of authoritarian domination.<sup>76</sup> Technically referred to as "electoral authoritarianism", this model poses a serious challenge to democracies in transition like Bangladesh, as those who rule in these illiberal systems are intent on retaining power at all costs. Strategies for maintaining monopoly in governance include the controlling of key government machineries, the parliament and the courts, tightly regulating the media, dividing and marginalizing the political opposition and bringing the civil society to heel by harassing NGOs (many of which work to ensure due process, rule of law and human rights) and restricting

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<sup>71</sup> Donnelly, Jack, *Universal Human Rights. In Theory and Practice* (2<sup>nd</sup> ed.), Cornell University Press, Ithaca and London, 2003, p. 191.

<sup>72</sup> Hye, Hasnat Abdul, "Good Governance: A Social Contract for the New Millennium" In Hye, Hasnat Abdul (ed.), *Governance.South Asian Perspectives*, University Press Ltd, Dhaka, 2000, pp.1-32, at p.7.

<sup>73</sup> IGS, *The State of Governance in Bangladesh 2006*, Dhaka, p. 61.

<sup>74</sup> Docolias, Maria, "Are We There Yet? Measuring Success of Constitutional Reform", in *Vanderbilt Journal of Transnational Law*, 2006, pp.1117-1231, at pp.1134-35.

<sup>75</sup> UNDP, *Human Development Report 2000* cited in Kumar, C. Raj, "Corruption in Japan—Institutionalizing the Right to Information, Transparency and the Right to Corruption-free Governance" , *New England Journal of International and Comparative Law*, Vol.10., No,1, 2004, pp.1-30, at p.10, fn51.

<sup>76</sup> Gershman, Carl, "The State of Democratic Governance: Achievements and Challenges" in Munoz, Heraldo (ed.), *Democracy Rising. Assessing the Global Challenge*, Lynne Rienner Publishers, Boulder et al., pp.31-39, at p. 37.



their international funding.<sup>77</sup>

Democratic governance is therefore crucial for protecting rights of citizens to the extent they can hold the government accountable for its policies, corruption and abuse of power, challenge inequities of autocratic regimes, deter criminal negligence by government and demand rule of law enforced with fairness and justice.<sup>78</sup> These principles essentially engender a society in which people are free to make choices, are free from poverty, deprivation, fear and violence, and are free to set priorities that ensure equity, justice and fair play.

Arguably, since its independence, Bangladesh has increasingly been moving away from what is considered as ‘minimalist democracy’ (transfer of power through regular, free and contested elections, fundamental freedoms, civilian control over policy and institutions) to ‘illiberal democracy’ characterized by misuse of state power for partisan and personal gain and politicization of state institutions.<sup>79</sup> For some years now the political scenario in Bangladesh has been dominated by a two party polity with considerable support of the voters at the grassroots. While this bipolar system has indeed introduced a measure of stability to the extent that the party once elected to office does not have to depend on shifting loyalties and at the same time, be wary of the fact that it does not have security of tenure beyond five years as mandated by the Constitution,<sup>80</sup> it has nonetheless engendered the practice of confrontational politics that is an antithesis to sustained democracy. The concentration of power in two major parties has similarly created a system in which winners in elections take all including control of public resources while the losers are severely sidelined which essentially results in a dysfunctional parliament.<sup>81</sup> Political patronage by the major parties has permeated nearly all key state institutions in ways that seriously undermine the accountability structures. In the same vein, even when undemocratic forces no longer exist and democratic governments are in place, internationally recognized human rights continue to be violated systematically.

### **Living Up to Obligations under International Law: Policy Priorities**

International human rights law broadly imposes three types of obligations on states: *to respect human rights* (manifest from non-interference with the enjoyment of rights); *to protect human rights* (manifest from prevention of rights violation by third parties); and *to fulfill human rights* (manifest from conditions created for the realization of rights). More often than not, states fall short of their obligation in terms of “protecting and fulfilling” human rights. Indeed, when examining public policies from a human rights perspective, it is important to focus on the obligations to “protect and fulfill” to mitigate the likelihood rights deprivation that these policies might potentially trigger. Indeed, the standards and principles relevant to understanding state obligation to protect and fulfill human rights are multi-layered and essentially include:

- **Duty to take steps:** to adopt legislative, judicial, budgetary, administrative and other measures to fulfill economic, social and cultural rights.
- **Maximum available resources:** must be provided to the steps taken to fulfill rights, including resources that can be provided through international cooperation.

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<sup>77</sup>*Ibid.*, p.38.

<sup>78</sup>*Ibid.*, pp.32-33.

<sup>79</sup> IGS, *The State of Governance in Bangladesh 2008*, Dhaka, 2009, p. xv.

<sup>80</sup> Sobhan, Rehman, “Structural Dimensions of Malgovernance in Bangladesh”, *Economic and Political Weekly*, September 4, 2004, pp. 4101- 4108, at p. 4102.

<sup>81</sup> IGS, 2009, *op.cit.*, p.2.

- **Minimum core obligations:** an immediate duty to prioritize achieving minimum essential levels of rights enjoyment universally.
- **Duty:** to ensure substantive equality in enjoyment of rights and in steps taken to fulfill rights.
- **Duty:** to ensure that relevant services needed to fulfill rights are available, accessible, acceptable and of adequate quality without discrimination.
- **Progressive realization:** duty to move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression.
- **Participation, transparency and accountability:** must be ensured in the policy-making/monitoring process.<sup>82</sup>

Indeed, a state's compliance with its obligation under international human rights laws cannot be measured only in terms of the level of enjoyment of a right as indicated by socio-economic outcomes but by looking at the political commitment and effort invested by a state to ensure that public policies concretely contribute to progressive realization of the right. Accordingly, a state's obligations involve both action and result, meaning that a state must show it is taking "action reasonably calculated to realize the enjoyment of the particular right".<sup>83</sup> A rights perspective deals not only with the content of policies, but also with the way these are designed and implemented; accordingly, it is important to consider the processes by which such policies are designed and implemented. Human rights principles broadly prescribe procedural requirements for the formulation of, consultation on and implementation of policies, which should be transparent; promote the full participation of all; and provide mechanisms for monitoring, oversight and accountability.<sup>84</sup> In measuring compliance, the following questions need to be asked:

- What legal and policy commitments have been made to give effect to a particular right?
- Are state policies and initiatives able to ensure the availability, accessibility, acceptability and quality of the services necessary for the enjoyment of the right?
- Do such initiatives seek to reduce disparities to ensure the achievement of universal minimum levels of the right?
- Do policy processes ensure participatory and accountable decision-making?

### **Integrating Human Rights in Development Planning**

Human rights are inextricably linked to the development of a nation and its people. Development is conceived as a state of well being in which citizens are ensured of opportunities and freedom from poverty, hunger, deprivation, oppression and injustice. Realization of such basic human rights is one aspect of sustainable development. That human rights and development are mutually reinforcing is clearly manifest from the *UN Agenda for Development*, **which** recognizes that

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<sup>82</sup> Drawn from *Covenant on Economic, Social and Cultural Rights, Optional Protocol to the Covenant, Committee on Economic, Social and Cultural Rights General Comments*.

<sup>83</sup> *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, para. 7, Maastricht, Jan. 22-26, 1997, available at [http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html)

<sup>84</sup> Center for Economic and Social Rights, *Assessing Public Policy from a Human Rights Perspective* available at <http://www.cesr.org/downloads/guatemala.case.study.march.2012.pdf>, citing *Stamford Common Understanding on Human Rights Programming* for a definition of the key principles of nondiscrimination and equality, participation and inclusion, transparency and right to information, accountability and rule of law and access.

Democracy and development are linked in fundamental ways. They are linked because democracy provides the only long-term basis for managing competing ethnic, religious, and cultural interests in a way that minimizes the risk of violent internal conflict. They are linked because democracy is inherently attached to the question of governance, which has an impact on all aspects of development efforts. They are linked because democracy is a fundamental human right, the advancement of which is itself an important measure of development. They are linked because people's participation in the decision-making processes which affect their lives is a basic tenet of development.<sup>85</sup>

There is growing consensus on the value of human rights principles— such as participation, non-discrimination and accountability – for good and sustainable development practice, the application of which builds on and strengthens good and sustainable development practice, with equal attention to process and outcomes.<sup>86</sup>

The legal basis for the integration of human rights in development policies has been gaining steady recognition worldwide with states and their development partners increasingly acknowledging the significance of accepting moral and legal responsibility of upholding human rights in their respective jurisdictions. Human rights principles and practices are particularly relevant for development policies as they provide a clear framework for 'matters of world poverty, inequality and development'.<sup>87</sup> This notion resonates in emerging scholarship that underpins the nexus between human rights and specific development issues. Various World Bank<sup>88</sup> and UNDP<sup>89</sup> publications show how ingrained inequities can potentially impede economic growth and the achievement of the MDGs. Other research and analyses on the growth/poverty/rights nexus reveal that infringement of civil and political are linked to lower economic growth<sup>90</sup> which in turn that affects people's survival, that human rights underpin access to the justice system and are therefore critical to the enforcement of contracts needed for a market economy to function<sup>91</sup> and that people need to be empowered to successfully claim their rights to basic social services such as health and education.<sup>92</sup>

### **Cross-Cutting Issues for Public Policy Using a Human Rights Perspective**

There are several issues that cut across an effective human rights regime and which have immense value for human rights based policy development.

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<sup>85</sup>United Nations, *An Agenda for Development: Report of the Secretary-General* (New York: UN, A/48/935, 6 May 1994), para. 120.

<sup>86</sup>OECD, *DAC Action-Oriented Policy Paper on Human Rights and Development*, 2007, available at <http://www.oecd.org/dac/governance-development/39350774.pdf>

<sup>87</sup>Salomon, M. 'The Future of Human Rights' in *Global Policy*, 3 (4), 2012, pp. 455-457, at p.455.

<sup>88</sup> World Bank (2005), *Equity and Development. World Development Report 2006*, Washington, DC.

<sup>89</sup> UNDP (2005), *Human Development Report 2005 – International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, New York.

<sup>90</sup> See Robert J. Barro , *Determinants of Economic Growth: A Cross-Country Empirical Study*, MIT Press, Cambridge, Mass, 1997.

<sup>77</sup> See Olson, Mancur , *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, Oxford University Press, Oxford, 2000.

<sup>92</sup> Gauri, Varun and Brinks, Daniel *The Impact of Legal Strategies for Social and Economic Rights in Developing Countries* cited in OECD, *DAC Action-Oriented Policy Paper on Human Rights and Development*, 2007, available at <http://www.oecd.org/dac/governance-development/39350774.pdf>

## Rule of law and due process

The existence of fair and just legal frameworks and due process enforced by an impartial regulatory body is fundamental to ensuring rule of law and due process in any given scenario. Decisions taken and their enforcement must be in compliance with established rules and regulations. The state of rule of law affects the justice seeking behaviour of citizens. A dysfunctional legal system and a weak judiciary essentially erode citizens' trust on justice dispensation mechanisms and makes them reluctant to access the system. The inherent principles underlying this premise are that-- i. government and its officials and agents as well as individuals and private entities are accountable under the law, ii. laws are clear, publicized, stable, and just and are applied evenly and protect fundamental rights, including the security of persons and property, iii. the process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient and iv. justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.<sup>93</sup>

## Equality & non-discrimination

The principles of equality and of non-discrimination are aligned with concepts of social exclusion and deprivation, whereby certain groups or individuals, for example, women, the poor, minorities, etc, are precluded from basic rights and entitlements.<sup>94</sup> Human rights based approach in policy planning essentially implies the adoption of special measures for addressing the systemic or root causes of inequality and discrimination. Indeed, much of the focus in this context has historically rested on access to basic services, like, health, education, employment and justice. In order for this approach to be effective, it is necessary to understand the form and nature of problems encountered, analyze local contexts and formulate policies in ways that target specific disadvantaged or vulnerable groups. Initiatives proposed to bring the desired change may range from legal reforms for addressing discriminatory laws and policies to responsible governance in key institutions to enhance access to basic services by the public.

## Inclusion and participation

Inclusion and participation within a human rights framework implies an active, free and meaningful engagement of citizens in development initiatives and /or governance processes. It is said that rights-based participation is about '*shifting the frame from assessing the needs of beneficiaries [sic] to foster citizens to recognize and claim their rights and obligation-holders to honour their responsibilities*'.<sup>95</sup> Indeed, participation is often viewed as both a measure to secure sustainable results and a goal in itself, which makes people aware that 'they have the right to demand change and social justice'.<sup>96</sup> This is particularly relevant for contexts where the poor and

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<sup>93</sup> See <http://worldjusticeproject.org/what-rule-law>

<sup>94</sup> D'Hollander, David, Marx, Axel and Wouters, Jan, *Integrating Human Rights in Development Policy: Mapping Donor Strategies and Practices*, Working Paper No. 108 – June 2013, Leuven Center for Global Governance Studies, p.38, available at <https://ghum.kuleuven.be/ggs/projects/policy-research-centre/documents-1/15-stp-report-integrating-human-rights-in.pdf>

<sup>95</sup> Cornwall, Andrea and Nyamu-Musembi, Celestine, "'Rights-Based Approach' to Development into Perspective", *Third World Quarterly*, Vol. 25, No. 8 (2004), pp. 1415-1437, at p.1424.

<sup>96</sup> Swedish Ministry of Foreign Affairs, *Change for Freedom: Policy for democratic development and human rights in Swedish development cooperation, 2010–2014*, Stockholm, 2010, p.13 cited in Cornwall et al., "'Rights-Based Approach' to Development into Perspective", *Third World Quarterly*, Vol. 25, No. 8 (2004), at p.39.

the marginalized are hard to reach or are excluded due to lack of knowledge and structural impediments.

It is recognized that “participation” is an over-used term, often divested of the requisite political will or even the capacity to translate it into action. While physical participation of citizens in policy development and implementation might not always be tenable, there are alternative ways of ensuring citizens’ inclusion in the said processes. Existing scholarship<sup>97</sup> identify various participation models—instrumental (extracting information from the participants), consultative (creating opportunities for receiving participants’ opinions and positions on an issue), engaged (participants directly involved in negotiation and decision-making) and empowerment (participants developed skills and abilities to influence decision-making and achieve high level of satisfaction of demands). While no one model may be considered appropriate, there are simple ways of securing citizens’ participation; for example, the practice of making public information readily available in simple format and language,<sup>98</sup> engaging with CSOs and using them as a conduit to reach local communities, developing channels for people to engage with service providers/duty bearers and capacitating them to hold the latter to account, people’s ability to organize freely, to express their opinions freely, are but some examples of citizens’ participation.

### **Transparency and access to information**

While the term “transparency” does not appear in any of the international human rights instruments its significance becomes explicit when it is read together with people’s right of access to public information. Right of access to information essentially complements the freedom of expression, because information can transform citizens’ expressions into informed opinions on public interest issues.<sup>99</sup> Access to information is also essential for human rights in general because effective access to public information is a pre-condition for enjoying and demanding other civil, political, economic, social and cultural rights, such as freedom of expression, participation, education and health.<sup>100</sup> Not only do governments have a duty to respect the right of access to information, but they have to ensure that mechanisms exist to ensure that it can be exercised in practice.<sup>101</sup> Moreover, the application of human rights principles plays a key role in making transparency policies more inclusive by guaranteeing access to information for all irrespective of ethnicity, gender, religion, economic and political status. While Bangladesh has made commendable advances in this context by enacting right to information and whistleblower protection laws, effective implementation of the laws remain elusive.

### **Accountability and integrity**

Concepts of accountability and integrity are pivotal to human rights based policy development just as they are important for good governance. This approach emphasizes on establishing a link between human rights ‘demand and supply sides through the lens of rights holders, duty bearers

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<sup>97</sup>See Gruenberg, Ch. and Pereyra Iraola, V., *Participation, transparency and accountability in targeted social programs: Case study handbook*, Tinker Foundation and Participa, Chile, 2007.

<sup>98</sup> Please see UNDP, ‘Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences’, Bureau for Development Policy, New York, 2012.

<sup>99</sup>International Council on Human Rights Policy, *Integrating Human Rights into the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities*, Switzerland, 2009, p. 23.

<sup>100</sup>*Ibid.*

<sup>101</sup> Please see *Claude Reyes et al. v. Chile*, Inter-American Court of Human Rights, Judgment of September 19, 2006, paragraph 77 cited in International Council on Human Rights Policy, *ibid.*

and citizenship'.<sup>102</sup> While international human rights law does not refer directly to the concept of accountability, human rights treaties impose on states, as “duty holders”, an obligation to protect the rights of individuals and provide recourse and justice if their rights are violated, failing which states are answerable for any acts or omissions with respect to this duty.<sup>103</sup> In this backdrop, states have an obligation to provide institutional arrangements that allow *all* persons – including disadvantaged groups, access to accountability mechanisms; similarly, they have an obligation not to block any person’s access to such mechanisms.<sup>104</sup> Corruption by way of bribes to key officials of the state tips the accountability principle in favour of the moneyed and powerful. This practice disproportionately affects disadvantaged groups such as the poor, women and minorities. While all forms of accountability are important to the integrity and quality of decision-making, the bottom-up, social accountability whereby the behavior and conduct of public officials is monitored from below by *inter alia* independent institutions, a free media, an active civil society perhaps best supplements the human rights framework.<sup>105</sup>

## **Incorporating Human Rights in Public Policy**

There are a number of elements that have a significant bearing when it comes to integrating human rights into public policy. This section draws on the work of Philip Alston<sup>106</sup> to demonstrate the complementarity between human rights and public policies which aims to ensure that public policies take into account human rights and that human rights frameworks function in ways that effectively contribute to achieving the goal/s set out in the policy. The key considerations in this context include:

### ***i. Relevance of human rights obligations:***

One of the cardinal principles to be taken into account during policy development and implementation is the international human rights obligations undertaken by the state voluntarily and accordingly align policy principles and priorities. This element is comparable to, for example, the international practice of requiring an environmental assessment (EA) before projects are undertaken.<sup>107</sup> Accordingly, policy papers should contain a clear statement to the effect that they will take into account, as appropriate, the human rights obligations of the state consistent with the principle of equality and non-discrimination. In this context, the use of human rights terminology

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<sup>102</sup>OECD/World Bank, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*, 2nd edition), Washington, DC., 2013, p.74.

<sup>103</sup>**International Council on Human Rights Policy**, *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities*, Geneva, 2010, p.26.

<sup>104</sup>*Ibid.*

<sup>105</sup>*Ibid.*

<sup>106</sup> Alston, Philip, “A Human Rights Perspective on the Millennium Development Goals”, paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development, available at...

<http://www.google.com.bd/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fissues%2Fdevelopment%2Fdocs%2Fmillennium.doc&ei=3zV8VKbyFIPVuQTKxIK4BA&usg=AFQjCNFXqr135akJPPoxBnnKSzombZ1fyw&bvm=bv.80642063,d.c2E>

<sup>107</sup> The World Bank Operational Manual, *Operational Policies: Environmental Assessment*, OP 4.01 (January 1999, revised August 2004), para. 3, cited in Alston, Philip, “A Human Rights Perspective on the Millennium Development Goals”, paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development, *ibid.*

wherever applicable is imperative for achieving impact, for example, references to right to education, right to health, right to adequate food and so on.

**ii. Policy strategies to underpin human rights friendly legal framework:**

Government strategies should be premised on appropriate legal framework and assurance given that all steps would be taken in conformity with basic human rights and other principles necessary to address governance dimensions.

**iii. Community participation in policy development:**

While participation is frequently heard in policy discourses, government commitment has tended to be largely regarded as hollow and tokenistic. Policy papers should acknowledge the inherent value community contribution and affirm that meaningful participation in decision-making will be sought, and then ask those concerned to spell out what this means in practice. In addition, citizens' rights to criticize official policy positions should ideally not be restricted.

**iv. Accountability mechanisms:**

Institutional arrangements for monitoring policy progress and outcomes are crucial for ensuring accountability in policy implementation of the without which policy initiatives will remain rhetorical. Realistic benchmarks/milestones would have to be set, against which reporting will be made. It is advisable to ensure a disaggregated reporting system which will take into account elements such as gender, social excluded/hard to reach groups, regional disparities, etc.

To sum up, the fundamental difference between traditional policies and policies with a human rights orientation is that traditional policies are designed to address matters of public interest whereas human rights based policies are premised on international human rights standards and obligations; people are conceived as beneficiaries in traditional policies whereas human rights based policies regard people as rights holders; the criteria for assessing human rights implementation are economy, efficiency and effectiveness in traditional policies whereas the criteria for assessing implementation in the latter are nondiscrimination, maximum use of available resources, progressive achievement of human rights, citizens' participation and transparency and accountability.<sup>108</sup>

## **Setting Priorities**

National plans and policies are essentially a starting point for ensuring that equality, human dignity and non-discrimination are considered in priority setting. As such, they must be accompanied by other priority setting mechanisms to enable decisions regarding strategic interventions. While setting priorities within a human rights based policy framework, attention must be given to ways in which certain people and groups continually experience deprivations across different contexts; these people represent not only deep rooted vulnerabilities but also processes by which they are excluded and marginalized and for which they deserve a minimum degree of accountability and redress.

## **Resource Allocation**

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<sup>108</sup> See ELLA (Evidence and Lessons from Latin America), *Making Human Rights Real: Two Latin American Experiences in the Rights-Based Approach to Policymaking*, Policy Brief, p. 2, available at [http://ella.practicalaction.org/sites/default/files/121030\\_GOV\\_ProHumRig\\_BRIEF2.pdf](http://ella.practicalaction.org/sites/default/files/121030_GOV_ProHumRig_BRIEF2.pdf)

Progressive and equitable economic policies are a prerequisite to effective realization of a wide range of rights.<sup>109</sup> Weaknesses in policies, particularly in the context of implementation, frequently stem from resource constraints. Notwithstanding, it is important to understand the state's fiscal policy in order to determine whether budgetary allocation or the lack of it hinges on genuine resource limitations, or from a failure and/or unwillingness to recognize the significance of making available resources in line with human rights principles, obligations and priorities.

In order to understand what resources a state has at its disposal and how they are utilized, it is important to examine the systems of resource mobilization and expenditure, whether budgetary allocations have been made for progressive realization of universal rights, has the state tapped into all potential sources, how much of the available resources have been allocated to social protection, who are the beneficiaries, have allocations evolved over time to priorities core human rights obligations, and so on.<sup>110</sup> It is also crucial to identify factors that impede the state's capacity to implement policies aimed at realizing citizens' basic rights progressively and without discrimination. For example, inadequate investment in the realization of citizen's basic rights might not simply result from a state's incapacity to mobilize adequate resources but may well be the outcome of policy capture by vested interest groups that are averse to fiscal reforms that would potentially erode their privileges and benefits.

### **Public-Private Collaboration**

The practice of involving actors outside the government in consultations for policy formulation by the government is an indicator of its recognition of the value inhering in the process. Indeed, the engagement of citizens with the government through different fora to inform policy development is a unique feature of a democratic and pluralistic social system under which the latter has an obligation to provide citizens with the opportunity to take part in the planning, decision-making and implementation of policies and legislation affecting them. This space, which has for long been occupied by civil society actors, namely, NGOs, rights activists, think tanks, academia, and media, is used to convey to the policy makers in the government the needs of the people on the ground and assist them in devising meaningful and realistic policies. While recent years have increasingly witnessed a rise in public-private partnership in law and policy development, there is a general consensus that this has largely been ritualistic as views and opinions of actors outside the government, though politely received, are not translated into action.

### **Factors Likely to Impede Institutionalization of Human Rights**

In Bangladesh, policy planning, particularly from a human rights perspective, is likely to suffer some setbacks. To begin with, the absence of inter-ministerial co-ordination is a recurring problem which impedes the flow of relevant information and data, leading to incoherence in knowledge management and use. While recent years have witnessed some degree of stakeholder participation in policy planning and formulation, such initiatives are viewed by many as eyewash as the final outcome is often completely devoid of citizens' inputs, suggestions, etc. provided during the consultation process.

Other institutional challenges include the lack of political will. Political commitments preceding national and local level elections to protect citizen's rights and ensure basic services are mostly

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<sup>109</sup> Center for Economic and Social Rights, *Assessing Public Policy from a Human Rights Perspective*, (undated), p.13, available at <http://www.cesr.org/downloads/assessing.fiscal.policies.from.a.human.rights.perspective.pdf>

<sup>110</sup> Ibid.



rhetorical and hardly ever implemented on the ground. Governments tend to be wary of human rights approaches largely due to an inherent fear that they might prove counterproductive, particularly in view of changes in political environment. Besides, government institutions lack the requisite capacity and internal controls to operationalize rights based approaches in public policy. The disconnect between policies designed in the state capital and their ramifications at the local levels is yet another obstacle that deters policymakers from considering human rights in public policies. This essentially widens the gap in the rhetorical adoption of human rights and their functional use.

## **POSSIBLE NEXT STEPS**

The universality, indivisibility and interdependence of human rights make it difficult to prescribe piecemeal solutions to human rights violations. Just as fulfillment of a right is dependent on the fulfillment of other rights, the infringement of one right similarly leads to violation of other rights. As such, effective enforcement of human rights demands a holistic, coherent, well thought out and coordinated strategy developed through dialogue, exchange and consensus between all organs of the government and between government and civil society actors. Having said this, the essential first step needs to come from the policy planners within the government. In addition to law enforcement and accountability systems, one of the means by which the government can guarantee human rights is through human rights based public policies. In this context, the following broad elements need to be addressed at the **policy level**:

- Undertake an objective assessment of the current human rights situation through a multi-stakeholder, participatory approach involving civil society, human rights bodies and the government to serve as the foundation for designing policies and action plans with a human rights based orientation and to ensure legitimacy and ownership of the process and outcome. In this context, a people-centric perspective encapsulating the experiences of the people, particularly the poor and the disadvantaged, say through perception surveys, may be considered.
- Invest in raising awareness, building capacity and convincing concerned stakeholders within the government about the benefits of reform. Support from UN organizations, national and local human rights institutions and the academia is crucial for providing technical and assistance in developing a theoretical framework to incorporate human rights into public policies and action plans. The use of explicit human rights or constitutional standards to set goals and benchmarks in policy planning is an essential element.
- Create an oversight mechanism to monitor the successful implementation of public policies with a human rights based approach. In this regard, the creation of a Parliamentary Committee with a special mandate to oversee human rights situation in the country may be considered. Public hearing of the Committee's observations/proceedings will also offer an avenue for civil society participation. Access to information, budgetary allocations and the development of measurable compliance indicators are essential for effective monitoring. This would involve the unpacking of a right and mapping who is responsible for fulfilling which human rights obligation, what they are doing pursuant to this obligation, how they are doing it and what remains to be done.
- Create a culture of human rights by raising public awareness of enforceability of rights through formal or informal education. It is not only the existence and operation of effective institutions that can ensure the protection of human rights but also the

willingness of all relevant actors in a given system—citizens who hold rights, the state that is obliged to respect those rights and the government organs that enforce those rights— to acknowledge human rights norms as being authoritative and worthy of respect. It is essential that human rights education for public servants is accompanied by institutional mechanisms that provide incentives for compliance with human rights obligations and sanctions for deviation.

On a more **operational level**, the following proposals may be considered:

- There is a need to decentralize the application of the writ jurisdiction as envisaged in the Constitution in order to facilitate enforcement of fundamental rights by the common man. To date, the practice of filing writs has been centralized and limited to the urban-based higher judiciary and as such, has remained an elitist device, to be utilized by the masses only when and if some legal aid activist/organization takes up an issue on their behalf. Article 44(2) of the Bangladesh Constitution clearly states “Without prejudice to the powers of the High Court Division under Article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers’. This provision has never been conferred on district courts; consequently, writ issues, even when there is a violation of fundamental rights, have no relevance for clients at local levels and as such, do not feature on the professional agenda of District Court lawyers. The activating of this clause will enable general people to challenge derogation of fundamental rights and seek redress without incurring the additional hassles in terms of travel, costs, etc.
- The law regulating the National Human Rights Commission contains provisions that essentially limit the independence of the Commission’s power of investigation. Section 18 of the Act requires the Commission to request the government for a report in the event of an allegation of human rights violation by the disciplined force or any of its members. While the term ‘disciplined force’ is customarily used to denote the military, technically the police are also deemed to fall into this category. Consequently, any human rights violation by the police and the Rapid Action Battalion (RAB) cannot, by law, be investigated independently by the Commission but would have to submit it for government inquiry. This provision needs to be amended to allow the Commission flexibility in investigating human rights violations by ‘disciplined forces’. Besides, the right watchdog is only recommendatory by nature and is devoid of executive authority that effectively limits its worth and power. The NHRC is inadequately staffed and under-resourced; efforts will have to be made to enhance its instructive, investigative and promotional role for effectively engendering a human rights culture.
- Initiatives should be undertaken to link demand and supply activities, particularly from the perspective of vulnerable groups’ (e.g., women, children, minorities, indigenous communities) ability to access information and claim rights through formal justice systems, and the capacity of formal mechanisms to deliver appropriate services. This essentially calls for the adoption of a range of measures, including the translation of necessary information into locally comprehensible languages, decentralizing services and public campaigns that reach the vulnerable and marginalized sections of the community.
- NHRC should be more strengthened. The current legal provisions should be further analyzed.



## V. Indicators and Achieving Results

**Over the last 15-year period of MDGs, the good governance agenda in Bangladesh has matured into an interesting set of policies, requiring governance improvements that touch virtually all aspects of the public sector.** The various FYPs, and particularly the 6<sup>th</sup>, have called for a long list of action points that must be done to improve governance. It has ranged from reform of the judicial system and strengthening of the rule of law, decentralization and streamlining of public administration, making integrity a central plank of the anti-corruption agenda, crafting an efficient public financial management system, as well as integrating human rights, transparency, and parliamentary oversight into government functioning. The experience of Bangladesh in terms of achieving good governance has been deeply problematic, however, with many priorities remaining.

**The implementation of Bangladesh's 7<sup>th</sup> FYP will coincide with the commencement of the global sustainable development goals (SDGs), which are now in the final stage of their formulation.** Over the last 15 years, Bangladesh has had a fairly successful track record in terms of achieving the millennium development goals (MDGs). By the close of 2015 Bangladesh would have attained most of the targets as stipulated within the goals as agreed by the UN in 2000. Despite serious resource constraints and frequent natural calamities, the various FYPs have given Bangladesh notable success in economic and social arenas. What has persisted as a major challenge for Bangladesh is that of attaining good governance.

**The governance and human rights 5-year Plan presented in this document is not diagnostic in nature, but rather a list of essential policy items to be undertaken over a five-year period (2015-20), which can be described as high-priority, essential, primary and long term.** The document has set priorities through a consultative process, involving public officials, civil society personalities, academics, professionals and international development partners. Finally, it needs to be stated that such a document is not cast in stone but to be seen as a living one to be consulted and changed, as and when necessary. It is hoped that the ideas contained in this document will assist the Government to work towards “good enough” conditions of governance.

### A Results Framework

**The Five Year Plan should develop a results framework in order to measure government performance on governance.** Such a framework can serve a number of functions, such as planning the efforts of government ministries, providing a clear means of consensus and coordination, driving program decision, facilitating communication of activities, and also allowing the executive, legislature, the citizens and others to evaluate government activities with simple measures.

**Indicators should follow several general principles.** One common set of principles for indicators is that they are SMART, i.e. specific, measurable, assignable, realistic and

time-related.<sup>111</sup> Within this, an important principle is that the indicator should directly relate to the successful completion of an activity prescribed within the plan.

**To improve upon the previous results frameworks, we suggest that a results framework for the 7<sup>th</sup> FYP therefore follow several principles.** This framework is presented in Table V-1. In the Mid Term Review, there was a weak relationship between indicators and the activities. As such, we recommend that the results framework include indicators such as:

- The selected indicators are directly related to the activities prescribed in the FYP
- The selected indicators balance the need to capture the diversity of activities related to governance and justice, yet remain simple and easily comprehensible

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<sup>111</sup> In more detail, SMART is Specific – target a specific area for improvement; Measurable – quantify or at least suggest an indicator of progress; Assignable – specify who will do it; Realistic – state what results can realistically be achieved, given available resources; and Time-related – specify when the result(s) can be achieved.

**Table V-1 Proposed Results Indicator Framework for Governance in the 7<sup>th</sup> Five Year Plan**

<i>Description</i>	<i>Issues and Obstacles</i>	<i>Output Measures</i>	<i>Examples of the Actions</i>	<i>Source of Data</i>
<b>Outcome: Government institutions at the national and sub-national levels are able to more effectively carry out their mandates, including delivery of public services, in a more accountable, transparent, and inclusive manner</b>				
<b>Perspective Plan Strategic Objective 1: All institutions of law enforcement and justice will work with greater fairness and efficiency resulting in greater public confidence in the rule of law.</b>				
Establish effective justice institutions	Justice institutions overwhelmed by caseload  Access to justice by the poor is lacking	Case backlog  # of legal aid cases, especially for the poor, marginalized and women	Introduce a computerized court case recording and tracking system and make the information accessible to citizens through websites.  Establish “Case Management & Coordination Committees” for civil and criminal matters at the district level. Such a mechanism will emphasize the working of the ‘system’ rather than just being concerned with the performance of	MoLJPA  NLSO

			<p>‘individual’ agencies.</p> <p>Create a new justice sector-wide committee, which will provide a national coordination mechanism including the senior-most actors in the justice sector in order to instill ownership from different stakeholders.</p> <p>Bar council should take effective steps to sensitize the lawyers and to take some reform initiatives ensuring the accountability of the lawyers and also to maintain the integrity.</p>	
<b>Perspective Plan Strategic Objective 2: Administration will be freed from partisan influence</b>				
Government will make all out efforts not only to revive but enhance competence and professional ethics in the civil service using sanction for performance	Lack of fixed rules to structure the Civil Service	Establish and apply Civil Service Act	Reforming civil servants’ performance evaluation through emphasis on establishing clearer annual work objectives and performance on these objectives and greater	MoPA

			<p>differentiation of annual evaluations and having promotion depend more directly on performance evaluations.</p> <p>Integrate performance management system at the ministries</p> <p>Establish a mechanism to address citizen feedback</p>	
<b>Perspective Plan Strategic Objective 3: Budget execution, especially Development Budgets, will be brought under public scrutiny</b>				
Establish effective planning and oversight mechanisms for budget	<p>ADP projects are numerous, with cost and time over-runs</p> <p>Lack of response to recommendations from PAC, based on OCAG audit reports</p>	<p>Average percentage cost overrun for ADP projects completed</p> <p>For PAC recommendations based on OCAG audits, % of funds returned and adjusted</p>	<p>Creation of a more comprehensive, centralized Treasury Single Account linked to FMIS</p> <p>An independent Comptroller and Auditor-General office</p>	<p>ADP Annual Report</p> <p>OCAG Annual Report</p>
<b>Perspective Plan Strategic Objective 4: A transparent governance system</b>				



Establish a strong Information Commission	Supply side capacity, Public awareness, Records management	# RTI requests with a response from Government <sup>112</sup>	Increase its ability to track data at different levels (national, district & upazila) on RTI applications, responses, appeals and decisions	IC Annual Report
<b>Perspective Plan Strategic Objective 5: The Anti-Corruption Commission will have the freedom to take a range of effective measures</b>				
Enhance ACC activities	ACC requires greater capacity and more on the ground presence	# cases prosecuted by ACC	Develop anti-corruption strategies for critical sectors, including an implementation plan that may include the creation of anti-corruption cells in every government department	ACC Annual Report
<b>Perspective Plan Strategic Objective 6: Human Rights (addressed in other paper)</b>				
<b>Perspective Plan Strategic Objective 7: Devolution (addressed in other paper)</b>				

*Note:* The unique result indicator is the passing and application of the civil service reform act, or Government Employee Act. This was selected as a qualitative and process indicator instead of an outcome indicator given that the country has waited for decades for such an act, and also given the difficulty in measuring the outcomes such as removing partisan influence.

<sup>112</sup> As the government ability to collect data on RTI requests increases, it may use an indicator such as RTI requests from women, to ensure gender sensitivity.



**The strategic objectives do not lend themselves to outcome measures, and as such, the focus of the indicators is output measures.** Unfortunately, the overall transparency of government and the level of corruption, for example, are not areas in which standard indicators are available. As such, we recommend the use of output measures.

**The proposed targets for the 7<sup>th</sup> FYP are the following:**

**Table V-2 Proposed Indicator Targets for Governance in the 7<sup>th</sup> Five Year Plan**

Indicator	Most Recent	Target (2020)
# RTI requests with a response from Government	11,000 (2013)	14,000
# cases prosecuted by ACC	TBD (2013)	TBD
Establish and apply Civil Service Act	No	Yes
Average percentage cost overrun for ADP projects completed	TBD (FY 14)	15%
For PAC recommendations based on OCAG audits, % of funds returned and adjusted	37.1% (9 <sup>th</sup> Parliament)	50.0%
Case backlog	2,861,003 (2013)	2,800,000
# of legal aid cases, especially for the poor, marginalized and women	19,000 (2013)	35,000

### **Achieving Results under the 7th FYP**

**The GoB must seek out methods to ensure that the various activities are completed.** The analysis presented in Section 3 suggests that the Government has not yet begun many of the governance and justice activities recommended under the 6<sup>th</sup> Five Year Plan. The principal purposes of the results framework are to provide a general goal and to measure of the successful completion of the activities. As such, capturing the level of activity should be a principal function of the results framework.

**One method is to institute a system of performance management using the indicators in the 7<sup>th</sup> FYP to provide clear performance measures for ministries.** This system is in line with the Perspective Plan, which states:

- (i) **Agency Performance Ranking:** A composite set of Agency Performance Indicators will be initiated for ministries and agencies to facilitate public

disclosure of performance data for each and every agency. It will set a standard for performance, transparency and accountability and will be helpful tool in policy making.

**The key to this system is to not only establish a set of indicators, but to develop a system to hold ministries accountable for achieving results.** A 'soft' form of accountability would be to hold periodic meetings in which the ministries report on their results. A 'hard' form of accountability would include budget allocations based on performance. Such a system may be instituted by different government entities (Ministry of Finance, Cabinet Division or Planning Commission), depending on which form of accountability the government pursues.

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## Annexes

Annex 1: An assessment of intended and actual activities under the 6<sup>th</sup> FYP

### **Proposed and Actual Activities under the 6<sup>th</sup> Five Year Plan of the Government of Bangladesh**

In order to estimate the actions under the 6<sup>th</sup> Five Year Plan, our team categorized and then described those actions. The categories included ‘not complete’, ‘partially complete’ and ‘complete’. If nothing at all was done, it would fall under the first category; if some genuine initiative was taken, the action would be categorized under ‘partially’; and if the action was fully done, it would be considered ‘complete’. This information was gathered from interviews with a variety of relevant stakeholders.

#### **Making parliamentary process effective**

1. Increasing the number of hearings open to the public, particularly of important budgetary committees such as the Public Accounts committee

Status: Not complete.

While the number of hearings has increased, they are not yet made public, which requires amendments to the Parliamentary Rules of Procedure.

2. Promoting standards for policy debate

Status: Not complete.

While this planned action is ambiguous, there are standards lacking in terms of promoting public debate on proposed policies, even if the Constitution mandates consultation with Parliament by the Executive.

3. Ensuring greater cross-party representation in standing committees and encouraging multi-party participation in formal reviews of Government actions

Status: Not complete.

While this planned action is also ambiguous, there have not been further steps to ensure its implementation. One possibility is to allow MPs to apply for Committee positions.

#### **Controlling corruption**

1. Anti-Corruption Commission will thus be put on a more sustainable footing by providing it with clear independence to carry out investigations and prosecute, but with high levels of accountability to other public authorities to ensure that its actions are unbiased and in the public interest.

Status: Partly complete.

The ACC has the budget, but this is not sufficient. Reports given to President, but not to Parliament. Further efforts needed to hold them accountable.

2. The Government will initiate a sustained campaign to create public awareness and education in preventive measures, creating the right conditions for the public sector to enhance public service delivery.

Status: Partly complete.

ACC is creating committees, to work with young people, but still requires much broader effort with scale up.

3. The Government will put in place some key reforms, such as introducing legislation and practices that will enhance the transparency of fiscal operations of the government.

Status: Not complete.

Such legislation has not been introduced to date.

### **Strengthening the Election Commission**

1. The Government will establish a mechanism for selection of members of the Commission that lays out clear criteria for non-partisanship, competence, and independence in order to sustain the independence of the institution.

Status: Complete.

Such a mechanism has been introduced in the legislation, but media and civil society have disputed the effectiveness of the mechanism.

### **Judicial Reforms**

1. Appointment of an Ombudsman with sufficient staff as guaranteed by the Article 77 of the Constitution.

Status: Not complete.

2. Establishing clear, transparent criteria and process for the recruitment and selection system ensuring competent judges are selected.

Status: Partly complete.

Lower court judges have such a mechanism, but not higher court judges.

3. Ensuring that the incentives in terms of pay and service conditions are appropriate to create an environment for dedicated services.



Status: Partly complete.

Higher court judge salaries have been revised, but other steps have not been taken for such an environment for dedicated services.

4. The Judicial Service Commission and its Secretariat will be equipped to monitor the performance of all judges and undertake evaluation on the basis of objective criteria.

Status: Partly complete.

Probably refers to lower court judges. There is a secretariat, but they are not equipped to monitor the performance of all judges. A strategic plan has been developed that will address these things.

5. Improving the work environment in the courts with proper office equipment and required support staff.

Status: Partly complete.

As refers to lower courts, such efforts have not been adequate. As refers to the higher court, some efforts have been undertaken.

6. Establishing a separate pay commission to formulate a separate salary structure for officials of judicial services reflecting the nature of their job and consistent with public sector compensation policy.

Status: Not complete.

7. Similar to the case with other public officers, introducing a system where judges have to reveal assets and properties belonging to them and their family members at the time of entry, during the tenure intermittently and after leaving the office.

Status: Not complete.

8. Streamlining administrative procedure of the court so that they are easily understood, and arbitrary decision making by court staff is minimized.

Status: Partly complete.

A pilot has been undertaken in lower courts regarding case management committees and criminal justice coordination committees, but this has not been accomplished at a larger scale.

9. Introducing a computerized court case recording and tracking system and make the information accessible to people through the website.

Status: Not complete.

10. Enable NGOs to work to facilitate access to the judicial system by the poor, women and vulnerable people and in building awareness among them.

Status: Complete.

Government has provided active support in terms of permitting NGOs to accomplish many legal aid activities.

11. Alternative dispute settlement mechanisms will be strengthened by regulating them by formal and traditional laws. Formal alternative dispute resolution mechanisms could be attached to courts or to government agencies, such as land and labour boards.

Status: Partly complete.

Village courts amendment has been approved by parliament, and National Legal Aid Services Organisation has been established in all districts and national Legal Aid offices have been provided the power to facilitate ADR. Land and labour boards are still nascent.

### **Promoting E-governance**

1. Formulating and implementing a comprehensive strategy to provide the maximum amount of information as well as forms, applications, and other documentation which citizens need to file online by all ministries/agencies.

Status: Partly complete.

The government has made strong efforts to include all forms and applications online, though there still remain some ministries in which this is not available.

The National e-Service System (NESS) is an initiative to consolidate all government e-Services within one framework. The NESS framework will accommodate all services offered by the government of Bangladesh to its citizens. An e-Service under NESS has capability to receive online or mobile-based applications, provide receipt numbers immediately for future tracking of status, and in most cases, completion of the service online. Any financial transaction associated with service application may be accommodated through a special e-Financial Inclusion platform. A forms engine to develop a digital version of any paper form is an integral part of NESS.

e District e-Service Centre (DESC) which is an ICT facilitated one-stop service centre providing an efficient electronic version of the century-old manual and heavily bureaucratic service delivery system at every DC office. DESC is located in the Deputy Commissioner's (DC) office. DESC has been designed to improve the accessibility and transparency of public service delivery system at the district

level to achieve the following objectives: • Ensure service delivery at the at citizens' doorsteps in the least possible time • Uphold citizens' Rights to Information through extensive information flow • Reduce corruption and increase accountability by ensuring enhanced flow of information and more transparent processes • Services available at the DC office can be requested and received through the one stop service counters, online, by phone, by post, or by fax.

2. Adoption of an ICT legal and operational framework which provides for interoperability of Government systems, privacy and security controls for use of information.

Status: Complete.

Bangladesh has enacted the following legal documents for dealing with the ICT and e-governance issues: The Information, communication and Technology Act 2006 (amended in 2009.2013) : Over all legal acceptance for e – communications and transaction including the security issues. Information security policy guideline; Cyber security strategic guideline: E –service act 2013 (draft): Coordination of the e –services in the public sector.

3. Establishing a nodal unit responsible for monitoring and evaluating the rolling out of e-governance tools.

Status: Complete.

Information, Communication and Technology division has been established. Establishment of National e-service authority for coordinating the e –services among the public sector organizations is under consideration. Beside these Access to Information Programme of the Prime Minister's office is also play the key role in this regard.

4. Enhancing local connectivity, including measures to ensure access of the poor and other disadvantaged groups.

Status: Complete.

UNION DIGITAL CENTERS are newly established one-stop service outlets operating at all 4,547 Union Parishads (UP, lowest tier of local government) of the country. Through use of ICT, UNION DIGITAL CENTER is able to bring various types of information related to government, livelihood and private services to the doorstep of citizens in rural areas. It ensures services providers and users to save time, cost and has made operations hassle free. Operating under the Public-Private-Peoples' Partnership (PPPP) modality, these centres are run by local entrepreneurs, hosted by UPs and supported by central administration.

However, further efforts are needed to ensure access by the poor and other disadvantaged groups to these centers.

5. Digitizing key records and instituting effective digital processing of ongoing cases/processes and providing for easier access to the public of these records as appropriate, notably property registers, court management, and tax administration.

Status: Partly complete.

Initiative for digitizing of Bangladesh Supreme courts has been taken. In the meantime cause list of the cases are made available online. Electronic income tax return system has been developed. However, other records such as property registers are not available as of yet.

6. Continuing capacity building of officials at all levels.

Status: Complete.

The training has been conducted on a continuous basis through the Access to information programme of the Prime Minister's office and Bangladesh Computer Council (BCC) . In the meantime along with other trainings nearly 25,000 officers at the field level have been trained to update their own websites which constitute the entire National Portal Framework.

7. Overall coordination of these initiatives, and leadership on developing the legal and operational framework, will be carried out by the Prime Minister's Office with support from the Bangladesh Computer Council (BCC). Implementation of capacity building and improvement of infrastructure will be undertaken by the BCC. Digitization efforts will be the responsibility of the respective ministries/agencies.

Status: Complete.

Responsibilities assigned and capacity building and improvements of infrastructure undertaken.

### **Improving project implementation capacity**

1. Shifting from the existing project-by-project approach to a more program and results based approach that is better linked with the plan and the medium-term budgetary framework.

Status: Partly complete.

This action is part of projects undertaken by the Planning commission.

2. Bringing improvement in project quality through more realistic project design, better assessment of implementation capacity, and more realistic costing.

Status: Partly complete

This action is part of projects undertaken by the Planning commission.

3. Project directors would be given more authority for accelerating the ADP implementation.

Status: Partly complete.

This action is part of projects undertaken by the Planning commission.

4. Aid disbursement procedures would be simplified.

Status: Not complete.

5. Procurement of goods and services would be made on a timely basis with due regard to qualitative and governance aspects of procurement.

Status: Partly complete.

This action is part of projects undertaken by the Planning commission.

6. Emphasis will be placed on strengthening the capacity of government officials regarding project implementation through proper assignment of staff, through better training, and through better accountability.

Status: Partly complete.

This action is part of projects undertaken by the Planning commission.

7. Management information system would be introduced and made operational so that implementation status is monitored at least on a quarterly basis.

Status: Not complete.

While an MIS system has not been made operational, though it is part of projects undertaken by the Planning commission.

8. Greater attention will be given to make project implementation results-based and not just a matter of speedier use of public funds.

Status: Complete.

Further efforts have been made to focus on results based implementation.

### **Improving sectoral governance**

1. Sectoral level anticorruption strategies would be formulated that would focus on

minimizing risks in the flow of goods and services. Special emphasis will be placed on improving governance in areas where the scope for corruption and rent seeking are particularly prominent, including tax administration, land administration, and basic service delivery institutions such as health, education, population and nutrition

Status: Not complete.

Our team could not find any anti-corruption strategies that have been formulated.

2. E-governance will be introduced in these areas and capacity of sectoral Ministries and agencies will be strengthened on effective delivery services ensuring participation of beneficiaries

Status: Partly complete.

Some level of e-governance has been introduced via small pockets of work, such as service delivery in health and land administration. There has been a commitment by GoB to increase e-governance in tax administration as well, and other initiatives under A2I.

### **Enhancing transparency and access to information**

1. Establishing a central office for providing support to, and overseeing implementation of, proactive disclosure of information required by the RTI Act by all Government agencies;

Status: Partly complete.

IC has taken responsibility for ensuring proactive disclosure of all Government agencies; however, implementation of proactive disclosure has been lacking. However, a central office has not been established as such. Greater detail needed on precisely who should do this.

2. Ensuring that Government agencies have duly appointed designated information officers with corresponding training and equipment to carry out their functions

Status: Partly complete.

Designated officers were appointed, but as shown in a recent survey (Nielsen, 2012), some 72% of Designated Officers were unaware of their duties under the Act. The Nielsen survey also suggests that 28% of Designated Officers have received training on RTI, primarily from the Information Commission.

3. Integrating training on right to information into overall civil service training

Status: Partly complete.

Training is a part of BPATC curriculum, but it is done in a very brief manner. The Nielsen survey also suggests that 28% of Designated Officers have received training on RTI, primarily from the Information Commission, while the survey shows that BPATC and other institutions are also conducting such training. However, such numbers are likely to diminish, with no government-wide or other major initiatives to train officers in RTI.

4. Providing the human and technical resources for the Information Commission to carry out all of its appellate and other responsibilities, including capacity to monitor overall compliance with provisions of the RTI Act.

Status: Partly complete.

IC has been very active in promoting RTI in all Government agencies, however they lack certain human and technical resources, not for lack of financial resources, but due to the need for improved planning and long term thinking.

5. Developing facilitation centres through public-private partnerships to help direct the filing of information requests in conjunction with the Digital Bangladesh agenda.

Status: Partly complete.

Union Information Centers have helped in accessing different types of information, but have not prioritized information requests under RTI as part of their activities.

### **Protecting human rights**

- *Note:* No clear actions

### **Public Administration Capacity Development:**

1. Drafting, consultations, and passage of the Civil Service Act and implementing regulations:

Status: Partly complete.

A draft of the Public Service Act ( which is now called Government Employee Act) was first formulated in 2010. The draft act has gone through stakeholder consultations. A committee of the Ministry of Public Administration has reviewed the draft considering the opinion came from the stakeholder consultation. The revised draft has been sent to the Prime Minister's office on March 2013 for the approval of the Prime Minister to submit it in the Secretaries Committee on Administrative Development. The Prime Minister gave her consent on April 2014 to submit the draft act in the Secretaries Committee on Administrative

Development. The Secretaries Committee has approved the draft act. It will be placed before the Cabinet soon. Once Cabinet approves, it will be placed in the parliament to be enacted as law.

2. Drafting rules for recruitment to allow for increased recruitment laterally into mid-level and higher level civil service positions, modernization of testing for new recruit batches:

Status: Not complete.

The issue of lateral entry at the position of Deputy Secretary (Mid career position of the government) from all the cadre services has been settled by a verdict of full bench of the Appellate Division of the Supreme Court in 2011. This has allowed all cadre service members to join in the core policy administration of the government. Apart from this there is no such recruitment rule in place or in the pipeline for allowing lateral entry. But as a prerogative of the President, the government may appoint 10% (of total posts of a certain position) of employees in the public service on contract, which can be treated as lateral entry.

3. Revising rules for the formation of the Public Service Commission to minimize opportunity for political influence, and other measures to increase its capacity (prior to completion of the current term of Commissioners):

Status: Not complete.

4. Developing greater opportunities for on-the-job training and classroom-based training with linkage between training and criteria for career advancement.

Status: Not complete.

The Ministry of Public Administration has taken an initiative to formulate a career planning policy, which is supposed to include the mentioned area. But as of today, there is no such policy in place to link the training and career advancement.

5. Revising the civil servants' code of conduct to address issues of corruption, accountability and performance, including consideration of an enhanced asset declaration regime:

Status: Partly complete.

The revision of the conduct rules is under process. Ministry of Public Administration has formed a committee to revise and update the Public Servant (Conduct) Rules 1979 in coordination with the Cabinet Division. In the meantime the ministry of Public Administration has collected feedback from other ministries. After considering the feedbacks a draft will be finalized. The draft then



will be placed in the Secretary's Committee on Administrative Development for final approval.

6. Strengthening and clarifying the Rules of Business so that civil servants could work with clear terms of reference promoting accountability:

Status: Not complete.

This initiative has not yet been taken comprehensively.

7. Reforming civil servants' performance evaluation through emphasis on establishing clearer annual work objectives and performance on these objectives and greater differentiation of annual evaluations and having promotion depend more directly on performance evaluations:

Status: Partly complete.

The Ministry of Public Administration has developed a Performance Based Evaluation System (PBES) under which an Annual Performance Report (APR) format has been finalized. The system was piloted in the Ministry of Public Administration in 2012. The ministry is now working on updating the job descriptions of the employees. A committee has been formed for this purpose.

8. Revising the civil service payment system to allow for less compression of pay and retention of persons with unusual, needed skills, as well as streamlining the system of benefits.

Status: Partly complete.

A Pay and Service Commission has been established in 2013 for rationalizing the pay and salary of the public sector employees. The Commission has almost finalized the recommendation that is supposed to submit by December 2014.

9. Institutionalizing the citizen's charter to provide regular feedback on public services.

Status: Partly complete.

The Citizen's Charter (CC) initiative has been taken by the government of Bangladesh in 2007. The Cabinet division has instructed the government organizations to formulate the CC in 2007. After that the Ministry of Public Administration has focused on the CC issue through the Civil Service Change

Management programme (UNDP funded project). In the mean time the CC has been piloted in 56 public service providers under 13 ministries across 16 districts.

### **Devolution to local governments**

1. Enhancing the legal framework for the functioning of local governments at the union, Pourashava, city corporation, and upazila levels through establishing clear service responsibilities, ensuring discretion of local governments to carry out their service responsibilities within national standards, devolution of administrative control over ensuring service provision in the areas which are assigned to respective local governments, providing for a greater discretionary financial base including robust local revenues and a transparent, a predictable system of intergovernmental fiscal transfers with, and provision of greater discretion in staffing to meet the administrative responsibilities at the local level.

Status: Not complete.

A strong efforts towards devolution along these lines have not been undertaken.

2. Increasing the transparency and improving the accountability of local governments by establishing indicators and standards for measuring performance in service delivery at local level, broadening the role of oversight institutions which would perform financial and service delivery audits, and investigating corruption and irregularities and make the reports available to public.

Status: Partly complete.

While union information centers have improved transparency, they have not focused on local governments, nor has oversight greatly increased. Some investigations into corruption have occurred.

3. Building the capacity of local governments through assignment of proper officials, technical assistance and training programs.

Status: Partly complete.

Training and technical assistance programs have been undertaken, though assignment of proper officials is still lagging.

4. Developing planning and budgeting capacities at the local level to help design and implement local level programs.

Status: Partly complete.

Some efforts to improve planning and budgeting capacity have been done, but not

yet to the extent that they can design and implement local level programs.

5. Expanding the role of citizen committees and strengthening participation of the citizens from different groups, including women and the poor, in prioritizing, implementing and monitoring of development program and other functions of the local government to ensure that local level development programs are appropriate and that these are well implemented.

Status: Partly complete.

While project work has focused on this, citizen committees still remain weak vis a vis planning processes at the local level.

6. Establishing E-governance at the local level through a well designed program of ICT hardware and software, technical assistance and training programs.

Status: Partly complete.

The a2i initiative has brought progress towards e-governance, though this has not been well integrated into local governments.

### **Public-private partnership**

*Note:* no clear actions.

### **Reforming planning and budgetary processes:**

1. The Sixth Five Year Plan already makes a fundamental shift in the planning process by making the public investments as indicative and focusing much more deeply on growth, employment and poverty reduction strategies, policies and programs. This indicative plan will serve as a living document through instituting a system of annual review of development performance and plan implementation. The performance review will focus on implementation of strategies and policies and look at broad economy-wide and sectoral outcomes rather than simply at financial progress of publicly funded investment projects. The results of the annual reviews will be shared with the cabinet and used to determine changes in plan goals, targets, strategies and policies as necessary in light of the changing global and local economy and the results of the plan implementation.

Status: Not complete.

An annual performance review of FYP is not complete, though there is an annual review of ADP project performance in terms of financial progress. Our team could find no evidence that these results are used to change the goals, targets, strategies and policies of the Five Year Plan.

2. The capacities of line ministries will be substantially strengthened to do proper planning and budgeting in the context of the implementation of the MTBF. Line ministries will

need to ensure that proposed projects and programs are consistent with the objectives and framework of the Sixth Plan.

Status: Partly complete.

Some capacity building has taken place in a small number of ministries, but very few having staff dedicated to budget and planning. Our team could find little evidence that substantial steps have been taken to increase line ministry capacity to implement MTBF.

3. Project approval process will be strengthened and streamlined to reduce delays and proliferation of tiny projects.

Status: Not complete

Our team could find no evidence that the project approval process has been changed in any substantive manner.

4. Project approval at the Planning Commission level will be substantially strengthened. All projects that go to the Planning Commission must provide a proper appraisal report along with sound analysis that shows the consistency and relevance of the project to sectoral/economy-wide objectives, strategies and policies. The appraisal report will do proper economic and financial analysis of the proposed project, do gender and environmental analysis as relevant, and show an implementation plan while providing clear evidence of implementation capacity.

Status: Not complete

Our team could find no evidence that the project approval process at the Planning Commission has changed in any substantive manner.

5. Proliferation of projects and long implementation lags are a perennial problem. The Sixth Plan will seek to break this logjam by doing a proper review of all approved and active projects in the pipeline in cooperation with the line Ministries. The review of this portfolio stock will seek to clean out dormant or irrelevant projects and help line ministries close the projects that are facing implementation problems through restructuring or through other relevant interventions. The results of this exercise will be shared with the cabinet for endorsement and approval.

Status: Not complete.

Our team could find no evidence that the project implementation process has changed in any substantive manner.

6. The technical capacities of the Ministry of Finance and the Planning Commission will be substantially strengthened through proper staffing and training to ensure the timely

implementation of the Sixth Plan and the MTBF. All efforts will be made to strengthen coordination between these two core ministries with a view to avoiding duplication, overlap and delays.

Status: Partly complete.

The Ministry of Finance has undergone trainings regarding MTBF, and they have hired additional Budget Desk Officers. However, our team could find few substantive changes as regards coordination, as well as increased technical capacities.

## **M and E**

1. Assign overall responsibility for instituting a results-based M&E to the Planning Commission. The General Economics Division (GED) in collaboration with the IMED will take the lead responsibility. Technical assistance from a multi-donor Trust Fund is already available for this purpose.

Status: Complete.

Responsibility assigned.

2. Availability of reliable data and its timeliness is crucial for policy making and impact evaluation which calls for increasing efficiency of the statistical system. Therefore capacity of the Bangladesh Bureau of Statistics (BBS) will be strengthened to enable it conduct surveys, special surveys and censuses to produce quality data. The publication of HIES, LFS, SMI, Agriculture census etc. should match with monitoring and evaluation cycle of the Planning Commission.

Status: Partly complete.

Capacity building conducted, but the data does not necessarily coincide with the monitoring and evaluation cycle of the Planning Commission.

3. The capacity of the GED and IMED will be strengthened with better staffing, technology, training and technical assistance. In particular, a strong GED is essential to enable it to guide the M&E working groups, coordinate their activities and carryout the analytical work.

Status: Partly complete.

Again, some capacity strengthening complete.

4. Good practice results-based M&E from international experiences including from those in India, Chile, Malaysia, Korea and Thailand will be reviewed and adapted to the specific context of Bangladesh.

Status: Not complete

Our team could find no evidence this was begun.

5. Good data is essential for an effective results-based M&E. The capacity of the BBS will be further strengthened to generate required data for M&E. This could entail special-purpose surveys and other outcome-oriented data base.

Status: Complete.

BBS capacity was strengthened, with som special-purpose surveys and other outcome-oriented data.

6. Strong results-based M&E will require collaboration with the line ministries, research institutions, and civil society. GED will be assigned this responsibility.

Status: Complete.

Responsibility assigned.

7. Proper review and dissemination of M&E results is essential to make this a useful tool for policy making. The findings of M&E will be reviewed through workshops and training programs. The dissemination effort will include sending the reports to the cabinet, the Parliamentary committees, the various ministries and also published as reports and posted on the website of the Planning Commission for general public review.

Status: Complete.

Numerous reports are made public and sent to the relevant government entities.

### **Results Framework:**

1. Assign overall responsibility to develop the Results Framework for the Five Year Plan to GED and the Economic Relations Division (ERD). As agreed in the Joint Cooperation Strategy (JCS) signed in June 2010 between the Government of Bangladesh and development partners, the latter will assist the Government in developing the results framework.

Status: Complete.

Responsibility assigned to GED/ERD to develop the results framework with the support of DPs.

2. Assign overall responsibility to monitor the Results framework to GED, in line with its general responsibilities to institute a results based M&E. GED will act as the clearinghouse for the data and will ensure that adequate roles are assigned to line ministries and other relevant agencies. An existing initiative to create a network of M&E officers across line ministries will form the basis of a monitoring network for the results framework.

Status: Partly complete.

GED assigned responsibility to monitor results framework, but initiative to establish a network of M&E officers across line ministries has not been finished.

3. Assign responsibility to ERD, in cooperation with GED, to organize an annual development forum to discuss progress on the results framework with key stakeholders, including development partners and civil society organizations.

Status: Partly complete

ERD is responsible, but the results framework did not allow monitoring of all data as it was not available.

### **Third Party Monitoring of the Sixth Five Year Plan**

1. Effective monitoring of the Five Year Plan by third parties will be instrumental in strengthening accountability and transparency; and effective in helping to take corrective actions to improve development results.

Status: Partly complete.

Government has begun a system of third party monitoring, but this has yet to become effective, both in terms of systematically monitoring results and helping to take corrective actions for results.

Annex 2: Recommendations of the various administrative reform commissions and committees

<i>Recommendation</i>	<i>ASRC</i>	<i>P&amp;S C</i>	<i>MLC I</i>	<i>MLC II</i>	<i>MLC III</i>	<i>Committ ee for Examina tion of Irregular ities</i>	<i>Administ rative Reforms Committ ee</i>	<i>Towards Better Governm ent</i>	<i>CoPSC</i>	<i>PARC</i>
Year set up	1973	1976	1982	1982	1983	1982	1993	1993	1987	1997
Year of recommendation	1974	1977	1982	1982	1983	1983	1993	1993	1988	2000
Recruitment to be based solely on merit / increase of merit quota	x	x						x	x	x
Direct recruitment / Lateral appointment to selected positions through open competition	x									x
Separate unit to manage civil servants' training	x	x								x
Need-based training	x	x						x		x
Changing the structure of civil service management	x	x							x	
Superior Policy Pool / Senior Services Pool/ Senior Policy Management Posts	x	x								
Centralized management of all cadres	x	x								
Ensuring that recommendations of Public Service Commission regarding appointment and promotion implemented on time / remove ad hoc recruitment			x		x	x				
Rightsizing government		x	x				x			

Note: ARCS – Administrative and Service Reorganization Commission; P&SC – Pay& Services Commission; MLC – Martial Law Committee; CoPSC – Committee on Public Service; PARC - Public Administration Reorganization Commission.

**Source: Reproduced from World Bank, 2006.**



### Annex 3. PEFA Assessment Results from 2006 and 2011

	2006	2011
<b>A. PFM-OUT-TURNS: Credibility of the budget</b>		
PI-1 Aggregate expenditure out-turn compared to original approved budget	C	B
PI-2 Composition of expenditure out-turn compared to original approved budget	C	D+
PI-3 Aggregate revenue out-turn compared to original approved budget	C	B
PI-4 Stock and monitoring of expenditure payment arrears	D	
<b>B. KEY CROSS-CUTTING ISSUES: Comprehensiveness and Transparency</b>		
PI-5 Classification of the budget	C	B
PI-6 Comprehensiveness of information included in budget documentation	C	B
PI-7 Extent of unreported government operations	D	B
PI-8 Transparency of inter-governmental fiscal relations	D+	D
PI-9 Oversight of aggregate fiscal risk from other public sector entities.	C	D+
PI-10 Public access to key fiscal information	C	B
<b>C. BUDGET CYCLE</b>		
<b>C(i) Policy-Based Budgeting</b>		
PI-11 Orderliness and participation in the annual budget process	B	B
PI-12 Multi-year perspective in fiscal planning, expenditure policy and budgeting	D+	B
<b>C(ii) Predictability and Control in Budget Execution</b>		
PI-13 Transparency of taxpayer obligations and liabilities	D+	C
PI-14 Effectiveness of measures for taxpayer registration and tax assessment	D+	C
PI-15 Effectiveness in collection of tax payments	D+	D+
PI-16 Predictability in the availability of funds for commitment of expenditures	C	C+
PI-17 Recording and management of cash balances, debt and guarantees	C	C
PI-18 Effectiveness of payroll controls	C	D+
PI-19 Competition, value for money and controls in procurement	B	
PI-20 Effectiveness of internal controls for non-salary expenditure	C	D+
PI-21 Effectiveness of internal audit	D	D
<b>C(iii) Accounting, Recording and Reporting</b>		
PI-22 Timeliness and regularity of accounts reconciliation	C	B
PI-23 Availability of information on resources received by service delivery units	C	D
PI-24 Quality and timeliness of in-year budget reports	C	C+
PI-25 Quality and timeliness of annual financial statements	C	D+
<b>C(iv) External Scrutiny and Audit</b>		
PI-26 Scope, nature and follow-up of external audit	D+	D+
PI-27 Legislative scrutiny of the annual budget law	D	D+
PI-28 Legislative scrutiny of external audit reports	C	D+
<b>D. DONOR PRACTICES</b>		
D-1 Predictability of Direct Budget Support	B	D+
D-2 Financial information provided by donors for budgeting and reporting on project and program aid	C	B
D-3 Proportion of aid that is managed by use of national procedures	B	D

Source: Reproduced from Government of Bangladesh, 2011.