

Anti Corruption Agency Strengthening Initiative

**Assessment of Bangladesh
Anti-Corruption Commission 2018
A Follow up Study**

Executive Summary

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A Follow up Study**

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Assessment of Bangladesh Anti-Corruption Commission 2018 A Follow up Study

Introduction

Transparency International (TI) undertook an initiative aimed at strengthening anti-corruption agencies (ACAs) in the Asia Pacific Region. This initiative comprised activities that included assessments of ACAs with sustained engagement, dialogue and advocacy at both national and regional levels.

As part of this initiative Transparency International Bangladesh (TIB) carried out an assessment of the Anti-Corruption Commission (ACC) of Bangladesh between November 2015 and April 2016. The study aimed at providing the ACC with up-to-date information regarding its performance and opportunities for improvement and providing all stakeholders committed to tackling corruption in the country a better understanding of the enabling and disabling factors which affect the ACC's efficacy. The findings of the assessment were shared with ACC high officials in March 2016 and later released through a press conference. In the following years the ACC undertook a number of initiatives with an aim to strengthen its capacity and improve its performance.

This follow up assessment has been conducted in 2019 for assessing the progress made by ACC since the first assessment. The objectives of this assessment are:

1. To review the performance and opportunities for improvement;
2. To assess enabling and disabling factors responsible for effectiveness of ACC;
3. To offer recommendations to overcome the challenges.

Methodology

The following methods were followed for conducting this study.

- Document analysis – review of laws, existing literature, media reports, websites.
- Key Informant Interviews – with ACC officials, former ACC Chairman, legal experts, practitioners, civil society members, and journalists.
- Review of findings by an international expert.
- Validation Meeting – Sharing of findings with ACC Chairman, Commissioners and high officials on 10 February 2020.

For conducting the study an assessment tool was designed to capture internal and external factors affecting the ACC's reputation and actual performance by the TI. This is a practical and comprehensive benchmarking tool aimed at highlighting the strengths and weaknesses of ACAs. It is a comprehensive indicator framework, made up of a total of 50 indicators under six dimensions; indicators are divided into enabling factors and performance indicators. The assessment tool was developed in consultation with experts, and was reviewed on the basis of the feedbacks coming from the first round of studies.

The reference period for all assessments on the ACC is three years (2016-2018). The data was collected during April to September 2019.

Scoring Method

The main findings of the assessment are based on a set of 50 indicators divided into six different dimensions. These indicators are designed to assess the capacity and effectiveness of the ACC, and to identify gaps and areas of opportunity (see Table 1 below).

Table 1. Dimensions of Assessment for this Research

DIMENSIONS OF ASSESSMENT	NUMBER OF INDICATORS
1. Independence and Status	9
2. Financial and Human Resources	9
3. Accountability and Integrity	9
4. Detection, Investigation and Prosecution	9
5. Prevention, Education and Outreach	8
6. Cooperation and External Relations	6
Total	50

Each indicator has been assigned one of three possible scores – high (2), moderate (1) and low (0), based on the level of standards set for each of the indicators. In order to arrive at the aggregate score for each dimension the final indicator scores for that dimension are added up, divided by the maximum total possible score for all indicators under that dimension and multiplied by 100. For example, the total score of

indicators under the first dimension (Independence and Status) is 12 (4 indicators x 2 + 4 indicators x 1 + one indicator x 0). The maximum total possible score for this dimension is 18 (i.e. 9 indicators x the maximum possible score of 2 for each). Thus the aggregate score (percentage) for this dimension is: 12/18 x 100 = 67%. Then the average score of all dimensions are drawn to get the overall score.

For a clear understanding of the dimensions as well as the overall score, it has been classified into three categories – ‘high’ for an overall score between 67% and 100%, ‘moderate’ for an overall score between 34% – 66%, and ‘low’ for an overall score between 0% - 33%.

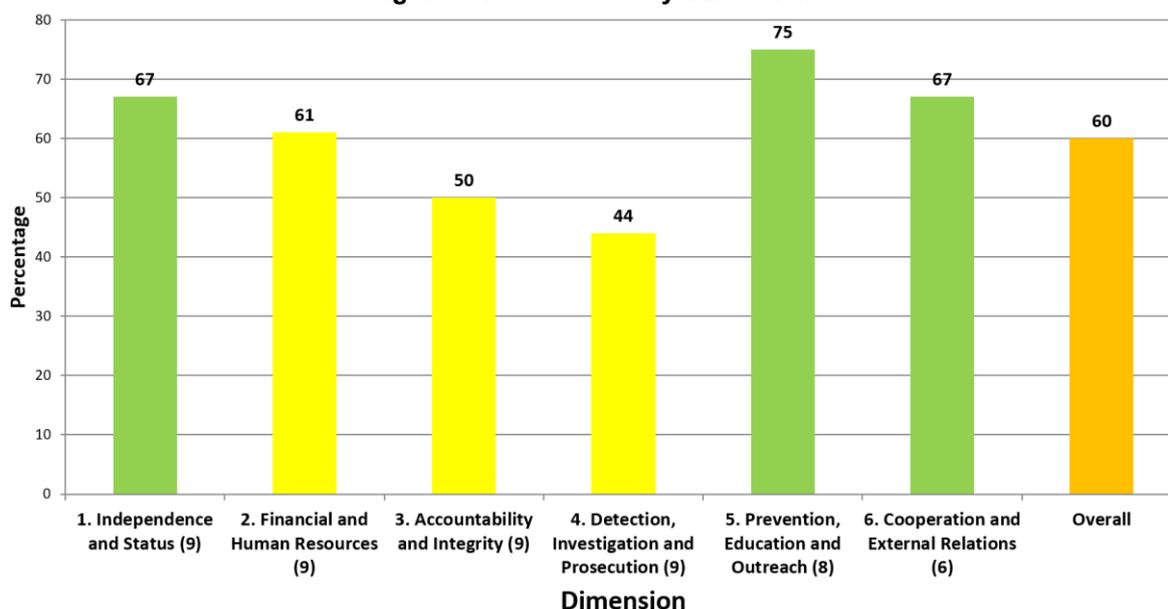
SUMMARY OF KEY FINDINGS

The overall score secured by ACC in this assessment is 60%, which falls in the ‘moderate’ category. It is noteworthy that ACC’s overall score falls short of 7 points from the ‘high’ category, which indicates that the institution needs to improve by only a few indicators in order to graduate to the ‘high’ category. Among the 50 indicators, the ACC scored ‘high’ in 42% (21), ‘moderate’ in 18 (36%), and scored ‘low’ in 11 indicators (22%). The highest score was achieved in ‘Prevention, Education and Outreach’ (75%), followed by ‘Independence and Status’ (67%) and ‘Cooperation and External Relations’ (67%). The lowest score achieved in ‘Detection, Investigation and Prosecution’ (44%).

Table 2: Assessment Summary: Indicators by Dimension

Dimension	Indicator								
Independence & Status	Institutional Independence	Appointment and removal of Commissioner(s)	Mandate	Jurisdiction	Investigation & prosecutorial powers	Powers to report and enforce recommendations	Legal autonomy	Operational autonomy	Political use of powers
Financial & Human Resources	Proportion of budget	Sufficiency of budget	Security & stability of budget	Staff salary & benefits	Staff selection	Investigation & prosecution expertise	Prevention & education expertise	Staff training	Stability of staff
Accountability & Integrity	Annual reporting	Responsiveness to information requests	External oversight mechanisms	Internal review mechanisms	Adherence to due process	Willingness of complainants to identify themselves	Complaints handling	Outcomes of complaints	Internal integrity mechanisms
Detection, Investigation & Prosecution	Accessibility to complainants /informants	Responsiveness to corruption complaints	Proactive investigation	Efficiency & professionalism	Prosecution rate	Conviction rate	Investigation of influential persons	Restitution & asset recovery	Perception of performance
Prevention, Education & Outreach	Allocated budget	Strategic planning	Anti-corruption learning & development	Organizational reviews	Prevention recommendations	Research on corruption risks	Dissemination & campaigns	Online communication	
Cooperation & External Relations	Confidence in Government support to the ACA	Cooperation with other integrity agencies	Cooperation with non-government organizations	International networks	Cooperation with other countries	Accessibility to marginalized groups			

Figure 1: ACC’s Score by Dimension



A brief dimension-wise findings is given below emphasising the weak areas of the ACC.

INDEPENDENCE AND STATUS

Under this dimension, four out of nine indicators received 'High' scores, four received 'Moderate' scores, and one received 'Low' score. The law provides ACC with substantial formal legal independence with little dependency on the government for its budget. The law also describes the mandate of ACC elaborately. Among 11 functions of ACC, five (5) are of punitive and six (6) are of preventive nature. These functions include investigation and filing cases, prevention, education, research and integrity advice for mainstreaming good practices in the work of government agencies. The Chairman and Commissioners of the ACC are appointed for five years, and they are well protected from any forceful and undue removal.

However, ACC's full independence and impartiality have been questioned due to its (in)effectiveness and autonomous exercise of power. Experts expressed that ACC is used as a tool for political harassment of the opposition and favouring the politicians of ruling party/ coalition, which has been evident during the 2018 National Parliamentary Election. It is also perceived that ACC is not politically neutral as it has not been able to show impartial behaviour in handling corruption cases. Experts alleged that it played a partisan role and did not take action against all accused equally. There is a common perception among informants that most of the people with partisan affiliation against whom investigation is going on belong to the political opposition, while only a few belonging to the party in power.

With regard to the jurisdiction of ACC, it covers all public sector corruption, and some private sector corruption with regard to money laundering, illegal wealth accumulation and bribery with public sector. Key issues including money laundering through currency transfer, mis-invoicing have been kept of ACC's jurisdiction through the amendment of the Money Laundering Prevention Act in 2015. The ACC prepares reports on corruption prone institutions and proposes recommendations, but does not have power to enforce such recommendations.

The operational autonomy of ACC is also limited, as sometimes it faces pressure from different stakeholders including government and political parties. The provision requiring prior permission of the government in filing cases against public officials under The Government Employment Act 2018 is believed to curtail ACC's autonomy. Moreover, ACC practices self-censorship to avoid adverse reaction from the government.

FINANCIAL AND HUMAN RESOURCES

Four out of nine indicators under this dimension received 'High' scores, three received 'Moderate' scores, while two received 'Low' scores. The average proportion of ACC's budget to total government budget has been about 0.031% on average during 2016-2018, whereas the global standard is 0.2%. However, although the actual monetary allocation for the ACC demonstrates an increasing trend, the main challenge is that the budget allocated for training is lower than the standard, which has some adverse impact on the efficiency, expertise and professionalism of the ACC staff. During the last three years (2016-2018) only on average 0.5% of total human resource budget was used for training (global standard 1%-3%). There is deficit of expertise in handling issues of converting property, banking sector corruption, detention of property, etc., as well as dearth of standard skill among panel lawyers specially in district levels. Similarly the relevant personnel engaged in corruption prevention and education lack adequate capacity of advocacy for implementing communication strategy of ACC, and mostly rely on the local committees (CPCs and Integrity Units).

Although the staff receive salaries and benefits according to government pay scale, and rationing and risk allowance for Grade 10 and below staff; but the monthly take-home salary is still not competitive with the private sector.

ACCOUNTABILITY AND INTEGRITY

Three out of nine indicators under this dimension received 'High' scores, three received 'Moderate' scores, and three received 'Low' score. The major concern with regard to ACC's accountability and oversight is the lack of any external oversight mechanism, it is only reportable to the President. Although ACC has a Monitoring and Evaluation (M&E) Branch for evaluating inspection reports regularly, there is no public representation in the structure. Although the annual report of ACC is submitted to the President, no discussion has taken place in the Parliament on this report. With regard to Internal integrity mechanism, the ACC staff is regulated through *The Anti-Corruption Commission Rules 2007*, and *The Anti-Corruption Commission (Employees) Service Rules, 2008* where there are provisions regarding conduct and disciplinary issues. However, there is still no separate Code of Conduct, and the one drafted in 2019 is yet to be finalised and adopted.

Another area of concern is that other public agencies are not regularly involved in investigation of ACC personnel to avoid conflict of interest. Complaints against ACC personnel are investigated by its Internal

Corruption Prevention Committee. However, according to law ACC can request other public agencies to investigate ACC allegedly handles corruption cases of the same nature differently – investigation and prosecution depend on guidance of ACC leadership and policy of government whether an investigation is to be expedited. Moreover, there are allegations of corruption and negligence to duties against a section of ACC officials.

According to some experts, this becomes more evident from the willingness or the lack thereof to collect evidence, which in essence reveals whether procrastination in respect of a case is intentional or stems from ignorance. Moreover, in most cases complaints are anonymous, indicating that they are not confident to identify themselves (less than 25%). and thus the profile of the complainants cannot be ascertained. Anonymity is primarily practiced to avoid harassment or for fear of reprisal.

DETECTION, INVESTIGATION AND PROSECUTION

Under this dimension three out of nine indicators received 'High' scores, two received 'Moderate' scores, and four received 'Low' scores.

The responsiveness to corruption complaints is low because of the scrutinising system for assessing the complaints. During last three years (2016-18), a total 47,549 complaints (or an average of 15,849 complaints per year) were received by the ACC. Among them, only 3,209 complaints (6.75%) were processed for further enquiry, whereas the standard is above 66%. Apart from this, 2,369 were sent to the concerned ministry/ division for necessary action. The prosecution rate is also low – ACC filed 848 cases out of total 4,038 enquiries (21%) (standard is above 75%).

The conviction rate of ACC's cases of corruption during the last few years has slightly increased from below 40% to an average to 57.7%. During the past three years (2016-2018), there were a total of 495 convictions out of 857 disposed cases, however, the standard is above 75%.

Public perceptions on the ACC's impartiality in handling similar kinds of cases are not very positive. According to ACC officials interviewed, there is a lack of public trust in the ACC. The ACC appears to be focusing more on petty corruption, while during 2016-2018 there has been no apparent success in netting the 'big fish'.

Efficiency and professionalism in corruption investigations is a moderate concern. Usually ACC takes more than the stipulated time to complete enquiry and investigation. Considering the length of time taken and conviction rate, investigation of corruption cases is still not efficient and professional up to standard. Another area of moderate concern for the ACC is the minimal amount of assets recovered, confiscated or frozen. considering volume of capital flight from Bangladesh (around US\$ 5.9 billion in 2015), amount recovered by ACC (BDT 1,532.9 million as fines and confiscations) not significant.

PREVENTION, EDUCATION AND OUTREACH

Four out of eight indicators under this dimension received 'High' scores, and four received 'Moderate' scores. An amount of BDT 267.9 million (around 2.65% of the ACC budget) is allocated for prevention, education and outreach activities for the fiscal years 2016-17 to 2018-19, which is not adequate (the standard is above 5%). While the ACC initiated a number of activities during the past three years – both at the central level as well as local level through the CPCs and Integrity Units, it lacks a comprehensive plan for its outreach and prevention activities. Prevention and educational techniques are not followed although it is emphasized in the Five Year Strategic Action Plan (2017-2021). The ACC is very much dependent on CPC level activities, although the annual plan is not fully implemented. Moreover, the prevention and outreach activities of the local level CPCs and Integrity Units are still largely occasion-based (such as observing International Anti-corruption Day and Anti-corruption Week) and rather ceremonial in nature. Although the ACC's use of website and social media has improved a great deal, there is still scope for the dissemination of anti-corruption messages. The use of social media is still limited.

The ACC still does not do research by its own. It is in the process of forming a research wing, while three researches commissioned in 2018 to exploration of corruption risks, contexts and conditions, none of which has been completed and shared.

COOPERATION AND EXTERNAL RELATIONS

Three out of six indicators under this dimension received 'High' scores, two received 'Moderate' scores, and one received 'Low' score.

The ACC does not have strategies, targets and benchmarks in place to enable it to monitor its responsiveness to marginalised groups (including women and minority groups). It does not collect disaggregated data (e.g. on corruption complaints received) according to different group characteristics.

The confidence in Government support to the ACC is moderate. Although the government top leadership has repeatedly indicated its commitment to control corruption and practiced a “Zero Tolerance” policy against corruption, and provided legal, institutional and financial support to the ACC to operate more effectively, the ACC has been weakened through the enactment of *The Government Employment Act 2018* which incorporates provisions designed to protect public servants. According to this law, it is mandatory for the ACC to seek permission from the appropriate authorities before arresting any government official on corruption charges related to their job. On the other hand, the ACC is directly or indirectly influenced while implementing the policy of zero tolerance. There is limited cooperation between ACC and ACAs of other countries. Two Memorandums of Understanding with the Anti-Corruption Commission of Bhutan and Investigative Committee of the Russian Federation (ICRF) were signed. The ACC is in communication with relevant organizations of different countries including Indonesia, China, USA, Singapore, Hong Kong, South Korea, Malaysia and India.

OVERALL OBSERVATIONS

In sum, the strengths of the ACC include its institutional independence, specific appointment and removal process of Commissioners, its mandate, and investigation and prosecutorial powers. With regard to financial and human resources, the ACC has sufficiency, stability and security of its budget, a robust staff selection process and stable staff. With regard to accountability and integrity, it maintains annual reporting, is responsiveness to information requests, and takes measures against complaints against its own staff. In the context of detection, investigation and prosecution, there is increased accessibility for lodging complaints, proactive investigation, and willingness and capacity to investigate influential persons. The ACC has strong prevention, education, and outreach activities as manifest from its robust corruption prevention initiatives including anti-corruption learning and development, organizational reviews and recommendations, and dissemination and campaign programmes. In terms of cooperation with external stakeholders, the ACC has sustained cooperation with other integrity agencies, and with non-government organizations, and maintains international networks.

The weaknesses of the ACC include inadequate budget compared to the national budget. The ACC does not have any external oversight mechanism, and lacks adherence to due process. The complainants are unwilling to identify themselves, which may indicate lack of trust or feelings of insecurity. The ACC is weak in responding to corruption complaints. The prosecution rate is still poor compared to the complaints lodged. There is no mechanism to address special needs of marginalized groups including the poor and women. Overall, the perception of ACC's performance is not encouraging and reflects lack of trust.

In the first assessment, the overall score for Bangladesh ACC was 61.22%, which fell in moderate category. Considering the previous score there is no significant change. The ACC improved on indicators such as staff selection, accessibility to complainants/ informants, conviction rate, dissemination and campaigns, cooperation with other integrity agencies. The areas where ACC has declined are political use of powers, investigation and prosecution expertise, responsiveness to corruption complaints, efficiency and professionalism, allocated budget for prevention, education and outreach activities, public confidence in Government support. It may also be noted that the ACC scored low score for the indicators proportion of budget, and external oversight mechanisms, as it did in the previous assessment.

RECOMMENDATIONS

Independence and Status

1. **Amendment of relevant laws:** Relevant laws (ACC Act 2004, Anti Money Laundering Act 2012, Govt. Employment Act 2018 etc.) should be amended by including following provisions:
 - a. Names and profiles of candidates should be disclosed for more transparent appointment of the Chair and Commissioners. Participation from the political opponents and civil society in the process should be ensured. An open public hearing should be organised with the selected candidates and should be aired.
 - b. ACC's jurisdiction should be enhanced through inclusion of money laundering and private sector corruption.
 - c. ACC's recommendations for concerned institutions to be made mandatory.
 - d. An independent committee comprising citizens' representatives and civil society members with high standards of integrity and credibility should be formed to advise, monitor and evaluate key aspects of ACC's work.
 - e. The provision related to arrest of government officials without prior permission must be repealed.

Financial and Human Resources

2. **Budget:** The budget of the ACC should be enhanced for:
 - a. Recruiting staff following the approved organogram
 - b. Training of ACC staff
 - c. Implementing prevention activities (such as public hearings, research, etc.)
 - d. Recruiting skilled and efficient lawyers with relevant knowledge and experience.

3. **Staff strength:** The number of skilled staff for enquiry and investigation and prevention should be increased.
4. **Training:** ACC should establish its own training institution to offer corruption related courses for its staff. ACC's investigation officers should have a foundation training on enquiry and investigation. It should also arrange training for its panel lawyers, especially at the district level. Staff engaged with prevention activities need special training on this issue.

Accountability and Integrity

5. **Adherence to due process:** ACC should handle all corruption cases of same nature in an equal manner through a neutral and transparent procedure.
6. **Comprehensive Code of Conduct:** ACC should have a comprehensive Code of Conduct for its staff and disciplinary procedures. It should include, *inter alia*, issues such as asset declaration, and conflict of interest, gifts and hospitality, post-employment restrictions, process for addressing breach of the code and other malpractices and management of internal complaints.

Detection, Investigation and Prosecution

7. **Responsiveness to corruption complaints:** ACC should increase number of enquiries on the basis of complaints lodged. In this regard on what basis the complaints are scrutinised and the explanation of why a complaint is not considered for enquiry must be published.
8. **Prosecution rate:** The ACC should take following measures to increase prosecution rate:
 - a. Conduct robust and rigorous enquiry into corruption allegations, avoid procedural mistakes, and consult with lawyers before filing corruption cases
 - b. Identify corrupt staff, initiate enquiries, and prosecute while doing reviews in the corruption-prone public institutions and on the basis of public hearings on allegations against specific staff
 - c. Pursue and follow up on concerned institutions to ensure that the recommendations are implemented.
9. **Efficiency and Professionalism:** ACC should complete the enquiry and investigation within stipulated time mentioned in the law and maintain the standard of professionalism and excellence of their duty.
10. **Analysis of complainants:** The ACC should analyse information of the complainants according to age, gender and profession for developing strategy to encourage complaints. ACC should increase publicity on this.
11. **Conviction rate:** ACC should take measures to explore and address challenges of investigation and prosecution, and consult with experienced lawyers before lodging corruption cases. It should also appoint more skilled and experienced lawyers, if necessary, with enhanced fees to ensure better representation at the trials.
12. **Restitution and Asset Recovery:** ACC should enhance its drive to recover, confiscate and freeze more assets in corruption cases.

Prevention, Education and Outreach

13. **Prevention and Education Activities:** To implement the annual plan of prevention and education activities ACC should follow its five year strategic planning.
14. **Research:** ACC should strengthen its own research unit by investing more on adequate and skilled human and financial resources, and conduct its own research to explore corruption risks, context and conditions. It should also undertake research and public perception surveys on ACC's performance and effectiveness.
15. **Public confidence:** ACC should take measures to enhance public confidence and trust by publicising its activities, publishing and regularly updating detailed statements on income, assets and liabilities of Commissioners and senior officials, measures taken against the "big fish", and progress on investigation, prosecution and disposal of corruption cases.

Cooperation and External Relations

16. **Cooperation with other countries:** ACC should take measures to increase collaboration and cooperation with ACA's of other countries and learn from their activities and experience.
17. **Attention to marginalised groups:** ACC should emphasise on addressing the special needs of different marginalised groups by ensuring for them easy access to ACC and complaint mechanisms and effective redress through affirmative action.