



RIGHTS monitor

HUMAN RIGHTS advocacy



Corruption: Consumers pay the price

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ASIA is reputed for many positive values. It is also reputed for corruption. Corruption has permeated the entire social system of many countries in Asia. The sad fact is that corruption is more evident in the countries that can least afford it, the countries in which most of the world's poor live. Bribes have to be paid for places in schools and universities for children, approval and renewal of business registration licences and permits, sundry applications to local authorities and even healthcare in public hospitals and redress in the local courts.

Each dollar diverted into corrupt hands comes from consumers. Consumers end up paying more than necessary for essential public goods and services and ordinary citizens are deprived of their rightful share of development.

Corruption is unacceptable wherever it occurs but, it is even more despicable when development aid is diverted away from those mired in poverty and living under distressed circumstances. In the case of rice distribution, there are many cases of how corrupt officials prevented food aid from reaching the intended beneficiaries, such as:

In Cambodia, the United Nations World Food Programme's (WFP) US\$72 million food-for-work programme, designed to help 1 million needy

job to a private contractor, the other co-accused. According to prosecutors, there was no evidence any food was delivered. Just before the trial began, the co-accused returned the money. On appeal in February 2004, the Supreme Court, with one judge dissenting, overturned the conviction of Tanjung due to what is widely believed to be undue political pressure on the judiciary. The conviction of the two co-accused remained but their jail term was reduced to 18 months. In December 2003, an external audit of the Attorney General's Office in Indonesia by PricewaterhouseCoopers revealed a shocking level of corruption. The audit report said that the Indonesian justice system would collapse without payments from rich companies and individuals to the AG's Office. The report said that payments originate from the police (who receive part of the bribes) and, brokers or lawyers looking for an advantage for their clients. Payments are made and received by prosecutors to pervert the course of justice, such as to bury dossiers, file weak charges, impose negligible sentences or release a criminal after conviction. (Indonesia is ranked among the bottom 10 countries of Transparency International's Corruption Perception Index 2004, at 133 out of 145.)

In India, the spectre of bumper harvests and overflowing granaries amidst famine, deaths from starvation and farmer suicides continue year after year. India exports millions of tons of rice at Rs 5.65 a kg. But in many

International donors and corporations must make the fight against corruption a central theme of their effort. For this they themselves must ensure that their dealings with national governments are transparent. Much publicity is given of government officials being caught with a hand in the till. However, there is very little exposure given of the companies seeking an edge over competitors by offering bribes to secure tenders or contracts. One exception involves the Gene Giant Monsanto, a leading provider of agricultural products and solutions with headquarters in the U.S. It was reported on January 7, 2005 that Monsanto voluntarily notified US government officials following an internal investigation revealing a bribe paid in Indonesia to bypass controls on the screening of new genetically modified cotton crops that were disguised as consultant's fees. Monsanto said that it first discovered financial irregularities in its Indonesian affiliates dating back to 2001. The Gene Giant now faces US\$1.5 million in penalties to be paid to the U.S. Department of Justice and the Securities and Exchange Commission (SEC) to settle the bribe charge and other related violations. So, U.S. coffers are richer by US\$1 million; how does the Indonesian public get recompensed? Corporations usually get away unscathed and unsullied. Bribery by them is even excused as a necessary part of doing business, and this is so both in developed and less developed countries. Japan and South Korea are good examples of countries where corruption saw the downfall of Heads of State but not the corporate captains who enlisted their treachery.

Even more damning is the fact that most projects that are tainted by corrupt practices are often not needed in the first place, are more expensive than they should have cost and in some cases become white elephants that are a continuous drain on the national purse. Consumers end up paying the debt owed by the country through higher prices or cut backs in much needed public services. The following cases illustrate this point:

The US company Westinghouse Electric Corporation won a contract in the early 1970's to build the Bataan nuclear power plant in the Philippines. It was alleged that it gave President Ferdinand Marcos US\$80 million in kickbacks. The plant cost US\$2.3 billion three times the price of a comparable plant built by the same company in Korea. Filipino tax payers have spent US\$1.2 billion servicing the plant's debts even though the plant never produced a single watt of electricity because it was built at the foot of a volcano near several earthquake fault lines. The Philippines government is still paying US\$170,000 a day in interest on the loans taken out to finance the nuclear plant and will continue to do so up to the year 2018.

The UK's Barclays Bank was one of eight banks that syndicated the loan for Paiton 1 and Paiton 2 coal-fired power complex in Java, Indonesia. In December 1998, the Wall Street Journal reported a series of corruption scandals associated with Paiton 1. Members and friends of the Suharto clan, among them Hashim Djodjohadikusomo, a relative of Suharto, as well as Agus Kartasasmita, a brother of the Energy Minister and later Minister for Economic Affairs, had been attributed a 15% stake without payment. Djodjohadikusomo and Kartasasmita were also awarded the contract to supply coal for the plant, without public tendering, despite their company having no previous experience in the coal business. The Indonesian Audit Commission estimated that such corrupt contracts increased the cost of Paiton by US\$600 to US\$1,000 million. These costs were shifted to the government by charging PLN, the state electricity board, an extremely high price for the electricity it purchased from the Paiton plant. The final electricity tariff was set at 8.6 cents per kilowatt of electricity, 32% higher than comparable tariffs in Indonesia and 60% higher than in the Philippines.

Concluding remarks: Corruption is criminal activities, it taints the giver and the taker in equal measure. Tough sanctions are needed to combat this perversity and the sanctions need to be directed at those who give and take bribes. The parties involved need to be prohibited from all future bidding in the country concerned and blacklisted globally. Anti-bribery legislation, corporate governance and anti-corruption compliance codes need to be put in place.

Consumer organisations must do their part in exposing corrupt practices and seeking redress for those affected by such practices, especially the poor. Without public exposure, shame and severe punishment, rampant corruption will not be abated.

Consumers are the ultimate victims of corruption. Corruption is a consumer issue and the consumer associations need to focus on efforts to fight corruption.

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Tsunami & landmines



PHOTO: AP

Landmines are an ongoing threat in some places hit by the disaster, but the risk has not increased dramatically. This is the word from experts, who question earlier reports of floating landmines and increased mine casualties in afflicted countries. In brief, Sri Lanka, Indonesia, India, Thailand and the Maldives are the worst victim of the disaster. Moreover Sri Lanka, Indonesia, India, Thailand are the countries with a mine problem. No large-scale displacement of mines or casualties is going on due to tidal wave. Antipersonnel mines were a threat to civilians and aid workers before and are still one now. The main thing that is needed: caution and continued awareness, ongoing mine action, pressure to ban mine use forever in Sri Lanka, Indonesia and India. (Thailand is already a Mine Ban Treaty member, as is the Maldives.)

Some flooded areas in Sri Lanka are mine-affected. Displacement of landmines was not extensive and no mine casualties have been recorded since the Tsunami, said the United Nations Development Programme in an USA Today article.

Luckily, most coastal areas have already been cleared of mines. In those mined areas remaining, there was some movement of mines but this was minimal and the mines are believed to have moved only within areas already regarded as mined and not into 'safe' areas. In some places minefield markers and fences were washed away by the floodwaters.

Norwegian People's Aid, an NGO involved in mine clearance in this country and a member of the International Campaign to Ban Landmines, says landmines in the Tsunami disaster zone won't hinder relief efforts but stresses the importance of aid workers following standard safety practice in their work in this heavily mined coun-

try. Also, there is concern for the safety of returning refugees as they move through or settle in unfamiliar areas that may be mined or are no longer marked. Educating displaced communities about the ongoing risks of mines and the importance of reporting suspicious objects will be important, as will re-fencing and marking and ongoing mine clearance.

In Indonesia, Aceh was severely hit by the Tsunami and it has a mine and unexploded ordnance problem. Not much is known yet about how the floods have impacted on the mined areas but the situation is thought to be similar to that in Sri Lanka. Although the contamination level is lower here and the risk has not increased significantly, ongoing mine awareness is still key.

Sadly, staff of Nonviolence International, which is an ICBL member, went missing in Banda Aceh and is feared dead. The organisation's "Peace Education Program" office was destroyed and documents and equipment were swept away, including ground-breaking new resource manual on peacebuilding and Islam.

In the other main countries affected by the Tsunami, mined areas were largely untouched by flooding. For example in India, the South-Eastern state of Tamil Nadu was the most affected, but the country's minefields are elsewhere. The truth is that when post-Tsunami relief and reconstruction efforts draw to a close, these countries still face the ongoing development disaster that is caused by antipersonnel landmines.

Source: International Campaigns to Ban Landmines (ICBL).



people for three years was riddled with fraud. From January 2003 until it was frozen in late February 2004, about 44% of the food sent out was stolen or diverted by government officials who inflated recipient lists with fake names and invented fictitious work projects. The WFP estimates that about 4,000 tons of rice failed to reach the impoverished families for whom it was intended.

In Indonesia, the then parliamentary speaker and Golkar Party chairman, Akbar Tanjung and two others were convicted of corruption charges in September 2002 for misappropriating US\$4.7 million in state funds from the National Logistics Agency (BULOG). They were sentenced to three years jail. The money was earmarked for sembako (nine basic food items including rice and other staple commodities) for the poor during the peak of the economic crisis in 1999. Instead of employing state officials, Tanjung appointed an unknown Muslim foundation chaired by one of the co-accused, a property tycoon, to distribute the sembako. They in turn gave the

parts of the country, the price of rice is much higher. In Andhra Pradesh state for instance, the government sells rice at Rs.6.40 a kg. The export price of wheat is even less than the below-poverty-line (BPL) rate of that item in many states. Investigations show that those who had died of starvation had drawn their full quota of rice. But what really happens is that the poor mortgage their BPL cards in distress to moneylenders, unable to afford the rice themselves. The moneylenders in turn buy the rice at BPL rates and "loan" it at higher prices to their victims. Corruption and inefficiency is systematically dismantling India's public distribution system, which was established to distribute food to the poor at lower prices.

The leading global NGO, Transparency International, estimates that the amount lost due to bribery in government procurement is at least US\$400 billion per year worldwide. This is a major loss of public funds much needed for education, healthcare and poverty alleviation. Corruption must cease to be a way of life in Asia's poorest countries.

LAW opinion

Becoming a lawyer

Setting a lucrative goal of becoming a lawyer is not possible for all. A lawyer is jurist forever and it is a continuous process. Lawyer called as learned in the society but surprisingly a lot of lawyers, specially who are practising in the subordinate court like me, are not competent enough to become the gladiator of establishing law in the society. Being social engineer a major portion of the lawyers is misguiding the clients as well as the courts in raw hands that is one of the causes of delaying of speedy disposal of justice. There are more than five thousands lawyers are practising in Dhaka Court but you will get only few competent and efficient trial lawyers. Among the all sorts of practising law, trial advocacy is tough job and the lawyer community must accept it. "Lawyer is an art and it can not be availed within short span of time"-this is a wise saying of the learned senior lawyer of our community. But in present context the witty lawyers of the modern world say that lawyering is

an art and it must be taught by young lawyers. But they should bear in mind that it is there implied obligation to this profession is to make astute lawyers and adroit justices for this century. Completing the BVC-Batch-8, I should be grateful to LETI but I have few suggestions to Bangladesh Bar Council and our learned senior lawyers to fit the young lawyers to uphold the dignity of the lawyering profession that are given below:

1. An Appellate Advocacy Training Program should be started as soon as possible.
2. Third class in any public examination should be treated as a disqualification of becoming a lawyer.
3. Bar Vocational Course may be started after passing advocacy written examination and advocacy viva voce may be held after completion of BVC.

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PHOTO: STAR

Conflict between fundamental rights and fundamental principle of state policy

Fundamental rights and fundamental principle of state policy are the most essential ingredients of our constitution. Both of them serve a useful purpose to reach to the goal of economic democracy but complexity arises when these two take position face to face. There is a common notion among the general people and even among some of the scholars that in case of conflict between fundamental rights and fundamental principle of state policy fundamental right will prevail. Actually, this is totally a wrong idea. This concept was actually established in India by the prominent case of Madras v Dorairajan but we are not bound by the decision of the court of India, therefore, the situation is different in Bangladesh. Actually, the framers of the constitution of Bangladesh were really conscious about the possible conflict between the provision of Part iii and the principle of state policy. They predicted that the welfare measure of the state may be barred by the provision of part iii of the constitution and therefore they specially provided in the article 47 that in specified matters any law made shall be immune from the challenge on the ground of inconsistency with part iii if the parliament declares such law has been made to give affect to any of the fundamental principle of state policy. In other words parliament has ability to make fundamental right subordinate to the fundamental principle in certain cases mentioned in article 47 in our constitution. Hence, one should not ignore the principle of state policy, but should adopt the principle of harmonious construction and attempt to give effect to both of them.

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গণপ্রজাতন্ত্রী বাংলাদেশের
সংবিধান

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LAW week

US wants full access to evidence & witnesses for FBI involvement

The US asked the government for full access to all evidence and witnesses of last Thursday's Habiganj grenade attack if they are to send the FBI for investigation into the carnage. US Assistant Secretary of State for South Asia Christina Rocca called Foreign Minister M Morshed Khan to explain her government's position regarding clear terms of reference as she said inaccessibility to evidence had rendered ineffective the FBI's help in the August 21 grenade attack investigation. She added that the US believes FBI assistance to last Thursday's grenade attack investigation has already been 'greatly undermined' as the crime scene has already been contaminated because of inadequate protection. *The Daily Star, January 31.*

EU concerned at street violence

The heads of mission of the European Union (EU) expressed concern at the current spate of violence on the streets in Bangladesh and called for a national 'confidence-building' dialogue to avoid deterioration of the situation. They reiterated that the government must ensure swift action and a thorough and transparent investigation into the killings in the January 27 grenade attack. The European envoys urged all parties to exercise restraint and refrain themselves from actions that can deteriorate the situation. The call came from the EU mission chiefs after they met with Leader of the Opposition and Awami League (AL) chief Sheikh Hasina in the capital and discussed the prevailing political situation following the grenade attack in Habiganj. The AL however said a national dialogue could take place only when there is a congenial atmosphere and good relations between the government and the opposition.

The EU delegation also included German Ambassador Dietrich Andreas, French Ambassador Jacques-Andre Costilhes, Danish Charge d'Affaires Tom Hansen, Italian Ambassador Pietro Ballero, Swedish Ambassador Borje Mattson and EC delegation head in Bangladesh Ambassador Esko Kentschynskyj. *Prothom Alo, February 2.*

HC declares illegal removal order of judge Shahidur

The High Court (HC) declared illegal the president's order removing additional judge Syed Shahidur Rahman in April last year. "The President's order removing Syed Shahidur Rahman from his office is beyond the mandate of Article 96 of the Constitution and he (President) has failed to apply his mind to it in passing the order," observed the court. Division bench comprising Justice Shah Abu Nayem Mominur Rahman and Justice Mainul Islam Chowdhury delivered the verdict after hearing the writ filed by the removed additional judge challenging the president's order. Attorney General A F Hassan Ariff conceded that the order of Shahidur Rahman's removal "has not been done in accordance with the constitutional provision." The allegations of bail fixing against Shahidur were not proved beyond doubt, he added. He referred to the report of the Supreme Judicial Council (SJC) headed by the chief justice that said, "There is total absence of material in support of the allegations nor can it be said that the allegations are without any basis." *UNB, February 3.*

Police get important clue of Habiganj carnage

Police have arrested three BNP activists and picked up 18 people for questioning from Habiganj and Sylhet in connection with the Habiganj carnage that left former finance minister SAMS Kibria and four others dead. But police declined to divulge political identity of the three persons arrested under Section 54 of the CrPC. Their family members however told The Daily Star they are involved with the BNP and its affiliates. Two of the arrestees, Shah Alam and Jainal Abedin Jalal have been placed on an eight-day remand and are being questioned in the custody of the local detective branch. The other one Abdul Wahed Sohel was sent to jail, as police did not seek his remand. Investigators are tight-lipped about the outcome of their quizzing Shah Alam and Jainal so far. *The Daily Star, February 4.*