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Faculty of Law

IMPROVISING: A PROCESS OF OVERCOMING INTERAGENCY INFORMATION SHARING DEFICIENCY IN AN AML REGIME

A thesis submitted in fulfilment of the requirements for the award of the degree

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

MD ZAHURUL HAQ

FACULTY OF LAW

2013
I, Md Zahurul Haq, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Md Zahurul Haq

March 2013
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<td>Anti Corruption Commission</td>
</tr>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>ADP</td>
<td>Annual Development Program</td>
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<tr>
<td>AML</td>
<td>Anti Money Laundering</td>
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<tr>
<td>APG</td>
<td>Asia Pacific Group on Money Laundering</td>
</tr>
<tr>
<td>AUSTRAC</td>
<td>Australian Transaction Reports and Analysis Centre</td>
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<tr>
<td>BAC</td>
<td>Bureau of Anti Corruption</td>
</tr>
<tr>
<td>BAMLCOs</td>
<td>Branch Anti Money Laundering Compliance Officers</td>
</tr>
<tr>
<td>BGB</td>
<td>Border Guard Bangladesh</td>
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<td>BO</td>
<td>Beneficiary Owners</td>
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<tr>
<td>C</td>
<td>Compliant</td>
</tr>
<tr>
<td>CAMLCOs</td>
<td>Chief Anti Money Laundering Compliance Officers</td>
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<tr>
<td>CDD</td>
<td>Customer Due Diligence</td>
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<tr>
<td>CD-rom</td>
<td>Compact Disc Read-only memory</td>
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<tr>
<td>CFT</td>
<td>Countering the Financing of Terrorism</td>
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<td>CSP</td>
<td>Civil Service of Pakistan</td>
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<td>CTRs</td>
<td>Cash Transaction Reports</td>
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<td>DMCs</td>
<td>Developing Member Countries</td>
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<td>DNFBPs</td>
<td>Designated Non-Financial Businesses and Professions</td>
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<td>EC</td>
<td>Election Commission</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FCB</td>
<td>Foreign Commercial Bank</td>
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<td>FERA</td>
<td>Foreign Exchange Regulation Act</td>
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<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<td>G7</td>
<td>Group of Seven</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GT</td>
<td>Grounded Theory</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>HREC</td>
<td>Human Research Ethics Committee</td>
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<td>IFES</td>
<td>International Foundation for Electoral Systems</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IQ</td>
<td>Information Quality</td>
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<tr>
<td>KYC</td>
<td>Know Your Customer</td>
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<tr>
<td>LC</td>
<td>Largely Compliant</td>
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<tr>
<td>ML</td>
<td>Money Laundering</td>
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<td>MLA</td>
<td>Mutual Legal Assistance</td>
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<td>MLPA</td>
<td>Money Laundering Prevention Act</td>
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<td>MLPO</td>
<td>Money Laundering Prevention Ordinance</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NC</td>
<td>Non Compliant</td>
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<td>NCCTs</td>
<td>Non-Cooperative Countries and Territories</td>
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<td>NGOs</td>
<td>Non-Governmental Organisations</td>
</tr>
<tr>
<td>NIR</td>
<td>National Identity Registration</td>
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<tr>
<td>NIRA</td>
<td>National Identities Registration Authority</td>
</tr>
<tr>
<td>NPM</td>
<td>New Public Management</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation of Economic Cooperation and Development</td>
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<tr>
<td>PC</td>
<td>Partially Compliant</td>
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<td>PCB</td>
<td>Private Commercial Bank</td>
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<td>PEPs</td>
<td>Politically Exposed Persons</td>
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<td>PERP</td>
<td>Preparation of Electoral Roll with Photographs</td>
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<tr>
<td>PIS</td>
<td>Participation Information Sheet</td>
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<tr>
<td>PSC</td>
<td>Public Service Commission</td>
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<tr>
<td>QDA</td>
<td>Qualitative Data Analysis</td>
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<tr>
<td>R</td>
<td>Recommendation</td>
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<tr>
<td>REs</td>
<td>Reporting Entities</td>
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<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
</tr>
<tr>
<td>Acronym</td>
<td>Definition</td>
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<tr>
<td>SAR</td>
<td>Suspicious Activity Report</td>
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<tr>
<td>SI</td>
<td>Symbolic Interactionism</td>
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<tr>
<td>STRs</td>
<td>Suspicious Transaction Reports</td>
</tr>
<tr>
<td>TIN</td>
<td>Tax Identification Number</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UOW</td>
<td>University of Wollongong</td>
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## GLOSSARY

**AML REPORTING SYSTEM**
The combined structure of Reporting Entities, Financial Intelligence Unit and the Law Enforcement Agency.

**AML PROFESSIONALS**
All persons directly related to the activities of an AML reporting system, for example, anti money laundering compliance officers of Reporting Entities, analysts of the FIU and money laundering case investigators of the Law Enforcement Agency.

**AML REPORTS**
All AML related reports, including, but not limited to STRs and CTRs.
ABSTRACT

The purpose of this study was to examine the Anti Money Laundering reporting regime in Bangladesh. The study scrutinised the activities of the major components of the Anti Money Laundering reporting system, which is comprised of the reporting entities, the Financial Intelligence Unit and the law enforcement agencies. Furthermore, the study identified the core concern of the persons involved in the reporting process and how this concern was continually being handled. Data was collected for this study through various methods including interviews, literature searches and observations. In order to study this substantive area where little research had been done, the analyst utilised a Grounded Theory approach to data collection and conceptualisation. This methodology emphasises the patterns of behaviour of people that indicate a social process that revolves around something relevant and problematic for those involved. It was found that the main concern of the persons engaged in the reporting system was the information deficiency caused by a poor inter-agency information sharing culture. Since timely access to useful information is at the centre of an anti money laundering reporting system, the persons involved, described in this study as anti money laundering professionals, must find alternative ways to fill the deficiency that hinders their day-to-day work. As they are part of a system that cannot be changed overnight, they must improvise. While this improvisation indicated a number of positive things, including the enthusiasm of the persons concerned to defeat a poorly-functioning system, it was also revealed that makeshift initiatives taken by inadequately trained personnel can result in only partial success. At the end, the study proposed a hypothesis that argued that this phenomenon of a shortage of useful information in the anti money laundering reporting system was actually a part of a general information deficiency in the overall bureaucracy. There was a shortage of both supply of and demand for good quality information. This situation could be comparable to the ‘vicious circle of poverty’ and ‘problem of capital formation’ in developing countries. Therefore, it will be interesting to see if a synchronised increase in the both demand for and supply of information using existing resources could provide an escape from the deadlock.
ACKNOWLEDGEMENTS

This thesis marks the end of my journey toward a doctoral degree that I began a few years ago. I received generous support and encouragement from a number of persons and organisations in this journey. At the end, it is a pleasant task to acknowledge their contributions without which this journey would certainly have remained incomplete.

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To my family members, whose constant interest has been a source of great encouragement, I record my deepest gratitude.
1 GENERAL INTRODUCTION

1.1 Introduction

The purpose of this chapter is to introduce the thesis with an emphasis on its key components. It first provides some background information about the research project. This thesis examines the performance of the AML system in Bangladesh against the requirements the global AML regime, its main features, and the minimum obligations this regime imposes on the various jurisdictions. Chapter One introduces the FATF prescribed AML reporting system model that jurisdictions must implement to prevent and combat money laundering. The thesis identifies a critical issue confronting the AML system in Bangladesh: the lack of timely and accurate information, an essential element of an effective AML system. It describes the general problem, identifies the research question and the purpose and specific aims of the research project along with the scope and significance of this study.

It explains in Chapter Two that the AML system operates within the broader bureaucratic environment of Bangladesh and argues that the bureaucracy in Bangladesh has unfavourable traditional and cultural elements which actually render the system incompatible with the efforts of implementing global AML standards. In particular, this discussion identifies the variables that strongly affect the relationship between the bureaucracy, the general people, and the various organisations responsible for implementing the national AML goals.

Chapter Three describes the Grounded Theory methodology and describes each stage in the application of that methodology from the initial data collection to the emergence of the core variable. It explains the data collection process, the coding process, the constant comparison of incidents, the use of theoretical sampling, and the emergence of a core category that expresses or explains the main concerns of the participants in the research.

Chapter Four argues that there is a shortage of useful information in the AML reporting system of Bangladesh which actually is a part of a general information deficiency in the overall bureaucracy. As a result the major components of the AML reporting system (REs, FIU and the ACC) are affected by both the low quality and low quantity of information. In response, the actors within the major components of the AML reporting
system have developed a range of improvisations — informal, partial and makeshift solutions — to handle this situation.

Chapter Five explains the behaviour of participants and identifies links between varieties of behaviours of the participants so that a hypothesis could be generated. It presents a brief introduction as to how improvisation is generally understood, its use in human society and its probable connection with AML initiatives. It also describes how the various features of improvisation may link with AML compliance and how a particular AML reporting system could benefit from different improvised information collection techniques.

Most importantly, this chapter argues that there are ‘good’ and ‘bad’ improvisations and that AML professionals must have enough experience and training to achieve the maximum success in applying improvised techniques to handle the information deficiency. Finally, the thesis identifies ways in which this strategic deficit may be addressed.

1.1.1 Background of the Thesis

Money laundering is a crime to conceal a crime. As it is a process of converting ‘potential purchasing power into actual purchasing power’,¹ the illicit funds must pass through the formal financial system at one stage or another of this process. The very nature of the laundering process brings both problems and opportunities. Money laundering makes financial institutions constantly subject to risks of various types and yet at the same time allows law enforcement agencies to track down even hidden or previously undetected crimes. Therefore, for ‘reducing crime, protecting the integrity of the core financial system, and controlling three types of global “public bads” — terrorism, corruption, and failed states’² the global AML regime provides several prevention and enforcement mechanisms against money laundering. As part of this arrangement, ‘the international community has reached a remarkable consensus about

the importance of developing money laundering laws that include suspicious transaction reporting duties …'. ³

1.1.2 The Global AML Regime and Its Key Functions

The foundation of the Financial Action Task Force (FATF) by the G-7 Summit that was held in Paris in 1989⁴ was the most significant action taken against money laundering. Its Forty Recommendations to prevent money laundering are now globally endorsed AML standards.⁵ These Recommendations are a comprehensive set of AML procedures that outline both a legislative and strategic framework against money laundering at the domestic level and provide necessary guidelines regarding international co-operation.⁶

In addition to the Recommendations, FATF published various guidelines in the form of interpretative notes to the Recommendations, and some reports (for example, the Financial Investigations Guidance)⁷ in order to assist member jurisdictions’ compliance initiatives. This information elaborates on specific objectives and the scope of the FATF Recommendations and helps members understand the exact requirements of each Recommendation. FATF has three main tasks — monitoring members’ progress in terms of compliance with its Recommendations, reviewing money laundering trends, techniques and counter-measures, and promoting FATF standards among non-member jurisdictions.⁸

1.1.2.1 Monitoring the Progress of Its Members

It has been said that, ‘The FATF Recommendations are meant to be minimum standards that enable countries to implement the requirements according to their particular circumstances and constitutional frameworks’.⁹ That is to say, jurisdictions are left with

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⁵ Toby Graham, Evan Bell and Nicholas Elliott, Money Laundering (Butterworths LexisNexis, 2003) 30.
⁸ Graham, Bell and Elliott, above n 5, 30–1.
very limited options to choose from when it comes to complying with global AML standards. FATF uses both yearly self-assessment and periodic mutual assessment procedures for monitoring member jurisdictions’ level of compliance with its Recommendations.10

The self-assessment procedure requires member jurisdictions to complete a standard evaluation questionnaire supplied by FATF. FATF then reviews the information so provided and decides on the level of compliance of the jurisdiction concerned. Mutual evaluation is, however, a rather thorough process. Initially, the jurisdiction under assessment completes a Mutual Evaluation Questionnaire and provides it to the evaluation team consisting of members with legal, financial and law enforcement related expertise. Next, the evaluation team visits the jurisdiction, engages in a series of face-to-face meeting with the representatives of that jurisdiction and obtains necessary information. During this visit experts make an assessment with regard to the degree of improvement in AML/CFT issues the country has already made and areas where it still fails to satisfy global standards.11 The evaluating team and the evaluated members adopt the evaluation report through mutual discussion and feedback.12 FATF’s third round of mutual assessment began in 2005 based on a revised 2003 version of the 40+9 Recommendations.13

1.1.2.2 Reviewing ML Trends and Counter-Measures

FATF issued its first set of Forty Recommendations in 1990 as a comprehensive measure against money laundering offences. After an initial review in 1996,14 the Forty Recommendations underwent a major revision in 2003. Substantial changes in money laundering techniques and the surfacing of evidence concerning the involvement of even non-financial institutions in money laundering activity mainly spurred this revision.15 Following the September 11 incident in the United States, FATF adopted a

11 Ibid.
15 Ibid 11.
further nine Special Recommendations on Countering the Financing of Terrorism to the previous Forty Recommendations.\textsuperscript{16} Following extensive international consultation in February 2012, FATF published a further revision of its Recommendations which included corruption and tax crimes as new priority areas.\textsuperscript{17}

1.1.2.3 Promoting FATF Standards among Non-Member Jurisdictions

FATF Associate members are responsible for the implementation of its standards among non-member jurisdictions. Currently there are eight such regional AML/CFT organisations across the world, including the Asia Pacific Group on Money Laundering (APG).\textsuperscript{18} Established in 1997, APG is a non-political multi-jurisdiction organisation that recognises FATF’s Forty Recommendations as the accepted AML standard for its own members.\textsuperscript{19} These organisations ‘typically tailor their own AML/CFT recommendations to suit their local environment’.\textsuperscript{20} They evaluate their member jurisdictions against FATF Recommendations.

Responding to the Special Needs of Low Capacity Countries

Another way of promoting FATF standards among non-member countries is to recognise the unique features of developing economies. Although it took quite a long time for FATF to understand the special circumstances of countries in the developing world, eventually they acknowledged that some countries’ risk profile and resource limitations place them in a separate and different group to other nations.

In 2008, FATF published the Guidance on Capacity Building for Mutual Evaluation and Implementation of the FATF Standards within Low Capacity Countries. This formally recognised the particular problems encountered by low capacity jurisdictions in implementing global AML standards. This Guidance suggested a number of policies

\textsuperscript{16} Ibid 8.
\textsuperscript{19} Asia Pacific Group on Money Laundering (APGML), \textit{APG Terms of Reference} 2012 (17 July 2012) APGML Documents, 3 <http://www.apgml.org/documents/docs/12/FINAL%20APG%20Terms%20of%20Reference%202017%20July%202012%20Adopted%20at%20AM%202012.pdf>.
\textsuperscript{20} Johnson, ‘Is the Global Financial System AML/CFT Prepared?’, above n 6, 10.
and procedures to prioritise and implement global AML standards in low capacity countries. This was an important initiative because one of FATF’s primary objectives was the successful roll-out of its standards in all jurisdictions.21

The Guidance identified criminalisation of money laundering, detection of the financing of terrorism, requirements for customer due diligence, record keeping and suspicious transaction reporting as five core AML standards and stressed that, irrespective of their capacity, all countries should implement these standards on a priority basis. The Guidance further mentioned that the low capacity countries’ unique structural characteristics and type of money laundering risk should be taken into consideration in defining the sequence of implementation of these core standards. For example, in a cash-based economy the informal financial sector may require more attention than the formal sectors.22

1.1.3 Annual Non-Cooperative Countries and Territories (NCCT) Reports

Failure to comply with FATF Recommendations may trigger a series of actions against non-complying jurisdictions or territories, which may range from an obligation to submit periodic reports, suspension of membership and even ‘black listing’. FATF requires that a jurisdiction must not only have a legislative framework against money laundering but that they should support that framework by the implementation of strong financial sector regulations.23

In this connection, another important function of FATF was the publication of annual Non-Cooperative Countries and Territories (NCCT) reports. In February 2000, FATF began the Non-Cooperative Countries and Territories (NCCT) initiative24 and surveyed 47 jurisdictions in two rounds in regard to an extensive list of 25 ‘detrimental practices’. Over the period of this NCCT process, the survey came up with a ‘black list’ of 15 jurisdictions in 2000 and 8 in 2001 and labelled them as ‘non-cooperative countries and

22 Ibid 5.
23 Graham, Bell and Elliott, above n 5, 31.
Due to the high number of negative practices in those jurisdictions, FATF was convinced that their motivation and aptitude to cooperate in the global fight against money laundering was inadequate. FATF set specific objectives for those jurisdictions to achieve. As they fulfilled those objectives and made significant progress in their fight against money laundering, FATF removed their names from the list. This process continued until October 2006 when last country was de-listed on the basis of the actions that they had taken to remedy the deficiencies previously identified.

Some scholars are often sceptical about the de-listing process. They argue that many jurisdictions (including FATF member states) would actually fail to pass the test if FATF properly applied the NCCT criteria for assessing the jurisdictions and countries. Having abandoned the original NCCT process, FATF actually ‘reinvented’ the process under a new label and continued the review process so that jurisdictions could be included in the list if they continued to fail to meet FATF standards. On 22 February 2013, as a part of its ongoing review of compliance with global AML and CFT standards, FATF published a public statement on high-risk and non-cooperative jurisdictions. It is the current vehicle to force compliance.

1.2 Requirements of the Effective Implementation of Global AML Standards

For the effective implementation of global AML standards jurisdictions need to meet certain specific requirements. These requirements are interconnected and can bring maximum success only when implemented collectively. A jurisdiction must criminalise money laundering and place adequate power in the hands of law enforcement and prosecution authorities so that they can investigate and prosecute money-laundering offences. At the same time, they must adequately train and equip the relevant agencies and their personnel with the necessary legal authority and other requisite resources to

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25 Ibid.
perform their duties properly. In addition, there should also be in place an efficient ‘freezing’, seizure and confiscation mechanism to deprive criminals of the proceeds of their crimes.\textsuperscript{30}

In addition to the criminalisation of money laundering and the adequate empowering of the authorities, another important requirement is the establishment of adequate measures to detect and prevent money-laundering attempts. FATF recommended that the jurisdictions require their financial institutions to have Customer Due Diligence practices in place to prevent criminals from operating anonymously or under false identities. Jurisdictions should further strengthen this initiative through thorough adequate record keeping and the updating of customer details. Accurate and updated customer data is crucial for any AML regime. It helps financial institutions to monitor customer behaviour, and then report suspicious activities, if any, to the financial intelligence unit (FIU) for further analysis and dissemination.\textsuperscript{31}

This monitoring, detection, reporting and then analysis and dissemination of suspicious activities/transactions are anything but a ‘self-guided tour’. It requires jurisdictions to fulfil a variety of other conditions for these steps to move forward. A strong internal enforcement mechanism against non-compliant reporting entities is an important prerequisite for the implementation of reporting obligations. At the same time, it is also crucial that the appropriate authorities have access to accurate and current information about legal persons and their arrangements.\textsuperscript{32}

‘Access to information’ has a wider meaning in an AML regime. Often launderers use multiple jurisdictions to scatter any evidence of criminal activity and for such activity to be detected investigators frequently need to access a variety of foreign information sources, not only for the initial detection of an instance of such activity but also for an indication of its penetration across any number of jurisdictions. Therefore, mutual

\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
cooperation by jurisdictions through intelligence sharing and legal assistance in a timely manner is critical so that no jurisdiction ever becomes a safe haven for criminals.\textsuperscript{33}

It appears that FATF recommended the above requirements to accomplish two primary tasks — firstly, to facilitate the ‘collection’ of financial information, and, secondly, to ensure its proper ‘use’. Combined, these two broad tasks propose the concept of an institutional arrangement that runs on the free exchange of useful information about the financial activities of individuals and businesses. The FATF Recommendations put forward a number of essential elements for the construction of a reporting regime. The following sections will further elaborate on those matters.

1.3 Key Features of the Global AML Reporting Regime

FATF puts much emphasis on preventive measures. Its standards lay down a detailed framework for Customer Due Diligence (CDD) and record keeping (R 10 and 11). FATF also sets out additional measures for specific customers and activities. For example, it puts special emphasis on politically exposed persons and their financial activities (R 12–16), provisions on reliance, controls and financial groups (R 17–19), reporting of suspicious transactions (R 20–21), and provisions on Designated Non-financial Businesses and Professions (R 22–23).\textsuperscript{34}

In order to support preventive measures, FATF requires jurisdictions to criminalise money laundering (R 3) and to have in place the necessary enforcement mechanism, including rules regarding confiscation and provisional measures (R 4). At the same time, FATF sets forth detailed guidelines about powers and responsibilities of competent AML authorities, including regulation and supervision of financial institutions (R 26–28), law enforcement and the Financial Intelligence Unit (R 29–32), statistics, guidance and feedback (R 33–34), and sanctions (R 35). Global AML standards also provide detailed guidelines about international cooperation, mutual legal assistance including freezing of assets, their confiscation, and the extradition of relevant parties (R 36–40).\textsuperscript{35} In brief, ‘[t]he Recommendations cover the criminal justice system

\footnotesize{\textsuperscript{33} Ibid.  
\textsuperscript{34} 2012 FATF Recommendations, above n 17. 4.  
\textsuperscript{35} Ibid 4–5.}
and law enforcement, the financial system and its regulation, and international cooperation\textsuperscript{36} as a comprehensive set of measures against money laundering offences.

The above-mentioned measures are applied under a multi-step institutional arrangement where data is generated and then used in law enforcement and related investigatory activities. The information travels through this multi-step process from collection to dissemination, grows gradually, acquires due attributes from each stage of its growth and gains maximum usefulness as it arrives at the final stage of use (Figure 1). In the subsequent sections, we will see how this evolution of information occurs in an AML reporting regime context and the key issues concerning that process.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{AML_Report_Model.png}
\caption{AML Reporting System Model}
\end{figure}

\textit{Note: Recommendation numbers correspond to those in the 2012 version of FATF Recommendations.}

\textsuperscript{36}Johnson, ‘Third Round FATF Mutual Evaluations Indicate Declining Compliance’, above n 10, 47.
1.3.1 AML Reporting System

The process presented in Figure 1 is a simple model of a suspicious transaction/activities reporting regime. Close observation of this model reveals two important things — the institutional shape of an AML reporting regime and the potential sources of information for this regime.

Institutional Shape of the AML Regime

The institutional shape of the AML reporting regime indicates that besides lobbying the governments for criminalising money laundering, another key aim of the global AML regime is to align itself with the core concept of the information age, that is, it reintroduces individuals and organisations concerned to the culture of easy access to knowledge and the free transfer of information. This emphasis on information sharing has resulted in the foundation of a social information-sharing network in the AML context. In this study, the analyst referred to this ‘AML reporting system’ as one where Reporting Entities (REs), the Financial Intelligence Unit (FIU) and the law enforcement agency are its major components.

Probable Sources of Information

An AML reporting system relies on both internal and external sources of information. Externally, the AML system components interact with a number of information sources, for instance, customers of financial service providers and various public, private, autonomous and international organisations. Some common examples are: tax authorities, various licensing authorities, immigration and passport authorities, and the like, all of which are sources of information for the AML reporting system. These various components also interact with each other and exchange information. Information is also passed internally within each of the component organisations.

1.3.2 Functioning of the AML Reporting System

An important purpose of the AML reporting system is to introduce a process through which its components will be motivated to combine their diversified efforts in achieving a specific objective — the control of money laundering. While international standards outline the broad roles of these components, the domestic AML legislation defines
specific roles that they adopt. Depending on each jurisdiction’s judicial and administrative system and the type of money laundering risk they encounter, the role and responsibilities of the FIU and the law enforcement agency may differ.

The AML reporting system works in steps. Initially, REs assemble information about known or suspected violations of AML laws from customers’ transaction records and also from external sources where possible and report them as suspicious transaction reports (STRs). The FIU receives, analyses and disseminates these reports. They analyse reports ‘by looking at financial transactions involving identified parties, linking that information to other available information concerning the identified individuals or organisations, inter-relationships between them or third parties’ before forwarding them to the relevant law enforcement agency. At the final stage, the law enforcement agency also plays its role by investigating those cases from a prosecutorial point of view. They conduct further investigation based on the FIU forwarded report (that may establish possible criminal conduct), uncover more evidence, and in some cases, eventually produce a case for prosecution.

1.3.2.1 Collection and Verification Steps

The most vulnerable moment for money launderers is when they enter into business with reporting entities because the chance of detection of a potential money laundering case is at its highest at the ‘placement stage’ when there is typically direct contact between the banking sector or other financial service provider and the customer. Therefore, it is very important that financial service providers gather adequate knowledge about customers and their business in order to be able to establish a logical connection between the value of transaction services and known sources of income.

FATF recommends that financial institutions should identify and verify the identity of their customers before or during the course of establishing business relations. They should do it using reliable and independent sources of documents and information so that the process works as a preliminary screening against false identity and forged

documents. If this screening process is not (or cannot be) properly directed, the number of suspicious activity reports lodged with FIUs related to apparent identity fraud may increase. Australian experience has indicated that such reporting may deflect the AML reporting from its primary focus upon major crimes.\textsuperscript{39}

**The Problem of False Documents**

Due to the ineffective reference checking facilities in some low capacity countries, it may be easy to obtain forged identification documents and use them with a minimum risk of detection. In fact, studies revealed that forgery could present a significant risk even in a developed country context. In a report on ‘identity related economic crime’, the Australian Institute of Criminology indicated that 95 per cent of financial crimes in the United States involve stolen identities.\textsuperscript{40} The report further mentioned that:

In February 1999, KPMG carried out a survey of over 1800 of Australia’s largest businesses. Of the 367 replies received, some 7280 incidents of fraud were reported in the two years preceding the survey, with 57 per cent of respondents reporting at least one incident during that period.\textsuperscript{41}

**The Challenges of Verification**

‘[A]n important constituent of reliability stems from verifiability’;\textsuperscript{42} however, FATF does not suggest any specific verification style or standard for the purposes of an AML reporting system. How a jurisdiction will impose Customer Due Diligence obligations on their reporting entities and upon what standard requirements would the method of verification be based rest with the jurisdictions concerned to decide. However, finding ‘reliable, independent source documents, data or information’ for verification, as suggested in Recommendation 10, could be challenging.

In its simplest terms, as Bohm and Mason mentioned, ‘identity’ is actually a relationship between a person and some standard identifiers, for example, name,


\textsuperscript{41} Ibid 2.

address, date of birth and the like. If a person knows all this information about himself, then he is able to identify himself as a certain person. From this point of view, verification of identity would mean collecting some evidence in order to be sure that the person in question bears a certain name, has that date of birth, address and some other social characteristics. But in reality, an electricity bill, for example, that supports someone’s claim about his address could be deceptive because it is not impossible to purchase such products/services without even establishing one’s true identity as a customer. Besides, such an identifier, even if it was correct when initially recorded, could become irrelevant if that person had moved to a new address.\textsuperscript{43} Such documents could then be provided by another party as a fraudulent ‘verification’ of that party’s identity in terms of both name and address.

The above examples raise a series of questions with regard to the general standard of identification and verification that FATF Recommendation 10 suggests. The very first question could be related to the reliability of this method of matching individual and identifier for verification purpose when we know that identifiers could change or otherwise lose their credibility quite easily. The next question could be about the parties to this process. When it comes to verification of a person’s identity with the use of certain documents, it may not be clear exactly who the other party in this exercise is, nor what would be the nature of the service provider’s responsibility if that provider failed to verify the documents correctly. It would be very hard to answer these questions in the context of those jurisdictions where there is no citizen database (or the database is inaccessible for any reason), institutional accountability is relatively weak, administration is mostly paper-based, and culture of interagency cooperation is not as good as in many other countries.

1.3.2.2 Reporting Steps

FATF suggests that jurisdictions require financial institutions to file STRs if they have reason to believe that funds are the proceeds of crime or related to financing of terrorism (R 13). In addition, there are some examples provided as to when a reporting entity may lodge an STR. If a reporting entity is unable to identify a customer or

beneficial owner during Customer Due Diligence (CDD), or is unable to verify their identity against reliable independent sources of documents or information, the financial institution concerned can consider lodging an STR (R 5). Beyond this, it remained largely open-ended for member jurisdictions in regards to what constitutes ‘suspicion’, though this is not the sole basis of reporting.

When it comes to reporting transactions, it is not necessary for the reporting entities to lodge a report based only on a genuine suspicion. National laws require the reporting entities to report cash transactions even if they did not feel the funds had any real connection with crime or financing of terrorism. This objective model of reporting requires reporting of transactions beyond a threshold amount. While this type of reporting promotes consistency and uniformity, it also results in reporting transactions that have no connection with crime. It should be noted here, however, that the purpose of such ‘threshold reporting’ is to facilitate the identification of patterns which might not otherwise be identifiable, by a single reporting agency. Often a number of deposits come from different accounts in another jurisdiction, therefore, only the FIU is in a position to see this pattern. Nevertheless, it is a fundamental requirement that reporting entities shall report suspicious transactions/activities based on ‘reasonable suspicion’. Then, what factors will reporting entities look for to make a decision about filing suspicious transactions/activities reports?

**Challenges in Identifying Elements of Suspicion**

An incident is distinguished as ‘suspicious’ based on contextual detail. That is to say, a reporting entity of a jurisdiction may view the suspicious activity of another jurisdiction as completely trustworthy. Therefore, anti money laundering professionals exercise discretion alongside the use of objective rules (which ideally should also be formulated based on particular context) to separate elements of suspicion from apparently trustworthy behaviours. Then again, use of discretion could be challenging for inexperienced persons and/or if there is inadequate contextual detail available to support decision making.

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Some scholars questioned the very fitness of the private organisations’ officials for this purpose as they are untrained in wider law enforcement techniques. They argued that where ‘suspicious’ is thought to be indicated by a person’s apparent ‘indecision’ in responding to legitimate queries or in that person’s appearance of ‘discomfort’ before the employee, for instance, an expert launderer may always be able to appear normal and cloak such behaviours with apparent ease and confidence.\textsuperscript{46} While this argument as to the lack of training and therefore the fitness of private employees to undertake a role more akin to that of an investigating law enforcement officer has some basis in that the global AML regime imposed additional levels of reporting obligations on various entities to report suspected crimes, it is neither a sudden arrangement for them nor does it require mastering skills irrelevant to their core business. Reporting entities are not supposed to act as law enforcement agencies. They do not investigate possible crimes, but merely indicate transactions which are suspicious or unusual in the context of the financial relationship and the known features of the client.

One scholar also mentioned that the appearance of members of a certain class or race in a country may seem to ‘look’ more ‘suspicious’ to reporting entity staff than other characteristics or those characteristics or races in other jurisdictions.\textsuperscript{47} For instance, in Britain ‘it has been found that a disproportionate share of STRs are filed about transactions made by visible minorities, even though, in the final analysis, they show a lower “hit rate” than those filed on Anglo-Saxons’.\textsuperscript{48} This reflects a certain level of disconnect between actual objective indicators and those perhaps more socially driven.

One simple example perhaps can be found in the misapprehension of aversion of the eyes, for example, as ‘shifty’ rather than a mark of respect. Another indicator of ‘suspicious behaviour’ — hesitation in answering even simple questions — may be due to a language difficulty rather than fraudulent misrepresentation of identity, and so on. Less charitable explanations would veer towards suspicions of staff operating on a basis


\textsuperscript{47} Ibid

of racial stereotyping, even racism, and the like. Cash dealings that are more frequently involved in some types of businesses than others may also attract attention.

Nevertheless, it could be hard, even in an ideal situation, to detect suspicion correctly. Some Belgian experiences have shown that it was difficult for the officials to decide — based on limited information — which case to investigate and which investigated case should be reported to the FIU. But this is only part of the problem. Non-reporting may result in various types of sanctions;\(^49\) therefore, reporting must continue. Michael Levi stressed the difficulties involved in this issue and argued that at times it could be really difficult to identify suspicious transaction as sometimes ‘it is very difficult to verify the genuineness of the levels of trade that correspond to the currency deposits’.\(^30\) Now, what are the factors that reporting entities will rely on to conclude that there are elements of suspicion?

An answer could be found in the Australian Transaction Reports and Analysis Centre’s (AUS TRAC) public legal interpretation series, which provides a legal interpretation of certain AML principles. In an interpretation supplied on ‘suspicious matter’ and ‘suspect transaction reports’, AUS TRAC mentioned that there must be ‘reasonable grounds’ to suspect that the person or their agent is not who they purport to be, or that the information that the entity has may be relevant in relation to tax evasion or another offence against State, Territory or Commonwealth law (including the Proceeds of Crimes Act 2002 (Cth)), or that the act is preparation for a money laundering or financing of terrorism offence; and a reporting entity must have a ‘real suspicion of the relevant matters and the suspicion must be based on matters or evidence that support the truth of the suspicion’.\(^51\) Citing a leading case in the Supreme Court of Western


Australia, AUSTRAC further stressed that ‘the Supreme Court is to be satisfied that facts exist which are sufficient to have induced that belief in a reasonable person’. 52

It is important to note, however, that laws are different in different jurisdictions as are the tests of what constitutes ‘suspicious’. Some jurisdictions may impose, in place of ‘reasonable belief’, a lower threshold to detect suspicion. They might require only ‘mere suspicion’. There could also be an issue with the use of legal language. ‘Suspicion’ in English might only mean ‘doubt’ but in other languages, suspicion might need a higher level of satisfaction.

As mentioned before, suspicion is contextual; yet, some common examples of subjective models of reporting may include judging customers by their behaviours, which may include unusual service requests, abnormal patterns in transactions and a combination of other unusual behaviours that one judges under particular circumstances. This style of reporting may be a difficult task for AML professionals who do not have enough experience and training in the detection of suspicious transactions/activities. 53

1.3.2.3 Analysis and Dissemination Steps

As part of FATF’s institutional measures against money laundering, jurisdictions are required to establish a central authority that will receive and analyse AML related reports and then disseminate them to law enforcement agencies. Beside regular STRs and cash transaction reports (CTRs), an FIU needs the authority to collect additional information to facilitate their analysis. In order to accomplish this task, they must have timely access to any financial, administrative and law enforcement related information. 54

Once the FIU decides to disseminate a report, it is the responsibility of the law enforcement and investigative authorities to investigate the cases forwarded to them and collect the necessary evidence for prosecution if such a course is indicated. FATF

53 He Ping, above n 45, 254.
suggests that the investigative authorities should have adequate powers, including the ability to implement measures to compel the production of documents, information or records in any form held by financial institutions, relevant non-financial entities, individuals or incorporated bodies.  

As Zerzan observes, ‘Certainly the most sweeping institutional shift established under the FATF regime is the Financial Intelligence Unit’, and the AML reporting system that rings it. Key features of the global AML initiative suggest that it is a highly data-driven regime which requires an appropriate institutional body that can collect, store, evaluate and share data and information across numerous agencies. Criminals abuse the complexity of financial system for their illicit business operations and scatter their activities across various organisational and geographical locations. As a central repository, the FIU and its institutional arrangement within the framework of AML reporting system can connect those dots and assist investigation and prosecution of money laundering related offence. The FIUs and the law enforcement agencies of the various countries are able to further exchange information.

1.4 Contextualising the Study: AML Compliance and Low Capacity Countries

The features of AML reporting systems (as detailed in 1.3.2 to 1.3.2.3 above) indicate that their successful implementation would require very efficient mobilisation of domestic resources. Along with availability of adequate resources, a jurisdiction must have the willingness and capability to use such resources to accomplish AML goals.

A 2011 IMF report maintains that when it comes to compliance with AML regime ‘[a] higher degree of compliance appears to be associated with a higher level of economic development’. However, a 2008 comparative study between compliance levels of pre and post the 2003 version of the FATF Recommendations showed that compliance

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55 Ibid 25.
56 Andrew Zerzan, Policing Financial Services Surveying the Anti-Money Laundering Regulatory Regime (September 2011) GSMA, 13 <http://www.gsma.com/developmentfund/wp-content/uploads/2012/06/policingfinancialservicessurveyingtheantimoneylaunderingregulatoryregime2011.pdf>; contra Article 5(3) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990). According to this source the concept of FIU was introduced long before the FATF was created.
57 Zerzan, above n 56.
levels had actually fallen, even in FATF member countries\(^\text{59}\) who were ‘better prepared given their experience, expertise, and years of commitment to their AML/CFT programs’.\(^\text{60}\) Nevertheless, studies have found that problems of noncompliance are more severe in low capacity countries.

Studies subsequent to the 2011 IMF report also suggested that economically underdeveloped countries maintain a poorer compliance record than that of their developed counterparts. A survey of FATF and World Bank data concerning 24 developed and 43 developing countries concluded that developing countries have a lower level of compliance in AML preventive measures, FIU and other institutional measures and compliance with cross-border cooperation obligations, among others.\(^\text{61}\)

The same study identified five common challenges that developing nations face in complying with FAFT standards. It suggested that a country’s compliance with global AML standards has a strong connection with its ‘institutional capacity’. Developing nations’ lack of experience, training and budgetary resources act as significant deterrent to founding specialised public agencies that many developed nations often have. This problem is intensified due to a lack of synchronisation among various government agencies within each country. Absence of regular dialogues among agencies on national AML issues and underrepresented national AML committees are two vital reasons why coordination could be poor.\(^\text{62}\) In this connection, the Report further maintained that:

> [M]any developing countries are cited in their assessments as lacking formalized protocols for coordination even though they may have broad laws that permit or encourage it. For example, the 2009 Bangladesh assessment notes that there are no MOUs between domestic agencies to share information so information sharing is ineffective.\(^\text{63}\)

Another challenge for developing nations is difficulties in problem ‘prioritisation’. Often AML is not on their priority list, given that various delicate as well as pronounced social and economic issues require more attention than money laundering. This lower priority may result in poorer implementation of AML standards even after enactment of

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63 Ibid 20.
the necessary legislation. The Report identified problems relating to ‘governance’ as another vital challenge that many developing nations face. In this study, Transparency International’s corruption perceptions and 67 FATF assessments were compared and analysis indicated a correlation between corruption and AML compliance ratings. Countries with a higher corruption level demonstrated a lower degree of compliance and vice versa. The study also stated that corruption is a serious obstruction to coordination in public sector.64

The fifth challenge, as the study highlighted, is the ‘overall strategy’ that developing nations employ to comply with global AML standards. The entire AML regime is heavily reliant on data and this is the area where a vital disconnect could be observed. Data must be collected and then verified to be useful for future reference. However, the reality is, in many developing nations members of a large segment of the society either do not have any identity documents at all or they have but such documents are not verifiable against any reliable sources.65 This reality may render strategic AML approaches futile in the developing country context.

The above discussion on the background of this research project points to certain specific issues related to the global implementation of the FATF Recommendations. It indicates that all jurisdictions must implement the core FATF Recommendations with equal effect in order to protect the integrity of the financial system worldwide. However, many developing countries do not have the required experience, training, institutional capacity, resources and adequate political will (among other things) to effectively implement these standards.

The descriptions and analysis presented in the preceding sections present a general background to the research project under study. The following sections shall briefly describe, among others matters — the substantive area of research, outline the problem, the purpose of the study, and the specific aims of this research project.

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64 Ibid 21–2.
65 Ibid 24.
1.5 Substantive Area: The Emergent Research Problem and the Research Question(s)

The broader objective of this research project is to generate a grounded theory through conceptualisation of data systematically collected from a substantive area. A grounded theory ‘emerges to explain the preponderance of behaviour in that area, which behaviour is the continual resolving of the participants’ main concern’. For the purpose of this research project, the analyst chose the AML reporting system of Bangladesh as the substantive area for three main reasons. First, this area was comparatively new which makes it an ideal setting for applying grounded theory methodology (to be elaborated in Chapter Three). Second, the analyst had easy access to research data (participants and their organisations) that was necessary for extensive grounded theory study, and third, it was an important and un-researched area.

1.5.1 Substantive Area: The AML Reporting Regime in Bangladesh

Bangladesh became a member of Asia Pacific Group on Money Laundering (APG) in 1997 and criminalised money laundering in 2002. In 2009, the APG Mutual Evaluation Report indicated that Bangladesh was a low achieving jurisdiction with an average rating below the level of a ‘partially compliant’ jurisdiction. Views reflected in this evaluation were further strengthened with the Transparency International (Bangladesh) report indicating alleged widespread corruption in the public sector of Bangladesh. These findings indicate some serious ‘disconnects’ in regard to the effort involved in and the results of the implementation of the AML regime of Bangladesh.

Located within the Central Bank, the Bangladesh Financial Intelligence Unit has an administrative model whose main task is to implement domestic AML policies with the help of the Anti Corruption Commission (founded in 2004). The FIU educates reporting

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68 Ibid 14.
69 For further detail, please see section 2.4.5 of Chapter 2.
entities (REs) on AML issues, supervises compliance and receives AML reports (STRs and CTRs). Empowered by law, the Anti Corruption Commission is the AML partner agency responsible for the investigation of all AML related cases.\footnote{APGML, \textit{Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Bangladesh}, above n 67, 8; \textit{Money Laundering Prevention Act 2012 (Bangladesh)} s 9.}

### 1.5.2 Research Problem and Questions

The analyst initially approached the research based on the assumption that the problem confronting the AML regime of Bangladesh was that the quality of reports being produced by the reporting entities and the FIU was not adequate, because this was one of the major issues that the APG Mutual Evaluation Report identified and repeatedly mentioned.\footnote{Ibid 8, 59, 64, 113, 178, 181.} Therefore, initially the idea was to examine why the quality of the reports was poor. In the course of undertaking this examination, it became apparent that there were more deep-seated and fundamental issues that APG Mutual Evaluation Report did not adequately address. The closer the analyst approached the problem, the more it became apparent that there were a number of underlying issues. Therefore, the analyst decided to apply a methodology (elaborated in section 3.5 of Chapter 3 below) which suited the substantive area. Finally, the analyst chose the Grounded Theory (GT) approach. A GT approach allows researchers to identify the core problem of a substantive area and the process that the people involved continually apply to resolve that problem.

As a key requirement for the systematic generation of a ‘grounded theory’ using classic GT methodology (as will be elaborated in Chapter Three), this research project began with no specific predetermined problem. However, the APG Mutual Evaluation Report on Bangladesh (elaborated in Chapter Two), which concluded that this jurisdiction required a major overhaul of its AML regime, was an important reason for choosing this substantive area. In addition, the literature review also suggested that the low capacity jurisdictions suffer from a set of problems unique to their own context.

Nevertheless, the analyst entered the ‘research setting with as few predetermined ideas as possible — especially logically deduced [sic], a priori [sic] hypotheses’.\footnote{Barney G Glaser, \textit{Theoretical Sensitivity} (Sociology Press, 1998) 3. Note: the phrase should read ‘especially logically deduced, a priori hypotheses’.} The
research began with the selection of an area of interest, that is, the ‘AML reporting system of Bangladesh’ and a general research topic — the ‘Assessment of the strengths and weaknesses of the Anti Money Laundering reporting system of Bangladesh’. As data collection and analysis continued, the problem and research questions began to emerge. In other words, the analyst entered the general problem area with a simple question — ‘What is happening in the data?’.

Through this study, the analyst has attempted to understand the activities undertaken in the Anti Money Laundering reporting system in a particular jurisdiction from the point of view of the AML professionals involved by analysing their ‘pattern of behavior’.\(^74\) This understanding involves the conceptualisation of the actions of the participants in order to identify what their main concern is and how they continually resolve this main concern. This core variable is the centre of most of the behaviours (actions, reactions and inactions) observed in the substantive area under research.\(^75\)

Through this process, the analyst identified the main research problem — interagency information sharing deficiency, which was the ‘[problem] of concern to informants’\(^76\) of this research project. After the identification of the main concern of the participants, the analyst reshaped the initial broad research query as more specific research questions began to emerge.\(^77\) For example, the methods AML professionals applied to collect vital information from external sources, the process they followed to ensure minimum compliance when collection efforts failed, the initiatives they took to manage the burden of subsequent queries about reported cases that they had limited information, and the like.

The Anti Money Laundering reporting system is primarily responsible for generating information and an audit trail for the AML regime. The major components of the reporting system are engaged in a continuous course of processing and using information collected from each other and/or external sources. These exercises help by


adding informational value to the collected data at different stages as it passes through the reporting system. The better the reporting system works, the higher the quality of information it generates, and the higher the chance is of controlling money laundering.

The substantive area chosen for this investigation is an important area. The analyst has chosen this area in order to discover the main concern(s) of the subjects and the core process that continually resolves this concern(s). This finding may help to identify what the current system is lacking and exactly what needs to be done to fix it, or what criteria the reporting system must fulfil in order to meet domestic requirements and international compliance standards and make the system more effective thereby. Another important reason behind the selection of the AML reporting system of Bangladesh is that the organisations concerned in Bangladesh are easily accessible to the analyst for interview and data collection.

The choice of GT methodology for this research came with another challenge. Although GT methodology is capable of using virtually any data, for the purpose of this particular research the analyst relied mainly on human participants, that is, the primary source of the data were ‘person to person’ interviews as there was very little relevant literature available that covered the AML regime of Bangladesh. Therefore, ethical considerations with regard to human participants emerged as an important issue.

1.6 Ethical Considerations

The concept of research ethics — and thereby the protection of the human subjects — began to develop in the post Second World War period following the disclosure of some extremely unethical research practices involving human subjects that had been utilised in Germany during the war. These precipitated the examination of existing research practices in the United States where some ethical concerns, including concerns regarding the risk of deception (in regard, for example, to the nature of research being undertaken on participants) as well as issues of consent were revealed. Subsequently, many authors stressed the need for the protection of human subjects against unethical research practices such as exposure to dangerous procedures, infringement of privacy

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and the use of deceptive practices, and advocated that participants must give informed consent.79

Informed consent as well as privacy and confidentiality are important ethical issues, especially in social research, which may pose a material risk for a research participant if the required safeguards are not adequately observed. Social research involves asking questions, which may reveal sensitive information about participants’ beliefs, knowledge, and views in regard to any particular phenomenon. This may expose human subjects to numerous unwanted situations and violate their privacy.80 Ethical research is concerned to preserve both the privacy of the informants and the confidentiality of the information that they provide; and hence these two issues need to be addressed individually and collectively.

Graziano and Raulin defined ‘privacy’ as ‘the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others’.81 Privacy can involve voluntary withdrawal — physical or psychological — from social participation. This could be a decision of an individual or group with regard to their staying away from being part of a certain group or larger group, as the case may be, and also their choice to remain anonymous.82 On the other hand, confidentiality as another form of privacy relates to the information individuals or groups divulge. The degree of confidentiality maintained determines how the information so divulged can be shared and used,83 and on the basis of an agreement regarding confidentiality of the data and its subsequent use, participants may make decisions with regard to revealing certain information which could be linked to them.84 Maintaining anonymity means that identifying information is removed from data so that it cannot be linked to the individual. This is generally to minimise the possibility of unwanted social effects of or repercussions from their participation in a research project.

82 Ibid.
An important aspect in ensuring the protection of participants’ privacy and confidentiality is that such protection directly relates to the nature of the research design;\(^\text{85}\) it also has implications in terms of data quality.\(^\text{86}\) Absence of such an assurance — or the presence of a fear in the respondents that such an assurance was inadequate or poorly based and that there could be a breach of privacy — could result in reduced participation and divulging of a greater proportion of invalid data.\(^\text{87}\) In order to ensure participants’ cooperation — not only in terms of participating but in terms of participating and responding honestly — a strong and reliable promise of privacy and confidentiality protection is crucial.\(^\text{88}\)

In this research, the analyst obtained approval from the relevant authorities prior to collecting data from the participants. The analyst obtained approval at two phases. First, the Human Research Ethics Committee (HREC) of the University of Wollongong (UOW) reviewed the application to undertake research involving human participants and approved it, on condition that prior approval would be obtained from the authorities concerned. Accordingly, in the second phase, the analyst contacted each authority in writing for approval. Upon receipt of such approval, he approached the potential participants.

### 1.6.1 Voluntary Informed Consent

The participants went through an informed consent process before they participated in the research. It was not possible to get all potential participants together for a number of practical reasons, including the nature of theoretical sampling process. In most cases, participants met the analyst individually in a thorough informed consent session. In this session, he explained what the research was all about, why the analyst approached the particular participant, the types of questions he was going to ask, how the data collection would proceed, how the collected data would subsequently be processed, used, and preserved. Participants learned through this session about potential risks from and/or benefits to be derived from the information that they would provide. Included in

\(^{86}\) Ibid 61.  
\(^{87}\) Ibid 226.  
\(^{88}\) Ibid 61.
the information session was material as to their rights, especially the right to withdraw, and contact information for the analyst, his supervisor and the HREC of UOW. The analyst communicated all these issues to potential participants both orally and through a written Participant Information Sheet.

Interested participants contacted the analyst at a later stage and fixed a convenient date, venue and time for the interviews. With the permission of the participants, the analyst used an audio tape recorder in addition to written notes for recording data. In the beginning, the analyst informed the interviewees that if they felt their responses to some of the questions would be different if there were no audio recording they should so indicate, which many did. Therefore, the analyst recorded some of the responses only in writing. At the end of the interview, the participants signed a consent form granting permission to use their data for the purpose of this research.

1.6.2 Privacy and Confidentiality

According to the requirements of the HREC of UOW, the analyst took all reasonable care to maintain the privacy and confidentiality of the interviewees. Participants were given the liberty to choose the interview venue and schedule so that they could keep their participation secret from colleagues, if they so wished. After the interview, all field notes and transcripts subsequently made from audio recordings were completely de-identified by removing any personally identifiable information. Information sheets were then coded with numbers and letters, the meaning of which is known only to the analyst and his supervisor. After the study, the analyst stored all documents in the repository of the Faculty of Law.

1.7 Purpose of the Research

In order to identify a broader purpose for this research project, the core research questions were revised to make the purpose of the research a declarative statement — to identify, describe and analyse the basic social psychological process or social structural process that are involved in processing the interagency information sharing deficiency in the AML reporting system of Bangladesh.

89 Glaser, Emergence vs Forcing, above n 77, 51.
1.7.1 Specific Aim of the Research

Once the analyst had properly identified the main purpose of the research, he prepared a set of aims to achieve this purpose. For this research project, the particular aims were to describe the context under which the AML professionals were working and to identify and explain various alternative information collection methods utilised by the AML professionals. Other aims were to identify and explain techniques that helped them to reduce the pressure created by the information deficiency and to identify and explain practices that helped them to maintain minimum compliance standards.

1.8 Literature Review

The analyst divided the literature review into two parts. After choosing the substantive area, the preliminary literature review began. This was a wide literature review on the general problem area in order to gain a theoretical sensitivity to data. This approach kept the analyst’s mind open to wide range of possibilities about the core concern of the area under study. The description of the background of the thesis together with a brief introduction to the substantive area in Chapter One and a broader analysis of substantive area in Chapter Two form part of the preliminary literature review.

A more highly focused final literature review began when the core concern of the substantive area began to emerge. This phase of the literature review was guided by the emerging research problem and associated research questions. There is no separate chapter or sections where this literature review is presented; rather, it is integrated into the body of the thesis, for at this stage, that researchers ‘review the literature in the field and relate the theory to it through integration of ideas’. Thus, for instance, the literature surveyed is used in the chapter on the emerging grounded theory (Chapter Four) and in chapter that comprises the discussion (Chapter Five).

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1.9 Scope and Delimitation

This research project is focused on the FATF 40 Recommendations that have set global anti money laundering standards but the FATF’s Special Recommendations on Countering the Financing of Terrorism (the Plus 9 of the 40+9 Recommendations) are not reviewed in this study. Again, when it comes to implementing global AML standards at a national level, this study examines the functioning of the AML reporting system only. To make the research project manageable, other AML issues, for example, analysis of AML legislation, the financial system regulations and various strategic initiatives concerning money laundering that, although contributing equally to the AML regime, have not been elaborated upon.

1.10 Significance of the Study

Although the issue of global AML is one of the heavily researched areas, only a limited number of scholarly works relate to the core AML challenges for developing nations. Apart from a few studies dealing in general with the situation relating to AML compliance and a limited policy analysis on implementing FATF standards, there was inadequate study with regard to exact nature of the problems that a developing country may face in implementing global AML norms.

As mentioned before (section 1.4), studies have identified several common challenges developing countries encounter while implementing global AML standards; however, careful observation suggests that developing nations face those general impediments in complying with any international standard. Besides, those findings mainly represent the views of the international standard setters and related assessors on the nature of the problems that developing nations face. They do not provide sufficient material as to how AML initiatives are perceived within those countries themselves, nor what the main concerns of the AML professionals there are, or how they manage those problems in their particular context, and the extent to which those measures are effective, as well as what exactly might be done to address all of those issues.

The analyst argues that in order to understand the core AML concerns of developing nations, it is important to look into the substantive area from the point of view of those who are directly involved in the process. That is to say, instead of assessing the situation
under an existing theoretical framework, it may be equally interesting to identify variables in a particular context and then integrate them into appropriate theories. This approach could be particularly useful studying an area where a serious dearth of literature exists, for example in regard to the AML regime of Bangladesh. Therefore, this research project aims to contribute to the body of existing knowledge concerning the domestic implementation of the global AML norms as it identifies a number of important variables logically connected with one core variable that fits the realities under study in the eye of the persons who are involved in the implementation process.

1.11 Thesis Structure

This thesis has five chapters. The first chapter presents a background to the research. It identifies key functions of the global AML regime, its main features, and the minimum obligations this regime imposes on the various jurisdictions. It also explains what strategic approaches they must take in order to comply with those responsibilities. This chapter introduces the FATF prescribed compulsory AML reporting system model that jurisdictions must implement as part of a compulsory prevention and enforcement mechanism against money laundering. This chapter shows how Bangladesh (as one of the member jurisdictions of an FATF associate member) assumes its global obligations to fight against money laundering offences. The chapter also describes the general problem, the research question, the purpose, and specific aims of the research project along with the scope and significance of this study.

Chapter Two provides a clearer and more elaborate description of the substantive area of this research. It presents some critical views of the bureaucratic environment of Bangladesh that is initially responsible for implementing any international standards, including the global AML standards, at the national level. Using some historic evidence and socio-political analysis, the analyst portrays the current context of Bangladesh that hosts AML regime. The analyst argues that the bureaucracy in Bangladesh has such unfavourable traditional and cultural elements which actually render the system incompatible with the efforts of implementing global AML standards. Some specific examples, among others, that have been used to strengthen this argument are the

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93 Glaser, Emergence vs Forcing, above n 77, 15.
unwritten rivalry among the public agencies, over-politicisation of the bureaucracy and lack of (information) sharing culture among various agencies.

The discussion presented in this chapter mainly represents the preliminary literature review. However, a significant part of the literature presented in this chapter was reviewed after the emergence of grounded theory (elaborated in Chapter Four). This chapter presents, among other things, the strategic arrangements, availability of resources, and common challenges to and achievements of the AML regime of Bangladesh. In particular, this discussion identifies the variables that strongly affect the relationship between the bureaucracy, the general people, and the various organisations responsible for implementing the national AML goals.

Chapter Three describes the Grounded Theory methodology. It provides a general introduction to Grounded Theory, its nature and its origins, and the divergencies between its two co-founders, as well as the rationale of applying this methodology to the chosen substantive area. This chapter describes each stage, from the initial data collection to the emergence of the core variable. It explains the data collection process, the coding process, the constant comparison of incidents, the use of theoretical sampling, and the emergence of a core category that expresses or explains the main concerns of the participants in the research.

Chapter Four is the chapter on Grounded Theory — ‘Improvising: A process of overcoming interagency information sharing deficiency in an AML regime’. In this chapter the analyst argues that there is a shortage of useful information in the AML reporting system of Bangladesh which actually is a part of a general information deficiency in the overall bureaucracy. As a result the major components of the AML reporting system (REs, FIU and the ACC) are affected by both the low quality and low quantity of information. In response, the actors within the major components of the AML reporting system have developed a range of improvisations — informal, partial and makeshift solutions — to handle this situation. ‘Improvising’ represent the core process by which the participants of this research continuously resolve their main concerns. It explains the different approaches that AML professionals initiate and the level of success that they achieved in the fight against a general information deficiency. This chapter identifies and explains the relationship between the core variable and other near core variables.
Chapter Five is a discussion on the material contained in Chapter Four. This chapter further explains the behaviour of participants as mentioned in the Grounded Theory. The purpose of this discussion is to explain such behaviour and identify links between varieties of behaviours of the participants so that a hypothesis could be generated. It presents a brief introduction as to how improvisation is generally understood, its use in human society and its probable connection with AML initiatives. It also describes how the various features of improvisation may link with AML compliance and how a particular AML reporting system could benefit from different improvised information collection techniques.

Most importantly, this chapter argues that there are ‘good’ and ‘bad’ improvisations. AML professionals must have enough experience and training to achieve the maximum success in applying improvised techniques to handle the information deficiency. Since the actors of the AML reporting system in Bangladesh lacks necessary training and experiences, their repertoire of improvisations remain largely ineffective in resolving the core problem — the general information deficiency. Although these improvised temporary initiatives do not appear to be a long- solution to the actual problem, this, however, prevents the system from collapsing completely.

Finally, the analysts stressed that the general deficiency of information is not only a result of shortage of supply of information but also a lack of demand of the same; and the problem could be resolved if both supply and demand of the information could be raised simultaneously.

1.12 Limitations of the Study

This research project could not benefit from the participation of indirect AML partners. They are the officials of various bureaucratic organisations in Bangladesh who are known to be key furnishers of information to AML reporting system users. There were several reasons for their exclusion from the research sample. First, they are excluded so that the perimeter of investigation can be kept focused on the core issues related to the AML reporting system; and second, they were excluded due to the existence of inadequate access to those public agencies. The process of obtaining permission to conduct interviews among public agency officials was a lengthy and complex task unachievable within the approved period of fieldwork.
Another limitation of the research was a serious dearth of literature on the AML regime of Bangladesh. Although Grounded Theory methodology works well in the context of an under-researched area, some relevant literature on the background of substantive area is still required. In the absence of independent scholarly publications, the analyst had to rely on the APG mutual evaluation reports for Bangladesh, a range of unrelated literature and personal observations to sketch the context of the AML regime in Bangladesh.

1.13 Conclusion

FATF introduced global standards for responses to be adopted in the battle against money laundering. Jurisdictions must adopt these responses in order to protect the integrity of the global financial system. The core Forty Recommendations of FATF are effectively obligatory for all nations, regardless of their capacity to implement these norms or the level of money laundering risk that their financial systems actually face. They suggest among other things that all jurisdictions must have an effective AML reporting system that would act as both a preventive and enforcement mechanism against money laundering. The establishment of such a system requires a well-synchronised method and the maximum utilisation of available resources.

Studies concluded that in many jurisdictions where an understanding about money laundering control is limited, the institutional capacity is weaker; pressing social issues demand greater attention, and hence compliance with international AML standards is lower. Despite the relevance of these findings in terms of the real problem at hand, there are large gaps in our understanding of the true nature of the compliance challenges that developing nations face. This entails an in-depth investigation in order to perceive the problems from the point of view of those who are responsible for implementing the global AML standards at national levels.

The substantive area of this research project, the AML reporting system of Bangladesh, is that of a low capacity country. A preliminary literature search suggested that there was a serious scarcity of relevant literature with regard to this particular jurisdiction. Therefore, the analyst chose Grounded Theory methodology to identify the core concern in the area under investigation. Through this study, the analyst attempted to understand the core concerns of the AML reporting system of Bangladesh from the point of view of
the AML professionals directly involved in the reporting process. This way, the study contributes to this little known area by generating a detailed theoretical analysis of the functioning of an AML reporting system in a low capacity jurisdiction.

The following chapter, presents a detailed description and some analysis of the bureaucratic and political environment of Bangladesh. In fact, any international policy must go through the local processes for domestic implementation. In order to understand the research method and the purpose of this research, a prior understanding of the research perspective is necessary. The Chapter Two will provide this opportunity by relating ongoing discussion on global AML standards to the particular national setting of Bangladesh.
2 DESCRIPTION OF THE SUBSTANTIVE AREA

2.1 Introduction

Like any public policies, the Anti Money Laundering initiatives are also implemented through a bureaucracy — an indispensable part of modern public administration. A national AML regime thus reflects ‘government policies and programmes as well as the behaviour of officials (usually non-elected)”\(^{94}\) which reveal the nature of bureaucracy of which they are part. Since the character of a bureaucratic organisation is determined by a nation’s enduring culture that derives from certain political, economic and social structures, each bureaucracy carries a degree of uniqueness owing to its ties with the historical background of that particular nation.

When it comes to implementing the global regime to control money laundering, the local authorities need to adapt it to the bureaucratic reality of their country. This experience is always a mixed one. Some jurisdictions are assessed as compliant in terms of their initiatives and some are identified as jurisdictions that ‘have not made sufficient progress in addressing [their strategic AML] … deficiencies’.\(^{95}\) This failure to comply with international AML norms has raised the question of the general efficiency of bureaucratic organisations in some jurisdictions. This can ultimately cast doubt on a government’s political commitment to the establishment of an efficient AML system, that is, one that actually works.

This chapter contributes to the current discussion on the administrative preparedness of jurisdictions when it comes to implementing the global AML norms in their domestic reality. It analyses the FATF Recommendations and their interactions with the bureaucratic environment of a low capacity country where there are many pressing issues (other than money laundering) which require immediate attention.

In the preceding chapter, we have already described the motivation behind the selection of the Bangladeshi AML regime for the purpose of this study (sections 1.5, 1.5.1, and

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1.5.2). Although traditionally it is a country with a backward economy and marked by ongoing political unrest, in recent decades the world community has praised this country for its rapid and consistent economic growth along with its significant progress in terms of social development indicators.⁹⁶ Many of these successes, however, fail to obtain appropriate approval due to a serious lack of reliability and competence within the country’s bureaucracy. Major development partners and donor agencies have pointed to this extremely centralised bureaucracy and the increasingly demanding administrative requirements in Bangladesh. They have identified these issues as the key reasons why implementation of a number of development projects took much longer time than expected, incurring a huge increase in total project costs.⁹⁷ Like these development partners, FATF is equally concerned about the wasteful bureaucratic processes that exist in Bangladesh. In their evaluation report on Bangladesh, FTAF mentioned that a lack of coordination among public agencies undermined effective AML implementation.⁹⁸

These organisations are important development partners who provide both financial and strategic support to many development initiatives in Bangladesh. Therefore, it is often hard for a government to avoid their advice.⁹⁹ In particular, their concerns with regard to bureaucratic inefficiency are especially important in AML implementation, because the global AML standard-setter stressed that without a sound civil administration system AML initiatives would remain ineffective.¹⁰⁰

This chapter highlights the fact that the bureaucracy in Bangladesh suffers from a number of cultural factors that prevent it from being a cooperative, proactive, and customer-oriented operation in most cases. For a robust AML regime, it is important to ensure that the public agencies concerned renounce the exploitation of loopholes in the

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administrative system and focus on sharing their resources and ensuring the best use of opportunities already provided within the legal framework. The ongoing discussion emphasises that the ‘ineffectiveness’ of the AML regime is not an ‘independent variable’ but rather only a symptom of many core problems that prevail in the bureaucracy and politics. These include, for example, the perpetuation of the old-fashioned paper-based office, the existence of widespread corruption, the posting of public servants to profitable and important positions based on their party loyalty rather than their skills and suitability, and the absence of a workable memorandum of understanding between public agencies — all of which are an integral part of the traditional bureaucracy of Bangladesh.

2.1.1 Methodology

This chapter explains the bureaucracy of Bangladesh in its historical context so that it is easier to understand why some of its characteristics are as they are. Before entering the democratic era, the country long existed under colonial rule and military administration in various forms, and the bureaucracy that exists today evolved through a long and eventful process. In the post-liberation period, society felt the necessity for a major overhaul of the civil administrative system\(^1\) in order to overcome a number of negative factors, including corruption, political interference, inefficiency, mismanagement and the inexperience of the new government.\(^2\) This encouraged the government to take several initiatives in regard to administrative reforms.

In the subsequent sections, the analyst explains the AML regime of Bangladesh in the existing bureaucratic context, and identifies some important areas where the AML regime interacts with the civil administration. After that, he contrasts the discussion with the general findings of the APG Mutual Evaluation Report on Bangladesh’s compliance with international AML norms. Finally, he discusses some established


\(^2\) M Rashiduzzaman, ‘Changing Political Patterns in Bangladesh: Internal Constraints and External Fears’ (1977) 17(9) Asian Survey 793, 794.
cultural theories so that the reader is able ‘to comprehend the consequences of [the] prevailing dominant culture on Bangladesh society and [the] body politic’.\textsuperscript{103}

2.1.2 Historical Background of the Bureaucracy of Bangladesh

The history of government institutions and the civil service system of Bangladesh (as part of Indian subcontinent) dates back to the thirteenth century or even earlier when a similar system began to develop in many Western countries. This well-structured bureaucracy was divided into several departments and was staffed by officials of various classes who formed the central part of the Hindu Kingdom. Officials were recruited based on their knowledge and high ethical standards and received remuneration through regular salaries or other forms of benefits.\textsuperscript{104} However, ‘[a]ll public officials were virtually servants of the rulers [rather] than of the State and they served at the pleasure of their masters’.\textsuperscript{105}

Although the Muslim conquests in the thirteenth century brought significant changes in the civil administration system of the Indian subcontinent, it was not until the early sixteenth century that the Muslim emperors formulated service rules for public officials. Like the earlier Hindu rulers, initially the Muslim emperors kept civil servants under their strict control. For a period, the emperors allowed only Muslims to join the civil service until they adopted a policy of non-discrimination which opened opportunities to non-Muslims.\textsuperscript{106} However, some parts of the Indian subcontinent managed to avoid such ‘bureaucratic conversion’ in regard to a single particular religion. Despite being part of the large Indian subcontinent, a secular attitude was evident in society and in the civil service in the area where present-day Bangladesh is situated.\textsuperscript{107}

\textsuperscript{105} Zafarullah, Khan and Rahman, above n 104, 26, citing F J Monahan, The Early History of Bengal (Bhartiya Publishing House, 1974) 40.
Initiatives taken during the period of Muslim rule (the Mogul empire) led to a number of adjustments in the civil administration of Bengal (present day Bangladesh). Most of those changes bore a resemblance to modern bureaucracy. For example, administration had several quasi-autonomous layers each assigned their own specific functions. The civil servants were given the status of ‘State servant’ and divided into many (66) grades. In addition, there were set selection criteria for higher officials. The emperor would consider the candidates’ experience, capabilities, honesty, diligence and, of course, loyalty before employing them as civil servants. In the same way too, promotion to a higher post would depend on the respective officers’ merit and loyalty instead of seniority. The Moghul civil service accommodated a significant number of Hindu officials in important positions although it was a Muslim empire.\textsuperscript{108} Scholars have argued that the main purpose of such appointments was to achieve political gain\textsuperscript{109} in a country where the vast majority of the population was Hindu.

As Mishra (1989) observes, ‘The advent and consolidation of British rule in India coincided with the decline of the Mogul empire’,\textsuperscript{110} and consequently the British Indian civil service laid its foundation on an already established organisational framework. In the early stage, civil service positions were preserved exclusively for British expatriates but in 1853 a new law came in force and introduced a system of open competition which allowed local Indians to join the civil service. Nevertheless, this initiative remained merely symbolic, as it was rarely possible for local people to take advantage of this opportunity. Indeed, the only way to participate in this civil service entrance competition (and thereby possibly qualify) was for the young aspiring Indian applicants (aged 19 to 22) to travel to London to attend the entrance examination which, in a further obstacle, was on subjects unfamiliar to those Indians who might sit the examination.\textsuperscript{111}

\textsuperscript{108}Zafarullah, Khan and Rahman, above n 104, 27, citing Hare Krishna Mishra, Bureaucracy under the Mughals, 1556 A.D. to 1707 A.D. (Amar Prakashan, 1989) 36, 40–1, 47, 52, 73–4, 78.


\textsuperscript{110}Zafarullah, Khan and Rahman, above n 104, 27.

Scholars have mixed views toward the input of British rule in the development of the modern bureaucracy in the Indian subcontinent. Misra (1977) mentioned that some of the negative practices that the British Crown nurtured and which prevented most Indians from being part of the central civil service were patronage, a rigidity in the recruitment process and the preference for ‘seniority’ as the key benchmark for promotion.\footnote{See Zafarullah, Khan and Rahman, above n 104, 28, citing B B Misra, *The Bureaucracy in India, An Historical Analysis of Development up to 1947* (Oxford University Press, 1977) 107–8.} Zafarullah, Khan and Rahman, however, mentioned that British rule had made some constructive contributions to the organisational framework of the Indian bureaucracy. When British rule ended in 1947, the Indian subcontinent had one of the most developed civil service systems in the world as it passed through a steady transition from a personalised service to State service and then public service.\footnote{See Zafarullah, Khan and Rahman, above n 104, 28.}

However, some of these positive contributions lost their significance, largely because in general the bureaucratic system of British India was hardly aimed at the public benefit. As M V Pylee indicated, the exiting government was unfavourable to indigenous social institutions and industries. The Government set the administration policy for the provinces without taking into account the unique cultural and racial factors of those regions. In addition, they neglected pressing social problems, denied people the most basic political rights while at the same time raising taxation and public (including military) expenditure to serve the interests of the Crown.\footnote{M V Pylee, *Constitutional Government in India* (Asia Publishing House, 1960) 63.}

Historically, as a part of the Indian sub-continent, present-day Bangladesh had been a part of British India for around two centuries. Because the British rulers developed most of its administrative structures, a colonial legacy is evident across its entire public administration.\footnote{Ahmed Shafiqul Huque, ‘The Impact of Colonialism: Thoughts on Politics and Governance in Bangladesh’ (1997) 28(1) *Asian Affairs* 15, 15–6, see also Ahmed and Khan, above n 101, 17–18.} In 1947, India gained independence and was divided into two nations: Hindu dominant India and Muslim dominant Pakistan (originally in two parts — West Pakistan, which is present day Pakistan, and East Pakistan, present day Bangladesh).\footnote{Ahmed and Khan, above n 101, 17.}

The British colonial heritage heavily influenced Pakistan’s bureaucracy and political culture. While still under the strict rule of the British government, the rulers gradually introduced representative public institutions, although their functions were only to serve
as an adviser to the government or as an overseer of local administrative matters instead of making policy decisions. As Washbrook observed, the key purpose for establishing those institutions was to ‘help legitimize and strengthen the authority of the bureaucratic state’ but not to transfer power to the people’s representatives. He indicated that this process ensured a powerful bureaucracy under weaker democratic institutions, ultimately creating a power imbalance in public administration. This persisted even in the postcolonial period as a second colonial legacy and continued to influence the political culture in both geographic ‘wings’ of Pakistan.

These two ‘wings’ of Pakistan — which were 1600 kilometres away from each other — had nothing in common in terms of language, social culture or political ideology, except religion. West Pakistan deprived the more populous East of genuine power sharing and kept the region underrepresented in every sphere of civil and military administration as well as in terms of the allocation of economic aid and the institution of development initiatives. Decades passed by of continued suppression of the East by the West and the denial of any genuine sharing of political power with the East (even after their leaders had won a clear majority in a free and fair election in 1970). Tensions mounted between the two wings. This awkward arrangement lasted until 1971 when Bangladesh finally gained independence through a war, which was extremely expensive in terms of human lives.

During the ‘Pakistan period’ (1947 to 1971), Bangladesh (then East Pakistan) was a province of federal Pakistan and administratively was practically a copy of the central government as it had a central secretariat divided into several departments headed by ministers. Yet, the features that distinguished it from the central bureaucracy was the structure of the field level administration which was divided hierarchically — divisions, sub-divisions, districts and Police Stations — on a geographical basis. Naturally, a


\[118\] Ibid 36–40.


\[121\] CIA, The World Factbook, Bangladesh, above n 119; Huque, above n 115, 16.
serious challenge that Bangladesh faced immediately after independence was the task of transforming the existing provincial structure of government into a national government. A newly-established reform committee found that it was truly challenging to attempt to absorb Bengali officials of the central government into a national government and also to integrate the offices of the central government with their equivalent departments in the Government of Bangladesh which had thus far been a part of a provincial government. Accordingly, except for some minor changes in the centre, field level administration remained almost the same after independence as before.\textsuperscript{122} Thus, ‘Bangladesh … inherited the British Indian system of administration, which Pakistan [had] carried on with some minor modifications for over twenty-four years’.\textsuperscript{123}

Nevertheless, some authors have viewed Bangladesh’s separation from Pakistan as an opportunity to free its bureaucracy from unwanted elements such as elitism, conservatism, and internal antagonism, among other elements that had been handed down over the centuries. Zafarullah and Huque mentioned that despite the obstacles Bangladesh stumbled over as war-torn country, it really didn’t have to reinvent the wheel for every sector. Bangladesh had inherited an already established administrative infrastructure and a group of experienced and well-trained bureaucrats who could contribute significantly to the state-building initiatives to be undertaken in war-ravaged Bangladesh. The government could utilise their skills and experiences, particularly in infrastructure building, policy development, and to introduce professionalism and a notion of ethics among civil servants that would make it a responsive bureaucracy.\textsuperscript{124}

However, post-independence Bangladesh apparently failed to take maximum advantage of these resources.

In the independent Bangladesh, international donors and development-partners ‘identified a number of bureaucratic dysfunctions as the major problem in pursuing good governance’.\textsuperscript{125} They mentioned that the public administration system was highly centralised and it followed an excessively hierarchical and overly bureaucratic process to deliver services, which virtually ensured its lack of responsiveness. Due to a lack of

\textsuperscript{122} Ahmed and Khan, above n 101, 18–20.
\textsuperscript{123} Ibid 18.
\textsuperscript{125} Islam, above n 99, 135.
accountability and transparency, the system grew into an inflexible and wasteful one. Donors and development partners had also condemned the over-politicisation of the bureaucracy. They advocated a proactive, accountable, transparent and customer-oriented public administrative leadership in Bangladesh.126

2.1.3 Government and Public Administration

Government

Bangladesh is a parliamentary democracy with the Prime Minister as its Chief Executive of the Government and its President as the Head of State (the latter a largely ceremonial figure with some ceremonial duties).127 This form of government was first adopted in post-liberation Bangladesh. Subsequently, the structure changed into a one-party rule with a President at the apex of state power. This continued until a group of military officers ousted the then President in August 1975. In the subsequent period, various forms of military regimes ruled the country until the people ousted the military regime and restored a multi-party democracy at the end of 1991.128

Public Administration

Public administration in Bangladesh has two tiers.129 Centrally, there are 41 ministries each headed by a Cabinet Minister who is appointed by the Prime Minister but who are collectively accountable to the Parliament. Besides this, there are 15 administrative divisions130 and 52 departments. Ministries that are mainly responsible for policy formulation for the government are mostly located centrally in the Bangladesh Secretariat in the Capital (Dhaka). In the second tier, there are various types of government organisations representing central ministries, divisions and departments. They operate at the district and sub-district levels. Their main duties are to deliver general administrative functions, including service delivery and local project implementation. In addition, there are some autonomous bodies and corporations

126 Ibid135.
127 Division for Public Administration and Development Management (DPADM) and Department of Economic and Social Affairs (DESA), United Nations, People’s Republic of Bangladesh, Public Administration Country Profile (February 2004) 7.
129 Ibid 365.
130 Islam, above n 99, 134.
created through a presidential Ordinance or Act of parliament.\textsuperscript{131} There are some other organisations established under the Constitution commonly known as ‘Statutory Bodies’, for example, the Election Commission, Bangladesh Public Service Commission and Office of the Comptroller and Auditor General.\textsuperscript{132}

\section*{2.2 Bureaucracy}

Although today ‘bureaucracy’ is commonly perceived in its negative sense as a synonym for ‘rule-encumbered inefficiency’ (for example, as ‘red tape’ or the presence of rigid rules and excessive formalities in public agencies which ultimately result in inefficient service deliveries), originally it was intended to be used ‘neutrally’ to mean the management structure of a government.\textsuperscript{133} An example of such use can be found in the theory of bureaucracy suggested by the German sociologist Max Weber, who described many ideal types of civil administration in a number of his essays collected in the volume, \textit{Economy and Society}. According to Weber, ‘[i]n the sphere of the state … three elements constitute a bureaucratic \textit{agency}, in the sphere of the private economy they constitute a bureaucratic \textit{enterprise}.’\textsuperscript{134} These elements are:

1) The regular activities required for the purpose of the bureaucratically governed structure are assigned as official duties.

2) The authority to give the commands required for the discharge of these duties is distributed in a stable way and is strictly delimited by rules concerning the coercive means, physical … or otherwise, which may be displaced at the disposal of officials.

3) Methodical provision is made for the regular and continuous fulfilment of these duties and for the exercise of the corresponding rights; only persons who qualify under general rules are employed.\textsuperscript{135}

In his theory, Weber described bureaucracy as the most rational way that human activity can be organised and as an efficient mechanism for the government of a modern state. He argued that it was the most justified form of organisation, and indispensable to

\begin{footnotesize}
\begin{enumerate}
\item Sarker, above n 128, 368.
\item Ibid.
\end{enumerate}
\end{footnotesize}
modern administration. There are certain vital characteristics of a bureaucracy, which makes it fit for modern society. This includes, for instance, ‘the tendency in bureaucracies to separate the means of administration from those who work with them’.

As Weber mentioned:

In principle, the modern organisation of the civil service separates the bureau from the private domicile of the official and, in general, segregates official activity from the sphere of private life. Public monies and equipment are divorced from the private property of the official.

Therefore, bureaucracy means ‘without regard for persons’, which could further be described as sine ira et studio, without anger or passion (fondness or partiality). Therefore, a bureaucrat

performs his duty best when he acts without regard to the person in question, ..., without hate and without love, without personal predilection and therefore without grace, but sheerly in accordance with the impersonal duty imposed by his calling, and not as a result of any concrete personal relationship.

As the bureaucratic arena refers to and includes all public agencies that formulate and implement public policies, regulate other public or private agencies, and deliver services. It is often viewed as an extremely influential element, if not the most crucial one, that strongly affects a country’s social and economic progress. That is, as some scholars have argued, a country’s society or economy is likely to benefit more from a bureaucracy that more closely approximates its ideal type than the one further from it.

Before we investigate further into this hypothesis, which in fact the researchers tested

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137 Swedberg and Agevall, above n 136, 20.


142 Goran Hyden, Julius Court and Ken Mease, ‘The Bureaucracy and Governance in 16 Developing Countries’ (Discussion paper No 7, Overseas Development Institute, July 2003) 2.

among 35 developing countries, we need to explore the Weberian perspective of this concept.

Instead of viewing bureaucracy as just a common and collective name for state officials Weber used this term to indicate to a particular type of organisational structure in contrast with patrimonial, which is the traditional top-down structure of monarchy, for instance, and prebendal feudalism, a type of patron-client relationship.\textsuperscript{144} As Schluchter indicated, prebends were utilised for fiscal purposes, to be precise, for tax collection,\textsuperscript{145} for securing tax payments for the royal treasury, as Weber described. That means, primarily there was no contract of personal loyalty but the relationship would be valued based on the income it could yield for the patron.\textsuperscript{146}

\subsection*{2.2.1 Bureaucracy and Economic Growth}

Now, going back to the hypothesis that we mentioned above, we will examine some of the common features of bureaucracies to identify the connection of such features with economic growth. When Weber contrasted the ‘bureaucracy’ with earlier forms of administration or structures of organisation, he indicated a number of features of a bureaucracy. Evans and Rauch in \textit{Bureaucracy and Growth: A Cross-National Analysis of the Effects of “Weberian” State Structures on Economic Growth} emphasised two simple yet important features — the importance of ‘meritocratic recruitment’ and of a ‘predictable career ladder’. In their investigation to see if the Weberian ideal of the bureaucracy had an effect on the economic growth of certain developing countries, they chose these two particular features from among others for a number of reasons. First, these two features had been widely used in the relevant literature; and, secondly, they were comparatively easier to interpret using certain measures which facilitated empirical testing.\textsuperscript{147}

Meritocratic recruitment increases the incidence of competence and the level of unity among the officials in an organisation, which ultimately may contribute to the provision of a highly motivational environment for individual officers. It is expected that officials

\begin{flushleft}
\textsuperscript{144} Ibid.
\textsuperscript{146} Weber, \textit{Economy and Society: vol 1}, above n 141, 260.
\textsuperscript{147} Evans and Rauch, above n 143, 751–3.
\end{flushleft}
who join an organisation through an equally competitive and fair process are more likely to show respect toward shared institutional norms and adhere to them than those who obtained their position through unfair patronage. Being part of an organisation with equally qualified colleagues and adherence to certain norms also helps individuals understand the risk and cost of corruption or similar practices that may ultimately undermine institutional goals.\footnote{148}

The promise of a long-term career could also help increase competence and strengthen unity within a bureaucratic organisation. This is especially so if the officials are confident that the demonstration of professional competence would eventually result in their being rewarded with a long, successful and prestigious career; and it is less probable that they would pursue corrupt ways for quicker personal success at the cost of institutional norms and goals. Promises — which could include a competitive salary package, a clear path of promotion, a posting in an important and prestigious position based on professional aptitude — may act as deterrent to such corrupt behaviour. Furthermore, the potential high cost of corruption — for example, loss of office, demotion, fines and so on — may also equally contribute to motivating officials to avoid corrupt practices.\footnote{149}

These two features could help individual officers to realise both short and long-term career objectives, which ultimately help the organisation to achieve its own goals. It may be noted here that ‘meritocratic recruitment’ and a ‘predictable career ladder’ are not the only structural features that could enhance organisational performance, and the best result could be realised if these Weberian features were jointly pursued, as Evans and Rauch said, with a ‘dense systematic set of ties to the entrepreneurial class’. They stated that if those two Weberian features of a bureaucracy contribute toward organisational coherence and the enhancement of professional competency, then this may have a positive effect on economic growth. Promise of a long-career path with the promise of rewards for competency would also encourage investment in public-sector infrastructure and this may then help bureaucrats to be cautious with regard to public expenditure. This will increase the efficiency of the bureaucracy and make it more effective. Evans and Rauch predicted that if the corruption remains under control and

\footnote{148}{Ibid 752.}
\footnote{149}{Ibid.}
the bureaucrats stay away from maximising their own private wealth and advantage, this would help to reduce implied tax on private sector.\textsuperscript{150}

Another probable impact of an efficient bureaucracy could be the increase in private investment in the economy. Any investment would be seriously discouraged if investors need to start and run their business in a system dominated by a corrupt, unpredictable bureaucracy. That is, a dependable, predictable and skilled bureaucracy will appear less risky for long term investment. Such a bureaucracy could reduce coordination challenges among individual entrepreneurs and encourage new investment. In addition, a good bureaucracy may help to turn informational resources into public goods, which may further increase confidence among investors and prompt investment in the upgrading of existing businesses. To be more precise, the bureaucracy itself could collect information and then offer an informational service to help local businesses grow in a changing global market.\textsuperscript{151}

Evans and Rauch hypothesised that those countries which had Weberian features present in their bureaucracy would experience a more rapid economic growth over the 20 years between 1970 and 1990 (the range they chose for data sampling) than those where such features were only partially incorporated. The researchers used data that referred primarily to the core economic agencies of the bureaucracies they sampled, and concluded that their findings supported the hypothesis. That is, they found that ‘meritocratic recruitment’ and a ‘predictable career ladder’ are connected with higher economic growth rates. The investigation also concluded that for higher economic growth having Weberian features in some strategic core agencies might be sufficient instead of organising the entire bureaucracy along this line. The findings also revealed high East Asian growth where competent and organised bureaucracies are prevalent, and low African growth rate where governance is a serious concern.\textsuperscript{152}

Despite many notable contributions by the modern bureaucracy, its strengths and weaknesses have always been under scrutiny. This is partly because a bureaucracy has its own inherent limitations, and partly because of the growing demands society

\textsuperscript{150} Ibid
\textsuperscript{152} Evans and Rauch, above n 143, 752–61.
continually places on bureaucratic organisations, which is to be expected in a constantly changing society. Therefore, extensive scholarly research and numerous reform movements in the public sector around the globe have highlighted the need for a new public managerial era. Some specific issues, for example, performance of the public servants and citizens’ satisfaction, among others, have attracted greater attention in discussion and debates for decades.

Recently there has been a growing demand that the public sector be modernised and more effective. Accordingly, ‘New Public Management’ (NPM) has been the centre of attention for last few decades. It is a new theory on public sector governance that emphasises managing public provision of services in different ways to ensure effective service delivery. NPM proposes theories about how the public sector is to be governed, and goes beyond the traditional public institutions like bureaux and public enterprises. However, it does not entirely replace the older framework of bureaucratic institutions but proposes a new approach imitating the market institutions. It includes contracting out public services and adopting a customer-oriented approach where bureaucrats are considered as managers and citizens as customers.

Regardless of NPM’s huge potential to address many of the pressing issues that bureaucracies face today, scholars expressed careful optimism about its suitability in some contexts. Zafarullah and Huque stated that the NPM philosophy has increasingly become essential for developing countries as their traditional public administration has become largely unreliable over the last few decades. However, they warned that it may not be possible to implement NPM to its full extent in countries where state interference in economic and social issues is widespread, as seen in many developing countries. Sarker insisted that some elements, like the clientelist politics evident in a developing country such as Bangladesh, also act as a deterrent to NPM style reform.

NPM is a rather broad concept that is aimed at an overall increase of services that public organisations could provide through the best use of limited resources. Therefore, the

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154 See generally Lane, New Public Management, above n 153, 1–11.
155 See Zafarullah and Huque, above n 124, 1391–2.
156 See Sarker, above n 128, 367.
core issue that NPM focuses on is the output of the bureaucracy, with an emphasis placed on performance measurements of the public officials.157 Then again, the usefulness of conventional public sector performance management and ‘merit pay’ in order to increase organisational effectiveness are not beyond debate. For instance, performance appraisal and merit pay in the public sector could be politically motivated; and then budgetary limitation on merit pay may force an organisation either to exclude a large number of high-performers from the list or distribute financial incentive to all eligible candidates in an insufficient quantity, which would not serve any meaningful purpose. Accordingly, instead of appraising individuals, the new policy could aim at setting appropriate targets for an entire organisation and then measure performance based on such an organisation’s collective achievements.158

Based on the above discussion, we can say that a modern bureaucracy may have the following features. It is an organisation, which has specific goals and a set of rules to achieve those goals. The bureaucrats shall be recruited based on their merit, through a fair and competitive assessment process. There shall be the promise of a long career where reward for the bureaucrat is based on the authority’s assessment of the merit, efficiency and performance instead of loyalty to a particular patron. There shall be clear division of labour and each bureaucrat will know the specific description for their job, the rights and obligations they have and the level of authority that they are entitled to exercise. A specific set of written rules of business and a code of conduct will govern both individuals and the organisation. As Max Weber stated, such a bureaucracy will be competent and cohesive in nature and an indispensable part of the modern administrative system.159

2.2.2 Money Laundering and Bureaucracy

In this age of globalisation, for a number of reasons governments and organisations are frequently adhering to international standards to organise their societies and economies. As Herrera correctly observed, ‘While some high-profile events, such as signing

treaties, attract attention, the real work of implementing international rules actually
takes place lower down inside state bureaucracies’.160 Moreover, it is not surprising that
often there is resistance against international norms at national levels, as ‘some …
organisations, and bureaucrats repudiate rules, drag their feet, adapt rules to fit their
own interests, subvert the intention of rules, or just plain ignore them’,161 often in direct
or indirect collaboration with politicians.162

Then again, a bureaucracy works in a political environment surrounded by the elected
people’s representatives who, unlike bureaucrats, occupy their office for a much shorter
period and with a specific political ideology and development agenda in mind. Likewise, as the IMF noted, ‘there is a question whether the least developed economies … will have the capacity to meet the higher regulatory standards’.163 That is, beside the
nature of the bureaucracy itself, there could be other variables which are associated with
attaining effective compliance with international AML standards in any country. Researchers often say that ‘policies and legislation aimed at combating money
laundering have … been designed mainly on the needs of the developed countries’.164

Hence, it may not be totally wrong to infer that many developing nations will not have
the necessary structures — robust financial supervision, stock market oversight and
effective risk management in the financial market, among other factors — to deal with
many of the regulatory requirements. Nevertheless, what is most important here is that
countries must assess their AML system to know its strengths and weaknesses and
respond appropriately to enhance level of compliance, because,

If they do not or cannot, there is a risk of their exclusion from the major financial
markets and segmentation in financial markets between the wealthier jurisdictions

160 Yoshiko M Herrera, Transforming Bureaucracy: Conditional Norms and the International
Standardization of Statistics in Russia (Centre for the Study of Public Policy, University of Aberdeen, 2006) 3.
161 Ibid.
162 See Martin Skladany, ‘Buying Our Way out of Corruption: Performance-Based Incentive Bonuses for
Developing Country Politicians and Bureaucrats’ (2009) 12 Yale Human Rights and Development Law
163 R Barry Johnston and Oana M Nedelcescu, ‘The Impact of Terrorism on Financial Markets’ (Working
164 Ayodeji Aluko and Mahmood Bagheri, ‘The Impact of Money Laundering on Economic and Financial
Stability and on Political Development in Developing Countries: The Case of Nigeria’ (2012) 15(4)
Journal of Money Laundering Control 442, 443.
and institutions that can comply with international standards and the weaker jurisdictions and institutions that cannot.\(^{165}\)

In the following section, we look into some common features of the bureaucracy in Bangladesh.

### 2.3 Bureaucracy in Bangladesh

Irrespective of their socio-political systems, economic conditions or geographic location, today almost every nation faces more intense challenges of globalisation than ever before. Beside globalisation, some other powerful forces — such as, economic competition, continuing socio-political turmoil, environmental issues, technological advancement, the changing labour market,\(^{166}\) money laundering and the financing of terrorism — have presented huge challenges to the nations of the world. In this section, we explore the nature of the bureaucracy in Bangladesh. The discussion includes a combined approach to understanding the bureaucracy in light of historical references, the system of government, public service commission reform, and the cultural background of Bangladeshi society.

#### 2.3.1 Civil Administration

As mentioned earlier (section 2.1.3), Bangladesh has a two-tier civil administrative system. At the top of this system is the Bangladesh Secretariat where all ministries and departments are based and public policies are formulated. In the second tier there are other ‘line’ departments under each ministry that are mainly responsible for carrying out general administration as instructed by their reporting authorities. A Minister is the political head of a Ministry. The Minister administers his functions as Minister through a ‘Secretary’ who is the administrative head for that ministry. Normally, there could be several divisions under one ministry, a number of wings under a division, several

\(^{165}\) Johnston and Nedelescu, above n 163, 18.

branches within a wing, and sections below a wing. The Secretary receives assistance from an adequate number of officers of different ranks as prescribed by law.\textsuperscript{167}

There are four ‘classes’ of public servants in a ministry and their role is determined by law. For instance, an Assistant Secretary, who is a Class I officer, leads a section (with the help of other office personnel) and performs his or her duties according to clear rules and precedents. While every officer above this position is a first class ‘gazetted’ officer, there are also some Class II ‘gazetted’ officers too. In addition, there are Class III and Class IV office personnel.\textsuperscript{168} While the Secretary (normally the administrative head of a ministry, and also of a division in some cases) is the one who directly advises the Minister on policy and administrative matters, the Joint Secretary (the head of a wing) of a ministry may also present a case directly to the Minister. However, the normal practice is to place it before the Secretary or Additional Secretary (the head of a division) first.\textsuperscript{169}

The Bangladesh Public Service Commission (PSC), which is a Constitutional body, established under Article 137 of the Constitution of Bangladesh, conducts government recruitment. The honourable President appoints the Commission’s Chairman and the members\textsuperscript{170} for a specific period. The PSC’s main function is to administer the examination to select suitable persons for appointment to the civil service of the Republic. The President may consult the Commission with respect to matters relating to qualifications for, and methods of recruitment to, the public service of the Republic; and also the terms and conditions (including pension rights) of that service, promotions and transfers.\textsuperscript{171}

\begin{itemize}
  \item[2.3.1.1] Lower Public Satisfaction in Citizen Oriented Services
\end{itemize}

The post-independence Government of Bangladesh adopted an interventionist, state-centred model of development, which, with some modifications, continued until the end of 1990. In the subsequent years, the government began to relax its control on

\textsuperscript{167} Ferdous Jahan, ‘Public Administration in Bangladesh’ (Working Paper No 1, Centre for Governance Studies, BRAC University, December 2006) 3.
\textsuperscript{168} Ibid 4.
\textsuperscript{169} Ibid 3.
\textsuperscript{170} Constitution of the People’s Republic of Bangladesh art 138.
\textsuperscript{171} Constitution of the People’s Republic of Bangladesh art 140.
education, health, transport, communication and other major socio-economic sectors and adopted a more market-led approach.\textsuperscript{172} The Government began to ‘emulate business ethics such as effectiveness, decentralization, competition, efficiency, value-for-money, and partnership in public services’\textsuperscript{173} and made people believe that to a great extent public agencies would now assume the role of a catalyst for private business enterprises and citizens would be treated as customers.\textsuperscript{174} When Bangladesh began this shift from an ‘interventionist’ model to the notion of a ‘customer’ service model under the pressure of the World Bank, many countries in the world (including a number of developing countries) had already accepted this style.\textsuperscript{175} This notion was ‘based on the rationales that the public service [was] expansive and inefficient, that its public image or perception [was] largely negative, and that its performance [was] disappointing.’\textsuperscript{176}

In subsequent years, despite several development and reform initiatives by the government, the citizen satisfaction level remained low.\textsuperscript{177} A number of researchers have indicated that the nation’s ‘citizens consider the public service as “over centralized, unaccountable, inefficient, overpaid, coercive, unethical, and rent seeking”‘.\textsuperscript{178}

\textbf{2.3.1.2 Reform Initiatives: What to Reform?}

As mentioned in the immediately preceding section, post independence Bangladesh faced serious criticism due to the interventionist nature of the state. The large size of the government, the wastage of resources, the government’s involvement in too many activities, the growing inflation rate and excessive bureaucracy were some of the outcomes of an interventionist state that immediately attracted attention. Critics also targeted the process that the public agencies followed in administering their business.\textsuperscript{179} The ‘model of administration was rejected as being inefficient, costly, rigid, corrupt,

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{172}] Jahan, above n 167, 4.
\item[\textsuperscript{173}] Ibid.
\item[\textsuperscript{176}] Ibid. Although the author uses the term ‘expansive’, the term ‘expensive’ is equally applicable.
\item[\textsuperscript{177}] Jahan, above n 167, 5.
\item[\textsuperscript{178}] Zafarullah, Khan and Rahman, above n 104, 69.
\item[\textsuperscript{179}] Sarker, above n 128, 367.
\end{itemize}
\end{footnotesize}
unaccountable, and unsuitable to an age seeking more dynamic model of social and economic development’.  

**Failure of Reform Initiatives**

In response to growing citizen demands and pressure from its international development partners, Bangladesh initiated several reform projects to reorganise its civil administration, because ‘[t]he delivery system for public services [had] ... reached an unprecedented level of inefficiency, which require[d] devising new ways of providing services to the people’.  

The demands were that the existing civil administration system should be reorganised so that it would become efficient, accountable and responsive. Despite a clear understanding of the importance of these issues, the reform schemes remained largely unimplemented. Sarker indicated that there were several reasons why reform initiatives generally failed in Bangladesh.

The new administrative system that was being proposed was known by different names, including ‘New Public Management’ (NPM) and ‘market-based public administration’. Scholars have noted a number of reasons behind the failure by Bangladesh to adopt the system more broadly. For instance, Allen Schick mentioned that the market economy in developing countries has some features, such as, the prevalence of corruption in the extensive informal economy, the inadequate access to capital, and the existence of many formal processes for regulating economic activities, which altogether might make a system unsuitable for NPM style reform.

In addition there were other forces that prevented the implementation of such reforms in developing countries. The weaker state capacity in developing countries was ‘manifested in the institutional, technical, administrative, and political arenas’, and militated against the adoption of such reforms in these economies.

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180 Ibid.
181 Ibid 365.
182 Ibid 366.
Specifically in terms of Bangladesh, as Sarker has identified, there were several well-known reasons that hindered reform in the public administration. He indicated that a lack of political commitment had been a major issue as political leaders were never serious about overhauling the bureaucratic system. Elected for five years, political leaders prioritised their short-term political agendas (by rewarding supporters through new procurements and contracts) and often overturning the previous reform agendas of their predecessors. The result was the continual abandoning of long-term administrative reform initiatives. In addition, as Khan mentioned, often reforms were politically motivated and aimed to serve individual interests rather than national concerns.  

Another issue was limited state capacity. Sarker observed that clientelist groups had been so powerful that they could influence state decisions and prevent reform proposals that might otherwise adversely affect their interests. The clientelist nature of politics is a serious problem in Bangladesh. Another serious concern is bureaucratic resistance. Sarker indicated that most civil servants viewed reform attempts as a kind of demotion in power and status, took a protectionist attitude towards the status quo and opposed change. In addition, there is the complexities posed by factionalism in the public service sector which has multiple dimensions, including competition between different political groups and loyalties, rivalry between generalists and specialists, between freedom fighters and non-freedom fighters, and between those from a military background and those of a civilian background, and so on.  

On top of that, there was corruption and politicisation of the administration. Various groups and actors who benefited from different forms of corrupt practices — for instance, bribery, abuse of authority, nepotism, favouritism, and patronage — often actively impeded reform. Due to over-politicisation of the system and pervasive corruption, promotion, transfer and postings in important or (illegally) profitable positions are often awarded to party loyalists.  

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186 Sarker, above n 128, 375.  
187 Ibid 376.
2.3.1.3 Bureaucracy’s Relationship with Politics

Although we have referred to the ‘politicisation’ of bureaucracy/administration several times in this discussion, it should be noted that it is not an entirely negative phenomenon. From one standpoint, this link between the bureaucracy and the political machinery may be viewed as an opportunity to utilise the bureaucrats’ expertise to help achieve development targets, bring about desired social changes and thereby materialise the political goals of a government. In addition, politicisation in civil administration could be desirable as long as it is used by the government in the democratisation process and as long as it is ‘affordable and profitable’. Then again questions remain: ‘What are the boundaries within which the politicisation process is politically affordable and profitable? And for whom?’ Jahan and Shahan replied that ‘the discussion on [the] politicization of [the] bureaucracy mainly aims to identify the effective line of interaction between the politicians and the bureaucrats’.

Another dimension of politicisation may refer to the politicians’ attempts to employ bureaucrats in order to serve the interests of the political party or parties in power. In this situation, the ‘appointment, transfer, promotion and other career decisions of civil servants are dependent on the will of their political master’. While this type of partisan appointment may be seen as normal in some contexts, especially in regard to the appointment of loyal servants in strategic senior positions, but this is in fact a type of politicisation where jobs are ‘handed out’ to loyal friends of the particular political parties in power, and it is thus a form of negative politicisation.

Political Interference in PSC

It has been alleged that the Bangladesh Public Service Commission (PSC) (section 2.3.1) has always been under some form of political interference, irrespective of the nature of the government, whether it is democratic or autocratic. During the democratic

188 See Keith C Simmonds ‘The Politicization of Bureaucracies in Developing Countries: St. Kitts-Nevis, A Case Study’ (1985) 46(1) Phylon 58, 60.
190 Jahan and Shahan, above n 166, 309.
191 Rouban, above n 189, 200.
192 Jahan and Shahan, above n 166, 309.
193 Ibid 310.
194 Rouban, above n 189, 386.
period, the civil society criticised the PSC for its failure to conduct fair competitive recruitment tests, and for the political affiliation of its Members. Even in the British colonial era the Chairman of the PSC, Sir Ross Barker, mentioned in his memorandum to the Simon Commission (1927) that he faced many problems due to government control over the recruitment process. During Pakistan period under the 1962 Constitution, the PSC enjoyed a certain degree of liberty in recruitment, promotion, transfer and disciplinary matters. However, the PSC’s power was virtually very limited, because the President could take those liberties away at any time by the use of a Presidential order.195

The PCS and the Ministry of Public Administration (formerly known as the Ministry of Establishment) are two important agencies that carry out the administration related to public personnel in Bangladesh. As described earlier (section 2.3.1), the PSC is responsible for conducting recruitment tests and the selection of personnel. In recent years, however, several allegations of corruption and politicisation have emerged against PSC. It has been at the centre of controversy for a long time, especially after the authority had cancelled the viva voce for the 27th Bangladesh Civil Service examination (2006) because of suspected corruption and politicisation, and had earlier cancelled the preliminary selection test for the 24th Bangladesh Civil Service examination due to an alleged leak of the question paper.196

**Executive Interference in the PSC**

There is a lack of clarity about the relationship between the PCS and the government’s executive branch, which has always resulted in some confusion. During the colonial era, the PSC was attached to the Ministry of Home Affairs which hindered the Commission’s functioning.197 Similarly, it was under the Establishment Division of President’s Secretariat during the Pakistan period,198 ignoring the question of the independence it might require for its statutory functioning. This practice continued in post liberation Bangladesh.199 As Jahan and Shahan indicated, ‘the independence of the

195 Jahan and Shahan, above n 166, 315–16.
196 Ibid 308.
199 Jahan and Shahan, above n 166, 317.
PSC from the Ministry of [Public Administration] is determined by the ability and status of the PSC Chair\(^\text{200}\) They further continued that:

...being a career bureaucrat had always been an added advantage in case of discharging duties. It has been noticed that it is easier for a civil servant to muddle through the executive control, the [Ministry of Public Administration]’s hindrances and obstacles because being a career bureaucrat enables him/her to realize the deeply set values of the administrative arena and to get the job done accordingly. If s/he is an ex-civil servant, he/she will be able to manage his office well, but to an “intruder” in the administrative realm, the story is quite different.\(^\text{201}\)

Their study further indicated that the PSC’s dependence on the executive, especially the Ministry of Public Administration, could be explained by two things: the Ministry’s control of the PSC though ministry personnel working in the PSC on deputation, and the PSC’s lack of administrative knowledge.\(^\text{202}\)

Researchers often say that the colonial legacy is a dominant feature in the bureaucracy of many developing countries, even after these countries have gone through several post-colonial administrative reform programmes.\(^\text{203}\) Studies that analysed some of these issues (as mentioned above) have identified several problems in the bureaucracy of Bangladesh that have an historical legacy from the British colonial period. In the case of Bangladesh, it was not only the colonial era but also the subsequent autocratic regimes in the post-colonial period and even some elements in the democratic governments that have contributed to this malfunction. The researchers have argued that how an institution like the PSC would operate in a country would depend on the ‘type’ and ‘nature’ of the government in power.\(^\text{204}\)

### 2.3.2 Legacy of Malfunction in Civil Administration

The British Indian government designed its bureaucracy in India, where the political environment was fundamentally different from Britain, mainly to serve the interests of the British imperial power in this colony and not to ensure good governance for the
people of the sub-continent. The bureaucracy was designed to ‘rule’ or ‘govern’ the people using a handful of administrators loyal to the British Crown. As Khan and Zafarullah have mentioned, even the Government of India Act 1935 that introduced the provision of Indian ministers paradoxically allowed the civil servants to bypass the ministers, which ultimately restrained the development of local political institutions.

During the Pakistan period, however, the bureaucracy exercised enormous power over politics. Until 1958, due to continuing political disorder in the country, the bureaucracy was involved in political decision-making and a civil-military partnership developed. This excessive demonstration of power and involvement in politics was later criticised by the subsequent martial law regime in 1958, which put the Civil Service of Pakistan (CSP) in an uneasy situation. Nevertheless, the bureaucracy once again gained its strong hold on civil administration back when the military government of Ayub Khan took the initiative to implement the Basic Democracies Order of 1959 and was desperately in need of efficient bureaucratic machinery. This initiative received enormous support from the CSP because the system of Basic Democracy came with a strong promise to put an end to the declining power of the bureaucracy and return it to its position as the strongest local community.

The CSP’s continuing domination during Pakistan period made the bureaucracy a target of fierce political criticism in Pakistan (and this legacy continued in independent Bangladesh) as they carefully safeguarded their colonial image to ensure maximum enjoyment of state position and power. As Khan and Zafarullah observed, ‘they manifested a negative attitude toward politicians, on the one hand, and a paternalistic

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207 Jahan and Shahan, above n 166, 320, where the authors cite M M Khan and H Zafarullah, ‘Politics of Bureaucracy in Bangladesh’ in A Farazmand (ed), Handbook of Comparative and Development Public Administration (Mercel Dekker, 1991) 651, 651.
210 Jahan and Shahan, above n 166, 321.
attitude towards the common man, on the other’,\(^\text{211}\) earning the disregard of both. This subsequently encouraged political parties in power to create a civil administration, which would be free from such an ‘elite’ mind-set. Consequently, in newborn Bangladesh, the bureaucracy would be heavily criticised by prominent politicians for its malfunctioning\(^\text{212}\) but this would hardly improve the image of politicians to the general populace. Political turmoil struck Bangladesh again in 1975 when a military authority came into power after the assassination of the President of the independent Bangladesh along with almost his entire family in a military coup just four years after the country’s independence.\(^\text{213}\) In the post 75 period, ‘due to the colonial heritage, distrust towards political leaders and paternalistic attitude to the citizen on the part of the bureaucracy, an effective partnership was built’\(^\text{214}\) and bureaucracy quickly became allied with the martial law administrator. This continued in subsequent martial law regimes too.

The military–bureaucracy relationship has been mutually advantageous for both groups. The bureaucrats have all along manifested an aversion for politicians. They seem to be allergic to political control and accountability. On the other hand, they are comfortable in a work environment that is impersonal, formal, and legal-rational and where the value system of political structures does not impede bureaucratic norms.\(^\text{215}\)

When finally democracy was restored in 1990, this rivalry between the political forces and the bureaucracy entered an expected, yet interesting, phase. Governments began to increase their executive control over the bureaucracy by centralising decision-making powers. A centralised decision-making power means almost unrestricted control over public expenditure, which would ultimately allow politicians to maintain a patron-client relationship with their loyal followers.\(^\text{216}\) Politicians can use public resources and other facilities to ‘encourage’ people to be loyal to them. Persons to whom patronage is


\(^{212}\) Jahan and Shahan, above n 166, 321.


\(^{214}\) Jahan and Shahan, above n 166, 321.


extended in return extend their support to the political party or politicians; this is the very ground that the political power of politicians is based upon. Generally, this patronage means ‘the instrumental use of positions of power to distribute jobs, goods, and other public decisions to partisan supporters’ that is, the illicit practice of directing public resources to friends and followers.

When the politicians started to cultivate this relationship with their clients, they soon engaged in ‘state-capture’ in the form of the extreme abuse of public resources. Markowitz warned that this practice might have serious consequences. The political elites who have the position of ‘client’ in this case may start viewing political ‘patronage a “problem-solving network” from which information, resources, and social mobility can be obtained’. This may ultimately make them heavily reliant on political patronage and encourage them to create pressure on their patron to bring such changes in state institutions as would suit their political ideology. In the case of Bangladesh, one study indicated that ‘[p]artisan politics seemed to permeate all aspects of public life and this penetration of politics had an adverse impact on the structure and operation of the public institutions’.

This position of the politicians in Bangladesh made them the ‘immediate beneficiary’ of the system that brought changes in the system not for the public interest but only to ensure their return to power (that is, winning next election). They even politicised the bureaucracy by recruiting, posting and promoting party loyalists in important positions in order to ensure administrative support for their political agenda and also to weaken

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219 See generally Markowitz, above n 217, 159–61.
220 Ibid 161, where the author quotes Javier Auyero, ‘From the Client’s Point(s) of View: How Poor People Perceive and Evaluate Political Clientelism’ (1999) 28(2) Theory and Society 297, 301.
the cycle of the ‘elitist mode of operation’ of the bureaucracy which, of course, was also contrary to any systematic change in the administration.  

2.3.3 A Cultural Explanation

Even after an historic account of the bureaucracy of Bangladesh and its relationship with politics, it might be interesting to see how some well-known cultural theories view these issues. Taiabur Rahman explored the established cultural theories proposed by Thompson and Hofstede in a bid to explain how the dominant culture of Bangladesh influences social interaction and the body politic.

2.3.3.1 The Cultural Landscape of Bangladesh Society

Kochanek indicated that Bangladesh appeared to be an hierarchical society despite the fact that it is a homogenous community in terms of race, religion, and language. That means, the society could be characterised by high grid values which were originally shaped by a Hindu religious culture and its inherent caste system as well as colonial heritage based on a master-slave relationship, and high group values, influenced by Islam — the major religion of the country — that (by way of contrast) advocates classlessness and fraternity, for instance.

The high grid values of Bangladeshi society are largely based on ‘inequality’, where the relationship between elites and commoners is governed by detailed implicit rules that ensure that a social distance between these two groups is carefully maintained. On the other hand, Islam stresses ‘group value’, which has received general acceptance by the

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224 Jahan and Shahan, above n 166, 323.
masses irrespective of their religious belief. Some research has identified that ‘uncertainty avoidance’ is high in this society where ‘collective norms’ are dominant. That is to say, only a low level of trust is placed on people who are not member of the family or group. This ‘low trust’ is often a dominant cause of why society places so much importance on consolidation of the hierarchy and the formulation of formal rules in organisations and political institutions.

Jamil has said that many of the features that we observed in the organisational context are also present in smaller social units, such as families. The head of the family holds the superior position and the rest of the members are subordinates who generally feel comfortable working under the head’s command and supervision rather than enjoy equal privileges. The superior will provide patronage and favour while subordinates will show loyalty and respect. Generally, questioning a superior’s orders or decision or confronting them openly is not common practice and is viewed as ill mannered. Hofstede’s cross-cultural study which involved comparing societies against the hierarchical one proposed by Thompson maintained that Bangladesh principally belongs to the ‘hierarchical society’ and as a result, the society manifests the following features (among others).

**Patron-client Relations**

This is an important feature of Bangladeshi society. People with higher rank and power have maximum control over the production and supply of resources, which puts them in the position of patron and forces the rest of the society to assume the position of client.

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This system creates a higher dependency of vulnerable groups on the stronger. People of lower rank depend on the higher rank for various types of material benefits since the latter controls the labour and services.

**Factionalism**

While Bangladeshi society has not many major socio-economic splits, yet, group conflict is prevalent with its own unique features. Often a political alliance secures power but soon falls apart due to an insufficiency of resources that prevents meaningful sharing of resources among the members of the alliance, a phenomenon that Lewis has called the ‘paradox of success’. Rivalry among political parties, their student wings, NGOs, various professional bodies (of lawyers and physicians, for instance) and associations is common.

**Favouritism**

Rahman stated that people in power often engage in corrupt practice in the form of preferential treatment of their friends, families, or clients. Often people view the public agencies as the central place of favouritism and bribery. Transparency International (Bangladesh) reported that a small group of people in powerful positions are heavily engaged in putting undue influence on the civil administration, particularly in regard to

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public procurement, and the misuse of development funds, as well as various other types of negative activities.\(^{240}\)

Siddqui indicated that *Tadbir* (the process of persuasion and personal lobbying) is very common in Bangladesh. People often use *Tadbir* to circumvent normal bureaucratic processes at public agencies. For example, when it is almost impossible for a normal person to reach a certain public servant with regard to any public service, they can solve the problem by approaching them through their ‘near and dear’ ones whom they cannot easily refuse. While *Tadbir* is often a common harmless practice that people use only to evade a cumbersome bureaucracy, it may also involve bribery. Bureaucrats themselves may also use it in order to pursue politicians to ensure political interference to guarantee a desired transfer and posting to select places or agencies,\(^{241}\) or employ another (to pursue other bureaucrat) to gain the cooperation of their counterparts in other public agencies (section 2.3.1.3).

**Lack of Trust**

Generally, the people of Bangladesh place a low level of trust in their politicians. Recent research has shown that the degree of people’s satisfaction with regard to the performance of the Members of Parliaments is low. In a Transparency International (Bangladesh) study, the average score of performance of the MPs was 4.18 on a 1 to 10 scale, with 1 being the least and 10 being the most satisfactory.\(^{242}\) Generally, people at large do not believe that anyone involved in politics in Bangladesh has any motive stemming from a desire to enhance the development of the society.\(^{243}\) This lack of trust may have important implications for the poor development of self-regulatory activities. As Peters (1995) argued, low social trust is a serious impediment to the development of


\(^{242}\) Akram, above n 240, 8.

non-government alternatives to civil administration. As Rahman similarly observed, ‘Reliance on formal rules and regulations [in public agencies] also results from low trustworthiness. Low trust is a manifestation of both high power distance and uncertainty avoidance’.

**Relaxed Accountability Mechanism for the Privileged**

Rahman stated that one of the notable features of social relationships and interaction in Bangladesh has its base on the notion of the roles of the ‘senior’ and the ‘junior’, where the former enjoys relaxed accountability. The relationship between parents and children, teachers and students, husband and wife, housewife and maid-servant, ministers and public servants, Prime Minister and members of the Cabinet are all governed by the unwritten concept of ‘superiority-inferiority’. While interacting with seniors, usually juniors are under more stringent accountability than are the seniors.

**Control over Information**

As Jamil noted, ‘bureaucratic decisions in Bangladesh are mostly available from internal sources such as superiors, colleagues, juniors, official circulars and gazettes rather than external sources. This […] evinces bureaucrats’ stronghold over information.’ In Bangladesh, bureaucracy essentially means ‘fundamentally domination through knowledge’ by highly experienced bureaucrats who have undergone extensive training and hold higher degrees often from renowned foreign universities.

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246 Ibid 10.
As indicated in section 2.1, the purpose of this chapter is to provide an overview of the bureaucratic environment of Bangladesh through which the AML initiatives must be implemented. Understanding this environment, especially its historical development and some important cultural features, will help the reader contextualise the unique features of the AML regime and its major issues. Based on the APG mutual evaluation report of Bangladesh (2009), the subsequent sections will provide a synopsis of the AML strategy in Bangladesh and briefly outline the major issues.

2.4 AML Regime in Bangladesh

Bangladesh was the first country in the South Asian Association for Regional Cooperation (SAARC) region to criminalise money laundering through the enactment of *Money Laundering Prevention Act 2002*. This Act was repealed as the *Money Laundering Prevention Ordinance* (MLPO) was promulgated in 2008. Currently, *Money Laundering Prevention Act of 2012* is in force.

2.4.1 General Situation of Money Laundering

Risks of Money Laundering

Bangladesh faces serious threats of money laundering due to a number of factors currently prevailing in its socio-economic context. Among these, corruption is the most prevalent. Under the *Money Laundering Prevention Act 2012* (s 2) corruption and bribery are on the top of the list of predicate offences, and proceeds of crime is defined as any property directly or otherwise obtained from a predicate offence (s 2). So much so that Iftekharuzzaman several years ago observed: ‘What is striking about Bangladesh is that corruption affects almost everyone and it is hardly ever punished’.

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250 Established in 1985 on the initiative of Bangladesh, SAARC is a regional organisation of eight south Asian countries, namely Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka together with Afghanistan, its most recent member. See generally, Lawrence Saez, *The South Asian Association for Regional Cooperation (SAARC): An Emerging Collaboration Architecture* (Routledge, 2012) 31–47.


252 Colin Knox, ‘Dealing with Sectoral Corruption in Bangladesh: Developing Citizen Involvement’ (2009) 29(2) *Public Administration and Development* 117, 119, where the author quotes Iftekharuzzaman,
comment that unfortunately appears no less applicable today. It is not hard to imagine a
direct link between corruption and money laundering when corruption is commonly
known as the abuse of public office for ‘private economic gains’, such as the receipt
of funds in bribes and the misappropriation of public funds to which the person has
access in their role) and money laundering, a concealment process. Indeed a form of
laundering is necessary to ensure that the personal gains from syphoning public monies
into private coffers or secreted for private use may go largely undetected. This can
include funds from bribes received to expedite projects or allocate funding in a
particular direction or kickbacks received as a reward for doing so, while at a lower
level small but repeated bribes may be received to ensure non-prosecution for minor and
even not so minor offences or to encourage prosecution for that same offence, as well as
simply to ‘short cut’ or be prioritised amid otherwise lengthy bureaucratic procedures
(as alluded to earlier). In such an environment, corruption is pervasive. Money
laundering plays an encouraging ‘role in the development of any crime that generates
revenues’. The ease with which it can be accomplished can have a direct impact on
the further extension of corruption in public office as well as in private business.

Besides corruption, drug and human trafficking are two other common crimes that make
Bangladesh vulnerable to money laundering in that they create demand for money
laundering services. Bangladesh is a trans-shipment point for illegal drugs, and often
smugglers use it as a transit country for heroin shipments through its airport and
seaport. As far as human trafficking is concerned, Bangladesh has been marked by its
role as a country of origin for the trafficking of men, women, and children for
purposes of forced labour and commercial sexual exploitation. A total of 407 traffickers
had been arrested in the period from 15 June 2004 to 15 February 2007 and 373 human
trafficking cases were instituted across the country.

‘Corruption and Human Insecurity in Bangladesh’ (Paper presented at Transparency International

253 Susan Rose-Ackerman, Corruption and Government: Causes, Consequences, and Reform (Cambridge
University Press, 1999) 75, quoted in Knox, above n 25, 118.

254 Masciandro, Takats and Unger, above n 1, 1.

255 APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of
Terrorism Bangladesh, above n 67, 18.

256 Ministry of Home Affairs (Bangladesh), ‘Bangladesh Country Report on Combating Trafficking in

257 Ibid.
Methods, Techniques, and Trends of Money Laundering

Since much of the economic activity in Bangladesh is cash-based, bulk cash smuggling is a common method of laundering along with structuring formal bank transactions. The Asia Pacific Group on Money Laundering (APG) indicated in their 2009 mutual evaluation report on Bangladesh that ‘Alternative Fund Transfer’, or in their terms, the ‘Alternative Remittance System’ is a common observable part of the Bangladesh economy, especially in regard to transnational financial transactions. APG stated that people use this method to both send illegally obtained money abroad and to receive legal inward remittances from migrant workers. In regard to the latter, according to the Ministry of Expatriates’ Welfare and Overseas Employment statistics, as of December 2012, more than 8.4 million Bangladeshi migrant workers were working across the world. In 2012, the value of inward remittances through formal channels was approximately USD 12.84 billion, but it is widely believed that the actual figures are far higher than official figures. For instance, there is a common belief that over 50 per cent of remittances comes through informal channels like Hundis or Hawalas.

Based on community trust and local culture, Hundis and Hawalas provide a quick, cheap, and convenient alternative to dealing with banks and filling out forms to an open account for migrants who have a limited education level and literacy. On top of that, most migrant workers come from rural Bangladesh where a banking service is extremely rare and due to the conservative social structures, the women especially do not establish a relationship with institutions such as traditional banks. Instead, they will trust a Hawaladar/Hundi operator in their community who is well aware of customary

However, some of the characteristics of these informal systems, such as ‘anonymity’ and ‘lack of transparency’, may make these informal funds transfer systems an attractive choice for money laundering and the financing of terrorism.  

2.4.2 Economic Growth and Money Laundering

The negative effects of money laundering on the economy have been thoroughly researched, in both academia and by industry. Top international organisations have published a number of papers on the consequences of ML and financial crimes in terms of economic growth. In a paper published by the International Centre for Criminal Law Reform and Criminal Justice Policy, Castle and Broomhall stated that money laundering ‘facilitates activities which are themselves intrinsically damaging: drug trafficking, corruption, embezzlement and tax evasion’. The World Bank has indicated that while harbouring large-scale criminal organisations and their illegal financial activity may appear both ‘good’ and ‘bad’ in the beginning (with upsides including increased employment, business activity, construction, cash flows), in the end the economic principle of Gresham’s law comes into operation and the ‘bad money drives out [the] good’. The region then faces the serious risk of being ruled by corrupt financiers and losing the integrity of its financial infrastructure, to the ultimate detriment of the entire economy as reputable sources of funding avoid the region, preferring to invest elsewhere.

In an ADB paper on the economic impact of money laundering, Brent Bartlett reiterated the risk to which the World Bank had also drawn attention, and warned that money laundering results in slow economic growth. It diverts national resources and promotes corruption, which ultimately reduce output in the economy’s real sector and distort the

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264 Zagaris, above n 263, 158–9, where the author cites R Barry Johnston, ‘Work of the IMF in Informal funds transfer systems, Regulatory Frameworks for Hawala and Other Remittance Systems’ (Monetary and Financial Systems Department, IMF, 2005) 1–2.


The phenomenon of money laundering may have rather a severe impact in developing economies due to certain inherent weaknesses that they have. Some recent research revealed that the informal cash-based economy in Nigeria offered an environment where the basic level of transparency in financial operations was absent, which ultimately contributed to economic digression and political instability. This research also indicated that ML may infiltrate the core of the financial and political structure resulting in investment instability, a loss of control over national economic policy, as well as undermine the growth of the legitimate private sector.

Starting from the early 1970s, Bangladesh’s economy is increasingly dependent on the privately owned garment manufacturing (or ‘ready made garment’) industry, which earn the largest chunk of its foreign currency (some USD 12.5 billion in 2009–10). From only 1.1 per cent during 1981–2 by 2008–9 this industry accounted for about 80 per cent of country’s total foreign exports. Considering some of the potential threats that ML may pose to the formal financial sector and the private investment environment of Bangladesh, the proliferation of ML is worth responding to with appropriate measures.

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269 See generally Aluko and Bagheri, above n 164, 442–6.
2.4.3 An Overview of the Financial Sector:

Banking Sector

Although there are various types of banks, insurance companies and non-bank financial institutions, the bank-based financial system dominates in Bangladesh. Until 1982, only state-owned commercial banks dominated banking sector. This monopoly resulted in poor customer service in and performance by the financial institutions. However, under intense internal and external criticism, eventually the Government had to introduce a reform plan to allow privatisation and decentralisation of banking services.272

In recent years, the banking system has greatly changed. The Government has allowed the creation of commercial and investment banks in the private sector. Now there are only 4 fully or majority state owned commercial banks (SOCBs) and 4 specialised banks (SDBs) (which are also fully or majority state owned), but 30 private commercial banks (PCBs) which are comprised of 23 conventional PCBs and 7 Islamic Shar‘iāh based PCBs. There are also 9 Foreign Commercial Banks (FCBs) operating in Bangladesh.273 Among these groups of banks, the 4 state owned commercial banks hold only 28.5 per cent of the industry’s assets but have the largest geographic coverage. With 3447 branches, they reach almost all districts and sub-districts of Bangladesh. In contrast, the 30 PCBs and 9 FCBs, mainly located in big cities and district headquarters, have altogether only 2900 branches although they hold 65.4 per cent of the industry’s assets.274

Other Institutions in the Finance Sector

Some other financial institutions in Bangladesh provide non-banking services with some specialised banking facilities. The insurance sector is relatively small and government policies allowed both public and private investment in this area to ensure

273 Bangladesh Bank, Banks (20 March 2013) <http://www.bangladesh-bank.org/fnansys/bankfi.php>, These are the scheduled banks. In addition there are 4 non-scheduled banks which offer only partial banking services: id.
healthy competition.\textsuperscript{275} Similarly, there are 29 investment, finance, and leasing companies operating under the licence issued by the Bangladesh Bank (the country’s central bank)\textsuperscript{276} but this sector has a very insignificant market share compared to the banking sector.\textsuperscript{277} One sector that is emerging rapidly in Bangladesh is the Capital Market. It is regulated under the Securities and Exchange Commission, and currently there are two stock exchanges in Bangladesh, one in Dhaka and the other in Chittagong. As of June 2011, the total number of listings on these exchanges was 705.\textsuperscript{278} In addition to this, some specialised banks and NGOs operate member-based micro-finance institutions, which are also growing rapidly. Money-changers also provide money exchange services to travellers within prescribed limits.\textsuperscript{279}

**Foreign Exchange Controls**

Non-residents need to follow a strict foreign exchange rule in Bangladesh. They may open a bank account only with the prior approval of the central bank, and in the case of a proposed investment in the securities market, they need to use a freely convertible foreign currency that they must remit from abroad through a formal banking channel.\textsuperscript{280} For foreign tourists, money-changers can release foreign exchange of up to USD 5000 and in the case of incoming passengers holding more than USD 5000, there is an obligation to make a declaration to the Customs Authority.\textsuperscript{281}

**Designated Non-Financial Businesses and Professions (DNFBPs)**

Since gambling (a common means of laundering funds elsewhere) is strictly illegal, there are no legal casinos in Bangladesh; however, there are approximately 1000 real estate companies operating in Bangladesh but only about 400 of them are registered


under the appropriate government-approved industry body.\textsuperscript{282} It is easy to invest money in this sector and then use it as a means of layering in the laundering process.

Among other DNFBPs, there are several hundred jewellery stores. These are located all across Bangladesh but this business is not well developed. The jewellery business in Bangladesh is mainly involved in the retail of precious metal and stones. The Bangladesh Bar Council is the professional body for the advocates, but there is no official record about the exact number of legal professionals providing financial advices to their commercial clients. In addition, notaries in Bangladesh generally have very limited role with regard to activities of DNFBPs as indicated in the FATF standards.\textsuperscript{283}

\section*{2.4.4 Overview of AML Strategy}

The domestic AML strategy means the adoption of international AML standards at a national level. Such standards come primarily from two major sources. Firstly, several United Nations conventions are involved in the development of global AML/CFT standards. These include, for example, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organized Crime (2000), the UN Convention against Corruption (2003), and the International Convention for the Suppression of the Financing of Terrorism (1999). Secondly, there is a major initiative outside the UN that has been taken by FATF through the adoption by many nations of its Recommendations. Although the FATF Recommendations lack the status of international legal instrument,\textsuperscript{284} they have enjoyed broad acceptance as global standards for several reasons.

The relevant UN resolutions and the FATF Recommendations have fundamental connections when it comes to their core issues and policies. The FATF Recommendations require jurisdictions to take a number of preventive measures and in case of violation react with such punitive action as is stated by UN conventions. In addition, the executive boards of the International Monetary Fund (IMF) and the World Bank have accepted the FATF Recommendations as the global AML standard. These organisations even cooperate in the mutual evaluation and assessment of state parties on

\textsuperscript{282} Ibid
\textsuperscript{283} Ibid 23.
\textsuperscript{284} Jensen and Png, above n 9, 111.
AML compliance issues.\footnote{285} Therefore, state parties or members of these organisations, including the FATF Associate member parties that implement FATF recommendation at a regional level, are under pressure to implement the FATF Recommendations at a national level.

The FATF Recommendations mainly cover core three areas of a jurisdiction as far as their AML initiatives are concerned: the criminal justice system and law enforcement, the financial system and its regulations, and international cooperation,\footnote{286} as well as some selected aspects of the non-financial sector.\footnote{287} Below is a description of the AML strategy adopted by Bangladesh in line with the FATF recommendations.

Since banking is the core of the financial sector, the Bangladesh Government has taken initiatives to implement AML measures in the banking sector on a priority basis, and then to implement similar measures subsequently in the non-bank financial institutions, the money exchange houses, and the insurance sector.\footnote{288} In September 2010, all stock dealers and stockbrokers also came under reporting obligations.\footnote{289} However, designated non-financial professionals — such as accountants, lawyers, real estate developers, and dealers in precious metals and stones — had no reporting obligations until they were finally included as ‘reporting organisation’ under section 2(w) of the \textit{Money Laundering Prevention Act 2012}.

\subsection*{2.4.4.1 Criminal Justice System and Law Enforcement}

\textbf{Legal Framework}

The highest court of Bangladesh is the Supreme Court. It is has two divisions, the High Court Division and the Appellate Division. The Supreme Court is independent in its exercise of judicial functions.\footnote{290} In addition, there are subordinate courts, tribunals, and

\footnotetext{285}{Ibid.}
\footnotetext{286}{Johnson, ‘Third Round FATF Mutual Evaluations Indicate Declining Compliance’, above n 10, 51.}
\footnotetext{287}{Jensen and Png, above n 9, 112.}
\footnotetext{289}{Anti-Money Laundering Department, Bangladesh Bank, \textit{Inclusion of New Reporting Agencies and Predicate Offenses in Money Laundering Prevention Act, 2009}, AML Circular No 26, 30 September 2010.}
special courts at the district levels. The relevant law establishes the various subordinate courts and allocates their various responsibilities to them. For example, the Special Court was established under the *Money Laundering Prevention Act 2009* for trying money laundering offences.\(^{291}\) This Act has criminalised money laundering and designated the Anti Corruption Commission as the investigating authority for ML related offences,\(^{292}\) and declared certain offences as predicate offence.\(^{293}\)

**Anti Corruption Commission (ACC)**

In addition to numerous social and political problems, the issue of corruption in all spheres of life is a serious concern in Bangladesh.\(^{294}\) The Government took the most significant step against corruption through the enactment of *Bangladesh Anti Corruption Act 1974* and the establishment of the Bureau of Anti-Corruption (BAC). Later, the *Anti Corruption Commission Act 2004* came into force. It provided for the establishment of the Anti Corruption Commission (ACC).\(^{295}\) The ACC — whose main function is to fight corruption, through investigation and prosecution along with measures like prevention, education, and advocacy — is an independent commission, which answers only to the Parliament.\(^{296}\) The *Money Laundering Prevention Act 2009* designated the ACC as the sole agency responsible for the investigation and prosecution of ML cases.\(^{297}\) Although the ACC gained public confidence through its drive against corruption during the Caretaker Government of 2007,\(^{298}\) the ACC has also been viewed (and continues to be so regarded) as the ‘result of [external] pressure and not of utmost

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\(^{291}\) *Money Laundering Prevention Act 2009* (Bangladesh) s 9, which corresponds to the *Money Laundering Prevention Act 2012* (Bangladesh) s 9.

\(^{292}\) *Money Laundering Prevention Act 2009* (Bangladesh) s 4, which corresponds to the *Money Laundering Prevention Act 2012* (Bangladesh) s 12.

\(^{293}\) *Money Laundering Prevention Act 2009* (Bangladesh) s 2(q), which corresponds to the *Money Laundering Prevention Act 2012* (Bangladesh) s 2(cc).


\(^{297}\) *Money Laundering Prevention Act 2009* (Bangladesh) s 9, which corresponds to the *Money Laundering Prevention Act 2012* (Bangladesh) s 12.

\(^{298}\) Knox, above n 252, 120.
sincerity …[as] the Act is vague in many respects, for instance, accountability, chain of commands and so on’. 299

Ministry of Home Affairs

The Ministry of Home Affairs is an important ally in the fight against money laundering. Primarily this ministry is responsible for the maintenance of law and order in the country through fighting against criminal activities and those who perpetrate them, investigating criminal cases, controlling smuggling, combating human and drug trafficking and operating rescue missions. Public agencies like the Bangladesh Police and its different branches, border security forces (the Border Guard Bangladesh or BGB), the coastguard, the Department of Narcotics Control, the Department for Passports and Immigration are among others work under this ministry. There are specific Acts of the Parliament that have established these agencies. The Acts and rules concerned clearly set forth each agency’s formation, functioning, and jurisdiction. For instance, the Department of Narcotics Control and the Border Guard Bangladesh are formed by and operate under the Narcotics Act 1990 and BGB Act 2010 respectively, under separate departments within the ministry. 300 This ministry also formulates and implements immigration related policies, 301 and handles incoming and outgoing requests for extradition. 302

The Rules of Business 1996 governs the various ministries of the government, their business, and relationship with each other. These Rules provide definitions of various public agencies, lays out their basic structures, delineates their authority and allocates business. For example, the Ministry of Foreign Affairs issues the necessary instructions regarding the manner of authentication of international agreements and treaties under Rule 5(iii), and the Ministry of Law, Justice and Parliamentary Affairs are authorised

299 Ehsan, above n 295, 52.
under Rule 5(iv) to issue instructions with regard to making and execution of contracts on behalf of the President (Government). 303

2.4.4.2 Financial System Regulations

Ministry of Finance

The Finance Division of Ministry of Finance primarily develops AML policies in collaboration with the Ministry of Law, Justice and Parliamentary Affairs. This includes preliminary discussion on any proposed relevant bill, drafting of the bill and other similar activities. 304

Bangladesh Bank (Central Bank of Bangladesh)

This is the central Bank of Bangladesh and the apex regulatory body for the country’s monitory and financial system. It formulates and implements monitory and credit policies, regulates and supervises banks and non-bank financial institutions, manages the country’s international reserves, issues currency notes, collects and furnishes credit information and prevents money laundering (among its numerous responsibilities). 305

The Bangladesh Bank is the government entity that is responsible for the administration of the money laundering prevention legislation. 306

Financial Intelligence Unit

Bangladesh has formed an FIU within the Central Bank whose main function is to take the necessary steps to prevent money laundering and terrorist financing. It has the legal authority under the Money Laundering Prevention Act 2009 to implement the country’s AML policies. 307 It receives and analyses Suspicious Transaction Reports (STRs) and Cash Transaction Reports (CTRs). After analysis of the material, if FIU officers have reason to believe that a report suggests a probable violation of the applicable law, then

303 See generally Rules of Business 1996 (Bangladesh) r 2–5.
306 Bangladesh Bank, Bangladesh Financial Intelligence Unit <http://www.bangladesh-bank.org/aboutus/dept/dept_details.php>, see also Money Laundering Prevention Act 2009 (Bangladesh) s 23, which corresponds to the Money Laundering Prevention Act 2012 (Bangladesh) s 23.
307 Money Laundering Prevention Act 2009 (Bangladesh) s 24, which corresponds to the Money Laundering Prevention Act 2012 (Bangladesh) s 24.
they disseminate such reports with their findings to the appropriate investigating authority. The FIU maintains database of all STRs and CTRs.

The FIU is also responsible for issuing the necessary guidance, notifications, and clarifications and even the conduct of training to Reporting Entities on AML compliance matters. FIU staff regularly inspect, monitor, and evaluate the AML compliance of the Reporting Entities. The FIU’s other important task is to maintain contact with other FIUs across the globe and exchange intelligence under bilateral agreements.

2.4.4.3 International Cooperation

Ministry of Foreign Affairs

The Ministry of Foreign Affairs handles requests for international cooperation. On behalf of the Government of Bangladesh, it formulates and executes foreign policy based on the guidance provided in the Constitution. The policies they formulate have their basis in the relevant domestic and international laws, and in other customary sources of international law, including international treaties to which Bangladesh is a party.

Ministry of Law, Justice and Parliamentary Affairs

Apart from acting as the administrative ministry for the subordinate judiciary, the Office of the Attorney General, the Bar Council, the Office of the Administrator General and the Official Trustee, the Public Prosecutors and the Notary Public and so on, this ministry handles all legislative matters, including drafting of statutes and their amendments. The Government consults them in regard to all proposals for legislation, legal questions arising out of government cases, the preparation and vetting government

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308 Bangladesh Bank, Bangladesh Financial Intelligence Unit, above n 306.
309 Money Laundering Prevention Act 2009 (Bangladesh) s 26, which corresponds to the Money Laundering Prevention Act 2012 (Bangladesh) s 26 (3).
310 Constitution of the People’s Republic of Bangladesh art 145(a).
contracts, international agreements, and the interpretation of law, and whenever the Government is involved in any civil or criminal proceedings.\textsuperscript{312}

**Office of the Attorney General**

The President appoints the Attorney-General for Bangladesh. The Office of the Attorney General deals with legal matters of the state, which includes giving legal advice to the Government and pleading government cases before any Court. The Ministry of Home Affairs and the Office of the Attorney General are the central authorities that deal with any Mutual Legal Assistance issues with foreign countries.\textsuperscript{313}

### 2.4.5 AML Regime in Bangladesh: The Issues

The APG in their 2009 Mutual Evaluation Report identified a number of issues with regard to the AML regime of Bangladesh. The following sections of this chapter draws on the relevant part of that report and are presented here as background information with a minimum of critical analysis. It may further be noted that the data used here was officially published in the Second Evaluation, which was adopted by the APG’s plenary on 8 July 2009.\textsuperscript{314} During fieldwork and data collection between July and December 2010, the analyst requested that the Bangladesh Financial Intelligence Unit provide him with the current data. In response, they advised the analyst that they had not officially published any such updated data since the evaluation. They further advised the analyst to consult the website of the Central Bank of Bangladesh, APG, and FATF for latest updates. However, as of March 2013 no significant updates were available save a number of FATF news items referred at the end of this chapter.\textsuperscript{315} This is indicative a major problem with the operation of many AML systems in developing nations and in Bangladesh in particular. There is simply no practice of regularly publishing even the most rudimentary data on the operation of the system.

Beginning in 1992, the FATF mutual evaluation system is regarded as one of its cornerstones and a significantly successful initiative. It is a comprehensive and objective


\textsuperscript{314} See generally ibid.

\textsuperscript{315} For further detail please see section 2.4.5.4 of Chapter 2.
approach to the assessment of the level of compliance of the jurisdictions with the FATF Recommendations. As Sansonetti has observed, ‘This rigorous scrutiny through mutual evaluation, public disclosure and its associated peer pressure has contributed significantly to the development of AML … regimes around the world’. In general, this practice contributes in at least in two ways; first, it assesses the extent to which a certain member has implemented international AML standard, and, secondly, it identifies some areas of concern where the member’s performance falls short of global standard.

Before we go more deeply into this discussion, it might be useful to explore what ‘implementation’ and ‘compliance’ mean in a general sense. As Weiss and Jacobson explained, implementation and compliance are different. For a country, implementation would refer to such measures that they are required to take at national level to give effect to the international agreements that they have entered. This may include enacting a piece of legislation, formulating a new policy, or introducing a new standard for professional activities and the like. Compliance, however, could be difficult to measure in the sense that it ‘involves assessing the extent to which governments follow through on the steps that they have taken to implement’ certain international agreements. Michael Clarke detailed a number of other elements compliance requires. He indicated that ‘regulation’ is necessary for compliance as an important step for a business to be able to participate actively in regulatory practice. This also involves identifying risks and assigning the appropriate body the responsibility to ensure that the rules are followed.

For the level of compliance with each FATF recommendation, a country is rated ‘C’, compliant, ‘LC’, largely compliant, ‘PC’, partially compliant or ‘NC’, non-compliant. This rating is done on the basis of certain essential elements that must be present in order to demonstrate full compliance. A rating of ‘C’ means that a recommendation is

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317 Jensen and Png, above n 9, 111.
319 Ibid.
fully observed; and ‘LC’ indicates that certain essential criteria are being fully met with some minor deficiency present. Similarly, ‘PC’ refers a situation where some substantive actions have been undertaken and where compliance by the member is observed in relation to some of the essential criteria of a recommendation; and ‘NC’ indicates major shortcomings in meeting essential criteria.322

After the third round of FATF mutual evaluations in 2009, some studies indicated a decline in the overall compliance level, which can be explained by the FATF members’ unwillingness, inability or even resistance to entertain changes.323 This finding implied that ‘there are a lot of holes in the financial framework through which a money launderer could operate, even with FATF members.’324 When it comes to evaluating the members of FATF Style Regional Bodies, the result is again disappointing but not surprising.

Among all 118 countries that have been evaluated on their level of compliance with the global AML standards from 2004 to 2011, around 24 of them are developing member countries (DMCs) of the Asian Development Bank. After the mutual evaluation process, it was found that although some of the DMCs had made commendable progress in the areas of concern, that level still falls short of the global standard, while the general level of compliance of these countries was not high. The study showed that around 75 per cent of the DMCs were rated PC or NC for 18 of the FATF 40 Recommendations.

There is no surprise that some of the main reasons for their lower rating for compliance were their inadequate infrastructure and resources, a lack of skilled human resources (in public, private and even in law enforcement agencies) and lower level of technical expertise of these professionals in comparison with their counterparts in the developed world.325

In 2009, the Asia/Pacific Group on Money Laundering conducted a mutual evaluation of Bangladesh’s level of compliance with the FATF 40 Recommendations. Bangladesh has been rated ‘C’ on 1 recommendation and ‘LC’ on 5 recommendations. On 23

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322 FATF, ‘Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special Recommendations’ (February 2009) 6.
323 Ibid 51.
324 Jensen and Png, above n 9, 110–15.
recommendations, they were rated ‘PC’ and on the remainder, 11, ‘NC’. Figure 2 is a graphical presentation of this rating. For this graph, consider that the ‘FATF’s description on how assessment levels are measured, ‘NC’ is set to zero, ‘PC’ to 0.33, ‘LC’ to 0.67 and ‘C’ to 1.0. This allows average compliance to be calculated for each recommendation. With One ‘C’, Five ‘LC’s, 23 ‘PC’s and 11 ‘NC’s, Bangladesh has an average compliance level of 0.29, which is below the level of level of ‘PC’. This may be noted here that often ‘PC’ may overstate the level of compliance and thereby give a distorted view, because in reality ‘PC’ is not far above ‘NC’.

![APG Mutual Evaluation 2009: Bangladesh](image)

Note: APG's mutual evolution of 2008 (published in 2009) was based on the 2003 version of the FATF Recommendations. For the corresponding 2012 FATF Recommendations, please see the International

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326 Johnson, ‘Third Round FATF Mutual Evaluations Indicate Declining Compliance’, above n 10, 49. Johnson’s process is used by the analyst in this analysis of the figures for Bangladesh.
In three major areas of compliance (section 2.4.4), as mentioned earlier, Bangladesh’s average level of compliance is lower than ‘PC’, means; it has taken only a few substantive actions in compliance with a few essential criteria, and there are major shortcomings, as they have not yet met the large majority of the essential criteria. Below, the analyst summarises the report of the APG Mutual Evaluation 2009 on Bangladesh.

### 2.4.5.1 Inadequate Financial System Regulation

In order to control money laundering Bangladesh took a number of preventive measures in accordance with the international AML standards. Starting from 2002 when the first Money Laundering Prevention Act was enacted through the enactment of MLPA 2009, various Bangladesh Bank AML circulars and guidance notes were published in order to regulate the financial system. The FIU published the circulars under the rule-making power provided in the MLPA 2002, the MLPO 2008, and other relevant Acts regulating the financial sector. A focus group prepared the Guidance Notes on the Prevention of Money Laundering. As an important step toward a preventive approach, the FIU introduced a Customer Due Diligence programme. The Assessment Team, however, mentioned that the same standard of CDD applied for all types of reporting entities, and the exclusion of some financial institutions (like the post office, securities companies, and various insurance companies) did not reflect a risk-based approach.\(^\text{328}\)

In 2008, a direct prohibition on anonymous accounts was introduced for the first time. Earlier, in 2003, the Guidance Notes required reporting entities (mainly banks) to update the Know Your Customer (KYC) information on their customers with accurate identification data by 31 January 2010. The Assessment Team indicated that the time


allowed for this compliance was too long and thus it was not possible for them to determine if fictitious or numbered accounts were operating in Bangladesh.\textsuperscript{329} In addition, the reporting entities did not have a comprehensive system available to check the background of Politically Exposed Persons.\textsuperscript{330} The Assessment Team commented that the overall implementation of the CDD requirements was weak because of the existence of a poor culture of compliance.\textsuperscript{331}

\textbf{2.4.5.2 Poor National and International Cooperation}

Another important aspect of the AML Regime is to ensure effective communication among domestic and international partners. Bangladesh formed a National Committee on AML in order to coordinate AML policy formulation and its implementation in the financial sector. The Committee was comprised of high-level officials from different ministries and the Central Bank. During an onsite visit, the Assessment Team found that the ACC was outside this coordination committee, which, according to them, was a sign of significant gap in interagency coordination. The National Committee played a vital role in suggesting or considering suggested changes in the AML legislation. Therefore, the ACC’s absence from such a high-level committee appeared to be a serious setback that might hamper effective AML policy formulation and implementation. Such a lack of interagency coordination was further evident through the exclusion of other key agencies in AML control efforts, for example, the Securities and Exchange Commission.\textsuperscript{332}

\textbf{Mutual Legal Assistance (MLA)}

Bangladesh has taken a number of steps in order to pursue international cooperation on AML and related issues. For example, Bangladesh has become a member of the Asia Pacific Group on Money Laundering (APG), and signed the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. It has also acceded to the International Convention for the Suppression of the Financing of Terrorism and partially adopted some provisions of the Convention against Transnational Organized

\textsuperscript{329} Ibid 84–5.
\textsuperscript{330} Ibid 96.
\textsuperscript{331} Ibid 100.
\textsuperscript{332} Ibid 146–7.
Crime (Palermo Convention). In addition, Bangladesh has become a party to the UN Convention against Corruption and has taken some steps to implement UN Security Council Resolutions 1267 and 1373 relating to suppression of terrorism financing.\(^{333}\)

Although Bangladesh expressed its willingness to cooperate with international agencies on AML control, there is no comprehensive legal framework in Bangladesh to facilitate Mutual Legal Assistance (MLA) to or by Bangladesh, as the Mutual Evaluation Report indicated. It is, however, possible for Bangladesh to consider an MLA request on a case-by-case basis relying on the direct application of the international conventions that the country has ratified.\(^{334}\) During the onsite visit of the Assessment Team in 2008, Bangladesh was preparing to apply for membership of the Egmont Group of FIUs in order to benefit from the international network of transnational intelligence sharing between the FIUs. However, in the absence of such a membership Bangladesh included some provisions in the existing legislation so that it could sign a Memorandum of Understanding with other nations and organisations and share information on ML related cases.\(^{335}\)

The MLPA 2009 empowers the Government and, where applicable, the Central Bank, to enter into bilateral or multilateral legal contracts, conventions or any agreement approved under international laws, with foreign countries or organisations in order to achieve the objectives of the AML regime.\(^{336}\) The Act also allows the Government and the Central Bank to make requests to foreign governments or organisations for ‘relevant information’ and also to comply with similar requests if such sharing is not contrary to national interests.\(^{337}\)

However, the Assessment Team referred to Criterion 36.1 of the AML/CFT Evaluation and Assessments Handbook for Countries and Assessors\(^{338}\) and observed that the provisions contained in the MLPA 2009 falls short of what required by the international

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\(^{333}\) Ibid 148.
\(^{334}\) Ibid 149.
\(^{335}\) Ibid 62.
\(^{336}\) _Money Laundering Prevention Act 2009_ (Bangladesh) s 26(1), which corresponds to the _Money Laundering Prevention Act 2012_ (Bangladesh) s 26(1).
\(^{337}\) _Money Laundering Prevention Act 2009_ (Bangladesh) s 26(2), which corresponds to the _Money Laundering Prevention Act 2012_ (Bangladesh) s 26(2).
standard. They stressed that they were unable to ensure if Bangladesh would be able to provide the highest possible range of mutual legal assistance using the existing legal framework. The Assessment Team also emphasised that the number of predicate offences under the existing law was inadequate to cover full range of ML matters.339

In Bangladesh, the Ministry of Home Affairs and the Office of the Attorney General are the competent authorities to handle MLA cases. They handle such requests on case-by-case basis. Although the authorities have so far indicated (until 2008) that they had received from 10 to 12 MLA requests and responded positively to all of them, they failed to provide records on exactly how many MLA requests they made or that had been responded to, nor did they indicate the nature of such requests.340

The APG Mutual Evaluation Report asserted that MLA related legislation was incomplete, which forced Bangladesh to rely on the direct application of UN conventions. It also mentioned that unless the number of predicate offences was increased to cover more offences this would continue to impede the effectiveness of the MLA for money laundering related cases. The Team indicated that although there was a lack of appropriate procedures to deal with MLA requests, the record did not show that even the minimum provisions available were being properly implemented. In addition, the MLPO (2008) had limited provisions to deal with freezing and confiscation orders outside Bangladesh.341

2.4.5.3 Weaker AML Legal Framework

During the onsite visit of the APG, the AML legal framework in Bangladesh was based on the Money Laundering Prevention Ordinance (MLPO) 2008 (subsequently passed by Parliament as the Money Laundering Prevention Act (MLPA) 2009. The APG indicated that the MLPO’s list of predicate offences under section 2(q) had considerable omissions as it failed to include offences like insider trading and market manipulation342 although the Central Bank regarded them as dangerous problem that had in the past led

340 Ibid 149.
341 Ibid 156.
342 Ibid 33.
to market volatility. The list also had failed to include crimes like piracy, counterfeiting, and piracy of products, sexual exploitation, and smuggling (save smuggling of currency).

The Mutual Evaluation Report expressed significant concerns about Bangladesh’s partial compliance with Recommendation 2 (money laundering offences). It criticised the provision of punishment for ML offences committed by legal persons as disproportionate or dissuasive. During the onsite visit, no consolidated statistics relating to investigation and prosecution were found. The Assessment Team showed concern about effectiveness of the existing arrangements for the investigation and prosecution of ML offences.

### 2.4.5.4 Inherent Problems of the FIU and the AML Reporting System

The FIU of Bangladesh is empowered under section 23 of the MLPA 2009 to receive STRs and CTRs from the reporting entities. The FIU received STRs in a paper format via messengers or facsimiles and CTRs on CD-rom. Subsequently, the FIU’s analysis wing manually entered this data onto the FIU database. They received CTRs on a monthly basis. The APG Mutual Evaluation Report stated that in the analysis phase the FIU sometimes worked in collaboration with the Criminal Investigation section of the Department of Police in order to access the police database. However, during interviews participants from the FIU indicated that in general the bureaucratic environment was very unfavourable to their accessing most law enforcement databases.

The APG Assessment Team found that the FIU’s inadequate access to public databases seriously impeded their analysis. The FIU indicated that most public agencies preserved their information in a manual format and any request to access this information would require a lengthy formal bureaucratic process. The FIU, unfortunately, did not have direct access to any financial administrative or law enforcement databases, including the database of the Police, Customs and Tax departments. After the FIU had made a

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345 Ibid 37.

formal request, the response time also varied, and requests for the provision of information would be handled on a case-by-case basis. Even in a matter of urgency, there was no specified way to access a database of the law enforcement agencies, which always delayed the process of analysis.\textsuperscript{347}

The FIU forwarded their analysed STRs and CTRs to law enforcement agencies for further action. Under section 23(2) of the MLPA 2009, the FIU could disseminate those reports to the national investigating authority for investigation and prosecution purposes, and section 12 of the same Act designated the Anti Corruption Commission as the investigating authority for all ML related cases.\textsuperscript{348} It was, however, not clear, why the ACC should be the investigating authority when proceeds could be generated from offence other than corruption, for instance, smuggling or piracy. In that case, different types of skills and resources would be necessary to investigate such predicate offences,\textsuperscript{349} knowledge, resources and skills that may not be available to anti-corruption experts.

The Assessment Team noted that the FIU had sufficient operational independence, autonomy, and apparently had secured office and information resources. They indicated that the head of the FIU was able to recruit and retain skilled human resources for the FIU.\textsuperscript{350} However, the experts argued that:

\begin{quote}
Policymaking is a knowledge intensive business. Therefore, even the most competent personnel cannot develop well-informed policies if they do not have access to sufficient data, methods and analytical tools. From this perspective, knowledge is a resource that has to be preserved and developed in order to ensure that the public sector becomes a “learning organization”.\textsuperscript{351}
\end{quote}

The Report mentioned the number of AML reports the FIU received, analysed and finally disseminated had sharply declined (elaborated in section 5.3.1) due to several

\textsuperscript{347} Ibid 59–60.
\textsuperscript{348} Ibid 61.
\textsuperscript{349} Under \textit{Money Laundering Prevention Act 2012} (Bangladesh) s 9, ML related predicate offences shall also be considered as scheduled offences of the Anti Corruption Commission.
political and legislative constraints and despite Bangladesh’s several important initiatives to strengthen the FIU’s capacity.352

The APG identified some specific reasons in the Mutual Evaluation Report as to why the AML reporting system remained so ineffective. One major reason for Recommendation 26 (competent authorities, their powers and resources) being rated at the ‘PC’ level was that the FIU did not have free ‘access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it required to properly undertake its functions, including the analysis of STRs’.353 Another reason given was the poor physical infrastructure of the FIU. This included lack of proper IT equipment, software, information storage facilities and the absence of an uninterrupted power supply — these jointly resulted in reducing the effectiveness of the AML reporting system in Bangladesh over the years.354

An important source of information for AML regulators could be cross border declarations or disclosures. In order to control physical cross border transactions of currency, Bangladesh applies the Foreign Exchange Regulation Act (FERA) 1947 together with similar provisions in the Customs Act 1969. The Customs Act controls export and import of any goods of a specified description into and out of Bangladesh by air, sea or land; and FERA controls currency transactions, requiring passengers/bearers carrying coins, notes, postal notes, money orders, cheques and other forms of ‘currency’ to declare this to the appropriate authority using the specified form.355

However, the Assessment Team found that there was no clear policy to ensure coordination between border enforcement agencies in general, and, a serious lack of cooperation between those agencies and the FIU or the ACC regarding the detection and investigation of ML cases in particular. The Assessment Team concluded that the absence of any mechanism that could ensure that the FIU would be able to share information obtained by authorities under FERA was a ‘serious deficiency’.356

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352 APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh, above n 67, 64.
353 Ibid 65.
354 Ibid.
355 Ibid 75.
What further alarmed the APG was the slow progress and the low success rate of investigation and prosecution of ML related cases. Records showed that in 2002 there had been a good number of investigations in progress. The Assessment Team observed during onsite visit in August 2008 that all those original cases were still pending. The FIU further informed the APG Assessment Team that only three cases were being investigated under the *Money Laundering Prevention Ordinance 2008*. Finally, the Assessment Team concluded that the criminal justice system of Bangladesh was affected by a serious court backlog.

The APG Mutual Evaluation Report 2009 on Bangladesh is a vast report that evaluated Bangladesh’s level of compliance with all 40 general (AML) and 9 special (Countering the Financing of Terrorism) recommendations of Financial Action Task Force. Most of the findings that highlighted non-compliance or partial compliance could be summarised as citing a serious lack of interagency coordination, bureaucratic sincerity and political willingness, together with the presence of a strong cultural resistance to change. In addition, corruption, nepotism, actual and perceived self-interest, a lack of training, a mostly risk averse culture, poor resources management, poor leadership and a failure to understand why ML is a problem at all are other major factors as to why Bangladesh’s level of compliance was rated as poor.

**Post Mutual Evaluation Developments**

FATF noted that in October 2010, Bangladesh made a high-level commitment to improve its policy and implementation process in order to deal with the AML related deficiencies, and since June 2012, Bangladesh has taken a number of the necessary initiatives to address these matters. Yet a number of issues — including adequately criminalising terrorist financing, strengthening provisions to identify and freeze terrorist assets, strengthening the FIU, regulating capital market intermediaries and improving transnational cooperation — are yet to be addressed. On 22 June 2012, FATF published news with regard to Bangladesh’s enactment of the *Mutual Legal Assistance Act 2012*. In September 2012, a delegation of Egmont Group visited Bangladesh and

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357 Ibid 35.
observed the country’s preparedness to obtain membership to this group. In the Egmont Working Group and Committee Meetings held from 20 to 25 January 2013, the Legal Working Group agreed to propose the admission of the FIU of Bangladesh.\(^{360}\)

In a developing country like Bangladesh, when it comes to complying with any international standard, the dearth of resources has always been widely promulgated (but often largely inaccurately) as an excuse for poor compliance levels. Therefore, the issue of poor compliance warrants further investigation to discover whether it is the absence of resources only or some inbuilt inefficiency within the civil administrative system itself, along with other social factors, which prevent an equal distribution of already available resources and whether these are the main reasons behind a largely ineffective AML Regime. The renowned economist and Nobel Laureate, Amartya Sen, viewed ‘… famines as economic disasters, not as just food crises’.\(^{361}\) That is, a social problem could always be the outcome of multiple factors working together. The analyst has further elaborated this issue in Chapter Five.

The above discussion on the APG Mutual Evaluation Report on Bangladesh identifies some important conflicting situations. Although initially the Government excluded the ACC from the national AML committees, the AML law subsequently conferred on the ACC the power to investigate money laundering cases. Then again, despite the fact that the FIU would require easy access for staff to public databases to assist their analyses, there were hardly any initiatives to ensure their easy access to such facilities. This probably indicates that the AML regime of Bangladesh is part of a largely dysfunctional civil administration system operating (or attempting to operate) under poor political control. Hence, it is important to look into the nature of the civil and political administrative system of which the AML regime is a part.


2.5 Conclusion

Like any international standard of compliance, compliance with global AML standards may present serious challenges for a nation, especially if it is a developing nation. These challenges may range from a country’s political dilemma in implementing the global AML norms to the unavailability of material resources. When explored, several dimensions of these problems emerged. It is not only a lack of political motivation or a want of resources but the government decision-making process that has appeared as the real problem for a developing nation. A long colonial background, autocratic regimes and certain established cultural norms jointly determine what to expect from a country when it comes to compliance with international norms.

The global standard setter’s evaluation may provide some understanding about the level of compliance with certain AML standards of a country, but such evaluation reports are mostly the result of the mechanical application of a set formula for checking performance against certain previously agreed terms and conditions, something with which the country in question is supposed to conform. Findings of such evaluations could be used to pass judgement about the seriousness of a country’s intention to honour their international obligations as a state, but this hardly explains why a country may perform in a certain way, and what is the proper or more plausible explanation of a probable gap, if any, between the accepted standard and the standard that has been achieved. At the same time, it is also important to see whether the country under assessment has taken adequate steps to improve its compliance level and then failed because of some other reasons. Often criticism about poor performance is fair and founded on justifiable grounds.

It can be said that a country’s performance in complying with any global norm, including global AML norms, could be properly explained through its historical and cultural lenses. Any global standard is ultimately implemented through the bureaucratic machinery of a country, and the bureaucracy and political machinery in many developing nations preserve an unwritten rivalry; thus, a nation’s international obligations may not be properly judged without considering its socio-political environment. Therefore, it is important to understand this relationship from an historical and cultural context.
It is also important to understand that a regime may deliberately design an AML system so that it would not work as an effective AML system but rather serve their own purposes, especially when that regime is more inclined to pander to its political clients (and thus guarantee their continued power) than consider the genuine interests of their people or international community. For instance, the failure to include offences like insider trading and market manipulation in the list of predicate offences under the *Money Laundering Prevention Act (MLPA) 2009* despite the central bank’s concern that these offences were responsible for market volatility in the past (section 2.4.5.3) raised questions about the scope of the MLPA. Secondly, authorising the ACC as the sole investigating authority of ML related offences when only two out of 22 predicate offences listed in the MLPA were within their investigative jurisdiction created a major problem. Section 17 (a) of the *Anti Corruption Commission Act 2004* (Bangladesh) clearly limits the jurisdiction of the ACC to those matters identified in the schedule of offences included in the Act (section 4.2.1. B). By ensuring that the ACC was the sole investigator of money laundering offences while investigation of most of these offences was outside their jurisdiction created a major hiatus in the investigative regime. This raises questions as to the real intention of successive governments with regard to the AML regime. Were such ‘errors’ or ‘mistakes’ the result of poor advice, a fundamental misunderstanding of the nature of the jurisdiction conferred on the ACC under its statute or a deliberate and cynical attempt by government to create an investigative lacuna? While this jurisdiction problem was corrected in the 2012 legislation it was a problem which should never have existed.

Understanding not only what problems exist with the legislation and administrative framework but also why those problems exist helps us to explain a country’s gaps in its level of compliance. It also assists us to formulate the appropriate plan to minimise the gap between compliance and non-compliance.

In order to study the AML reporting regime of Bangladesh, the analyst chose to apply the Grounded Theory approach. This approach is useful in generating a grounded theory that explains the core problem of the persons involved in the substantive area under study and examine how that problem is continually being managed. The next chapter presents an overview of the Grounded Theory approach, including what Grounded
Theory methodology is and why the analyst chose this particular approach for this study.
3 METHODOLOGY

3.1 Introduction

This chapter describes the research methodology used in order to develop the Grounded Theory (GT) presented in Chapters Four and Five. It begins with some background information on the GT method and its principles, and then takes the reader through the process of theoretical sampling, data collection, analysis and the final emergence of the theory.

In the beginning, a thorough discussion on the background of Grounded Theory brings out some popularly debated issues about this method and simultaneously provides insights into some basic tenets of Grounded Theory. The first part of the discussion is about the roots of GT methodology and what academics think about it, including the points on which they agree or disagree. Knowledge of the very roots of this method is helpful in understanding its nature and principles. The next phase of discussion includes the ongoing debate between the two co-founders of Grounded Theory — Glaser and Strauss. This discussion, again, helps the reader to understand the real nature of classical Grounded Theory, its development, and the divergence that subsequently grew. Academic arguments between Glaser and Strauss not only resulted in a divergence of their thoughts on Grounded Theory and their then choosing to write separately, it successfully attracted many scholars to this discussion which enriched the GT methods enormously. A number of grounded theorists and critics generously contributed to this discussion with their scholarly views, which helped new users of Grounded Theory to understand not only the procedures of its classical method but also the two different views which the co-founders subsequently developed. This discussion established that there could be more than one way of generating an inductive Grounded Theory, and that the choice ultimately rests with the researcher concerned to decide which method to follow. In this study, the reasons why the analyst chose GT methodology in the first place, and then the motivation behind selecting one particular style from two established styles, are set out at the conclusion of this discussion.

Next, the discussion will present the elaborate procedures of classical GT methodology. This will include the course of theoretical sampling, data collection, and analysis for generating the particular grounded theory for this study. The process will systematically
illustrate how sampling, data collection, coding, and analysis ran concurrently, and then further data was collected from different sources in order to develop the theory as it emerged.

For this study, the analyst chose a substantive area, which is comparatively new, one about which relatively very little has been written, and which provides easier access to data sources than other possible areas. For the theoretical sampling, the analyst conceptualised the data through constantly comparing incident with incident (to generate a concept) and then incident to concept for the purpose of coding. Based on the codes the analyst theoretically sampled subsequent data sources and explored them until the point of saturation was reached, that is to say, no new properties of the code or categories were emerging. Constant comparative analysis enhanced the codes initially by adding more properties and dimensions to them, and then by theoretically linking them with other categories.  

The initial constant comparative analysis and open coding included any data that the analyst came across. However, after the initial phase of coding, a core variable (along with other near core variables) emerged when open coding ceased and selective coding began, that is, a ‘coding [conducted] … to delimit coding to only those variables that relate to the core variable [or category], in sufficiently significant ways to be used in a parsimonious theory’.  

3.2 Grounded Theory and Its Discovery

Founded by Barney G Glaser and Anselm L Strauss in 1967, the Grounded Theory method (GT) is designed to generate an inductive theory from data through an organised and comparative procedure. With its inherently extremely structured and equally flexible character, what a GT methodology produces is a set of integrated conceptual hypotheses about a substantive area which ultimately lead to the generation of the inductive theory. Capable of using any data with any theoretical perspective for

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362 See especially Glaser, Emergence vs Forcing, above n 77, 101–2.
363 Ibid 75.
generating a theory, Grounded Theory is a general methodology independent of other Qualitative Data Analysis (QDA) methods. Due to its general nature, Grounded Theory can easily be used by researchers from any field or department irrespective of the type of data they are working with.\footnote{366 See especially Barney G Glaser, ‘The Impact of Symbolic Interaction on Grounded Theory’ (2005) 4(2) The Grounded Theory Review: An International Journal (2005) 1, 4. Glaser and Strauss, The Discovery of Grounded Theory, above n 364, 1.}

Glaser and Strauss stressed that in social research, the generation of a theory from scientifically collected and analysed data is just as important as the use of various sociological methods to gather accurate facts for testing an existing hypothesis. They also said that a grounded theory emerging from data has a broader applicability as it corresponds to practical situations and is easily comprehensible to both experts and non-experts.\footnote{367 Janice M Morse, ‘Tussles, Tensions, and Resolutions’ in Morse et al (eds) Developing Grounded Theory: The Second Generation (Left Coast Press, 2009)13, 13. See also, Antony Bryant and Kathy Charmaz, ‘Grounded Theory Research: Methods and Practices’ in Antony Bryant and Kathy Charmaz (eds), The SAGE Handbook of Grounded Theory (SAGE Publications, 2007) 1, 3.}

\section{3.3 Origin and Divergences}

Despite its broad popularity and frequent recognition as the world’s most used qualitative research method in diverse fields of scholarship,\footnote{368 See, eg, Antony Bryant and Kathy Charmaz, ‘Grounded Theory Research: Methods and Practices’ in Antony Bryant and Kathy Charmaz (eds)The SAGE Handbook of Grounded Theory (SAGE Publications, 2007) 1, 3.} substantial disagreements among the scholars about various aspects of Grounded Theory made it a ‘contested concept’.\footnote{369} Primarily, the disagreements concern different scholarly viewpoints with regard to the roots of Grounded Theory and then much of the debate centred on the accurate application of the various procedures of GT methodology used to generate inductive theory. This part of the ongoing debate attracted scholarly contributions from the opposing scholastic views of Glaser and Strauss as a split occurred between them after they began writing separately on Grounded Theory.

\subsection{3.3.1 Roots of Grounded Theory}

The concept of ‘ontology’ refers to ‘the science or study of being’ and ‘from a social sciences’ point of view’, as Blaikie describes it, this also includes an assertion regarding what exists, its nature, the social elements of which it is composed, and their ways of
interacting. That is to say, ontology explains our observations of the nature and structure of reality.\textsuperscript{370} Here, knowing something ‘exists’ logically leads us to a related concept of epistemology, which is concerned with how we may go about inquiring into the nature of reality.\textsuperscript{371}

‘Epistemology’ is ‘the theory or science of the method or grounds of knowledge’ that deals with some claims with regard to procedures that researchers may use to discover some reality they believe can be known.\textsuperscript{372} The procedure may include identifying such elements that distinguishes knowledge from mere belief, that is to say, identifying the essential conditions that knowledge must fulfil, and identify a hypothesis about the methodology one can use to gain such knowledge about reality.\textsuperscript{373} In brief, as Hatch and Cunliffe put it, it is all about ‘knowing how you can know’.\textsuperscript{374}

Grounded Theory (GT) has been influenced by both the interactionist approach and the constructivist inquiry approach developed by Herbert Blumer, who coined the term ‘symbolic interactionism’ (SI).\textsuperscript{375} He argued against the acceptance of natural science as a model for sociological research, that is, he opposed relying only on experimental forms of inquiry, which concern quantifying, for instance, measuring, weighing or assessing of factors. He contested the concept that the quantitative method could address the complexity of human action properly, because, people ‘live in a meaningful social world’.\textsuperscript{376} Blumer ‘stressed the role of concepts that are sensitising rather than definitive, that gain their utility and significance from patterned relationships rather than quantifiable correlations’.\textsuperscript{377}

\begin{flushleft}
\textsuperscript{370} Norman Blaikie, \textit{Approaches to Social Enquiry} (Polity Press, 1993) 6.
\textsuperscript{371} Ibid 7.
\textsuperscript{372} Ibid 6–7.
\textsuperscript{373} Ibid 7.
\textsuperscript{377} Heath and Cowley, above n 76, 142. See especially Herbert Blumer, ‘Sociological Analysis and the Variable’ (1956) 21(6) \textit{American Sociological Review} 683–90.
\end{flushleft}
Often scholars assume that there is a natural correlation between Symbolic Interactionism and Grounded Theory. Blumer posited that symbolic interactionism rests on three simple premises. First, human beings act toward things based on the meanings that the things have for them. Secondly, the meaning of such things is derived from the social interaction that one has with one’s fellows. Third, these meanings are handled in and modified through an interpretative process used by the person in dealing with the things s/he encounters. Therefore, Symbolic Interactionism ‘views meanings as arising in the process of interaction between people’. From this viewpoint, some scholars have stressed that ‘[f]or both symbolic interactionism and grounded theory, the researcher and research participants are assumed to be interactively linked in a mutual relationship in the natural field to investigate their behavior’.

The co-founder of classical Grounded Theory, Barney G Glaser, however, countered this assertion and said that Grounded Theory ‘is not underlined by symbolic interaction, nor constructed data. GT uses “all as data,” of which these are just one kind of data’. He argued that much Grounded Theory to date, in nursing and management, seemed to use qualitative data, which tended to be SI oriented. A further description on interactional research area involving human group life and its relationship with GT has been presented in Appendix D (Roots of Grounded Theory).

3.3.2 Divergences between Glaser and Strauss

A researcher using Grounded Theory for the first time may easily become confused regarding the differences that exist between the diverse styles adopted by its co-founders. After the initial joint work of Glaser and Strauss in 1967, significant disagreement grew between them on the methods of achieving a grounded theory. The disagreement became obvious when Strauss separated from Glaser and published

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382 Glaser and Holton, above n 365, 53.
Qualitative Analysis for Social Scientists in 1987 and Basics of Qualitative Research with Juliet Corbin in 1990. Glaser, however, ‘remained true to his commitment’. 384

From the subsequent publications of Glaser and Strauss, it is apparent that most of their disagreements focused on the method of data analysis385 that ultimately leads to the emergence of categories, the core category, and the theory.

In 1990, Strauss with co-author Corbin came up with a rather user-friendly version of the GT method for novice researchers which Glaser branded as ‘no longer grounded theory’ or just ‘conceptual description’,386 and Keddy, Sims and Stern observed that it introduced a rigidity that was not intended in the original Grounded Theory. Consequently, they continued, researchers often produce theories, which are premature and thin.387 Glaser, however, remained committed to his original thoughts and ideas and wrote extensively to explain some of the basic concepts involved in the original version of Grounded Theory, for example, memos, coding and theoretical sampling.388 'However', as Heath and Cowley have observed, ‘it is methodological rather than ontological and epistemological aspects that have been cited as the main source of divergence’.389

3.4 The Study

GT researchers ‘seek to understand a situation from the subject’s own frame of reference’.390 The purpose of this study is to understand the AML professionals’391 perception and their experience of information collection for the AML reporting regime in Bangladesh, the issues that affect their collection procedure, and how they process those issues in everyday life.

384 Heath and Cowley, above n 76, 142–3.
386 Heath and Cowley, above n 76, 142.
388 Heath and Cowley, above n 76, 142.
389 Ibid.
391 AML Compliance officials of reporting entities, the Financial Intelligence Unit and the AML law-enforcing agency.
3.5 Use of GT Methodology

After choosing a substantive area for this research (as elaborated in 1.5.1), the analyst searched relevant literature for a considerable period and discovered that only a very limited amount of partially relevant literature was available, none of which clearly indicated any core issues of current concern with the AML reporting system of Bangladesh. The analyst also reviewed some international policy documents, for instance, the general evaluation reports produced on the AML regime of Bangladesh (as elaborated in Chapter Two and Chapter Five). Produced by international policy makers, those reports are merely a range of unfocused superficial appraisals with regard to what is happening in the AML regime, what is ‘wrong’ or ‘right’ with the AML reporting system, and what may be done to improve it. Apparently there is a serious dearth of acceptable general theories or specific hypotheses on any particular relevant issue. As the investigation continued, it was apparent that the real nature of the problem of the substantive area could be far different from that which appeared in the available literature (as detailed in 1.5.2).

In view of this, the analyst chose GT methodology because ‘like most forms of qualitative research, grounded theory makes its greatest contribution in the areas in which little research has been done’. A definition of what actually is meant by an area ‘in which little research has been done’ could be borrowed from Stern (1980), who stated that either there is no theory, which means a serious vacuum of variables, or there are theories but the analysts have attempted to investigate such a ‘complex area of behavioral problems where salient variables have not been identified’.

Besides, as Holloway and Todres note, Grounded Theory is useful in investigating human actions and interactions. It emphasises people’s patterns of behaviour, which indicate a social process which revolves around something ‘relevant and problematic for

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392 For further details, please see section 2.4.4 and 2.4.5 of Chapter 2 and section 5.3.1 as well as 5.3.2 of Chapter 5.
those involved”,396 and this method is ‘particularly helpful when investigating social
problems or situations to which people must adapt’.397 Bangladesh has no other option
that to meet the strict global AML compliance requirements and face their obvious
implementation challenges. Therefore, their AML professionals must resort to some
‘improvised’ techniques to overcome the challenges they face working as part of the
AML regime (which will be elaborated upon in Chapter Four).

The GT method was a good fit for this study, which examined how AML professionals
deal with their information providers, the processes they use to deal with this situation
and their social interaction with other information sources, for instance, public agencies.
This study also examined the perceptions of the AML professional with regard to their
‘social world’ inside and outside the virtual AML reporting system, which is comprised
of the reporting entities, the Financial Intelligence Unit and the AML law enforcing
agency (the Anti Corruption Commission of Bangladesh).

3.5.1 Choice between Glaser and Strauss

The natural connection between money laundering and illicit profits has made the global
AML regime one of the top areas of scholarly investigation today, and, as expected,
there is an abundance of relevant literature. Yet, jurisdiction specific research on AML
matters appeared to have received less attention, as many of the great scholarly works in
this area have shown a greater inclination toward addressing the generic AML issues
raised by the global policy documents. While this inclination often fails to focus on the
jurisdiction specific AML problems, there is no doubt that it forms the basis of any
scholarly discussions on the global AML initiatives. Furthermore, in the area of AML
research these generic discussions can be an effective means of identifying such
common AML issues, which may remain undetected through a focused study on any
particular jurisdiction.

The contrary is also true. Many of the ML related concepts are actually context specific;
for example, some economies rely more on cash transaction than do others. Naturally,

396 Barney G Glaser, Advances in The Methodology of Grounded Theory: Theoretical Sensitivity
397 Rita Sara Schreiber, ‘The “How to” of Grounded Theory: Avoiding the Pitfalls’ in Rita Sara Schreiber
and Phyllis Noerager Stern (eds), Using Grounded Theory in Nursing (Springer Publishing Company,
some jurisdictions may face AML challenges which are so unique in character (requiring equally distinctive responses) that they may remain hidden unless there is a context specific investigation. After an initial survey of the literature, the analyst found that the AML regime of Bangladesh is one such area, namely one that has not undergone thorough and independent scholarly research.

Almost of all the AML issues that Bangladesh faces today have been identified by the relevant global standard setting entities during their evaluation or subsequent follow-up visits. The Mutual Evaluation Report (referred to earlier) was general in nature, in that while it superficially touched upon many problems, it did not make a thorough analysis of any particular one. Besides, hardly any academic publications categorically focused on any of the specific issues identified by the Report. In order to fill the vacuum, the analyst attempted to study this substantive area and discover what specific issues this particular jurisdiction was concerned about at the time of this investigation. With the aim of accomplishing this task, the analyst chose a GT methodology and employed the advantages that this particular methodology offers to those who wish to investigate new areas of research (as described above).

For this research the analyst chose Glaser’s classic GT methodology. The rationale for this decision was based on the following criteria:

Classic (Glaser) Grounded Theory requires researchers to begin investigation without a predefined theoretical framework — gaps or hypothesis — which is generally created based on variables identified through an extensive literature review. As far as the current substantive area of research is concerned, it involves a situation where there is a dearth of specific literature on Bangladesh’s AML regime on one hand and an abundance of relevant literature on general AML issues on the other. As emphasised by Strauss398 this latter abundance might pose a problem in that it might ‘contaminate…, inhibit, stifle or otherwise impede the [analyst’s] effort to generate’399 an inductive theory if the study began with an extensive literature review on a substantive area. This is because ‘[i]t is hard enough to generate one’s own concepts, without the added burden of contending with the “rich” derailments provided by the related literature in

399 Glaser, Emergence vs Forcing, above n 77, 31.
the form of conscious or unrecognized assumptions of what ought to be found in the data'. Therefore, the analyst chose to adopt the classic Grounded Theory methodology of Glaser so that his mind would remain open and prepared for generating an inductive theory from the collected data that ‘fit the realities under study’.

3.6 Recruitment, Sampling and Logic of Ongoing Inclusion

The following sections will provide an overview of the methods the analyst adopted for the recruitment of participants, a discussion on the sampling process and the process of the ongoing inclusion that continued throughout the course of data collection and the process of conceptualisation.

3.6.1 Recruitment

The analyst identified the participants with the assistance of management and officials of the organisations concerned. These organisations received letters with detailed information with regard to the purpose of this research, the interviewee selection criteria, the research ethics adopted, and the treatment of confidentiality issues. After obtaining written approval from the authorities concerned, the analyst circulated Participant Information Sheets, Consent Forms and his contact details among potential participants, with a request that such persons contact the researcher if they were interested. The analyst recruited only those who volunteered to provide information.

3.6.2 Sampling

Initially the analyst approached a small group of AML professionals for interviews. After that, the analyst used a constant comparisons method to continue data collection from each source of information until a category was saturated. When the research to discover a theory is in progress, the exact number of participants and their type will remain unknown until the research ends, because ‘the actual number and type of

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401 Ibid 30.
sample depend[s] on the point at which theoretical saturation occur[s]’. That is to say, the analyst interviewed new groups of participants for specific information based on what the previous groups provided, and continued exploring a source until the data subject stopped providing information on any new category or on properties to existing categories.

The application of grounded theory usually takes place in an environment where there are large numbers of potential participants, for example in a health care system or even a large corporation. This means that the size of the eventual participant sample is unknown at the outset.

In the case of the AML system in Bangladesh there was an important factor which limited the potential size of the participant group. While the designated AML officers often had had no special skill sets or training and were chosen in many cases without any AML related selection criteria (a serious flaw in the whole AML system which may well have been intended in some institutions to ensure problems were not discovered) the number of such staff across the AML system was still relatively small.

During the fieldwork, as mentioned earlier (recruitment), participants were contacted through their respective managements. Only a certain group of officials who were allowed by their respective authorities attended the briefing session in order to collect the Participant Information Sheets and the Consent Forms. Among them only a limited number of AML professionals (directly involved in AML related issues) and other officials (who had somewhat indirect involvement in AML issues, for instance, one FIU official responsible for international correspondence and an ACC officer who acted as the coordinator between FIU and the ACC, see section 3.7.3, Profile of the Participants) finally contacted the analyst and participated in the interviews.

3.6.3 Logic of Ongoing Inclusion

During the inclusion of participants, the analyst guided his focus on groups or individuals based on a simple point, the purpose of the research, that is, the generation

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of a theory based on collected data. In doing so, the analyst must identify a core category and as many properties of such a category as possible. The analyst, thus, must concentrate on the data and its continuing conceptualisation in order to discover a uniformity, a situation where the data is able to fit into or create some pattern. Accordingly, the selection of interviewees based on comparable variables was not the leading motivation for the analyst. In *The Discovery of Grounded Theory*, Glaser and Strauss wrote:

> Our logic of ongoing inclusion of groups must be differentiated from the logic used in comparative analyses that are focused mainly on accurate evidence for description and verification. That logic, one of pre-planned inclusion and exclusion, warns the analyst away from comparing “non-comparable” groups. To be included in the planned set, a group must have ‘enough features in common’ with the other groups. To be excluded, it must show a “fundamental difference” from the others.405

Now the question is, how rational would it be to rely on such a ‘purified group’ and deem that inauthentic factors will not taint the research outcome? Glaser and Strauss warned that in order to qualify and disqualify a group, researchers (who are not trying GT methodology) actually attempt to hold a few ‘strategic factor[s]’ constant and then qualify or disqualify groups depending on these factors’ presence or absence.406 However, they reminded readers that ‘[i]his effort of purification is made for a result impossible to achieve, since one never really knows what has and has not been held constant’.407

For instance, during the field research the analyst found that reporting entities did not establish a specific skill-set or terms of references for the position when recruiting AML compliance officers. Rather, they randomly chose them from existing staff members and assigned them with AML related tasks. Sometimes a person in charge of a branch (manager) who was already in charge of general banking acted as an AML compliance officer in addition to his regular office duties. Frequent staff movement, both horizontally and vertically, also made is even harder for those part-time compliance officers to grow professionally towards the required skill-set of an AML compliance officer. This means that in Bangladesh an AML compliance officer’s position is not as a

406 Ibid.
407 Ibid.
member of an established profession whose primary responsibility will be to oversee and manage AML compliance issues within an organisation. Therefore, it would be an unsound decision to attribute any criterion on the group as the most ‘sensitive’ to AML issues, for example, the AML compliance (officers of the REs), and then include only members of this particular group for interview and data collection. Instead, participants (although a small number) were recruited also from such groups of officials who did not have the official designation of AML compliance officer but had adequate knowledge on the categories and properties to the categories (see section 3.8 Data Management and Analysis) the analyst were collecting information on.

Nothing is constant here. Therefore, no potential participants had been ignored only because they did not have the official designation of an AML compliance officer and vice versa. Glaser and Strauss further stressed that:

> [T]hese rules of comparability are important when accurate evidence is the goal, but they hinder the generation of theory, in which “non-comparability” is irrelevant. They prevent the use of a much wider range of groups for developing properties of categories. Such a range, necessary for the categories’ fullest possible development, is achieved by comparing any groups, irrespective of differences or similarities, as long as the data apply to a similar category or property.  

They add that, ‘It is theoretically important to note to what degree the properties of categories are varied by diverse conditions’. For example, properties of the code ‘improvising informal communication’ in the interactions between reporting entity officials and their customers in a bank, for instance, can be usefully developed by making comparisons with the same situation in some public agencies where both FIU and ACC officials visit and communicate informally to build rapport for the collection of additional documents on STRs. The similarities and differences in these conditions can be used to explain the similar and diverse properties of interaction between AML information collectors and informants.

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408 Ibid 50–1.
409 Ibid.
410 For further detail, please see section 4.4.1 of Chapter 4.
3.7 Data Collection, Recording, and Analysis

The actual fieldwork for data collection, recording, analysis and ‘memoing’ ran simultaneously, as required by the GT methodology. Yet, for ease in understanding of the entire process, these are presented as separately as possible.

3.7.1 Collection

Initially, the analyst contacted the participants through their respective management, met them in person and engaged them in an informed consent session. Later, the participants who volunteered contacted the analyst by telephone and expressed their interest in taking part. On the scheduled date, the analyst collected the data using a combination of both semi-structured and unstructured interviews. Each interview lasted for about 40 to 80 minutes.

The analyst had always been aware of some inherent limitations of interviewing. For example, as indicated by Mark Hughes, in an interview the cultural differences between the interviewer and the interviewee may result in a misinterpretation of data. Often the interviewer may become overly dependent on a certain group, which has strong knowledge on any particular issue. This may also lead to bias and wilful dishonesty in the provision of information. Therefore, the success of the interviews often depends on the researchers’ personal knowledge about the subject matter, their organised attitude, and ability to stay away from ‘predispositions’. The analyst took the necessary steps to overcome these limitations using the inbuilt strengths of the interviewing process. In doing so, he adopted a style, which was an adaptation of some general interview processes, and that was particularly applicable in the unique cultural context of Bangladesh.

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Preparation

Introductions

Kane stated that ‘the closer the interviewer is to the respondent in class, sex, age and interests, the greater chance the interviewer has of being successful’. In the Bangladeshi social context, selection of words, style of talking and body gesture of the greeting would be significantly different depending on participants’ age, sex, belief, and also the rank they held in their organisation in particular and in the society in general. Since the analyst shared the same cultural background as the participants, it was easier for him to address these issues and help the participants form an impression about the analyst beyond the impression they had formed during the first meeting at their respective organisation in a formal environment. This assisted the participants to relax and feel more confident about sharing what they felt about what was going on in the substantive area of research.

The analyst prepared separately for each interview. This included collecting some background information about the person, their profession and the organisation that he or she was working with, arranging the necessary logistic support for the interview and always arriving at the venue a little earlier than he had previously agreed and greeted the participants upon their entrance. The entire interview process was planned based on the level of eagerness that a participant had expressed when that person had called to schedule the interview.

If the participants indicated that the interview was a new experience for them, the analyst asked them to suggest their own format, if any. As a result, when most of the respondents gave oral interviews, some of them requested for additional time and answered a few specific questions in writing.

Actual Holding of the Interview

The language of interview was Bangla, the national language of Bangladesh, with very frequent uses of English. Howard and Peter suggested that ‘the most important thing a

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413 Eileen Kane, Doing Your Own Research (Marion Boyars, 1990) 68, cited in Hughes, above n 412, 213.
414 Hughes, above n 412, 213.
researcher should remember to do in an interview is to listen. Interviews are primarily a way to gather information, not a conversational exchange of views.415 The analyst asked a question and then let the participants speak freely without interruption and as long as s/he was giving relevant information. However, instead of remaining silent or being too enthusiastic about the responses, the analyst adopted the role of an active listener, and expressed his interest, attention and agreement through the occasional ‘yes’ or nodding of head and through eye contact.

Ending

In most cases, the analyst developed some kind of rapport with the participants both before and during the interview in order to make them feel comfortable and provide the information without any concern for the possibility of any violation of privacy or confidentiality. Therefore, ending of the interviews was not hasty or formal. In all cases, the interviews ended with kind of informal greetings and exchange of personal contact — a common gesture of appreciation in Bangladeshi culture. After that, the analyst asked if they had anything they wanted to know or any further comment to make.

3.7.2 Literature as Source of Information

Besides the interviews, the analyst used literature as a source of data from the very beginning of the research. However, considering the main aim of a GT methodology, which is generation, not verification of theory, the analyst divided the literature review in two phases postponing the in-depth literature search on substantive area until a theory began to emerge. As Glaser rightly said, ‘if a grounded theory researcher does a literature review first, he/she does not really know which literature will fit in the substantive area. The researcher does not know what he is going to discover’.416 In Grounded Theory, ‘the literature is discovered just as the theory’.417 Thus, the analyst delayed the review of most relevant literature until the core category began to be generated; however, preliminary literature review continued from the onset of the research.

416 Glaser, Doing Grounded Theory, above n 75, 69.
417 Ibid.
Once the decision to apply a GT approach was made (section 1.5.2), the analyst divided the preliminary literature review into three major areas. In the beginning, the analyst reviewed literature in the substantive area avoiding extensive search for any particular topic or problem identified by other research. The idea was to ensure ‘avoidance of pre-empting, preconceived concepts which may easily detract from the full freedom to generate concepts that fit and are relevant when initially coding and analyzing the data as it is collected’.\(^{418}\) Next, the analyst carried out an extensive literature review on GT methods and read them as ‘manuals’\(^{419}\) to learn more about GT methodology and how to apply them directly in practical field of research. Subsequently, in order to understand how to conduct and write a grounded theory, the analyst reviewed a number of model grounded theories other GT researchers had generated using either the Classical (Glaser) and Straussian methodology. He read ‘many pieces of the same range of style so he [understood] the variations of the norms he [would] have to deal with, such as the ratio of theory to illustrations which varies greatly’.\(^{420}\)

Finally, at the stage when the theory appeared to be adequately grounded and a core variable has emerged, the analyst began to review literature on areas relevant to the core category and its properties. This way the analyst integrated the literature into the newly developed theory.\(^{421}\)

### 3.7.3 Profile of the Participants

In the beginning, three Branch Anti-Money Laundering Compliance Officers (BAMLCOs) of private commercial bank gave interviews. Following the findings from those interviews, the analyst interviewed another three officers of commercial banks, including one from a reputable foreign bank operating in Bangladesh. This process helped identify certain common issues those reporting entities (REs) were facing with regard to their reporting obligations under the AML regime. For further clarification of those issues, the analyst approached two Chief Anti Money Laundering Compliance Officers (CAMLCOs) of private commercial banks and one member from the Financial

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\(^{418}\) Glaser, *Emergence vs Forcing*, above n 77, 35.

\(^{419}\) Glaser, *Doing Grounded Theory*, above n 75, 76.

\(^{420}\) Glaser, *Emergence vs Forcing*, above n 77, 36.

\(^{421}\) Ibid 32.
Intelligence Unit. They provided very useful and elaborate information on the categories identified in the previous interviews.

After that another two Chief Compliance Officers, two FIU officials (one analyst and one officer responsible for international correspondence) and two AML case investigators from the Anti Corruption Commission gave interviews. At this stage of data collection, the core problem and process slowly began to emerge, and information collection only on those issues became necessary. Accordingly, the analyst interviewed two CAMLCOs and one AML case investigator of the ACC again. At the final stage, two AML case investigators, one BAMLCO, one CAMLCO and one FIU analyst provided information on the core variable. A total number of 23 interviewees gave interview, among them 14 representatives of the REs, four FIU officials, and five investigators from the Anti Corruption Commission.

3.8 Data Management and Analysis

Classical Grounded Theory suggests two different types of coding — substantive and theoretical coding.\(^\text{422}\) Substantive coding is the initial phase of data analysis, when a researcher deals with the collected data directly in order to discover categories and properties of those categories.\(^\text{423}\) First, open coding helps to produce an ‘emergent set of categories’ relevant to the substantive area of research by asking simple questions, for instance, ‘what is this data a study of’,\(^\text{424}\) and then selective coding (immediately after open coding) which delimits data collection and coding only to those categories that are indicative of the core variable.\(^\text{425}\)

The constant comparative method is the fundamental operation of Grounded Theory. During the initial coding, data is broken up and one incident is compared with another to find similarities and differences. Once the data is conceptualised, that is, once concepts are generated, new incidents will be constantly compared with these concepts to see if they fit a particular context. Constant comparison looks for a pattern in data so


\(^{423}\) See Glaser, *Emergence vs Forcing*, above n 77, 39.


\(^{425}\) See Glaser, *Emergence vs Forcing*, above n 77, 75.
that similar incidents could be named as a category and differing incidents could be named as the property of a category. Emerging categories and their properties indicate toward new incidents that need to be compared and the probable sources of data that need to be consulted. This leads to theoretical sampling. When ongoing comparisons of incidents do not give way to any new properties of a category, saturation is achieved. This is the time when analysts collect data, analyse, and compare incidents with categories, which have not reached saturation. The researcher gradually progresses towards theoretical completeness as more and more categories and their properties become saturated.

Theoretical coding is the subsequent phase, when substantive codes are integrated into a theory, in other words, ‘[t]heoretical codes implicitly conceptualize how the substantive codes will relate to each other as interrelated, multivariate hypotheses …. They are emergent, and weave the fractured story turned into concepts back to an organized whole theory’. This way Grounded Theory passes through different stages of conceptualisation, that is to say, data, coding (conceptualisation) of data, and their integration into a theory. Holton described the process as one where ‘[t]he coding of data in grounded theory occurs in conjunction with analysis through a process of conceptual memoing, capturing the theorist’s ideation of the emerging theory’. The final stage of the achieving a grounded theory is the sorting of memos and the writing of the thesis. The writing process is also a part of GT method.

3.8.1 The Coding Process

Travers has noted that, ‘An important principle of GT is that the analyst should use a codified procedure for analyzing data … which allows readers to understand how the analyst obtained his theory from the data’. Glaser described ‘codes’ as ‘very important’ in the generation of theory and ideational codes as its ‘building blocks’. Coding gives an abstract view of data and thereby frees the researcher from usual

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426 See ibid 38–42.
427 Glaser, Doing Grounded Theory, above n 75, 141.
428 Ibid 137.
429 Ibid 163.
430 Ibid.
431 Holton, above n 422, 265, 265.
432 Travers, above n 376, 43.
433 Glaser, Advances in the Methodology of Grounded Theory, above n 91, 55.
bondage of the empirical nature of data. It helps researchers explain what is happening in data as they conceptualise basic patterns of human behaviour. In Grounded Theory, it is important to understand the differences between the various types of coding and to take the time to engage them in data analysis. Appendix D provides further information about the application of the GT process.

3.8.2 Substantive Coding

Glaser noted that ‘[s]ubstantial codes conceptualize the empirical substance of the area of research’. A theory is actually grounded on data. During the initial phase of fieldwork, the analyst found all data as a set of descriptive incidents with no underlying pattern. By using the substantive coding method, incidents described by the participants or collected through other means were conceptualised, that is, the underlying meaning of data was discovered.

3.8.2.1 Emergence of Core Category

The core category emerges through a constant comparison process. As the analyst continued coding, he remained alert for a core category (variable). Constant comparison generated a number of codes and their properties but the analyst was watchful as one or two of them might have the merit of being the ‘core’ concept. This constant alertness was necessary to identify the ‘main theme’ — the main problem of the research participants (people of the particular social setting) and also the pattern of behaviour (that tells what is going on in the substantive area) that is grounded in the data. Often this core variable is a basic social process or ‘a typology, a continuum, a range, dimensions, conditions, consequences, and so forth’.

Glaser stated that ‘[Grounded Theory] hinges on a core category which accounts for most of the variation in the problematic pattern’. The core category clearly shows its relevance and importance as it accounts for most of the variations in the social process.

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435 Ibid 55.
436 See Glaser, Emergence vs Forcing, above n 77, 38.
437 Ibid 94.
438 Ibid 61.
439 Holton, above n 422, 279.
440 Glaser, Emergence vs Forcing, above n 77, 76.
that continually resolves the main concerns of the participants. It conceptually explains the hidden pattern in the behaviour of people. Glaser identified certain criteria that the core category generally has. Some of those criteria are:

(i) the core category relates meaningfully to many other categories and their properties, and in this way it holds a distinct position among other categories;

(ii) it recurs frequently in the data, indicating a steady pattern; and

(iii) it takes a longer time to reach saturation. Its relevance and explanatory power gets the researcher through the analytical process in which he is involved.

For this study, the core variable that emerged was ‘improvising’ informal communication methods with some closely related near core or sub-categories. While ‘improvising’ accounts for the ‘variation in the problematic behaviour, [it] is also a dimension of the problem’. The officials of the reporting entities, the FIU and the ACC were found to be using various types of innovative person-to-person communication techniques in order to get access to information held by different public agencies and other potential sources that were not under their control.

3.8.2.2 Selective Coding and the Grounded Theory: ‘Improvising’

How will a researcher know the appropriate time to code selectively for a core category and to cease open coding? Glaser answers, ‘[t]o selectively code for a core variable … means that the [researcher] delimits his coding to only those variables that relate to the core variable in sufficiently significant ways to be used in a parsimonious theory’. Glaser suggested that it is wise to delimit an emerging theory to one core variable and keep other near core variables in a position subordinate to the core.

The selection of a core variable leads to setting further limits on the analytical process of Grounded Theory. Now only the core variable and variables closely connected to the core will receive all the focus of further data collection. They are the ones that will be

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441 Glaser, ‘Constructivist Grounded Theory?’, above n 375, 104.
443 Ibid 96.
444 Ibid 61.
445 Ibid.
446 Ibid.
ultimately included in the theory. A core category also delimits analysis by linking its connection with that particular pattern of behaviour which resolves the problem. Glaser argued that ‘[w]ithout a focus on how the core resolves, solves or processes the problem, the analysis can drift to accounting for irrelevancies in the pattern, instead of being forced to integrate around the problematic’. Furthermore, another delimiting function of the core is that researchers are advised to concentrate on only one core at a time after being confident about its relevance to the substantive area of research.

For this research, after choosing ‘improvising’ as the core category which resolves, solves or processes the main problem of ‘interagency information sharing deficiency’, other near core categories, for example, ‘collecting crucial information’, ‘being selective’, and ‘keeping to the code’ were included under it as sub-categories. The core and all its sub-categories have their own properties that explain what the categories actually stand for. After this selection, the analyst collected data and coded only for the relevant core category and its sub-categories where relevant.

As mentioned above, choosing one core category does not mean the researcher will abandon other sub-categories; they will, however, assume a subservient role in the theory. Thus, to analyse the basic condition of applying ‘improvisation’ techniques by the AML professionals for additional data collection from potential sources, the analyst used categories like ‘collecting crucial information’, and ‘being selective’, although in other publications these variables are being treated as ‘core’.

After selective coding, the following core category or main theme of the grounded theory for this research and related sub-categories emerged:

(i) Core Category: Improvising (a process of overcoming interagency information sharing deficiency in an AML regime)

(ii) Subcategories: ‘Collecting crucial information’, ‘Being selective’ and ‘Keeping to the code’

447 Ibid 93.
448 Ibid.
449 Ibid.
3.8.2.3 Saturation

When to stop collecting data — is an important question in Grounded Theory. In *Theoretical Sensitivity*, Glaser warned that ‘[o]ver coding is unnecessary. Too many codes dilute the impact of core and near core ones, and add only minor variations.’ Therefore, it is important to apply a saturation technique during all phases of data collection, coding and sampling.

The adoption of the saturation technique prevents the researcher from ‘collecting [the] same data over and over based on the same questions which ignore the interchangeability of indices. It keeps data collection to a minimum, instead of allowing it to pile up too much data’. In the *Discovery of Grounded Theory*, Glaser and Strauss mentioned that once some incidents have been coded many times for a certain category, the researcher rapidly understands if similar incidents are going to add anything new. If a new incident does not reveal any new aspect, then coding and comparison will only make existing data voluminous and add nothing substantial to the emerging theory. Therefore, the process of constant comparison and the coding of incidents continue ‘until such time as the incorporation of more incidents reveals no new category’.

For example, after the analyst had established national IDs/ passports/driver’s licence (government issued credentials) as the basic standard of customer identification documents accepted by reporting entities, he no longer needed to code incidents referring to government issued credentials as the basic standard of identification. However, he encountered a case where government issued credentials did not appear to be the sole basic standard of ID (a negative case); the case was coded. In this case, a globally reputable private company issued an employee photo ID that was initially accepted as a ‘reliable’ identity document by a reporting entity. The reporting entity argued that globally reputable companies generally recruit employees through a rigorous screening and reference checking process; therefore, they considered it ‘safe’

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451 Glaser, Advances in the Methodology of Grounded Theory, above n 91, 71.
453 See generally Glaser and Strauss, The Discovery of Grounded Theory, above n 364, 111.
455 Glaser and Strauss, The Discovery of Grounded Theory, above n 364, 111.
to identify the customer on the basis of the photo ID issued by such a company. However, the question remains if indeed this was a safe practice.

3.8.3 Memos

In their first publication on Grounded Theory, Glaser and Strauss gave an example of ‘memoing’, which could be helpful in understanding why such a process is necessary, and when to do it. As they said:

After coding for a category perhaps three or four times, the analyst will find conflicts in the emphases of his thinking. He will be musing over theoretical notions and, at the same time, trying to concentrate on his study of the next incident, to determine the alternate ways by which it should be coded and compared. At this point, the second rule of constant comparative method is: stop coding and record a memo on your ideas. This rule is designed to tap the initial freshness of the analyst’s theoretical notions and to relieve the conflict in his thoughts.\textsuperscript{456}

In a subsequent publication, Glaser defined memo as ‘the theorizing write-up of ideas about codes and their relationships as they strike the analyst while coding’,\textsuperscript{457} here, by ‘code’ Glaser indicated ‘substantive codes and their theoretically coded relationships as they emerge during coding, collecting and analyzing data and during memoing’.\textsuperscript{458} In the language of Strauss and Corbin, memos are ‘types of written records — those that contain the products of analysis or direction for the analyst. They are meant to be analytical and conceptual rather than descriptive.’\textsuperscript{459}

The analyst wrote memos and kept records of the analytical process throughout the data collection and theory development process. In most cases, he penned down memos as soon as they occurred to him or immediately after the interview without relying on memory. Early memos were provisional and lacked consistency and relationship with other memos;\textsuperscript{460} however, as the analysis progressed, the analyst realised it was a learned skill\textsuperscript{461} and stopped worrying about achieving perfection.\textsuperscript{462} The analyst

\textsuperscript{456} Ibid 107.
\textsuperscript{457} Ibid 83 (emphasis in original).
\textsuperscript{458} Glaser, Doing Grounded Theory, above n 75, 177.
\textsuperscript{459} Anselm Strauss and Juliet M Corbin, Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory (SAGE, 1998) 217.
\textsuperscript{461} Ibid 250.
understood the memoing process as involving ‘analytical conversations with himself about research data’ and the recording of early concepts about the emerging theory.

3.8.4 Theoretical Coding

Just like substantive codes, theoretical codes are also emergent. Substantive codes conceptualise raw data and generate categories while theoretical codes conceptualise how those categories and their properties could link together into an hypothesis. The story that is ‘broken’ during the coding process is put together by combining various elements into a connected whole. Connecting substantive codes without theoretical codes makes theory unclear and often confusing. The proper use of theoretical codes adds uniqueness to a theory.  

3.8.5 Memo Sorting and Integration

Glaser noted that:

> While ideational memos are the fund of grounded theory, the theoretical sorting of memos is the key to formulating the theory for presentation to others whether in words or writings. Sorting is an essential step in the grounded theory process that cannot be skipped. It begins to put the fractured data back together. It consists of setting up the memos in a theoretical outline in preparation for the writing stage.

Memo sorting takes place at the end of fieldwork, when most categories have reached close to saturation. Since memos are kept throughout the constant comparison process, researchers find they have a large number of memos at the final stage of this process that must be sorted and then integrated into a theory. Properly sorted memos produce a fully integrated, dense theory. Memo sorting provides guidelines with regard to the writing style of the theory, in that it orders the ideas in a coherent way. This is because memo sorting is not cataloging data, but it is an organisation of ideas. Hence, unlike data sorting which could often be assigned to a third party, memo sorting needs to be

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462 Ibid 251.
463 Ibid 247.
464 Glaser, Advances in the Methodology of Grounded Theory, above n 91, 72.
done by the GT researchers themselves because they know their ideas better than anyone else, and also how those ideas may relate with one another.466

3.8.6 Writing

Writing is also a part of the GT method, that is to say, the researchers must finally present their theory according to the requirements of their readers. A theory generated for an article or a monograph would be different in construction of logic and shape, however, all grounded theories need to follow certain standards to be presented in a written form.

Grounded Theory does not begin with a problem identified through a literature review; rather the problem is derived from the core variable of the theory. However, literature is used subsequently to supplement or form a contrast with the theory so generated.467 In GT writing, the authors’ ‘approach to introducing the problem is to use a “funnel down” from a “nature discussion” to introducing the problem. The general, grounded, most relevant properties of the core variable are discussed, to give the fullest meaning of its general nature’. 468

Grounded Theory is a study of concept. When it comes to conceptual style, the analyst tried, as much as possible, to avoid descriptive statements and write conceptually, by making theoretical statements about the relationship between concepts, rather than writing descriptive statements about people.469

3.8.7 Data Preparation and Computer Assisted Analysis

For Grounded Theory, Glaser very strongly argued against completely tape recording and transcribing interviews. He argued that audio recording is costly both in terms of time and money; and it postpones theoretical sampling and analysis, making it clearly unsuitable for Grounded Theory and its requisite skill development.470 However, as time was an important factor (and participants were busy professionals, scattered in different locations), along with keeping extensive field-notes and memos, the analyst audio

466 Ibid.
467 Ibid 131.
468 Ibid.
469 Ibid 133.
recorded interviews and transcribed them when necessary to add to the credibility of the data as it allowed the analyst to go back and closely analyse information as many times as he wished. During the interviews, the analyst discovered that putting full concentration into note taking and conversing only occasionally with the participants was counterproductive to building rapport. Participants often paused in their speech and felt inclined to allow time for note taking, which distracted both the interviewer and interviewee and could repeatedly prolong interview time unnecessarily. In subsequent interviews, therefore, the analyst supplemented note taking with audio-taping.

Subsequently, the analyst imported all notes and transcripts into NVivo data analysis software. NVivo is very powerful software that allows the importation of not only texts in different formats but also audio and video files. It helps the analyst to make better decisions by assisting in data analysis, displaying connections, ideas and findings with visualisations (such as word trees, tree maps, connection maps and cluster analysis). In brief, it is an excellent tool for efficiently managing huge quantities of data stored in various formats.

3.9 Conclusion

Grounded Theory is a qualitative analysis and not qualitative research, in the sense that it does not, for instance, do statistical content analysis of interviews or the observation of data, which in effect is a quantitative analysis of qualitative data. Grounded Theory focuses on the qualitative analysis of qualitative, and also at times, quantitative data to produce concepts that are incorporated into hypotheses. The qualitative analysis consists of three major components:

(1) data collection, which soon becomes intricately involved in (2) the methods analysis, that soon generate the concepts, hypothesis and their integration which result in the production of (3) written and verbal presentations. Number (3) takes various forms depending on the audience.…

From the time when grounded theory research begins, it follows an organised and inductive procedure of data collection and analysis. Grounded Theory is open to emergence and that is why researchers are required to enter the substantive area without

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472 Glaser, *Emergence vs Forcing*, above n 77, 11.
a problem already known or framed. They do not need to force the data to fit into an already known hypothesis for verification. A Grounded Theorist is free from this burden; however, once the theory has emerged he can compare his theory with other theories and suggest corrections or synthesis.\textsuperscript{473}

The theory generated in this study is the outcome of the research on a particular substantive area; however, it also has a general applicability in other substantive areas. In reality, ‘improvisation’ is necessary in many professional activities in order to meet the growing demands of risk management or for creativity. Also, it would not be too incorrect to claim that in reality, developing countries may often need to ‘improvise’ implementation techniques when it comes to complying with certain international standards, for example, international standards relating to labour, environmental management, medicine, drug use, and the like — for which they are not fully prepared.

The next chapter, Chapter Four, will present the Grounded Theory — ‘improvising’, which was generated by applying the methodology described in this current chapter. Chapter Four describes how the AML professionals of Bangladesh (a low capacity country) applied various improvised techniques to handle the problem of ‘interagency information sharing deficiency’, an enduring problem, when premeditated and usual methods would remain ineffective.

\textsuperscript{473} Ibid 15.
4 IMPROVISING: A PROCESS OF OVERCOMING INTERAGENCY INFORMATION SHARING DEFICIENCY IN AN AML REGIME

4.1 Introduction

This chapter is the written presentation of the grounded theory ‘improvising’ which the analyst generated using GT methodology in the substantive area of the Anti Money Laundering (AML) reporting system in Bangladesh. Subsequent sections of this chapter are designed to present the main problem the (core concern) of the people in the substantive area and how they continually resolved that issue (the core process). What may further be noted here is that the theory is principally based on empirical data (collected during fieldwork) supported by relevant literature where appropriate. Except for some ‘time neutral’ expressions, which are presented in present tense, the rest of the theory is written in the past tense as it concerns the research after it has been conducted.

Besides the lobbying of governments to encourage them to criminalise money laundering activities, another key objective of the international AML regime is to align itself with the core concept of the information age by connecting the individuals and organisations concerned to a culture of easy access to knowledge and the free transfer of information. The collection of financial transaction related information, processing and dissemination of financial intelligence for investigating money laundering related offences is a prime concern of this regime. This emphasis on information sharing has resulted in the creation of a sort of social ‘information sharing’ network within the realm of the national jurisdictions. In this study, the analyst refers to this information exchange as the ‘AML reporting system’, where the Reporting Entities (REs), the Financial Intelligence Unit (FIU) and the law enforcement agencies are its major components.

The AML reporting system is a process aimed at guiding these components to combine their diversified efforts to achieve a specialised objective: the control of money laundering. The components act in their own ways from their own positions in order to assist this system to work. REs must assemble information about known or suspected violations of anti money laundering laws from customers’ transaction records, even from external sources when possible, and send them as reports to a national central agency, the FIU, for analysis. At the FIU, staff analyse these reports ‘by looking at
financial transactions involving identified parties, linking that information to other available information concerning the identified individuals or organisations, inter-relationships between them or third parties before forwarding them to the law enforcement agency. At the final stage, the law enforcement agency also plays their role by investigating those cases from investigator’s point of view. They gather evidence to determine if any crime under the specific law has actually been committed, and if so, by whom? If their investigation indicates that any specific crime has been committed under the AML legislation, they collect the relevant evidence and take the necessary initiatives to present a case before the appropriate court of law.

This apparently simple workflow of the AML reporting system components, however, passes through an intricate interactive process, often with complexities generated by the bodies’ overlapping relationships with each other. The interactions take place primarily between the AML reporting system and its external sources of information, and then among the components of the system themselves, occasioning a specific kind of social activity that the analyst referred as ‘improvising’.

Primarily, ‘improvising’ is an inventing or coping activity undertaken by an entity in need of information when dealing with those who are apparently in possession of the same. If the usual procedures of information collection remain unsuccessful or less successful in achieving their primary goal, ‘improvising’ could then be used as a technique to gain some control over the possible consequences of such a failure. The ultimate goal of improvisation is to manage the challenging circumstances caused by a deficiency in interagency information sharing. When ‘improvising’ is used as an information collection technique, it is applied in order to break the practice of ‘traditional action’ with regard to interagency information sharing, that is, the pattern of behaviour that has always applied in a in a given situation. The use of these techniques helps the user gain, in most cases temporary, access to such information, which is normally almost inaccessible.

The analyst will discuss one such information collection process that occurs simultaneously within the components of the AML reporting system and then between each of the components and the external entities from which they seek to collect

474 Broome, above n 37, 301.
information. Generally, the relationship between the AML reporting system and its external sources of information lacks balance. In most cases, the components of the system do not have any influence over external sources, which are, to be exact, other public agencies. This general picture, however, appears to change in favour of the AML reporting system components when they are able to use their ‘improvising’ technique effectively.  

The analyst collected the information discussed here through extensive fieldwork in Bangladesh. He chose the substantive area, the AML reporting system of Bangladesh, because he has a thorough understanding of its cultural environment and easy access to data sources. Using a constant comparative method (elaborated in Appendix D), the analyst chose only those relevant incidents that account for the core problem and its continuing resolutions in the substantive area.

Initially, the analyst will present a description of the conditions that are apparently responsible for prompting AML professionals to improvise alternative ways of resolving information sharing deficiencies. Some reasons affect all three components of the system almost equally while others affect individual component only. Subsequently, the analyst will describe how the AML professionals applied different improvising techniques in diverse situations.

4.2 Background and the Core Problem

After having conducted the fieldwork and undertaken the data analysis, the analyst identified ‘interagency information sharing deficiency’ as the core problem of the AML Reporting System. When the component entities have to put up with a number of other issues, for instance, under reporting and ineffective AML policies, this problem has its own unique consequences on the overall reporting system that always affect the component entities ability to function properly.

An AML regime requires that a customer, both existing and potential, must be properly identified before a reporting entity provides any designated services, ongoing or

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When an RE is a financial institution, generally they begin a business relationship with a customer through the opening of an account for the customer or that customer’s business. Account opening is a designated service. Therefore, each RE must identify the customer before providing this service by collecting document-based information about the customer. This involves, to be precise, collecting the necessary KYC information and then comparing it against reliable and independent means of verification.

Under the AML regime, the collection of customer data is an important exercise that helps the REs meet vital regulatory obligations. This is an ongoing process and the REs must carry this out in accordance with the specific provisions of the AML legislation in each jurisdiction. This variation in the requirements exists because every jurisdiction has its own set of unique money laundering related problems which must be addressed by the jurisdiction’s AML regime.

In Bangladesh, for instance, AML professionals indicated that obtaining a forged ID, especially a passport or National ID, and then using it without raising much suspicion is quite easy. On several occasions, the FIU and ACC officials discovered one person had used more than one passport issued under different names and to different addresses. Naturally, the legislation requires AML professionals to become very cautious in accepting customers for designated services, because while the correct and adequate information could be useful, incorrect and incomplete information could be equally useless or even pose a risk. Therefore, the REs must be cautious about what they collect. This requires the authentication of documents by checking with the appropriate authorities to be sure that the documents are not forged, distorted or otherwise unfit to qualify as ‘useful’. The best way of authentication is to get the relevant issuing agencies to check the documents against their records.

The authentication of public agency issued documents, however, is not easy in Bangladesh. In order to determine the genuineness of any document the REs’ first point of reference is the relevant government agency that apparently issued such a document. Normally REs need to send copies of documents supplied along with a formal letter

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requesting that the appropriate authority check and verify the documents’ authenticity. In most cases, however, such requests are overlooked by the agency that is the subject of such a request. Even when, on some rare occasions, a request is entertained, the process is excessively time and effort consuming.

The FIU, on the other hand, notwithstanding the fact that it is a public agency, has no better access to other public agencies’ information than do the REs. The public agencies often deny or delay the FIU’s requests for access to their information, which seriously hampers the FIU’s analysis and timely disposal of cases for further action (elaborated in section 2.4.5.4). In fact, as indicated by some of the FIU officials, many public agencies do not even know about the special role of the FIU. They consider the FIU as a part of the central bank which is busy with routine banking supervisory work, and then treat their requests accordingly. This identity crisis (which results in a failure to prioritise the requests for information by the FIU) makes the FIU’s interagency interaction even more difficult.

The deficiency in interagency information sharing is also a serious issue for the Anti Corruption Commission (ACC) which acts as the law enforcement agency for the Bangladesh AML regime. The ACC receives Suspicious Transaction Reports (STRs) from the FIU and although the FIU has analysed the material such an analysis is often lacking in detail and may be inadequate. The ACC then launches a preliminary inquiry in order to determine if the case has sufficient weight to merit further investigations. If they are positive this is so, they will forward it to the next level of investigation. Both the inquiry and investigation phases are aimed at evidence collection from multiple sources. The ACC contacts both private and public agencies for this purpose and unfortunately receives similar treatment to that of the FIU, with some exceptions, however.

One of the reasons why the ACC sometimes fails to collect information using the normal accepted formal methods is that some public agencies do not cooperate with its staff — but for exactly the opposite reason to why they do not respond to the FIU. In recent years, especially during the military backed Caretaker Government from 2007 to
and in the subsequent years, the ACC has grown into a reputable and powerful organisation in Bangladesh, with commendable success in exposing hidden corruption cases. For this reason, when the ACC begins an inquiry against any public official, other officials from same agency or closely related agencies often show a reluctance to cooperate or they try to skilfully avoid the ACC’s queries. They want to avoid being the one who ‘blew the whistle’ against their own colleagues. Especially in a jurisdiction where there is no witness protection legislation, a point that the ACC officials mentioned frequently, ‘whistle blowing’ can only promise risks not rewards.

4.2.1 Some General Factors Affecting Information Sharing

Given the context, it is important to further explain how the bureaucratic reality in Bangladesh relates to the AML information deficiencies. The fundamental question here is whether or not the very nature of Bangladeshi bureaucracy is incompatible with the basic requirements of an AML reporting system.

As mentioned earlier, corruption is widespread in the public sector of Bangladesh (section 1.5.1) and also ‘there is a practical nexus between corruption and money laundering’478 (section 2.4.1) as it is at the heart of most profit driven crimes. Hence, it is obvious that the bureaucracy will strive to maintain its traditional ‘unaccountable’ and ‘inefficient’ character (section 2.3.1.1) when it comes to promoting a sharing culture in order to strengthen the AML reporting system. This is, because, sharing information is often regarded as a vital step towards ensuring transparency in governance as opposed to cultivating the colonial practice of secrecy.479 While there could be many reasons, as we will see in the subsequent sections, why a bureaucracy may appear unwilling to support a sharing culture among the agencies, from the discussion in Chapter Two, however, it may be said that the excessive control over

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477 See generally Lewis, above n 213, 96.
public information by the secrecy loving bureaucrats in Bangladesh (section 2.3.3.1) is probably indicative of a ‘symbiotic relationship between sin and secrecy’.\textsuperscript{480}

Interagency information sharing deficiency in Bangladesh is a result of the combined effects of many closely related factors. The presence of these factors (elaborated in section 2.3.3.1, ‘Control over Information’) accounts for the current state of the nation’s civil administration system, which has not gone through any major reform since the country’s independence due to ‘so many priorities at hand’.\textsuperscript{481}

There are some social factors at play, for instance, the absence of a ‘sharing culture’ among public agencies and a long-held bureaucratic stance of the non-elected officials of public organisations. Often this traditional bureaucracy is criticised for its literal adherence to the official rules and for persisting with a level of legitimately avoidable rigidity. Other factors are political and legislative, for instance, the limited power provided to the ACC to investigate money laundering cases\textsuperscript{482} and a range of organisational barriers. In addition, there are factors related to technological limitations in communication (elaborated earlier in section 2.4.5.4).

4.2.1(A) Absence of a Sharing ‘Habit’ or Culture

The AML professionals interviewed indicated cultural barriers as one of the core reasons for the existing information sharing deficiencies in Bangladesh.\textsuperscript{483} They mentioned that the experience of AML professionals during information collection from other public agencies is no way unique. They said that a lack of interagency collaboration that results in interagency information deficiency is a negative tradition or habitual practice that also affects other agencies in relatively similar ways. They further suggested that the current practice of non-cooperation has its origin in the past but that it is still preserved in the present because historically the political and civil administration system had been maintained not to serve the needs and aspirations of the people of a


\textsuperscript{481} Sarker, above n 128, 365.

\textsuperscript{482} Although the ACC was designated as the sole investigating agency for cases filed under the MLPO 2008, it was not until 2012 that the predicate offences listed in the AML law were finally declared as the scheduled offence of the ACC. For further information please see the Money Laundering Prevention Act 2012 (Bangladesh) s 9.

\textsuperscript{483} For further detail, please see section 2.3.3.1 (Control over Information) of Chapter 2.
sovereign country but to suit the narrow interest of certain groups in power. This culture is deeply engraved in the Bangladeshi bureaucracy (elaborated in section 2.3.2).

How a public agency will respond to an information sharing request largely depends on how other agencies around them traditionally handle similar requests. That is to say, information sharing interactions are social actions that have a relationship with the present, past or even future behaviours of others, known or unknown. Moreover, traditional social actions, as theorised by Max Weber, are actions carried out by tradition, which includes habit, that is, a series of steps learned gradually and sometimes without conscious awareness. If we apply this theory in the Bangladeshi context, we have a reliable explanation for why some things are done in certain ways. Bangladesh’s colonial heritage still has a strong influence on its political culture and the bureaucracy (elaborated in section 2.1.2). The colonial power built a strong centralised bureaucracy in order to rule the empire with officials chosen by them and not by (and often not even from) the people being governed. This very anti-democratic spirit in civil administration nurtured a model of rigidity, isolation and the practice of unhealthy internal politics. Here members of the civil services had no accountability to the public but only to their superiors. Although the British colonial era ended on the Indian subcontinent in 1947, later Pakistani rule and the subsequent martial law regime prevented the Bangladeshi people from pursuing democratic practices until the end of 1990 (as detailed in section 2.3.2).

4.2.1(B) Inadequate Political Willingness

As we already mentioned in Chapter Two, the entire AML initiative may be denounced for not having demonstrated any real willingness to establish a robust reporting regime. During the interviews, the participants expressed their concerns with regard to some of the strategic decisions of the Government taken during the last few years. They mentioned that whilst some of those decisions might have an isolated positive effect on

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486 Ibid 28.
487 Ibid 25.
488 Wilder, above n 117, 20.
specific AML issues, they were not meant to achieve a viable solution to the inefficient reporting regime in general.

**Strategic Dilemma**

Through the initial legislation, the Government empowered the Bangladesh Bank (the nation’s central bank) or any person authorised by the Bangladesh Bank to enquire into offences committed under the anti money laundering legislation. They were authorised to use the power usually exercised by an Officer-in-Charge of Police in criminal case investigations. Although the police do not work under the Central Bank’s jurisdiction, this arrangement neither authorised nor barred the Central Bank from officially engaging police or the Anti Corruption Commission in money laundering investigations (through a mutual understanding). In 2008, however, the government promulgated the Money Laundering Prevention Ordinance empowering the Anti Corruption Commission as the sole investigating authority for offences under this law. This created a dilemma, offering two irreconcilable choices to the ACC. The first option was that they would investigate the cases, which was not always possible because according to the *Anti-Corruption Commission Act 2004* they were empowered to investigate only their schedule of offences related to corruption and only two of the 22 predicate offences under the AML legislation fulfilled this requirement. The second choice was to delegate authority to the police if the ACC was unable to investigate, but, under the *Anti Corruption Commission Act 2004*, the ACC can delegate investigative powers only to their own officials, not to the police.

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489 *Money Laundering Prevention Act 2002* (Bangladesh) s 5. This Act was repealed by the Money Laundering Prevention Ordinance (MLPO) 2008, later by the *Money Laundering Prevention Act 2009*. This was also repealed by Money Laundering Prevention Ordinance 2012 which later became the *Money Laundering Prevention Act 2012*.


491 Ibid.

492 *Anti Corruption Commission Act 2004* (Bangladesh) s 17(a).

493 However, it should be noted here that under the *Money Laundering Prevention Act 2012*, s 9(1), all offences under this Act shall also be considered as scheduled offences under the *Anti Corruption Commission Act 2004*. 

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4.2.1(C) Organisational Barriers

The FIU indicated that on several occasions it took the initiative to bring other public agencies under an umbrella of a Memorandum of Understanding so that the FIU’s information needs would be formally recognised. However, the other agencies did not show much interest in this regard but verbally assured the FIU that they would cooperate on case-by-case basis (as elaborated in section 2.4.5.4). From the FIU’s point of view, signing an MOU would benefit them in at least two ways. First, this would help them to establish their distinct role in the mind of other public agencies that often consider the FIU as merely a part of the Central Bank engaged in regular banking supervision. Secondly, this would widen the FIU’s opportunity to get direct access to the public agencies concerned. At the time of the interviews, the FIU officials mentioned that their access to various public and private agencies was limited to personal contacts that may not be available in case of an emergency. Hence, a formal liaison officer or a contact point would help them to contact the appropriate authority directly. They said that at times potential informants did not know if they should share a particular type of information with external bodies like the FIU, and if so, to what extent this was permitted. A formal arrangement would ease many of these dilemmas, they added.

From a social standpoint, however, the FIU and the ACC mentioned that generally they did not maintain a norm of reciprocity with many of their counterparts in the government. AML professionals from both of these agencies indicated that their role in the government was unique in the sense that their main business was to deal with sensitive classified information, something that they were unable to share with most other agencies or indeed those agencies just did not need such information at all.

An FIU official mentioned that they had to endure a greater level of demands than many other public agencies when it came to performing their professional duties, because, as they said, they were accountable to both the government and the international community, since every year they must sit with APG personnel to present the country’s AML initiatives to an international forum. They mentioned that often the international standard setter stressed the number of STRs and the level of interagency information sharing practices as important measures of the efficiency of the FIU. Naturally, they had to increase their demand for information from other agencies over the period, and this
then resulted in the ACC also having to engage in similar activities. Therefore, sometimes the FIU and the ACC were viewed as agencies that demanded more than what they were able to share in return. Therefore, a strong attempt on the part of the FIU to achieve the signing of a Memorandum of Understanding (MOU) remained unsuccessful for a variety of reasons, including the organisational self-interest of other public agencies.

The AML officials of both the FIU and the ACC stated that sometimes other agencies cooperated only if they felt that the receiver of assistance would be able to return that favour in some way. ‘[These] self-interest concerns of individual [organizations] present another formidable barrier to information sharing. Because the benefits of organizational cooperation are often indirect and difficult to measure,’ and often agencies agreed to cooperate only when they were confident that the cooperation would be somewhat mutually beneficial.

For instance, it was sometimes easier for the AML professionals of the FIU and the ACC to collect information from the tax authority or the Criminal Investigation Department of Police than other agencies in the government. This was because the close connection between some serious predicate offences to money laundering often made a case a matter of common interest for these agencies. If they believed that the problem would benefit from a mutual solution with the FIU and or the ACC, and they had enough organisational ability and resources to cooperate with each other, a mutual information sharing partnership worked better.

4.2.1(D) Technological Barriers

Technological barriers were a crucial obstacle for the AML reporting system in Bangladesh. Save for some isolated initiatives of using information technology for internal information storage and sharing, the overall system was traditionally and

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continues to be paper-based. Although some of the interviewees noted that there might have some been an underlying causality between the use of technology and the quality and number of STRs, most interviewees identified this as a significant problem. They indicated that the manual methods in document/information processing and dissemination were two key reasons why some reporting entities, especially those who extensively use information technology in day-to-day business, found reporting a difficult task and tried to avoid it whenever possible.

During fieldwork, the analyst found that the entities that were directly connected to the AML reporting system could be broadly classified into three groups based on the level of information technology that they used in their day-to-day business. Among these three groups, locally incorporated foreign or international banks were the heaviest users of information technology. In addition to having the standard Information Technology infrastructure for online banking services, they subscribed to international databases of Politically Exposed Persons and also used computerised information systems customised for AML compliance. This system helped them undertake automatic transaction monitoring, and analysis, as well as report generation. Privately owned local banks ranked second on this ladder as most of them have online central databases of customer information and transaction history. These reporting entities operated only in big cities. In contrast, public banks that had the widest banking network across Bangladesh were mostly paper-based just like the FIU and the ACC.

The FIU staff, however, did not appear to be too judgemental about this huge disparity, especially, among reporting entities. They said that they were well aware of this issue but not too concerned about it at that moment. They argued that in the Bangladeshi context this disparity was an unavoidable reality. In the remote rural areas and small towns where hundreds of public bank branches operate, these banks mainly dealt with local services, traders, shop-owners, rural farmers and borrowers from micro-finance agencies. They permit bank accounts to be opened with as little as ten TAKAS⁴⁹⁷ (less than 15 Australian cents) and provide banking services for a very nominal annual fee. They were neither willing nor capable of affording costly modern IT based banking services.

⁴⁹⁷ Currency of Bangladesh.
On the other hand, locally incorporated international financial institutions and most private financial institutions operated only in big cities and had significant investment in Information Technology. These financial institutions had two strategic advantages in business operations: first, the number of customers they served was small, and secondly, most of their customers were residents or businesses in urban where IT facilities were easily available. The FIU officials indicated that the disparity between the rural and urban financial systems was so huge and the respective problems were so unique in nature that it would take extensive research and planning before upgraded and customised compliance obligations could be imposed. While the size and frequency of rural transactions might not pose a real threat to the operation of the AML system, they did create an obvious gap in the system that could be exploited by those who wanted their ML activities to remain undetected.

The FIU officials mentioned that they had designed the AML reporting processes to work in a way that technological under-dependence does not become a barrier. They said that they had formulated the AML compliance policy for all types of financial institutions, ranging from those who were providing credit facilities for rural farmers to those who were serving only corporate clients in metropolitan areas. They did not only differ in type of services they provided (and their economic values), and the kinds of customers they handled or distinct organisational goals they pursued, they also differed in general capacity.

The FIU considered this an important issue while setting the minimum IT requirements for the REs. The requirements to submit STRs and CTRs were virtually similar. While the entities lodged completely paper-based STRs, they used the FIU supplied standard software for automatic CTR generation from daily transactions and wrote them on compact discs (CDs) before sending them to the FIU on a monthly basis. Those who needed to enter transaction data manually into the institution’s computer system before writing them on CDs would require this time. The FIU officials claimed that although it was always hard to introduce a uniform policy, the existing arrangement was a functional minimum standard for all. At the time of that the fieldwork and data collection was undertaken, there was no guidelines of ‘urgent reporting’ for the reporting entities.
A group of AML professionals working for privately owned local financial institutions and the public financial institutions expressed their ‘neutral view’ of technology and said that it was neither good nor bad for the reporting process. They said that they never felt that their organisations were facing any compliance problem that could be resolved by only by the broader application of technology. During conversations, however, some of the interviewees disclosed that they had never reported a suspicious transaction and others disclosed that they had reported only a few such transactions. That is, the only thing they were sending to the FIU on regular basis were CTRs, and those once a month.

Another group of interviewees who worked for locally incorporated international banks and the privately owned local banks, however, indicated that paper-based STR filing was complicated and time consuming. It not only required filling out the paper form manually, but also required copying a huge volume of papers. They said that this manually inefficient process had a direct impact on both the number and quality of STRs submitted. Their argument was that if the quality and number of report had to improve, the FIU should have taken the initiative to reduce their paperwork by introducing a secure internet-based system for electronic information exchange.

The FIU’s position in this regard was fairly plain and simple. They said that since the original source of most of the information was paper-based, the FIU was unable to collect and analyse it electronically. They held that how the government would view the idea of digital interaction between entities through e-governance or use information technology as a tool to achieve better government was a political issue where FIU had little to contribute. They said that unless there was a digital revolution in the public service, an isolated effort by the FIU to digitalise the AML reporting system would not bring much benefit.

Some AML professionals working for the privately owned commercial banks, however, disagreed. They indicated that this was a ‘chicken and egg’ causality dilemma. They wanted the FIU to take the first step to break this cycle of manual information processing. They argued that the reporting entities were already producing machine readable CTRs using the FIU supplied software. At the same time, if the FIU opened the gate for online enrolment and submission of transaction reports electronically, many
would accept this as the preferred method of reporting for businesses, especially those who already have a competent IT base.

They observed that if the FIU were able to introduce online CTR submission even on a trial basis, this would allow the businesses to figure out the benefits of online reporting and encourage more investment in IT infrastructure. This would make it possible for the STRs to be submitted online in future. The FIU appreciated this view of the reporting entities and at the same time noted that neither the ACC nor the FIU were ready yet for such an initiative. Until they gathered more experience and skill as the AML regulator or investigator, as the case may be, they would not initiate the introduction of substantial changes in reporting methods. However, the reality is, in order to gather experience, they first need the reports.

In particular, as some of the AML compliance officers from the locally incorporated foreign financial institutions indicated, in the AML reporting system of Bangladesh, under-dependency on technology itself was the first barrier and technological incompatibility was the second. When prompted, some FIU officials agreed somewhat with this comment. They said that most reporting entities could not afford a modern customer monitoring system, and those who could were still unable to procure a system of equal standard due to their unequal financial capacity. In addition, the FIU did not have enough expertise to guide reporting entities in this regard.

They further indicated that even if the reporting entities were able to produce and submit electronic reports that would solve only a small part of the problem. The FIU itself was not ready to accept such reports because it did not have a functional information system to handle such an inward dataflow. The only software they had for STR and CTR analysis was not fully functional, as they did not have enough data to feed the processor. Besides, none of the public agencies had a modern computer based information sharing network.

To ensure that the reporting entities would gradually adhere to at least the minimum standard of online reporting was no simple task, an AML professional from the FIU noted. He said that although the situation was gradually changing due to the ongoing anti money laundering awareness building campaign, many agencies and reporting entities still viewed the FIU only as an extended part of the Central Bank, the regulator
of banking industry and not as the AML authority for financial institutions in general. Although the FIU personnel used their inherent connection with the Central Bank as leverage when dealing with reporting entities, they felt that it was crucial to establish themselves as an entity which had some unique features and roles and which was responsible to ‘receive and analyse financial intelligence’. It was often hard for the FIU to impose rules on businesses that were not under their direct authority. The AML professional from the FIU (above) described this as a general drawback for the AML reporting system.

The above-mentioned variables were some of the key reasons why the AML professionals had to improvise different techniques to overcome the interagency information sharing deficiency. Irrespective of the positions they held in their respective organisations, all AML professionals played their role as part of a system that continually collected, processed and disseminated information. In doing so, they improvised various techniques to build informal relationships with potential informants and invented alternative collection methods to fulfil their professional obligations. Subsequent parts of this chapter will provide an account of the process they pursued to fulfil such obligations.

4.3 ‘Improvising’ — The Process of Overcoming Interagency Information Sharing Deficiency

As mentioned earlier, the analyst acquired information for this research through extensive fieldwork conducted over several months in Bangladesh. The primary method of information collection was the ‘face-to-face’ interview with the AML professionals concerned who were working in various organisations in Bangladesh (section 3.7.3). Other sources of information were local and international legislation, rules, reports, conventions, policy papers and the like that the AML professionals frequently referred to at the time of interview.

It may be noted that collected information presents only those incidents that the analyst identified and then conceptualised during data collection and the theoretical sampling

498 Broome, above n 37, 301.
499 Written presentation of this theory followed the writing style of ‘The Milkman and his Customer: A Cultivated Relationship’, see generally Simmons, above n 475, 4–29.
process. The finding is ‘readily modifiable when new data presents variations’. In addition, the theory presented here does not guarantee that the AML officials were always successful in resolving their core concerns using improvised techniques. There might be some other reasons why someone agreed to share information. To be precise, it is very hard to determine with reasonable proximity to what degree improvising techniques were successful.

Interagency information sharing deficiency is a complex social phenomenon that the analyst observed in the context of the AML regime of Bangladesh. It creates major compliance challenges for all AML professionals in the reporting system. However, none of the interviewees who took part in this research could suggest a permanent solution to this problem. They held that since there was no permanent solution in their hands, they must continue to resort to situation specific makeshift solutions to mitigate this challenge in so far as it was possible.

They said that at times even the wittiest application of informal personal communications would not guarantee the necessary success, that is, reasonable access to all relevant information that they might need. Naturally, improvised techniques were also used to prevent the emergence of any uneasy situation that could surface due to the failure of the collection techniques adopted. Overall, ‘improvising’ was a combinations of techniques applied to overcome a situation created by interagency information sharing deficiency.

In order to overcome the situation, as mentioned above, the AML professionals were working to accomplish three major tasks simultaneously. They used different sets of ‘improvised’ techniques to accomplish each task. The purpose of ‘collecting crucial information’ was to gather such vital information they must collect to keep the system running. Another task was ‘being selective’ about what they disseminated because disseminating reports with regard to an incident about which they had only a little background information would put them in an uncomfortable situation when the recipient would require clarification on issues or demand more links.

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500 Glaser, *Emergence vs Forcing*, above n 77, 15.
501 Simmons, above n 475, 4, 12.
Collecting highly useful information through improvised techniques would require an enormous amount of luck at times. Naturally, the AML professionals often collected only the amount of information sufficient to ‘keep to the code’, that is, to ensure that they had collected at least the minimum amount required to fulfil their legal obligation. For instance, when it was less risky from both a business and a regulatory perspective, the AML professionals would collect information as per the minimum standard that was stated in the rules, being fully aware of the fact that such information might not be of much practical use. This was a defensive technique from such a point of view.

What may be noted here is that although the techniques described in the subsequent sections were used by the AML professionals of the REs, the ACC and the FIU in order to achieve an ultimate common objective, most of their short term goals were, however, unique to their own particular context. Therefore, the common broader objective of ‘collecting crucial information’ was pursued by the AML professionals through such techniques as were useful and suitable in their own particular context.

4.4 Collecting Crucial Information

The most important task of the AML professionals was to collect AML related information from a number of internal and external sources. The information collected from these sources was crucial for the relevant components of the AML reporting system. They had to collect this information in order to keep their core business activity running. They used various improvised techniques in order to collect essential information. These techniques can be broadly divided into two sub-groups: ‘improvising informal communication’ and ‘devising alternative collection methods’. Sometimes the AML professionals applied both techniques simultaneously and at times separately with notable time gaps between incidents depending on the situation.

4.4.1 Improvising Informal Communication

As mentioned earlier (section 2.1.2), the interagency relationships that exist today are the result of a long bureaucratic tradition of civil administration that requires that interagency communications use certain official procedures, letter formats, jargon, language and even a specific mode of delivery. In addition, public officials need to maintain a very clear and defined official hierarchy for any official communication
Sometimes they enjoy a certain level of independence when communicating within their own department, but they need to be quite formal when contacting other departments. For instance, the Rules of Business 1996 sets out (amongst other similar consultation processes) the formal procedures for consultation between Ministries and Divisions. To be precise, the Rules describe the responsibilities of the various Ministries and Departments of government and the procedures for discharging such responsibilities. These procedures evolved during the British colonial period and are still in practice.

Because of these traditional official procedures, it was often very hard for the AML professionals to contact the right person easily and as rapidly as may be required. They were always advised to follow the proper communication channels, which were slow moving and mostly ineffective. Such channels were particularly unsuitable for the type of business in which the AML professionals were involved. Owing to this, they often used several informal communication techniques that enabled them to build an informal relationship with their counterparts.

For the reporting entities, the most important source of information was their customers. The better the relationship they maintained with the customers, the higher the chance was to obtaining additional information about them. An AML professional working for a reporting entity said that there had been a time when financial service providers could maintain close social interactions with their customers, which enabled them even to know many of the customers individually. Although the same practice may still exist in some small towns, it is rare in big cities where the customer base is comparatively much greater in number. In the present context of Bangladesh, customers are a privileged group in a highly competitive market. Financial service providers are independent, and virtually unbound by the rules of the REs in the way that REs are by the policy of their regulatory body. Therefore, REs often failed to exercise enough authority over their customers if they appeared to be uncooperative in providing necessary documents when they applied for any designated services.

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Accordingly, they had to apply certain informal communication styles to build casual relationships with many customers. Generally, in the AML context this short-term relationship was built in order to fulfil a number of specific AML regulatory requirements. However, reporting entities may cultivate their relationship with customers for purely business purposes through relationship managers, which was not part of this study.

Though in most cases RE staff successfully applied their improvising techniques to individual customers, their efforts were less successful when dealing with organisations. Beside customers, they had to contact various public agencies in order to collect information on individual customers and their businesses. For example, they contacted the photo ID issuing authorities, licensing authorities and different utility service providers in order to verify certain customer information. Participants from most of the REs mentioned that they remained unsuccessful in their use of informal communication techniques with public officials. Therefore, they had to improvise their own techniques to collect the necessary information.

Adopting informal communication methods was, for the AML professionals in Bangladesh, the first step toward building a workable informal relationship with potential sources of information. Instead of directly asking for any assistance, they emphasised the establishment of friendly relationships with their potential informants based on trust and cooperation. AML professionals in the REs, the FIU and the ACC resorted to numerous innovative techniques according to their own capacity and need in order to establish this communication.

4.4.1(A) Being Inquisitive

In the AML regime, the professionals working for reporting entities had the responsibility of acting as the initial screening point to ensure they were not allowing any anonymous account or account with fictitious names to operate. They had to undertake Customer Due Diligence measures and adequately identify customers as part of their business and regulatory risk management process. Accepting those customers who provided insufficient information about themselves and their businesses and those who provided adequate information using forged or illegally obtained documents were just as risky. AML professionals, along with other staff-members, have the
responsibility to oversee the document authentication processes when necessary. In addition, they had to supervise continuing customer data collection, verification, and authentication throughout their relationship with customers if regular monitoring suggested anything unusual.

**Customer Acceptance**

Generally, the reporting entities collected customer information in two phases. First, when they accepted a customer through account opening or when they provided designated services; and secondly, when they detected any significant changes with regard to the use of existing accounts. Most interviewees working in the financial institutions said that sometimes customers did not have the necessary documents for the type of account for which they applied. For instance, a customer may be applying for an account in the name of his business but he fails to produce copies of a Tax Identification Certificate or a Trade Licence although his business is already in operation. Although customers must declare at least one source of income when opening an account, sometimes they conceal material information about other additional businesses and or sources of income that might also use the same account.

Whilst customers were gradually becoming aware of their AML obligations, many of them showed resistance to providing the proper identification documentation and other relevant information. The AML professionals mentioned that some customers were unaware of their obligation to provide supporting documents for opening an account. Many of them were heavily influenced by the concept of traditional trust-based business relationships with financial institutions. Sometimes the demand for additional information and supporting documents was viewed by small trade owners as sign that the financial service provider viewed the trader as ‘untrustworthy’; the traders thus construed the demand for further documentation as slur on their integrity.

Sometimes financial institutions asked for certified copies of diplomas issued by the General Education Board as an additional verification measure when they had some doubt about the authenticity of photo IDs already provided. While many of the customers cooperated, a large number of them remained uncooperative because either they had never finished college or they had finished but did not collect the diplomas. Officials indicated that many customers tried to avoid such requests because the
collection of diplomas gained at the public examinations involved a long process and hence many refrained from collecting them at all unless they planned to pursue a tertiary education.

The AML professionals of the REs predicted several consequences of allowing customers to open accounts without sufficient documents. They said that such practices always enhanced the chance of lodging STRs even when no money laundering or related offences had actually been committed. In the particular context of Bangladesh, for a range of social and cultural reason, often customers may ignore the probable consequences of using their account in a way unfamiliar to the service provider. For instance, a customer may allow his friends and relatives to use his account for large and frequent cash transactions that have no declaration in his Transaction Profile. He may also use his account for a business undeclared to the reporting entity. In both instances, the incidents could result in the lodging of STRs although no case of money laundering was actually involved.

‘Being inquisitive’ was the most common approach toward a new customer who was applying to open an account with a financial institution. Some customers who came unprepared would provide lame excuses and push staff to finish the account opening procedure quickly so they could then leave. It was often difficult to trace these customers later and make sure that they updated their file with the missing documents. When the RE official concerned encountered such a situation, their first task would be to greet the customer cordially and attract their attention to the requirements detailed on the account opening form. If the customer appeared uncooperative, the officer concerned would politely mention that they needed such information to know him well and to offer better services in the future.

Along with establishing the customer’s ‘true identity’, the key task of the front desk officer concerned was to collect as much detailed information about the customer and their business as possible. For instance, if a customer claimed that he was a public servant yet his declared transaction profile — predicted frequencies of monthly transactions and their size — was inconsistent with the usual salary of a public servant of his rank, the officer would request him to provide supplementary documents justifying those additional earnings. If such documents were not supplied and the
account holder continued exceeding his transaction profile, this would result in the filing of an STR.

Often, some of the positions in the bureaucracy generate much a higher annual income than was gazetted for their level.\textsuperscript{504} This was often because of the various forms of illegal activities that some public servants engage themselves in. Some interviewees indicated that they needed to be very inquisitive about public servants placed in positions where the chance of illegal earnings was higher (section 2.3.1.2). They said they interviewed customers and noted such information separately to use it later when conducting a risk analysis. Although being curious about a customers’ professional detail was often ‘most unwelcome’ in the Bangladeshi social setting, it was, however, one of the ‘most important’ issues in the AML context. However, if officials showed much concern or rigidity about any issues, the customer might just leave and chose some other service provider. Front desk officials, therefore, had clear instructions that they might not harass, offend, tip off or put across any sign of suspicion in their behaviour while inquiring about customers’ business.

Providing financial services to certain small trade owners and employees of private companies without conducting proper due diligence could be even riskier. During account opening, such persons may declare that they would use their account for regular large cash transactions but it was clearly inconsistent with their declared earnings. When asked, they claimed that the extra money would come from their investments in the stock market. When prompted, some of them provided copies of Beneficiary Owners (BO) account certificates as proof of such investments but many failed, saying they were using friends’ or relatives’ BO accounts with the stock broker. The AML professionals would rate these customers as high risk and took various initiatives to discover if their claims were genuine.

Sometimes the reporting entity officials used the disguise of friendly conversation to hide their probing attitude so that a potential customer did not get offended. To begin a friendly conversation, they offered assistance to fill out the account opening form, the KYC form and the Transaction Profile. They asked questions on each information field

of a form and obtained answers as it was filled it out. They would express their pretended interest about information so provided, for example, the customer’s profession and location of work, as well as one or two unrelated slightly personal questions so that the customer would participate in the conversation.

Once the customer was involved in conversation, the officer would use the occasion of an answer for asking other related questions. The name and address of a nominee would naturally lead to further queries regarding their profession and banking information, if any. However, the officer concerned would not ask for such information so directly. Instead, they would indicate that they needed the nominee’s information so that they could offer them new products. This approach often helped the REs to collect the required KYC information about both the main applicant and the nominee without offending anyone.

If a ‘friendly conversation’ failed to gather the required information or documents, the officer concerned would then show a little bit of friendly persistence to remind the uncooperative customers about the reporting entity’s regulatory obligations to collect certain customer data. Sometimes they would even mention that Bangladesh Bank might pay a surprise visit and discover accounts with insufficient information. This would definitely result in the closure of such an account without notice. This technique would, however, be used only as last resort when all other attempts at extracting the required information had failed.

Being inquisitive was useful not only to obtain required information about customers but also to avoid preventable errors. Some of the AML professionals mentioned that on several occasions the FIU had warned them about filing STRs without sufficient internal inquiries having been first conducted. The FIU’s preliminary inquiry revealed that many of the STRs could be prevented if the AML professionals concerned interviewed the account holder before reporting. Maybe an unemployed housewife received several large cash deposits into her savings account in a short period of time and the financial institution concerned reported it as an STR. However, a simple interview with the account holder would reveal that she had sold some real estate that she had inherited from her deceased parents and the sums deposited represented the monies received from such sales.
In reality, as claimed by the reporting entities, most of the customers were legitimate business owners and their reluctance to provide information did not mean that they wanted to use the account for illegal transactions. Rather, it was more of a cultural issue that some individuals, small enterprise owners, unregistered commission agents, shop owners, subcontractors or similar sole business units would run their business in less formal ways, sometimes even without a trade licence. Although officials of the reporting entities were well aware of this fact, they must still collect information in order to fulfil their formal obligations often in informal ways, without losing a customer.

4.4.1(B) Conversing Casually

After a customer has been accepted for receipt of designated services, the reporting entities had to maintain Ongoing Customer Due Diligence (OCDD) in order to ensure that the customer was not using his account in a way which was inconsistent with the patterns of transactions that could be reasonably anticipated for such an account. This would require the reporting entity to remain observant about customers and update their records with current information as it became available. The ultimate purpose of this exercise was to remain aware of the level of risk that the customer might be posing to the reporting entity. Any customer accepted and rated as low risk might become high risk at a subsequent stage or vice versa. It was the responsibility of the reporting entity concerned to revise their risk assessment and deterrence measures from time to time.

Reporting entities often detected unusual activities during Ongoing Customer Due Diligence. Most participants from reporting entities indicated that the transaction profile of a customer was the primary basis for separating unusual transactions from normal ones. If a customer were found to have exceeded his declared transaction profile, the matter would be noted as ‘unusual’. If there were several transactions of a similar kind, that occurrence would ‘trigger an alarm’ and the account would then be brought under a regime of continuing monitoring. If the trend continued over a period, the reporting entities would see it as suspicious and initiate subsequent proceedings.

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As mentioned earlier, the second phase of information collection about a customer becomes necessary when reporting entities identified any suspicious transactions. The process of collection included calling the customer over the telephone and requesting a meeting. Generally, there had to be quite a few telephone calls before a customer finally appeared. On a few occasions they never did, which was dealt with in different ways. Upon a customer’s arrival, the case officer or the AML professional concerned warmly greeted them before beginning the conversation.

Generally, most reporting entities would process a case involving suspicious transactions with adequate precautions. A hasty move could result in ‘tipping off’ the customer (and possible offender), which was an offence under the AML legislation; and similarly, accusing an innocent customer by mistake could result in a loss of business and reputation. In view of that, once a reporting entity had detected a suspicious transaction and decided to call the customer in for an interview, the primary goal of the AML professional concerned would be to build an informal, yet guided, rapport with the customer in question. The reporting entity personnel would employ this window of a ‘casual relationship’ to explore the suspected transactions.

‘Conversing casually’ was one of the most used improvising techniques used by reporting entities for information collection when they were dealing with an existing customer. As mentioned earlier, many customers did not understand why they had to explain everything related to their business to the financial service provider. Often, as noted, they remained uncooperative. The reporting entity had to ensure that a capable officer would handle each case in a covert manner to ensure maximum success. The conversation would usually begin with a topic that was ostensibly unrelated to the transactions in question. Usually, it would begin with some praising words about customer’s business followed by the offer of new products or services. Afterward, the AML professionals would use situation specific tactics to collect information from the customer. Some widely used common tactics are presented here.
Common Tactic in Response to large Deposits: Dealing with ‘Service Holders’

Reporting entities applied the following tactic to respond to numerous sudden deposits in a customer’s account from unknown sources. Once the casual conversation began, the AML officer would raise the issue very politely. If the customer was a service holder, the officer would inquire if he was selling any real estate, that is, a piece of land or an apartment. An ‘honest’ customer normally cooperated with direct answers and subsequently presented the necessary documents for examination. The most common reasons, as demonstrated time and again by most customers, were: the sale of real estate, receipt of interest from stocks held or profits from the sale of stocks on the stock market, as well as allowing a friend or relative to temporarily use the customer’s account, or borrowing or receiving foreign remittance on behalf of friends or family living in rural areas where there is no banking services, and the like.

Instead of answering directly, some customers often expressed their reluctance by asking a question in reply, for example, ‘Why do you want to know?’. In return, the officer would say that if the customer was selling, then someone was buying the property, and that party might be interested in the RE’s home loan products. While observing the customer’s reaction, the officer may candidly add that they were struggling to achieve the monthly sales target and was wondering if the customer could help by providing the buyer’s contacts.

On the other hand, some customers would hesitate and try to avoid answering the RE officer’s initial inquiry as to whether the inflow of capital was from the sale of real estate and instead respond, for instance, that he had investment in stock market. The officer then would look very enthusiastic and offer him or her new services related to investment in stock market. If a customer showed any interest to such offer, the officer concerned would view it as ‘positive gesture’, and then request him to provide copies of his BO account certificates. The officer would stress that the RE required those certificates in order to be able to design and offer the products or service which would be the most appropriate for the customer. However, often customers said that they did not have any BO account of their own but rather that they were investing through the

506 In Bangladesh, the term ‘service holder’ frequently is used to indicate salaried employees of both private and public organisations. For further detail on public servants, please see section 2.3 of Chapter 2.
accounts of their friends or relatives. In such a case, the officers would then request the customer to provide copies of the BO account certificates along with copies of the investment agreements between the customer and his friends or relatives, as the case may be.

A difficult customer would still try to avoid production of such documents and insist that there were no written agreements at all. At this stage, the officer would politely remind the customer that he (the officer) had some obligations under the company policy to update the customer’s file with the necessary documents. Later, the AML officer would record in writing the outcome of this ‘casual conversation’ with the customer and determine the subsequent course of action.

**Common Tactic in Response to Large Deposits: Dealing with Businesspeople**

When the suspected customer was a businessperson, the casual conversation started in a rather more direct way. This was because the large cash transactions of a certain amount and frequency were not very unusual on accounts held by this particular group of customers. Generally, the AML officer would politely mention that they were happy to see that the customer’s business was running well. They would congratulate the customer, and refer to the recent high volume transactions and eagerly inquire if he had opened a new business or expanded the existing one. Irrespective of how the customer reacted to such an assertion, the AML officer would immediately make a brief oral presentation of the new products customised for the customer.

An AML professional working for an RE said:

> If there are a lot of [large] deposits, we ask the customer, please tell [us] if you have opened new business units, [if yes], then where? If he is a good/legitimate customer, he would say, oh, yes, I have opened a new chain store …, why don’t you drop in some day. It happens sometimes.  

While a ‘legitimate’ business owner would give simple answers and even invite, in some cases, the officer to visit their new business, the AML professional in this particular instance held that a businessperson whose intention was to avoid providing

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507 RE13, in the interview.

508 Single quotation marks (or double if within an existing quotation) may be used around some words and phrases to imply that the words or phrase may not signify its apparent meaning (This is particularly the case in Chapter Four). These expressions were actually used by the participants during the interviews.
further information would behave differently. They would attempt to establish the transactions as normal business practice and try to leave as soon as possible to avoid further discussion. At this stage, the AML officer’s task would be to offer him tea or coffee and ask if the customer was unhappy with the new products or services they offered and if yes, why.

If the customer stated, for instance, that they thought the new offers were good and would think about the proposal and contact the officer concerned later, then the officer would request a date and time to contact him again. If the customer hesitated, the officer would make a final request for information with regard to his sources of money. This time the officer would say that the RE needed such information to understand the nature of the business that the customer was involved in so that they could develop new products and services to meet the customer’s changing business needs. If all efforts failed and customer avoided all attempts to give any satisfactory answer to the reporting entity’s queries, the matter would be noted for further action.

Here an important point that came out of the above quotation was that sometimes the AML professionals working for the REs became judgemental and labelled the customers as ‘good’ or ‘legitimate’ (or the opposite, for example, ‘dishonest’). This mind-set probably developed from the assumption that the AML compliance officers may assume the role of an assistant to the law enforcement agency, which, in fact, was a sign of an unclear or even a wrong understanding of the role that they are supposed to perform.

**Precaution in Dealing with Customers**

Some of the AML professionals working with privately owned local financial institutions mentioned that their managements strongly advised staff not to jump to a conclusion but arrive at it more slowly with due deliberation after they had carefully examined all suspicious issues and became confident that the alleged transactions were probably ‘linked with … illegal activity’. They were warned not to misinterpret the
careless attitude of uneducated\textsuperscript{509} customers as ‘suspicious’ and file an STR when reasonable patience could reveal the ‘truth’ of the matter. One interviewee noted:

Yes, we have some guidelines, for instance, when you see that [a customer] looks hesitant or, you know, [like] a thief … if the Police suspects someone [is a] thief and [question] him, his facial expression will change [during questioning] and you can see changes in his gesture and he will appear as if he is “caught red-handed”. We don’t question [in] exactly the same way, but when we ask [a suspect customer]. ‘What is the name of your shop? Are you the owner or the manager? Please tell us your address so that we can … you see, at this stage the customer appears a little hesitant and we assume that there might be something suspicious…\textsuperscript{510}

Once again, an AML professional’s misconception about their role is evident. This misconception might have its root in the very instructions that streamed down (direct or perceived) to them from their respective managements to look for a ‘link with any illegal activity’ when an unusual incident took place. This group of AML professionals — who actually compare their role with that of the police — might feel more duty-bound to improvise information collection techniques, go deeper into the problem, set a target which is fairly impossible to achieve, fail, and close the file without reporting.

Participants who were working for locally incorporated foreign financial institutions, however, mentioned that their management had hardly objected over-reporting from branch level to central compliance unit. They said that their reporting was more frequent than most other reporting entities because they had to follow the reporting guidelines set out by their Group along with the compliance standard of the local FIU. For example, when calculating threshold amount for Cash Transaction Reporting (CTR) they not only considered single transactions of a certain amount or above that limit\textsuperscript{511} but also

\begin{flushright}
\textsuperscript{509} Although circumstances are changing rapidly and people are gradually becoming more aware of the increasingly stringent banking regulations, many of the reporting entity AML professionals, however, mentioned that it was often difficult for them to accustom the customers to the inquisitive attitude that REs personnel had to adopt as part of their AML compliance obligation. Many of the customers who were engaged in cash-based small trades had little or no formal education and were unaware of the changing banking regulations. Bangladesh is a country where the rate of education is generally poor due to a number of reasons, including an increasing primary-school dropout rate. See generally Andleeb Sharif, ‘School Capacity the Neglected Paradigm in EFA Movement: A Case Study of Educational Development in Bangladesh at the Primary Level in EFA Context’ in Justin Bruner, \textit{Learning and Doing Policy Analysis in Education: Examining Diverse Approaches to Increasing Educational Access} (Springer, 2012) 61, 61.

\textsuperscript{510} RE8, in the interview.

\end{flushright}
considered combined figure of a series of smaller transactions, both deposits and withdrawals, on any account within a specified period of time.

One participant from a public financial institution and two participants from local private financial institutions mentioned that until the end of 2005 they lodged many STRs mainly based on CTRs. Later, the central bank circulated an official notification advising reporting entities not to suspect transactions only because they exceeded threshold amount.\textsuperscript{512} In contrast, some reporting entities that had never submitted an STR because they thought that submitting only the CTRs was enough, were reminded by the central bank that they must continue both types of reporting simultaneously.\textsuperscript{513}

Hence, the officer concerned continued conversing with customers until they arrived at the conclusions that either the suspicion was actual or it just appeared suspicious due to an unrevised transaction profile, for example, undeclared businesses (undeclared to financial service provider or appropriate government authority — for instance, the tax authority — or to both). If they were reasonably certain about any probable suspicious transaction, this would normally make their task easier. They could quickly report the incident to the central compliance unit and end the preliminary inquiry phase right away. In other cases, especially when the case involved businesspeople who ran cash-based\textsuperscript{514} trades and had a limited knowledge of modern banking rules, the reporting entities had to be very patient and continue conversing until the ‘real nature’ of the problem came out. An interviewee pointed out that occasionally money launderers used their friends’ bank accounts, especially of those who ran cash-based small and medium size trade enterprises. The actual operator of the accounts might not have any knowledge that their so-called friends were misusing their accounts. Therefore, sometimes even multiple sessions of interviews with the same customer were necessary to reach a conclusion.

\textsuperscript{512} Anti-Money Laundering Department, Bangladesh Bank, \textit{Regarding Submission of Cash Transaction Report (CTR)}, AML Circular No 9, 29 December 2005.


\textsuperscript{514} Except for some established big business organisations in urban areas, most of the wholesale and retail business in cities, small towns and rural areas of Bangladesh rely on cash transactions.
Example

A reporting entity officer provided an example from their experience on how an incident of negligence on their behalf resulted in an uneasy situation. In that particular incident, an STR was filed against a customer who failed to update his account-opening file with adequate supporting documents. When a disparity between actual transactions and the declared transaction profile was noticed, the reporting entity filed an STR without making any reasonable effort to contact the customer and request an explanation, if any, from that person. After being questioned by the law enforcement agency, the customer visited the reporting entity concerned and expressed his deep frustration because he thought he had been reported as a ‘criminal’.

In a subsequent interview with the RE concerned, the customer denied any connection with crime and criminal proceeds. He claimed that he was a local agent of a Chinese trading house although he failed to provide any certificate of registration or authorisation of any form issued by such foreign company. He then changed his position and said that he was actually a broker working for that Chinese company, and received sales commissions in cash from local traders. When further questioned, he was surprised to learn that even brokers needed a licence to operate. Finally, when he ultimately failed to provide any government permission to operate a brokerage firm, the AML compliance officer concluded that the customer was not even a broker in that sense; rather he was an informal commission agent.

This particular customer actually acted as an intermediary between the foreign company and its local exporters in exchange of commission paid typically in cash. He had his own registered shop and a Tax Identification Number (TIN) but at the time that the RE concerned was investigating his case his (undeclared) income, as a commission agent was much higher than his (declared) earnings from the shop. Regarding the TIN certificate, he said that he had obtained the certificate only because most of the other shop owners in the business centre where his office was located also had TIN. However, he claimed that he did not know that government permission was required to operate a brokerage firm.

The RE mentioned that the incident was taken seriously by the FIU who pointed their finger at the weak KYC system of the reporting entity concerned. They, however,
defended their position and argued that the said account was opened when Bangladesh had just entered into an AML regime and the concept of Customer Due Diligence for AML purposes was still in its infancy. In a subsequent interview an FIU official, however, stressed that they had given clear instructions on how to apply such measures to all high-risk customers.

The incident mentioned above was one of several similar incidents that took place at the initial stage of the AML regime in Bangladesh, which, some of the financial service providers interpreted rather plainly. As one AML professional of a reporting entity said:

> Then quality of our reports is good, because ... I believe ...[a]nything we report, I mean ... we will not report unless we are 100% confirm. We report only when it appears to us that it is 100% [suspicious].

Just like being judgemental about the customer and feeling responsible for identifying any probable connection with illegal activity (as mentioned above), here we see that some AML professionals were also being too careful and rigid in assessing unusual transactions. This stance, once again, was based on a somewhat poor understanding of what ‘suspicious’ actually meant in an AML context. Reporting Entities are supposed to lodge STRs if they have a ‘reasonable belief’ that a transaction is suspicious, that is, any unusual transaction not supported by sound evidence to the contrary may lead to an STR. Here, an attempt to be ‘100% confirm’ only introduces a rigidity that could easily lead to the problem of under reporting.

Later, a few AML professionals working for privately owned local financial institutions, however, noted that the retention of a financially solvent customer appeared to be their management’s unwritten priority. They pointed out that up until that time the FIU had not imposed sanctions on any financial institution for only accidentally omitting a reportable incident. Apparently, the managements of their institutions were ready to run the risk of overlooking some suspicious transactions, an action which may or may not have future consequences.

A small fraction of the total number of participants working with the reporting entities indicated that the level of effort in communication and information collection would

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515 RE5, in the interview.
have depended largely on their prediction of probable consequences of omitting to report a reportable incident because, as they added, there had always been a ‘second chance’ of detection. They illustrated this by saying that on a few occasions the reporting entities lodged STRs only after some incidents of financial fraud were made public by the media, or sometimes after the ACC had contacted the financial institutions after being tipped off by their own (ACC) secret sources about probable corruption cases.

**Common Tactics in Response to Sudden Withdrawals**

Like sudden large deposits from unknown sources, sudden withdrawal of very large cash or the entire balance from an account was also viewed as suspicious. This suspicion, however, applied mainly to accounts run in the name of a business or other entity with legal personality, for instance, NGOs. In recent years, a number of fraudulent entities had emerged that had targeted people in small towns and rural areas, promising a quick profit in exchange for small weekly cash subscriptions. They collected money from thousands of people and then fled with the fund. Some of the accused persons were arrested and prosecuted after the central bank shut down their fraudulent activities;\(^\text{516}\) however, often these businesses later re-emerged under a new name in a different location.\(^\text{517}\) Naturally, there was a growing concern about these issues.

The AML professionals working for the reporting entities had always been extra cautious about organisations attempting to withdraw every last penny. In fact, they had both a regulatory and business interest for such preparedness. They used various tactics to initiate a casual conversation as the first move to learn the probable reason behind such an order for a withdrawal. Some of the most common tactics were ‘playing the victim role’ and ‘awaiting method’.


Playing the Victim Role

This was the first tactic that the AML professionals applied to begin a conversation with the customer who was suspiciously attempting to withdraw all their money. The officer concerned would pretend to be surprised and politely ask if the customer had suddenly experienced any instance of poor customer service that had made him take such a serious decision. A ‘reasonable’ and ‘honest’ customer would provide a simple and acceptable answer; for instance, their business had been relocated to a place where the financial service provider concerned did not have a branch, and so on. In the Bangladeshi context, this reply could be acceptable since many financial service providers operate only in the big cities. In addition, the customer’s attitude and style of query might also suggest their ‘innocence’. For example, before lodging instructions for such a transaction, many customers would enquire about the process involved in such a withdrawal and if there was any requirement for giving prior notice, and so forth.

Some customers (who is not ‘honest’), however, would adopt a rather more direct approach. They would ask the financial service provider about the fastest possible way to withdraw all their money in cash. In order to make this customer relax and provide more information about his intention, the officer concerned would ask where he was taking the money. He would stress on the point that the sudden withdrawal of such a large amount may raise a question about the performance of their branch and they may even lose their job, because the incident would definitely disappoint the management. They would mention that they needed to know the information so that they could offer some product or services to the other party and bring the deposit back.

The AML professionals said that they tried all these tactics to buy time for internal consultation and to identify the vulnerabilities of the suspect customers. They mentioned that such customers generally appeared to be low in confidence. Some of them would give in to simple unmerited flattery and some would cooperate more when offered the possibility of an attractive investment offer due to their ‘greediness’ and ask for more information about it. The relentless application of various behavioural efforts would often put the customer on the defensive and at some point of the conversation their behaviour would begin to indicate that something was ‘suspicious’.
However, many of the suspect customers were rather well prepared to answer questions. During the initial inquiries by the AML officer, they would ‘put on a brave face’ and hardly showed any sign of urgency to liquidate the account. They inquired carefully into the options of withdrawing their money and possible closure of the account. When they felt the officer was probing, instead of showing impatience they would try to steer the conversation to slightly different topics. The AML professionals said that they were advised to assess such customers for a longer time than usual.

Instead of applying positive reinforcement like unmerited flattery or playing a victim role at the initial stage, they acted rather more formally. That included making simple queries, like, ‘Sir, you said you wanted to close your account, right?’ and, when the customer replied, he would be politely put on hold, with the officer saying ‘Sir, please wait a moment’ and then the officer would serve another customer,518 or pretend to look for something urgent in the computer or in a file. They would then observe the customer’s behaviour and simultaneously keep asking relevant questions. However, gradually they would advise what probable negative consequences might follow if they lost such a valued customer. Yet, the language or tactic used would depend on the officer’s initial covert assessment of the customer in question.

**Awaiting Method**

If ‘playing the victim role’ remained unsuccessful or worked only slowly, the AML officer would employ the ‘awaiting’ tactic, making the customer comfortable and ‘buying time’. The AML professionals knew from experience that the customer they were dealing in a situation like this would generally be in a hurry and had less interest in unrelated discourse. Therefore, the officers had to choose their excuses carefully so as to keep their real intention hidden from the customer. The most common excuse was to indicate that the officer who usually handled large cash withdrawal orders was not available at his desk and then pretend to look for him, and then use the time for weaving casual conversation. Often they utilised this opportunity to leave the desk for quick internal consultations or to contact the central compliance unit.

518 In many financial institutions in Bangladesh, customer service desks serve more than one customer at a time when it comes to handling non-cash services and general inquiries during peak hours. This trend, however, was in a state of transition in some branches of locally incorporated foreign financial institutions.
Proposing the Alternatives

At times, customers remained uncooperative and did not reveal much even after a reasonably long casual conversation. In such a situation, one common tactic was to propose an alternative to cash. Generally, officers requested the customer to accept various bank instruments instead of cash. Where customers requested conversion of their money into foreign currencies, the officers offered remittance services and the customer to provide the necessary information about the recipient. In any case, generally, a customer who was trying to hide something would come up with a number of excuses as to why they were unable to accept anything other than cash.

The AML professionals suggested that their inquiring attitude and informal chatting were of great help in knowing their customers better and collecting vital information to fulfil some of the crucial AML obligations. They said that these practices had always been a part of their business as they had begun using those tactics in a limited scale long before there was any AML regime. Under the AML regime, however, they had the opportunity to apply them extensively. The extensive customer data that they collected for the AML regulator through this process not only helped them to save their business from being used as a conduit for criminal gains but also facilitated corporate decision making with regard to the development of new products and services, as well as cultivating valuable business and professional relationships.

4.4.1(C) Communicating Informally

The AML professionals working in the FIU also applied similar techniques which were a little more formal in style than ‘conversing casually’ since in most cases their counterparts were equally well-placed government officials. Although in most cases the FIU had easy access to various public agencies, in order to collect sensitive information about a person or entity they frequently relied on indirect ways. When FIU officials required some information which was apparently held by a public agency, their first task would be to identify the particular unit and the appropriate officer within that agency. They did this with the help of their personal contacts who might or might not be an official of that public agency. These contacts were relatives, friends, friend’s friends, former colleagues or just known persons in some other capacity. At times, the communications progressed in phases, as they had to accept assistance from more than
one source. Use of such an ‘insider’ or someone closely related to the insider to establish communication was, however, also a form of Tadbir.519

The FIU officials requested the relevant personal contact to introduce them to the specific unit or department of the public agency that they were trying to reach. If the contact had direct access to that agency, they would introduce the FIU officials directly and request the other party to cooperate. This introduction was generally unofficial and sometimes less formal depending on how well the contact person was known to the other party. Sometimes, one source might be good only to identify who the right person was in a certain public agency and then s/he provided some advice on who the FIU officials should contact next in order to reach that person. One FIU official mentioned that on occasion they directly approached the person so identified when no such ‘introducers’ were available.

After the informal introduction, the FIU officials’ job was to continue the informal communication and maintain a workable relationship. To them, a workable relationship meant being able to call the person directly over the phone, exchange greetings and end the conversation in a friendly manner. On rare occasions, they even visited a person only in order to further cultivate the relationship. One reason behind this was the busy schedule of both parties, and the other was the FIU officials’ attitude of treating this relationship like a savings account. The ‘less you use [it], the healthier it remains’, hypothesised one FIU official. He said that even their casual communications had a formal dimension due to a number of cultural issues with regard to how junior officers should deal with their seniors.520 They never asked for personal favours, but only for professional assistance.

The most common and easiest communication method for the FIU officials was to contact the other party via telephone. They called the person, exchanged greetings, and then, depending on how welcoming the other party sounded, the FIU officials would make a request for a personal meeting. During the meeting, they would reintroduce themselves by referring to their previous telephone conversation and/or the introducer in order to open a conversation. After that, they would express their real intention and

519 For further detail, please see section 2.3.3.1 of Chapter 2.
520 For further detail, please see section 2.3.3.1 (Cultural Landscape of Bangladesh Society: Relaxed Accountability Mechanism for the Privileged) of Chapter 2.
solicit assistance. Generally, their request for a favour regarding the assistance required was polite, plain and direct.

Two FIU analysts, however, said that their efforts were not always successful in establishing amity right away. At times, they had to spend some time in cultivating the relationship, directly or through personal contacts, before making a request for assistance. If the other party was too busy or just did not want to make friends quickly, or somehow sensed that the FIU officials were contacting them with a purpose, the technique worked more slowly. A similar thing happened when FIU officials contacted them through personal contacts that were not equally known to both sides. All these pretences were applied due to the absence of a culture of regular interagency information sharing.\(^{521}\)

In response to the scenarios mentioned above, and sometimes as the very first step toward contacting an agency, the FIU officials tried a blend of both formal and informal tactics. The purpose of using such methods was to minimise any chance of virtual refusal, which many busy public officials sometimes expressed in the guise of blunt reluctance. By using selective inattention and selective attention techniques during conversation, those public officials would communicate their disinclination to attend to something not related to their core business.\(^{522}\)

First, the FIU officials sent a formal letter to the top officials of a certain agency and then contacted the agency concerned in an official capacity with the excuse of following up on the letter. An FIU official argued that, despite the fact that many official request letters were eventually ignored, nobody ever rejected a written communication upfront when it was formally addressed to a top authority — not even verbally, let alone in writing. The officials visited the agency that was the intended subject of their approach for information with a copy of the letter on which the said agency acknowledged, with official stamp and reference number, their receipt of the original.

Sometimes, this approach shortened the FIU officials’ access route to an agency by opening a window of direct communication, which they would be able to use in

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\(^{521}\) For further detail please see section 4.2.1(A) of Chapter 4.

subsequent interactions. They visited the public agency directly, met the intended person with ease and requested the required information. Even though they carried a copy of the official acknowledgement of receipt of their original letter to that agency’s top authority, they hardly showed it to the lesser official but only politely referred to it in a casual fashion and inquired if there were any progress regarding their request. However, this did not take away the stress that someone would go through under normal circumstances but only lightened it a little bit. They still had to work on the relationship until the other party appeared to be accommodating.

One FIU official clarified that the application of this tactic did not, in a sense, work all by itself; sometimes, they applied this tactic not in the beginning, but only after they had succeeded in establishing a workable informal communication using a certain level of positive reinforcement. If the initial friendly informal communication worked, the other party would come forward and advise the FIU officers to employ this tactic. For example, a junior officer of a public agency agreed to share certain official records with FIU officials but his inferior rank would not allow him to do so directly and instantly; however, he was able to advise the requesting party on exactly how the bureaucratic process worked in their agency. That is, sometimes communication tactics were not improvised by the official, but suggested by an officer in the target agency. One FIU official said that often they would be able to get assistance from the same person and method on a number of similar occasions. This is because, as Weiss observed, improvisation is often common in public agencies.523

Faced with an event that calls for response, officials use their experience, judgment, and intuition to fashion the response for the issue at hand. That response becomes a precedent, and when similar — or not so similar — questions come up, the response is uncritically repeated.524

The FIU officials used no specific jargon or set expressions as part of their positive reinforcement, but there was something in common — there had always been a clear expression of an honest willingness to cooperate if the requested party ever needed the FIU’s assistance as far as the exchange of information was concerned. If the public

agency in question was the one dealing with issues closely related to those of the FIU — for instance, officers managing issues like tax, customs, foreign trades, foreign currency control and so on — this promise of future cooperation appeared to have worked better.

It may be noted here once again that these communications were not covert initiatives in order to gain access to highly classified documents. Generally, the FIU would request such information that any FIU would require to run their normal business. For example, the agency in control of the immigration database would be approached in order to track a reported person’s travel patterns, or the agency responsible for records of the filing of income tax returns would be approached, or that in control of the passport application database and the like. The problem was not a lack of understanding or authority on anyone’s part, but mostly a lack of a good well-established culture of interagency cooperation.  

4.4.1(D) Using Professional Network

Another common way to identify a potential contact person or to establish informal communication with some public agencies was to use professional networks. This, once again, was an informal network. This network developed when the FIU officials met their counterparts in some professional training situations, seminars, or workshops, which might or might not be related to anti money laundering issues. During those sessions, the FIU officials identified potential individuals who might be helpful in future. If any of them represented a public agency that worked in a field closely related to the FIU’s interests, the FIU officials would collect their contact details and maintain communications.

For rapport building, the ACC’s investigators used similar techniques, however, in a slightly more confident manner. Unlike the FIU, the ACC enjoyed a powerful influence in society due to their authority to investigate and prosecute corruption cases that occurred within most of the other agencies. This image sometimes helped investigators to contact key personnel in other public agencies in ways that were more direct than could the FIU. They frequently made direct visits to other public agencies during the

525 Please see Chapter 2 for more detail.
preliminary fact finding phase. Nevertheless, they were not fully exempt from the need to cultivate relationships with others.

As described earlier, historically the Bangladeshi bureaucracy is stained with many unwanted elements like elitism and conservatism.\(^\text{526}\) The bureaucrats’ paternalistic attitude toward the general population, and the inbuilt social dilemma of low trust (in the authorities),\(^\text{527}\) create a distance between the bureaucracy and general masses. Bureaucrats are viewed as privileged and powerful — not only by general masses but also by the public servants who work in inferior positions. Naturally, some public agencies, like the police and the ACC who are able to use legitimate force against disorder often appear as a more powerful authority than many other public agencies. This may bring both advantages and disadvantages.

During the interviews, the analyst observed that although the ACC’s powerful image in the society of Bangladesh often helped them to gain easy access to sources of information, sometimes the same image acted as hindrance. Generally, people working in various public and private organisations did not volunteer and tip the authorities off about misdeeds taking place around them. When the ACC approached any such organisation after being tipped off by secret sources, many of the officials working in those organisations showed a reluctance to cooperate and remained tight-lipped. This was because they believed they might end up ruining their friendship with the person about whom the ACC was enquiring. They just did not want to be the reason for a criminal case to be filed against their own colleague. It also demonstrates the lower trust in law enforcement agencies with regard to their ability or willingness to maintain the privacy of informants.

Unless the evidence suggested someone’s direct connection to an incident, at times it was very hard for an ACC investigator to convince anyone to reveal information about an offence. Naturally, in order to gain trust the ACC officials had to maintain a friendly and informal relationship with potential informants. It was not an easy task, however. In the absence of a witness protection mechanism, a fact to which all the ACC officials

\(^{526}\) For further detail, please see section 2.1.2 (Historical Background of Bureaucracy in Bangladesh) and 2.3.2 (Legacy of Malfunction in Civil Administration) of Chapter 2.

\(^{527}\) For further detail, please see section 2.3.2 (Legacy of Malfunction in Civil Administration) of Chapter 2.
who participated in this research referred, it was close to impossible to convince people to act as whistle blowers.

4.4.2 Devising Alternative Collection Methods

Improving informal communication marched side by side with devising alternative methods for collecting information. The AML reporting system components — the REs, the FIU and the ACC — collected their information through various alternative ways in different stages of the reporting system. Figure 3 shows the interactive information collection relationship among the components of the AML reporting system and between the system and their external sources. External sources may range from an individual customer of the REs to various public agencies.

Figure 3: A Simplified Interactive Information Collection Relationship
This figure (Figure 3) presents a simplified information collection relationship in the Bangladeshi AML context as described by the participants in this research. In real life, this relationship is actually very complex. All three components of the reporting system collect information from external sources at different stages and share with each other. For the REs the major source of information is their customers and, on a very limited occasions, the public agencies. They share this information with the FIU, mostly in the form of STRs when filing of such reports becomes necessary. The FIU analyses the STRs and forwards material to the ACC (a partner agency) for further investigation. Both the FIU and the ACC need to contact each other, their external sources, as well as the REs in order to complete their respective tasks.

Figure 4 is a very simplified presentation of information flowchart (as described in FATF 40 Recommendations) of AML reporting system in Bangladesh.

![AML Information Flowchart of the AML Reporting System in Bangladesh](image-url)
The AML information flowchart of the AML reporting system in Bangladesh (Figure 4) indicates that the AML professionals working for the REs are the first to collect and feed the system with information. Their primary source of information is their customers and, on rare occasions, some public agencies. In both Step 1 and 2, the REs need to contact public agencies either to collect or to authenticate already collected information about their customers.

During the ongoing business relationship with customers if a reporting entity discovered any unusual and a suspicious transaction on a customer’s account, they would file reports to the FIU generally in the form of STRs as shown in Step 3. The FIU’s task would be to analyse the reports and add more value to the information (Step 4). Here the second level of information collection began and, for this purpose, the FIU had to access a number of public and private agencies’ databases and collect information to support their analysis.

After the analysis had been conducted when they were convinced that a report had enough merit they forwarded it to the ACC with their analysis, as shown in Step 5. In the ACC, a report had to go through several screening stages before it would be ready for the prosecution process. This screening and analysis phase required ACC investigators to contact many external sources in order to collect more information with regard to the case. This included going back to the REs concerned and the FIU who were responsible for preliminary data collection, reporting, and analysis.

In every step of data collection as mentioned above, the AML professionals used various types of techniques. Although the preliminary rapport building communications were mostly humble and informal, the actual collection method took various forms. Once they identified a potential source, the AML officials used diverse informal, semi-formal or formal methods or a combination of multiple methods in order to collect information. Subsequent sections describe the most commonly used methods the analyst identified during interview data analysis.

4.4.2.1 Improvising the Authentication Process

When a customer provided personal and business details on an account opening form, for instance, they also had to supply supporting documentation. Here, the AML
professionals’ responsibility was to verify that the information supplied against the supporting documents and make sure that the information matched the corresponding documents. This exercise, however, would remain half-done unless they checked the authenticity of those documents. To do so, the reporting entities applied different alternative techniques since there was a growing tendency of persons using fake documents in account opening procedures, but there hardly was any government initiative to curb this problem.

There were multiple reasons why some people were found to be using forged documents, including the personal identity card. One key reason behind the use of a fake national photo ID card was conflicting government policies or inadequate clarification on how to implement those policies. In 2008, the Government established the National Identities Registration Authority (NIRA) through the National Identities Registration Authority (NIRA) Ordinance 2008528 when the Bangladesh Election Commission (EC) was updating the electoral roll for the upcoming election. Under this project, millions of voters received a national photo ID which, according to the EC, would be required to obtain 22 different types of public and private services.529 Sections 13(1) and (2) of the NIRA Ordinance 2008, as well as section 11(1) of the National Identity Registration Act 2010 (NIR Act), stated that the Government may, by notification in the official Gazette, introduce a system that requires any citizen in receipt of any service or civil facility to present their national identity card.530 However, apparently most of the citizen service providers, including government agencies, like the Department of Immigration and Passport, as well as most commercial banks ignored the immediately preceding sub-section 13(3) of NIRA Ordinance 2008 and the second clause of Section 11(1) NIR Act 2010 where it was stated that no such notification could be issued until the issuance of a national identify card was generally completed throughout Bangladesh, and thus, no such requirement for the compulsory production of

528 Subsequently ceased to have effect due to expiry of the period mentioned in Article 93(2) of the Constitution of the People’s Republic of Bangladesh because it was an order by the President when parliament was not in session, but subsequently it was never presented in parliament as a bill to be passed as an Act of parliament.
the national photo ID could be imposed on citizens. Many organisations, therefore, (erroneously) made it compulsory for citizens to present their national photo ID in order to obtain various citizen services. Later, in 2009 and in 2012 the EC circulated official notification acknowledging the confusion and advised all service providers not to make it mandatory to produce a national photo ID since the issuance of such a national identity card was still incomplete in many parts of the country. In the interim a number of citizens had obtained a fraudulent national photo ID in order to secure access to even the most basic of services (and services to which they were otherwise entitled).

Primarily the authentication required for documents related to the identification of the individual and their business. In the absence of a central database or reliable commercial identity checking services, the REs needed to contact the public agencies concerned for authentication of documents ostensibly issued by them. This could either be about checking photo IDs or the documents directly related to identification, for instance, proof of address, or both. Almost in all cases, they never received any response and if in rare cases they did, the subsequent process would be too long and full of bureaucratic hurdles. Naturally, the REs had to improvise alternative ways of authentication.

Authenticating Identity: Person

When it came to identifying a person, the REs asked the customers to submit the necessary identity documents along with the account opening form. This might include a photocopy of a passport, driver’s licence and the national ID issued by the public agencies concerned. Some of the RE officials mentioned that they used available in-house knowledge that they had either gathered from years of experience or learned from senior colleagues in order to authenticate photo IDs. They said that through years of experience they had learned to identify some unique features of genuine documents. If such security features were absent from a document, they would know it was fake.

Some reporting entities always asked for more than one photo ID for additional security. Two were considered good, three or more were better. They matched the

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information on one photo ID with the other and examined whether the information matched. Next, they matched the information on the photo IDs with other documents such as a trade licence, Tax Identification Number (TIN) certificate, and sometimes even with diplomas issued by educational institutions; to be sure there were no discrepancies.

Officials claimed that if there had been anything suspicious with regard to the identity of a customer, there was a high chance that it would appear at least on any one of those identity documents.\textsuperscript{532} For example, a person finished his high school from his place of birth and registered him as voter in the same constituency would definitely raise suspicion about his identity if he held a passport issued by a passport office located in a district far away from his usual place of residence and business. Comparing one document with another occasionally helped identify potential gaps in information. The AML professionals said that they found this method of verification and authentication useful.

\textbf{Authenticating Identity: Substantiating Address}

The personal identification was not fully complete until the RE concerned had reliable proof that a customer’s address was genuine and that they could successfully trace him if needed. Although a small geographic territory, Bangladesh is one of the most densely populated countries in the world.\textsuperscript{533} In the urban areas, the population has a very high density as more and more people rush there for work. Most of these people do not have permanent accommodation in these cities. They move very frequently from one place to another, making it difficult at times for service providers to track this highly mobile customer base.

Another reason why that they found it hard to trace these people was that generally private accommodation was not rented through leasing agents. Traditionally, in most cases tenants would rent the property directly from the proprietors through a verbal contract. The AML officials from the REs mentioned that they often tried to contact

\textsuperscript{532} At the time that the fieldwork and data collection were undertaken between July and December 2010, the reporting entities did not have access to the digital database of the Election Commission. For more information on this digital database, please see Case Three of Chapter 5.

\textsuperscript{533} Md Motaher Hossain, ‘Changing Consumption Patterns in Rural Bangladesh’ (2010) 34(3) \textit{International Journal of Consumer Studies} 349, 349.
customers for various reasons but communications sent to many of the addresses on their records returned undelivered. Subsequent onsite visits revealed that the address that the customer had provided on the account opening form was either old or just a fake one. However, reporting entities must improvise some techniques in order to authenticate a customer’s address before that person could be accepted for designated services.

Thanks Letter

The customer address, as provided on the account opening form, had usually been verified against some documents, for instance, a copy of a passport which bears both the permanent and current address of its bearer. Passports and other identity documents were generally genuine; however, it was not hard to obtain a fake one as mentioned earlier. Therefore, the REs verified the address of a potential customer by sending a ‘thanks letter’ to the address provided. If the customer brought the letter back to the bank with his signature, as instructed, the address was authenticated and accepted as apparently genuine. Generally, thanks letters would be sent to all who applied for designated services, although the exact time and mode of such delivery would be known only to the RE concerned.

Third Party Issued Documents

In many cases, the REs verified the customer address against documents issued by third parties, for example, insurance policy papers, utility invoices and the like. While some REs would collect these documents only as an extra layer of security, others would make it a routine practice. This was not a common practice like sending out thanks letters, but REs widely accepted utility invoices as proof of address because in Bangladesh utility companies are state-owned entities. The popular belief is that state-owned agencies never approved an application for service without prior verification. Yet, all the REs who participated in this study agreed that if anyone wanted to hide their address, it wouldn’t be impossible because utility invoices were issued in the property owner’s name, not the tenants’.
**Personal Visit**

At times the REs employed stronger and more reliable authentication technique when it came to dealing with high-risk customers, for instance, when a new or existing customer applied for credit facilities. Before granting such application, the RE concerned would re-check the applicant’s identity, business details and their address. Records of the account’s beneficiaries and guarantor would also be checked in the same way. REs sent their own employees or hired agent or both to visit the applicant’s residential and business address and inquire into their other personal details. In addition to the thanks letter and third party issued documents, this visiting exercise provided another extra layer of security.

One AML professional, however, mentioned that often their hired agents were inquiring sometimes unduly into the customers’ private information. This was not merely because of a conservative bureaucratic system that denied the REs’ access to many public agencies’ databases but also because many of those agencies actually lacked the resources to help the REs. He claimed that in the absence of fast and trustworthy support from public agencies, the financial institutions were increasingly relying on unconventional methods to know about customers. He warned that the application of such techniques would soon raise the question of privacy violation. Besides, the method had its own limitations. The hired agents normally provided these onsite verification services through casual employees, who had no or very little accountability with regard to the quality of information they were collecting. And, most importantly, ‘There [were] no clear provisions governing procedures for the use of third parties for services that [involved the] CDD’.

For the REs the most useful sources of information were their customers. It was comparatively much easier for them to contact their customers and collect information using some techniques than collecting it from public agencies. ‘Being inquisitive’ and ‘conversing casually’ were virtually ineffective against the time old bureaucratic system where public servants remained somewhat distant from the general population.

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Therefore, the REs needed to find ways of collecting information as directly as possible from its original sources.

Depending on their risk analysis, the REs employed multiple improvised authentication and substantiation techniques for document authentication. At times, they were extremely careful and the other time they turned somewhat of a blind eye to this authentication process. If a customer was officially introduced by one of their staff members, or the applicant was an employee of the RE’s corporate client, they would generally be accepted based on a ‘minimum’ of documents required by the FIU (for account opening). That is, sometimes the decision to apply an improvised authentication technique would depend on how risky the RE concerned considered a potential forgery of information from the general business risk’s point of view, which might not be related to risk of being used as conduit of money laundering.

4.4.2.2 Using External Information Supports

Although the REs were the primary sources of information for the FIU, they collected a great deal of additional information from external sources apart from those public agencies that they had to contact for most of their information. Sometimes, the REs did not have information beyond what they had already supplied in their STRs and sometimes they had it but just did not volunteer it to the FIU. This wilful nondisclosure and its context will be discussed in subsequent sections of this chapter but cannot be fully ignored in the present context. On some occasions, especially during the initial stage of the AML regime, some of the REs volunteered and provided some information about a suspected launderer.

This apparently incautious generosity of some REs as well as other difficulties the FIU faced in gathering intelligence from most public agencies sometimes encouraged them (the FIU) to become uncomfortably frank in their approach. On some occasions when the AML regime of Bangladesh was still in its formative years, the FIU asked the RE concerned to arrange a meeting at their (REs) premises and introduce them directly to a suspect and reported customer. This would be uneasy for any RE, no doubt. Consequently, the REs concerned became very careful in sharing such information that was not directly requested in the STR form. These factors, coupled with many others, made the FIU rely more on external sources.
The information that the FIU collected from non-financial institution was very useful in their analysis. A frequently cited example during the interview was about the practice of buying real estate in the name of a family member(s) of a suspected money launderer. The family member’s declared income did not support the ownership of such a property. Often the proceeds of crime were used to buy high value properties in the name(s) family members as part of the layering process. The Land Revenue Office, for example, had been a source of records on all transfers of land ownership, which were registered in a certain administrative area. The FIU also collected information from a number of local and foreign media to support their analysis.

4.4.2.3 Using Secret Sources for ML Discovery

Another important source of information for both the FIU and the ACC was their secret sources. These secret sources were individuals who on condition of anonymity volunteered information on suspicious activities that they had come to know about from some source or another. Some of these individuals were attached to public or private agencies and some were self-employed persons. At times they tipped off their contact officers in the ACC or the FIU about an incident that the FIU and the ACC had already discovered and sometimes they provided additional information on an incident that the FIU had come to know about from open sources.

These so-called ‘secret sources’ were connected to individual officers and not to the agency itself, as the interviewees claimed. Interviewees chose not to discuss how those ‘secret sources’ were recruited or if they received incentives of any kind for the services they rendered (which would definitely raise questions about the source of funds), but there is a common belief in Bangladesh that ‘secret sources’ receive various types of incentives — whether financial or non-financial. However, the FIU and the ACC regularly cultivate relationships with these persons as they were not only the provider of preliminary information on incidents but also a good source of providing ‘links’ useful for forming an audit trail of incidents. There were also anonymous complainants who frequently provided information about corruption and other types of offences committed for financial gain.

To encourage people to provide information, the FIU and the ACC opened complaint boxes where anyone could submit information at any time, with or without disclosing
their identity. The FIU officials said that they generally rejected complaints that were fully anonymous since often they were made only to harass opponents. They, however, did not explain how they knew without an investigation that an unsigned complained was filed *mala fide*. At the same time, along with two other investigators from the ACC, the FIU officials argued that unless there was a witness protection mechanism in order to protect individual security and privacy it was very unlikely that people would volunteer such information.

Investigators and analysts from the ACC and the FIU still stressed that they must continue to encourage people to come forward and drop information in the complaint box. The ACC officials claimed that often they discovered serious financial irregularities with regard to some of the REs based on the warnings of an anonymous complainant; such irregularities had taken place months ago but had not been reported through the proper channel. Later, the REs concerned filed an STR with the FIU with regard to those incidents but only when the ACC drew their attention to the matter.

### 4.4.2.4 Collecting Information from Witnesses

The involvement of witnesses in an ML related case is part of the regular investigation process, yet in the current context their ability to share valuable information is very relevant. In order to overcome the information deficit, the ACC often relied on the witnesses of particular cases. Sometimes a paper trail for an incident would indicate individuals who had a direct affiliation with certain transactions. These individuals were asked to be witnesses in the case and disclose further information to the ACC. This would not be easy when several individuals of an organisation appeared to have their signature on a file and everybody, as they would claim, just carried out only their official duty and had no knowledge that the matter was actually linked with something suspicious. Naturally, sometimes the investigators had to convince individuals separately to provide as much information as possible. In practice, persuasion may not work because it could be very hard to compel someone to give evidence against his or her will. However, one ACC investigator provided a somewhat opposite analysis. He said that if a paper trail suggested any direct connection with a person (for example, an officer who dispatched a document with his signature on it) in regard to some transactions, it was rather easier for the investigator to convince that person to divulge more information since his knowledge about the incident was already evident.
4.4.2.5 Using Persuasion

Both the FIU and the ACC used persuasion for information collection when necessary and possible.\textsuperscript{535} Here the term ‘persuasion’ is used to mean using some form of influence (without duress) to change the person’s attitude toward information sharing. Depending on the situation, the FIU officials generally resorted to this technique if their informal professional network and most other means of information collection failed. While applying this method they contacted the agency concerned directly, tried to influence the relevant person with their eloquence, and urged cooperation. The ACC had been more successful in persuasion than the FIU because, as mentioned earlier, the former had a nationwide authoritative image, something the FIU was still struggling to create. However, the FIU’s persuasion worked better on non-banking financial institutions and closely related industries.

4.4.2.6 Being Persistent

When most other improvised information collection techniques remained unproductive, the ACC officials resorted (sometimes in accompany with other techniques) to persistent requests for assistance. They demonstrated such persistence by regular visits, longer stays, and systematic enquiries about the piece of information that they were looking for or an update on the formal request letter they had initially submitted. One ACC investigator said that they would not use this technique during a preliminary fact-finding mission but during the investigation that began only when the ACC officially gave the go ahead for the investigation. The FIU officials apparently avoided using such a technique.

4.4.2.7 Collecting International Intelligence on an Ad Hoc Basis

When the ACC needed to collect information from foreign FIUs, their first point of reference would be the FIU of Bangladesh. In most cases they failed to obtain assistance from the FIU in this regard because — at least until December 2010 when fieldwork for this thesis was in progress — Bangladesh was not a member of the Egmont Group.\textsuperscript{536} That is, officially the Bangladesh FIU was out of the international group of FIUs who

\textsuperscript{535} For further detail, please see section 2.3.3.1 (Favouritism) of Chapter 2.
\textsuperscript{536} For more information and subsequent development, please see section 2.4.5.4 of Chapter 2.
were sharing international financial intelligence. This had been a serious setback for the AML regime of Bangladesh, and one which made the ACC’s AML case investigation rather harder when it came to examining foreign elements in a case.

In order to overcome this challenge, the ACC had to improvise ways to collect information through existing resources without any support from the local FIU. They obtained assistance from the Office of the Attorney General and signed Mutual Legal Assistance agreements on an ad hoc basis under Article 46 of the UN Convention against Corruption (UNCAC). One ACC investigator stated that sometimes they had to satisfy the other parties that the offence under investigation in Bangladesh would also be an offence if committed in state party to whom the request for information was being made (dual criminality).

The AML professionals engaged in all these improvised techniques for informal communication, relationship building, cultivation, and also for the actual collection of information when they were dealing mainly with parties outside the AML reporting system. Within the system, information sharing worked apparently smoothly and without any improvisation on anyone’s part. Yet, stakeholders had some serious issues to complain about, in a constructive manner however. They frequently raised the issue of very poor quality of information that they were receiving from each other, along with many other issues.

As information passed from one hand to another within the system, the recipient gained an idea about the level of sincerity of its sender in performing their part of the task. Being the customer in same information market, all three components of AML reporting system knew exactly what it took for a party to gather information from external sources, and, simultaneously, they also could sense if there had been any negligence on anyone’s part. They acknowledged the difficulties their counterparts were facing in collecting information from external sources and agreed on the point that no one party could enhance reporting quality overnight with their sole effort.

While this understanding helped individual components to identify their own strengths and weaknesses, it also made them more accommodating to each other. And this ultimately worked toward reducing the growing pressure of the interagency information sharing deficiency in rather atypical ways, as we will observe in the following sections.
4.5 Being Selective

Being selective had been a widely used, yet rarely acknowledged improvisational technique applied by all three components of the reporting system. Most research participants abstained from making direct comments about the real intent of being selective while sharing information with each other. Others claimed that the main purpose of screening was to ensure that no innocent person was falsely or wrongly reported and then accused. Nevertheless, ‘joining the dots’ during the coding of the interview data suggested that an important purpose behind application of this technique was something actually different from what participants claimed.

The AML professionals put a stringent screening policy in place, which aimed at identifying and sharing certain types of reports/information from the great number available to them. The successful application of this technique served at least two purposes. Initially, it lightened the workload of the organisation concerned and, secondly, it helped them prevent some anticipated consequences. They were selective in every step of data collection, processing and dissemination.

Selecting only ‘suitable’ reports for next level of processing while dealing with a large number of reports was an objective issue, yet, it was interesting to observe that the AML professionals took the liberty to define ‘suitable’ in this context from a subjective point of view.

4.5.1 Authenticating Selectively

For the REs, the authentication of customer identity and their business documents was always difficult, time consuming and above all costly, since there was no trouble-free way of doing it. If a customer appeared to be less risky because he was introduced by a trustworthy person (for instance, one of the employees of the organisation), then the REs normally tried to avoid the use of any improvised authentication process. They would selectively authenticate documents of only those files which were apparently suspicious; leaving them unattended could be risky for the business and include the risk of regulatory sanctions. For instance, all loan applications had to pass through an improvised authentication process.

537 For further detail, please see section 3.8.2.2 of Chapter 3 (Selective Coding), and Appendix D.
4.5.2 Narrowing Suspicion on TP Violation

During account opening, customers had to declare their known sources of income and the highest amount as well as the frequency of predicted transactions each month. They supported this Transaction Profile with appropriate documents, such as a salary certificate; and updated the financial service provider with ensuing changes in earnings. If an RE detected that a customer had been significantly exceeding the declared limits of this TP in terms of volume and or frequency, the RE would consider it unusual. Several unusual transactions prompted them to put the account under close watch. If the trend continued and the customer failed to provide an acceptable explanation when asked, the matter would be forwarded to the FIU as Suspicious Transaction Report.

All research participants from the REs indicated that this was their primary basis for an STR, and to be ‘unusual’ every single transaction had to individually cross its declared limit, while only one RE claimed that even a series of smaller transactions over a shorter period of time would raise suspicion for them. Hence, if a customer’s transaction pattern did not deviate considerably from their declared TP, they would not be put under scrutiny and no STR would be filed. Apparently, by and large it was possible for any customer to revise their TP several times a year to update their files with a new declaration and then structure transactions below the threshold amount in order to avoid suspicion.

TP violation was initially suggested by the FIU as one of the means of identifying unusual transactions, but subsequently this narrow approach was accepted as the ‘principal method’ by most of the REs. This over dependence on a particular method almost assured that other types of unusual transactions could be ignored. One reason behind this approach was that both Transaction Profile and its violation (that is exceeding the declared transaction limit) very clearly appeared on the documents for ready reference. For other types of transactions or activity which required intense scrutiny in order to be detected, it seems that this would be avoided whenever possible, as there had not been any record of harsh sanctions applied because someone ignored a
reportable incident. This was one reason why the level of reporting was too low in Bangladesh. From 2002 to 2008, the FIU received only 481 STR from the REs.\textsuperscript{538}

\textbf{Table: Total Number STRs Reported to the FIU and Disseminated by it between 2002 and 2008}

<table>
<thead>
<tr>
<th>Period</th>
<th>No of STRs Received</th>
<th>No of STRs closed at end of FIU enquiries</th>
<th>Disseminations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>35</td>
<td>32</td>
<td>3</td>
</tr>
<tr>
<td>2003</td>
<td>23</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>2004</td>
<td>100</td>
<td>44</td>
<td>56</td>
</tr>
<tr>
<td>2005</td>
<td>52</td>
<td>46</td>
<td>6</td>
</tr>
<tr>
<td>2006</td>
<td>138</td>
<td>122</td>
<td>13</td>
</tr>
<tr>
<td>2007</td>
<td>105</td>
<td>105</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>28</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>481</td>
<td>384</td>
<td>85</td>
</tr>
</tbody>
</table>

\textit{Courtesy: APГ Mutual Evaluation Report 2009}\textsuperscript{539}

4.5.3 \textbf{Sharing/Reporting after Rigorous Filtering}

All three components of the reporting system applied this method almost equally from their own perspective. They employed a rigorous screening process before sending any information in order to ensure that only reports with adequate external links went out to a stakeholder. This helped them to respond quickly and efficiently to any future queries from the recipient. From the general point of view, rigorous screening before forwarding a case should have been a part of normal business practice; however, to the AML reporting system components, it was also a mechanism to avoid unattainable requests.

\textsuperscript{538} APГML, \textit{Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh}, above n 67, 64.

\textsuperscript{539} Ibid.
4.5.3(A) Rigorous Filtering of STRs

If a suspicious transaction had been detected, it would go through quite a process before being reported as an STR. First, the front desk officer or cashier who detected an unusual transaction would report it to the Branch Anti-Money Laundering Compliance Officer, commonly known as a BAMLCO, who then put that account under regular scrutiny and, if the trend of unusual activity continued, they invited the customer in to try to obtain the necessary information in a covert manner. If they were satisfied that there was nothing suspicious, the matter would end there; and if not, the BAMLCO would report it as a Suspicious Transaction to the central compliance unit.

The central compliance unit would then conduct its own investigation into the STR. They would collect more documents and then, unless they decided otherwise, the matter would be forwarded to the FIU as an STR. One RE officer said that they had a special committee in the central compliance unit that analysed each potential case of an STR before sending it to the FIU. The Managing Director (MD) of the organisation was a member of that committee and he was aware of every decision the committee passed. A staff member at another RE, however, observed that their final submission of STRs to the FIU required MD’s verbal permission. That is, an incident would require agreement of many persons in an organisation before it could be lodged as an STR, and any one of those persons could stop a case proceeding for any number of reasons.

Although all the BAMLCOs who participated in this study dismissed the idea that immediate business profit making was their priority over and above protecting their organisation from the risk of losing reputation due to its failure to report money laundering incidents, nevertheless all of them agreed that reporting a customer was always risky. Such an act would almost guarantee that the RE would lose business from both the customer reported and some of their friends and family. Their concern reflected a situation where AML reporting did not remain as secret as it was supposed to do. Reported customers, even if they were not ultimately prosecuted for money laundering offences, became aware of the fact that an STR had been filed against them. One of the most common reasons why the confidentiality of the STRs were compromised, as some of the interviewees from the REs claimed, was the direct communications between an investigating officer and the reported customers or their friends and colleagues in the preparatory phase of the investigation. In the initial stage of the AML regime, as
indicated earlier (section 4.4.2.2), some REs concerned were even asked by the FIU to introduce them directly to reported customers. In many cases these types of errors are not the result of any attempt to ‘tip off’ customers but simply a failure to understand and apply basic investigative techniques. These fundamental failures of the most basic elements of AML investigations demonstrate how often assumptions made in developed economies about the way in which AML norms will be implemented in developing economies fall short of reality. They underline the need for training and technical assistance for both FIU staff and those within REs in developing AML systems.

They further added that REs’ employees (including its individual branches) who were the initial identification and screening points for unusual activity (in most cases) had both business targets and regulatory obligations to attain. Often young sales executives had very high monthly sales or deposit targets which they must achieve, and simultaneously their manager had the responsibility to comply with all business regulations including the AML laws. And, as mentioned earlier,\textsuperscript{540} ironically, in most cases branch managers (especially in the banks) are also the AML compliance officers. The manager must bring deposits into the RE through his sales team and yet is expected at the same time to ensure AML compliance.

One ACC investigator highlighted this situation as a considerable predicament. He stressed that it was not hard for anyone to understand which groups of customers might have millions of Takas\textsuperscript{541} to buy various deposit products in a poor economy like Bangladesh where corruption was so widespread.\textsuperscript{542} He further argued that some of the REs were fully aware of the fact that many of the deposits that their sales team would bring in might be from questionable sources. Therefore, at least some of the REs used rigorous screening not only as a method of overcoming information deficiency but also as an important means to protect their business interests.

Then what was the most pressing reason why there were few reports and what actually prevented the REs from lodging STRs? Let us consider some ‘dots’ that were suggested by both the interview data and the existing literature on the AML issues of Bangladesh.

\textsuperscript{540} For further detail, please see section 3.6.3 of Chapter 3.
\textsuperscript{541} The currency of Bangladesh.
\textsuperscript{542} For further detail, please see section 1.5.1 of Chapter 1 and section 5.3.2 of Chapter 5.
For the REs, reporting normally meant opening a gate for continuing incoming queries from the FIU with regard to the incident reported and suspect individuals. Since it had always been a difficult process for the FIU to collect intelligence from external sources, naturally they put pressure on the reporting parties to provide more information about any incident that they reported. And, as we have already seen, collecting information from external sources only for compliance purposes was quite an unattractive task for the REs. Consequently, if a reporting entity were aware of the fact that the suspected customer had another account with a second RE and also had some stock in a certain company, they would not include this information in the STR, even if these facts were relevant, unless they had enough documents to satisfy the FIU in this regard.

In this connection, the ACC officials were rather frank in their expression and stated that many of the REs did not report unless they had to. The investigators claimed that, on a number of occasions, STRs were filed only when the ACC visited an RE after being notified by their ‘secret sources’. The APG stated in their Mutual Evaluation Report that in 2008 REs filed several STRs based on media reports of the arrest of criminals. Although the APG described those incidents as the REs’ tendency towards ‘confirmed suspicion’, the analyst believes that the account of the ACC’s investigators best describes the incidents.

This was because, in the same report, the APG further mentioned that the REs did not conduct regular checking of suspicious matters on publicly available information about the customers. They said, at times, even an inquiry launched by the relevant law enforcement agencies failed to have the REs looking ‘at related accounts to consider possible suspicious transactions’. One easily conceivable explanation of this imprudence could be false (or real) assurance that no serious consequences would follow; or, as APG indicated, ‘a poor understanding of what [was] suspicious among those group of REs who had “the greatest numbers of customers and the widest geographical coverage across Bangladesh”’.545

543 APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh, above n 67, 111.
544 Ibid. 110.
545 Ibid 110.
Now, ‘joining the dots’ we just compiled here would apparently suggest that rigorous filtering were helpful, at least for the time being, for the type of business that the REs were involved in and the nature of the challenges that they were facing in doing such business in the traditional bureaucracy of Bangladesh. However, this generalisation should not apply beyond its justified limits, to be precise, to be applied only to those participants who were theoretically sampled\(^\text{546}\) and also to the particular context of interviewing which might have significant implications for the interpretation of data.

4.5.3(B) Sorting and Analysis

The FIU receives many reports from the REs which had been lodged on the basis of only the slightest suspicion or without thorough analysis. The FIU officials described this as ‘defensive reporting’\(^\text{547}\) by some REs, especially after being strongly reminded by the FIU of their non-reporting. Sometimes STRs were lodged ‘according to the strict interpretation of the provisions’\(^\text{548}\) of the AML laws which resulted in the submission of reports on every unusual transaction.\(^\text{549}\) Sorting and analysis of these types of STRs was wasteful in general, and in particular, sometimes their poor presentation may have masked (whether intentionally or not) serious money laundering incidents. After dissemination, all those STRs would return with enormous numbers of queries from the ACC to which the FIU would have few or no answers, which also indicated poor analysis on the part of the FIU.

In order to confront this challenge the FIU began encouraging the REs to send ‘linking case’ that is, the reporting entities should report primarily those STRs that had a good audit trail so that the FIU could trace back and more easily go deeper into a case. This helped the FIU to start their analysis quickly and gather more information before dissemination. In their mutual evaluation report, the APG referred to the FIU’s lack of understanding of the various money laundering typologies. This seriously undermined the effectiveness of the system. The APG stressed the immediate need for the adoption

\(^{546}\) For further detail please see Appendix D.


\(^{548}\) APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh, above n 67, 111.

\(^{549}\) Ibid.
of improved analytical tools, increased staff training, and timely access to public as well as open source information.\textsuperscript{550} This recommendation was a clear reference to the FIU’s lack of resources and explained why the FIU might be interested mainly to those STRs which came with lots of hints (or accompanying materials) for further enquiries.

The FIU advised the reporting entities to put in place a rigorous internal screening process before sending anything to the Unit. They argued that the purpose of this screening was to ensure that only relevant good quality reports were lodged. However, the REs might not have enough information about a genuine case of money laundering for a number of reasons and the FIU also seemed to be aware of this fact. Yet, for now, they would prefer cases with more external links so that the suspected criminals and their collaborators could be easily identified.

\textbf{4.5.3(C) Initiating Case after Rigorous Screening}

Just as for the FIU, screening the STRs was also a part of the ACC’s normal business practices, but the ACC’s screening was more thorough than that of the FIU. During the data collection and coding process that one major reason behind this stringent process was the need to counterbalance the existing information deficit. Every case they received would first be placed on the table of a ‘sorting committee’. Its members would examine whether the case met certain specific criteria, for example, if the case had merit, if the ACC had the legal authority to investigate the offences involved in the case, or if the case had adequate supporting documents, and the like. The sorting committee would decide if the case would be accepted for next level of processing.

The sorting committee could end the processing of the case right away. If they decided otherwise, the case would go to the office of the Commissioner for enquiry and investigation. If the Commissioner presumed the case had merit, he would assign it to an enquiry officer for preliminary enquiry. After conducting his enquiry, a preliminary enquiry officer might arrive at the decision that the case was not worthy of further investigation. However, if he found something substantial in his enquiry, an Investigation Officer would be appointed to conduct further investigation in the case. It was the report of the Investigation Officer that would determine if the case would be

\textsuperscript{550} Ibid 8.
reported to police as a ‘First Information Report’ and thereby initiate the prosecution process.

During the interviews, the ACC officials mentioned that overall they were not happy with the quality of reports they were receiving. They indicated that many of the reports they received should have been resolved at the end of the FIU, and the REs should have never lodged some of them if they had analysed the information properly. While they made it clear that they were fully aware of the problems other components of the reporting system were encountering, they still maintained that their counterparts were not making the best use of available resources. Naturally, they had adopted a very strict filtering method to ensure only genuine laundering cases went through. This extremely rigorous procedure laid down for screening was to ensure that, if the ACC finally decided to proceed with a case, they had enough materials in hand to successfully prosecute the money laundering offence.

4.6 Keeping to the Code

‘Keeping to the code’ was basically a defensive technique applied mainly by the REs but also by the FIU and the ACC when improvisational efforts for data collection failed or became too difficult. The personnel involved in the AML reporting system, depending on the particular party’s capacity and position, applied various techniques to accomplish this task. Although the immediate purpose of undertaking these tasks was to remain compliant at least in the eye of the higher authorities, it ultimately contributed toward avoiding the use of discretion in compliance, which was a major element of the risk-based approach. None of the reporting system components ever admitted that they used this method with the purpose of avoiding a non-compulsory task; however, during the interviews all participants agreed that for the less risky customer they often complied with only the minimum obligations to remain safe in the eye of law and management.

4.6.1 Collecting the Minimum

Officials of the REs said that at times they collected customer information only to satisfy the FIU. They followed the rules strictly and collected only such type and quantity of information as was set as the minimum by the FIU. They knew very well
that the information collected only to meet minimum regulatory requirement might be
inadequate, of inferior quality or otherwise useless. When improvisation was avoidable
or costly in terms of resources, the reporting entity decided to stay away from that
exercise. They used the narrow interpretation of FIU notifications on CDD and
collected customer data only to the extent that it was compulsory to meet minimum
threshold.

The FIU was also aware of such circumstances when the collection of adequate
information by the REs might become extremely inconvenient even with their best
efforts. Therefore, they left an option in the regulation asking the REs to collect
customer information ‘up to its satisfaction’. In an explanation of this, an FIU official
said ‘up to its satisfaction’ should mean anything that the RE concerned honestly
believed would satisfy the FIU. However, the REs did not apply this method (‘keeping
to the code’) when they believed that their business was at risk. They took advantage of
the ambiguity of the rules and applied this method only when it was apparently ‘risk
free’ for them, from both a business and regulatory point of view.

4.6.2 Collecting via Customised Forms

The FIU provided a customised STR form and gave some objective guidelines for
forming suspicion. The guidelines indicated that the REs must fill out the information
fields in the form when lodging STRs and provide additional information, when
possible, with supporting documents. Providing additional information and or
documentation in support of an STR was not mandatory. Thus, if they were unable to
collect any additional information, or if they did not choose to provide additional
information for some other reasons, they just filled the form out and lodged the STRs
with a minimum of information. This method appeared as particularly helpful when the
REs were somehow bound to report an incident, which they would not report in an ideal
situation, for example, reporting based on a media report of criminal arrests.

551 Anti-Money Laundering Department, Bangladesh Bank, Instructions to be Followed for Compliance
with the Provisions of Money Laundering Prevention Act, 2009 and Anti Terrorism Act, 2009, AML
Circular No 24, 3 March 2012.
4.6.3 Avoiding Non-Compulsory SAR

Any suspicious activity might turn into a suspicious transaction or may bear elements of potential money laundering offences. Thus, it is a legal requirement for REs in many countries to report suspicious activity of customers or potential customers. However, in Bangladesh, filing a Suspicious Activity Report/ SAR was discretionary unless the REs decided that the activity had link with suspicious transactions. This gave the REs permission to ‘turn a blind eye’ to suspicious activities and refrain from reporting them unless it was truly risky for their business. When most REs did not report suspicious activities, some of the locally incorporated foreign banks indicated that they used elements of suspicion (from activities that did not involve any transaction) in their internal investigations before lodging STRs. However, wilful negligence in regard to SARs kept the rate of AML reporting very low and helped most of the REs reduce the mounting pressure for improvisation and collection of information.

4.6.4 Shifting Responsibility to the ACC

When the FIU apparently failed to use ‘all available means ‘to collect additional information in order to support their analysis of important money laundering cases, their last option was to forward the case to the ACC to fill this gap and take further measures. The FIU officials said that they attached a note with the reports indicating what further information was needed for the file to be considered for the next level of enquiry. The FIU officials admitted that at times the ACC was in a better position than they, especially when the FIU failed to manage support from the police for the FIU investigation. They had no choice but to shift responsibility to the ACC for further investigation in such instances. For the FIU, this was another way of dealing with the information sharing deficiency.

552 At the time of data collection for this research, filing of a report of a ‘suspicious activity’ was not mandatory in Bangladesh. See APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh, above n 67, 10. The analyst is unaware at the date of thesis submission (March 2013) of any amendment to the Act that would change this situation, having confirmed this by speaking with a Bangladesh Central Bank staff member on 22 March 2013. Thus, there remains no legal obligation for REs to submit a report of ‘suspicious activities’.
4.6.5 Sending Back for Further Analysis

When the ACC became unable to discover enough material with regard to a case that they were enquiring into, and they were of the view that the FIU could have provided them with a better analysis of the incident, they would refer the STR back to the FIU for further information and analysis. If the FIU were able to assist, then the case would go to the next stage, or else it would be dropped by the ACC either at the enquiry or investigation stage. The ACC and FIU were separate government entities with a separate mission and vision. They were not accountable to each other. Their relationship was formally established in April 2008 under section 9 of the Money Laundering Prevention Act, 2008, which declared that the ACC was the investigating agency for cases filed under the Act. The provision remained the same in Money Laundering Prevention Act of 2012, where section 9(1) of this Act designates the ACC (or any other agencies authorised by ACC) as the investigating agency.

4.6.5(A) Using Court Orders

When improvisations virtually failed, or became otherwise inconvenient to pursue, the ACC obtained a court order and collected information from the agency concerned. This was often a time consuming process to appear before a court and obtain an order, yet at times this was the most effective way of collecting the information. This was not an improvised technique in the regular sense (as mentioned in the preceding sections of this chapter), but the ACC often utilised this technique although it was a little time consuming and formal, but most effective at the same time. No court would grant permission to search a premise only because an application had been made by the ACC based on mere speculation. The ACC had to satisfy the court that there were concrete grounds for suspicion, which often would not be possible to prove in the court unless a considerable amount of information had already been collected.

Although the techniques used in achieving the task of ‘keeping to the code’ was the result of the apparent failure of most available improvising techniques, it may be noted that this was also a form of improvisation. The AML reporting system components

553 Ibid 66.
applied this technique in order to remain compliant with their respective regulatory obligations.

4.7 Conclusion

The collection of information from the various public agencies will not be easy for the AML reporting system since those agencies do not function under the authority of the FIU or the ACC, and besides, the traditional bureaucracy in Bangladesh will prevent interagency information sharing to prevail at a level that is required by any modern administrative system. At times, the public agencies are hardly accountable to anyone for not being cooperative with their counterparts in other agencies.\textsuperscript{554} From this point of view, the AML reporting system components and their potential information sources are in a relationship where the latter enjoy a position of nearly absolute power over the former. If the former are able to apply their improvised techniques on the latter or in the circumstances, they will be able to balance this power asymmetry and thereby reduce the compliance pressure that now exists on them.

As discussed in this chapter, the AML reporting system components did exactly this. They applied multiple improvised techniques and tried to deal with the existing interagency information sharing deficiency. When they applied a number of informal methods of communication, they were able to gain easier access to information held by other public agencies. At other times, they were able to reduce the pressure of information collection either by being selective or by collecting only the minimum required. Since information is the heart of the AML reporting regime, the AML professionals concerned must collect whatever information they require in order to keep the reporting system running, because a failure to do so will increase the chance of being viewed as a ‘failed system’ in the eye of both domestic and global policy makers.

However, this was only part of the problem that the AML system components were trying to resolve. Soon they discovered that the necessity to improvise techniques, even only for the very basic level of information gathering, was so acute that they could hardly focus on the quality of the data they collected or produced. In the next chapter,\textsuperscript{554} However, it does not necessarily mean that the public agencies are isolated entities and work separately in competition with one another. A certain level of cooperation or social pattern does exist which actually forms the basis of the behaviour presented in this chapter.
we will discuss what improvisation actually means in different contexts, why it becomes necessary and under what conditions it can bring best result. The discussion will also help us to examine the extent to which the AML reporting system was successful in applying their improvised techniques.
5 DISCUSSION

5.1 Introduction

The following discussion is a part and continuation of the previous chapter. In the first few sections of this chapter, the analyst has explored certain dimensions of a number of general theories on improvisation and then integrated into them the theory presented in Chapter Four. After that, the analyst explains that the activities mentioned in Chapter Four were actually aimed to achieving several short-term targets in pursuit of a long-term goal.

Depending on circumstances, the act of improvisation could take different shapes. In an organisational context, improvisation could differ in many respects from those generally seen in their typical context of the performing arts, such as music, dance and theatre. Then again, further differences may occur along the dimensions of improvisation and its properties even in organisational context when it is done ‘off the cuff’ for ‘crisis improvisation’ instead of as an improvisation of a new product or process, for instance. However, irrespective of its dimension and areas of application, the success of improvisation actually largely depends on the skills and experiences of the persons involved in the process.

In this chapter, the analyst will show that improvisation initiated in response to some intricate social crisis might require some proactive reactions, which might initially look consistent, coordinated and even successful. However, due to their ‘makeshift’ nature and the involvement of inexperienced persons along with the influences of other external factors, such efforts might ultimately fail to produce a lasting solution to the enduring problem. The analyst will further explain why this situation warrants immediate attention and what could be done to improve the very circumstances that encouraged the ‘improvisation’ in the first place.

At the end, this discussion will lead to drawing a hypothesis based on the nature of the core problem, the level of success achieved using existing resources, lessons learnt from failures, and the available resources at hand. The analyst argued that improvising activities in the context of the AML reporting system of Bangladesh could be compared with ‘crisis improvisation’. This crisis was a direct outcome of the deficiency of
interagency information sharing caused by bureaucratic failure and a general deficit of relevant information.

Although some historical evidence, as described in Chapter Two, suggested that such failure was a consequence of a continual abuse of the system at the hands of colonial and autocratic authorities, however, it may not be wrong to say that today the failure is largely deliberate.\textsuperscript{555} In the AML context, the negative influence of the bureaucracy could be seen as a major impediment towards the creation of ‘information capital’ on which the output of the AML reporting system is virtually based.

This impediment may seriously disrupt the AML reporting system, rendering the entire AML regime ineffective. This is because the AML reporting system, as described earlier,\textsuperscript{556} is virtually an information sharing social network and the triadic ties between actors of this network could be interpreted using network theory. That is, the ‘nodes’ (the REs, FIU and ACC) are ‘tied’ to each other through their organisational position. The REs report STRs to their reporting body, the FIU; and after analysis, in appropriate cases the FIU shares those reports with the ACC — their AML partner agency. Similarly, the ACC may contact both the FIU and the REs for further information on a case.

This refers to a symmetrical causal relationship among the actors. In this deterministic system, the quality of the STRs produced by the REs affected the analysis by the FIU. The literature review and data analysis in Chapter Two\textsuperscript{557} and Chapter Four suggested that the STRs submitted by the REs were declining significantly in both quantity and quality over the last few years. This lack in quality cascaded down to influence the outcome of the partner agency’s investigation and preparation of cases. Ultimately, these poorly prepared cases failed to have a deterrent effect in the society as they just failed to prove the crime in the first place, that is, this reporting process is a chain of events based on causation where a second event is understood as a consequence of the first.

\textsuperscript{555} For further detail, please see section 2.3.2 of Chapter 2.
\textsuperscript{556} For further detail, please see sections 1.3.1 and 1.3.2 of Chapter 1.
\textsuperscript{557} For further detail, please see section 2.4.5 of Chapter 2.
However, this was only half of the problem. Both the APG mutual evaluation report on Bangladesh and the empirical data suggested that the collection of good quality data and information from external sources is a growing challenge for the entire AML reporting system. Beside their internal limitations, all three actors of the reporting system were almost equally affected by external factors, like the bureaucratic impediments and the general tendency towards noncompliance in society, among others. Irrespective of the context — for example, business, social or regulatory — the lack of cooperation between the users and the furnishers of information was evident. Here, the relationship between the AML reporting system and the other public agencies was virtually asymmetric and the AML professionals needed to work hard to bring it near symmetry as described in Chapter Four. Nevertheless, this approach offered only a partial and temporary solution to the real problem.

The analyst argues that the improvisation in the AML reporting system context was an isolated voluntary response to an enormous multifaceted problem. On the one hand, the newly established reporting system had enormous pressure of compliance and, on the other hand, the very basic means for such compliance — the experiences and access to adequate quality information — were unavailable. All these encouraged the AML reporting system to resort to a makeshift arrangement in relation to their AML reporting related obligations. The obvious consequence of this attitude was the collection and sharing of poor quality information in every phase of reporting process, resulting in a ‘garbage in, garbage out’ trend.

The problem of the AML reporting system represented one of many similar problems related to a short supply of information. The information sharing deficiency, therefore, was a general problem, and the AML reporting system could not make any significant difference through improvisation alone. Nevertheless, the improvisation efforts were successful in that they identified the core problem of the substantive area, identified the possible gaps between compliance and non-compliances, and provided some indications with regard to how to design a way out. The continuing employment of improvised techniques to establish smoother communications that resulted in enhanced cooperation and easier access to some information — altogether failed only to indicate that the root of the problem was not within the AML reporting system. While the reporting system must take the initiative to resolve its own limitations, a key resolution might come
through a rather more general approach to the problem. The analyst argues that the deficiency of relevant information might not be a problem caused only by a shortage of supply, but also of demand. As in the vicious circle of poverty, this indicated a vicious circle of general information deficiency, which was comparable to the problem of capital formation in economics.

Based on a well-known theory of economics, the proposed hypothesis presents a general model to break this deadlock in the AML reporting system context. Comparing ‘information’ in AML context with ‘capital’ in economics, the analyst observed that solving the problem of ‘capital’ formation by breaking the vicious circle of poverty in developing countries could be comparable with the challenges of creating ‘information capital’ in a poorly regulated AML regime. Therefore, a similar solution could be applied in both cases to break the stalemate.

5.2 Improvisation

Finding a creative solution to a problem, especially in a ‘stress situation in which one must search for new ways of solving old problems, where the means to do so have suddenly been denied’, could be a simple explanation or definition of the word ‘improvisation’. This, of course, does not clarify all aspects of this term but may provide a reasonable fit in the AML reporting system context. This particular aspect of improvisation at least indicates that an unstable situation may arise so abruptly and be one for which people may or may not have minimum warning or adequate preparation. Sometimes, such a situation may occur at a rather slower pace with prior notice, yet people’s inability to respond quickly to such situation with sufficient means may equate it with sudden change. In brief, as mentioned in Stacey’s work on chaos theory:

[B]eyond a certain point, increased knowledge of complex, dynamic systems does little to improve our ability to extend the horizon of predictability of those systems. We can know, but we cannot predict. Hence, having the capacity to respond in a spontaneous fashion is critical.

How this ‘capacity to respond’ is critical in AML reporting system, or what unstable situation or negative changes may occur in the AML compliance context that may bring AML professionals into a lateral thinking game —partly arose in Chapter Four. Subsequent sections of this chapter will further explain the circumstances from a general point of view. The analyst will discuss some features of improvisation in different contexts so as to understand the core meaning of this term and how this thus includes the activities of AML professionals.

5.2.1 Description of Improvisation

Alfonso Montuori gave a fairly simple example of improvisation. As he suddenly decided to play game of football with some of his friends on a sandy seaside beach, they realised that the sand had created very different conditions for them. This was not grass or any kind of synthetic playing turf that they were used to. The ball reacted strangely and unpredictably. Their balance was unsteady in the sand as the ground below their feet would give away, and all their usual skills that worked perfectly on regular football fields would just not work well on the sand. It was as if they were playing a different game.\footnote{Alfonso Montuori, ‘The Complexity of Improvisation and the Improvisation of Complexity: Social Science, Art and Creativity’ (2003) 56(2) Human Relations 237, 240.}

As Montuori noted, ‘The conditions [led] us to modify our game, to deal with unforeseen elements, with the complexity and uncertainty of a new and different environment. We [began] to improvise’.\footnote{Ibid.} They soon, however, discovered that the new conditions came with both challenges and opportunities. They used their jackets as goalposts and quickly agreed on a set of implicit rules to fit the situation, as they were not \(n\) players on each side.\footnote{Ibid.} He further stated:

These tell us when it is appropriate to shoot at goal, when we should pass the ball to someone else, and what constitutes annoyingly hogging the ball as opposed to simply clowning around. We improvise the way we handle the ball, we make up new ways of playing within the context of the skills and rules we already know through years of playing.\footnote{Ibid.}
New conditions tempted them to employ their skills and go beyond the already known options and explore the possibilities of the present. They knew all basic rules of the game, and all they were doing was improvising their game to fit in new situation.\footnote{Ibid.}

### 5.2.2 Improvisation in Arts

While the above example was taken from a friendly game where both the game and the improvisation were chosen to enjoy some time away from regular business of life, the application of improvisation at an organisational level is actually a rather serious professional activity, for example, in jazz music. In fact, ‘[t]he field of organizational improvisation has drawn heavily from jazz music’\footnote{Ken N Kamoche, Miguel Pina e Cunha and João Vieira da Cunha, ‘Introduction and Overview’ in Ken N Kamoche, Miguel Pina e Cunha and João Vieira da Cunha (eds), Organizational Improvisation (Psychology Press, 2002) 1, 2.}, where improvisation is an integral part of the form.

A popular and highly regarded encyclopaedia suggests that ‘[a]ny attempt to arrive at a precise, all-encompassing definition of jazz is probably futile’\footnote{Jazz, Encyclopaedia Britannica, Academic Edition (28 June 2012) <http://www.britannica.com.ezproxy.uow.edu.au/EBchecked/topic/301986/jazz>.}, and yet, as it maintains, jazz is a musical form rooted in the music of different continents which is often characterised by varying degrees of improvisation including deliberate deviations of pitch and the use of original tones.\footnote{Ibid.}

Paul Berliner, an ethnomusicologist best known for specialising in jazz and other improvisational systems, stated that ‘jazz artists commonly perform without musical scores and without a specialized conductor to coordinate their performances’.\footnote{Paul Berliner, Thinking in Jazz: the Infinite Art of Improvisation (University of Chicago Press, 1994) 1.} Yet, due to its liveliness, consistent style and tremendous power to bring about emotion in human mind, a listener might not believe that the artists performing on the stage may never have practised the piece or even played together before\footnote{Ibid.} but that they were actually composing and performing ‘on the spot’.\footnote{Don Michael Randel (ed), The Harvard Dictionary of Music (Harvard University Press, 4th ed, 2003) 406.}
As with music, people apply improvisation to virtually all forms of performance as well as the visual arts in the twentieth century.\textsuperscript{571} This relationship between art and improvisation is not hard to understand, however. Improvisation illustrates itself through the natural capacity of the human being to generate creativity in many areas of human effort.\textsuperscript{572} Carter argued that improvisation has the power to ‘[suppress] historical consciousness that is necessary to break the causal chain between existing conventions and new developments in an artistic practice’,\textsuperscript{573} and this is one important reason why improvisation is necessary in art. If improvisation has the power to invent new forms spontaneously, it may be able to bring in unconventional elements in art by suspending the familiar set structure for a practice.\textsuperscript{574}

Carter identified a few important potentials of improvisation in the context of art. He observed that improvisation had the ability to discover something that would be normally unknown if rigid rules were employed. That is, the use of improvisation may help by encouraging practitioners to study a situation from a number of alternative viewpoints, and this thirst for discovery may ensure the continuous delivery of new resources in the work and maintain a higher quality in creativity.\textsuperscript{575} Carter highlighted an interesting feature of improvisation when he said that it ‘provides new paradigms while at the same time undermining the notion of a normative paradigm against which to evaluate possible solutions’.\textsuperscript{576} He further added that ‘[t]hrough experimenting with improvisational art practices, artists discover “fresh and significant relationships” that “in some measure remake our world” and make “a genuine contribution to knowledge”’.\textsuperscript{577}

### 5.2.3 Other Forms of Organisational Improvisation

Beside music and other forms of art, improvisation plays a vital role in every walk of life ‘with its focus on participation, solidarity, and responsibility for the individual in a

\textsuperscript{572} Ibid.
\textsuperscript{573} Ibid.
\textsuperscript{574} Ibid.
\textsuperscript{575} Ibid 181–2.
\textsuperscript{576} Ibid 182.
In general administration, policy making or in a specific profession like nursing in circumstances where there is a shortage of equipment, supplies or even human resources, improvisation could be a viable solution. Hence, improvisation could be truly desirable in the case of an emergency or a disaster situation when feelings of such resource deficiency (for whatever reason) are most acute.

Karl Weick viewed capacity to improvise as a crucial strength in the disaster response as he analysed the role that fire-fighters played when responding to the Mann Gulch wildfire of 1949 in the United States. He indicated that people who are flexible in their choices and can compromise with discretion are more helpful in response to a disaster than those who do everything ‘by the book’. In cases of emergency when one organisational order collapses, people with greater interest in and capacity for role improvisation may help formulate an alternative order instantly. However, an interest in or access to role improvisation alone cannot guarantee success.

Weick further argued that sufficient knowledge and experience about the tasks and adequate familiarity with the material to be used may enable someone to create order out of chaos using whatever means were at hand. ‘Bricoleur’ — a term originally used by Claude Lévi Strauss to mean ‘someone who works with his hands and uses devious means compared to those of a craftsman’ in the French version of The Savage Mind was subsequently cited by Weick to mean someone skilled in using the environment to accomplish their tasks or someone who is skilled in improvisation. Karl maintains that:

Bricoleurs remain creative under pressure, precisely because they routinely act in chaotic conditions and pull order out of them. Thus, when situations unravel, this is simply normal natural trouble for bricoleurs, and they proceed with whatever materials are at hand. Knowing these materials intimately, they then are able,

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581 Ibid 639.
usually in the company of other similarly skilled people, to form the materials or insights into novel combinations.\textsuperscript{584}

Another important area where personnel need to manage their affairs often under constant pressure and in the face of multiple limitations is probably business management. To build a management structure, as management expert Peter Drucker suggests, two important queries need to be fulfilled — first ‘What are its typical stresses and strains?’ and ‘What performance does it have to be capable of?’\textsuperscript{585} These two questions point to a basic fact that every organisation is normally expected to accomplish its aims and objectives under constant pressure,\textsuperscript{586} for example, improvisation during new product development when a series of creative works — new product definition, alterations to the prior work schedule, a new test schedule, the development of an internal focus group and faster work process — need to be developed.\textsuperscript{587}

‘Improvisation’ as a word has its origin in the word ‘proviso’, which means to foresee or make a condition in advance or to do something that is already planned. Using the prefix ‘im’ (negative) makes it just the opposite — ‘unforeseen’.\textsuperscript{588} Thus, improvisation deals with the unpredicted and the unexpected, and it works without a prior stipulation. ‘Italian has formed a verb \textit{improvisare} — to do something without preparation, to solve an unexpected situation’\textsuperscript{589} and, it is claimed that the noun ‘improvisation’ derived directly from this verb.\textsuperscript{590}

While the above meaning of the word ‘improvisation’ gained broad acceptance, its definition changed in different contexts. Although dictionaries tend to provide rather general definitions, such as a performance ‘according to the inventive whim of the moment’\textsuperscript{591} or ‘performing’ ‘extempore, without preparation’\textsuperscript{592}, or ‘a composition; a

\begin{itemize}
\item \textsuperscript{584} Ibid.
\item \textsuperscript{585} Peter F Drucker, \textit{The Practice of Management} (William Heinemann, 1955) 202.
\item \textsuperscript{586} Arie Halachmi, ‘Management under Emergency: Paradoxes and Improvisation’ (1980) 2(1) \textit{International Journal of Public Administration} 81, 81.
\item \textsuperscript{587} Weick, ‘Introductory Essay: Improvisation as a Mindset for Organizational Analysis’ above n 523, 543, 545.
\item \textsuperscript{588} Ibid 544.
\item \textsuperscript{589} Alterhaug, above n 578, 98.
\item \textsuperscript{590} Ibid.
\end{itemize}
course pursued in accordance with no previously devised plan, policy, or consideration and the like, yet their association with art and music is readily apparent. Those related to jazz defined it as a ‘lack of prior stipulation and lack of planning as [in] composing extemporaneously, producing something on the spur of the moment’. A fairly general definition — ‘carrying out of activities in non-routine, atypical or unexpected ways’ — is again incomplete due to its extremely broad coverage that may include any activities which are not improvisations but still done atypical ways.

A definition, which is rather general in expression, in that, it not only reasonably explains improvisation in art but also allows improvisations that take place in other contexts to be easily included, is:

Improvisation involves reworking precomposed material and designs in relation to unanticipated ideas conceived, shaped, and transformed under the special conditions of performance, thereby adding unique features to every creation.

Descriptions and definitions of improvisation in different contexts, as mentioned above, draw out certain general dimensions of improvisation. Although used primarily in the context of jazz, Paul Berliner indicated that most definitions place an emphasis on the ‘spontaneous’ and ‘intuitive’ nature of improvisation, but Crossan and Sorrenti identified ‘spontaneity’ and ‘intuition’ as two critical dimensions of improvisation in business organisations too. This view is further strengthened by Weick who echoed

593 P B Gove (ed), Webster’s Third New International Dictionary of the English Language, Unabridged (Merriam-Webster, 1996), cited in Hanley and Fenton, above n 579, 126.
597 Berliner, above n 568, 492.
Berliner and stressed that both terms require further unpacking to suitably fit the organisational context. 599

5.3 Improvisation in the AML Reporting System

In the previous chapter, the analyst showed that ‘improvisation’ was being used by AML professionals mainly as responses — spontaneous actions based on intuition or immediately available knowledge and resources — to overcome an information deficiency, which was caused by a lack of interagency collaboration in general or a poor interagency information sharing culture in particular. However, a strict emphasis on ‘spontaneity’ and ‘intuition’ keeps the description largely incomplete and make improvisation look like ‘making of something out of nothing’. 600 Therefore, the further investigation of these two dimensions of improvisation is necessary.

Berliner said that to understand the process of improvisation properly, the term ‘intuition’ needed further elaboration. 601 Otherwise, ‘[t]his simplistic understanding of improvisation belies the discipline and experience on which improvisers depend, and it obscures the actual practices and processes that engage them’. 602 Weick maintained the same view and further added that the word ‘intuition’ should be broadly understood because ‘it is the very nature of this process that makes improvisation possible’. 603 That is to say, what emerges when we analyse intuition is ‘experience’; and it is the level of an improviser’s know-how or procedural knowledge that ‘separates good from bad improvisation’. 604

In the field of the AML reporting system of Bangladesh, as we observed in previous chapter, the three major tasks — Collecting Crucial Information, Being Selective and Keeping to the Code — were being simultaneously pursued by the AML professionals through a number of improvised techniques. For example, during the collection of information from public agencies, ‘being persistent’ was a common technique among

600 Berliner, above n 568, 492.
601 Ibid.
604 Ibid.
the ACC investigators but not among the AML professionals of the reporting entities. This was because using their sense-perception, which was backed by their prior experience of working with other public agencies, the reporting entities (given their position in the society) already knew if application of such a technique was going to yield any successful result for them at all.

Similarly, when a customer suddenly placed an order to withdraw all their money in cash and close the account immediately thereafter, this triggered an alarm. In response, the AML professionals of reporting entities used techniques like ‘playing the victim role’, ‘proposing alternatives’ or adopting the ‘awaiting method’ to buy time and encourage the informal conversation to continue. They used their experiences (intuition) and prior knowledge about similar customers and spontaneously applied improvised techniques to discover why the customer was closing the account and requesting a significant cash transaction when withdrawing money using other bank instruments would be safer and more convenient. Here, identifying an activity as ‘unusual’ was a matter of common sense but devising ways to explore why it was unusual was improvisational.

Close observation of the use of improvising techniques in the AML context revealed another important dimension of the emergency performance of AML professionals. In most cases, the AML professionals of the REs had limited authority over their main source of information — the customers. The REs had to improvise a great variety of informal communications and information collection techniques, and apply them promptly with enough precaution to avoid ‘tipping off’ the subject. ‘Being inquisitive’ during the account opening process, ‘conversing casually’ when a suspicion arose, or using ‘playing the victim role’ to investigate a proposed sudden and significant cash withdrawal — were designed to comply with the AML obligation while at the same time preserving the interests of the business by keeping the valuable customers undisturbed. On the other hand, the AML professionals of the FIU used ‘communicating informally’ — a less formal technique than ‘conversing casually’ — and the ACC applied ‘collecting information from the witness’ for the same purpose. Similarly, in order to accomplish two other tasks — ‘Being Selective’ and ‘Keeping to the Code’ — the AML professionals of the different components of the AML reporting system promptly applied various other improvised techniques.
Although these spontaneous actions might appear unsystematic at some point in time, it is not hard to notice their inherent discipline. Most of the improvising activities in the context of a particular organisation (whether it was an RE, the FIU or the ACC) could be grouped together under three sub categories, namely ‘Collecting Crucial Information’, ‘Being Selective’ and ‘Keeping to the Code’, which suggested that those actions were actually aimed at accomplishing specific objectives. This ordered style of behaviours indicated a further explanation of the word ‘spontaneity’. Berliner observed that a spontaneous well-disciplined performance of improvisation is basically a result of long practice (of the skill of improvisation not the particular melody), which means persons who practice well are better prepared to confront a challenging situation.

After unpacking ‘intuition’ and ‘spontaneity’, what has actually been found to be an extremely simple suggestion — experience and practice help someone perform better. In the organisational context, improvisation, therefore, is a performance, which could meet, in Crossan’s view, an organisation’s need for innovative solutions. That is to say, improvisation is a ‘conscious choice people make rather than [a] random behaviour’. Neither pure guesswork nor haphazard actions in the name of ‘intuition’ or ‘spontaneity’ (as the case may be) could bring success through improvisation in the AML context. Therefore, the level of experience that an entity possessed in handling similar situations along with their ability to focus on continuing practice would determine the success that they could achieve through improvisation.

5.3.1 Effect of Improvisation in the Bangladesh AML Reporting System

While it is in no way possible to quantify the level of success improvisation can achieve with any reasonable accuracy, it is, however, still possible to draw some specific examples that might indicate the level of intuition and spontaneity that the AML professionals possessed. The analyst presented one example from the literature review and another from the empirical data. These examples are in no way conclusive, but still they provide an interesting insight into some aspects of an information sharing deficiency and the effect of improvisation in this particular context.

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605 Berliner, above n 568, 494.
As mentioned earlier, the empirical findings and the literature review indicated that Bangladesh was a low achieving AML regime with an average rating below the level of partially compliant jurisdictions for compliance with the global AML standard. The APG Mutual Evaluation Report identified several general concerns that Bangladesh needs to work on, and most importantly, many of those issues relate to poor interagency collaboration and a lack of sufficient access to AML related information.\textsuperscript{608}

**Example One**

While a number of innovative efforts had been in practice among the AML professionals to reduce the information deficiency, they had apparently little effect on the real problem that the reporting system was facing. The APG Mutual Evaluation Report stated that Bangladesh had taken a significant step to develop the capacity of the FIU to receive, analyse and disseminate STRs, CTRs and other forms of data, yet, due to several political and legislative constraints, there has been a sharp decline in the number of AML reports that the FIU received and finally disseminated in last few years.\textsuperscript{609}

\textsuperscript{608} For further detail, please see section 2.4.5 of Chapter 2.

\textsuperscript{609} APGML, *Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh*, above n 67, 64.
Note: Data collected from APG Mutual Evaluation Report 2009 on Bangladesh.

Figure 5: Double Line Graph Presentation of the STRs Received and Disseminated by the FIU.

As shown in Figure 5, there was steady progress in both the receipt and dissemination of STRs starting from the beginning of the AML regime in 2002 until the end of 2004. After that, there was a sudden drop in the total number of STRs received and disseminated. Interestingly, during 2006 and 2007, the change was sharp but the trend was in the opposite direction. Although, the number of STRs received reached its highest peak in 2006 and then declined compared to the initial three years, however, number of dissemination slumped sharply during this period. By end of 2008, the total number of STRs received had decreased to its second lowest level, and number of reports disseminated dipped to its lowest ever level.

Example Two

In order to examine the above findings from a different perspective, interview participants were asked to answer a simple question about the quality of the AML reports (both STRs and CTRs) that they handled. It is often said that ‘[i]nformation
quality (IQ) is an inexact science in terms of assessment and benchmarks yet the study of information quality is vital for organisations because this might have a ‘potential severe impact on organizational effectiveness’. It may also here be noted that although an organisation’s effectiveness does not exclusively depend on the quality of information, in the AML context quality may play an extremely vital role.

In this study, information quality has been used in a very simple sense. No specific definition of ‘quality’ or ‘set of measures’ had been used to assess the quality of information, because that would lead the discussion to a whole new area. In order to give a general theoretical understanding of quality, participants were requested to give their opinion based on the AML reports’ conformance to the relevant specifications, and whether or not they meet consumer expectations or adequately serve the purposes of their users.

Those participants who work with reporting entities were randomly selected from the group of reporting entities who had experience of filing STRs. It may be further noted here that, according to one interviewee from the FIU, that one of the reasons behind the very low number of reports was that many of the REs never filed an STR (section 4.2.1.D). Participants from the FIU and the ACC agreed to respond to this survey on condition of anonymity. As a result, only about half of the total number of those two groups was finally allowed to participate in this survey so that they remain unidentified from rest of their colleagues.

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The result of this particular study was not surprising (Figure 6). The survey data shows that 12 of the 14 AML professionals from REs believed that the quality of their STRs was ‘good’; one said it was ‘bad’ and one remained indecisive. On the other hand, except for one participant from the ACC who remained indecisive, all participants from the FIU and the ACC disagreed with the majority of the representatives from the REs.

**Figure 6: Presentation of Survey Data on the Quality of AML Reports**

The result of this particular study was not surprising (Figure 6). The survey data shows that 12 of the 14 AML professionals from REs believed that the quality of their STRs was ‘good’; one said it was ‘bad’ and one remained indecisive. On the other hand, except for one participant from the ACC who remained indecisive, all participants from the FIU and the ACC disagreed with the majority of the representatives from the REs.

**Analysis of Both Examples**

Although a number of innovative actions had been taken to improve the situation of the AML reporting system of Bangladesh, the outcome of those initiatives remained uncertain. As far as the STRs were concerned, the decline in both the quantity and quality indicated that there was a major gap between the AML professionals’ understanding about how a reporting system should function and the way the reporting system in Bangladesh was actually performing.
5.3.2 Signs of an Ineffective Reporting Regime

There could be several explanations as to why the AML reporting system in Bangladesh appeared largely unproductive. Here the analyst would like to present the reasoning of the persons who actually acted as appraisers of the system as mentioned above. Although their analysis provides some reasonable insights into the reporting system’s performance issues, they do not, however, lead to any dependable conclusion yet. Therefore, a further explanation of their views is necessary in the context of the two key dimensions of improvisation, namely, experience and practice or training.

Interpretation of the APG Assessors

The APG identified some specific reasons in their evaluation report as to why the AML reporting system remained so ineffective. One major reason for rating ‘PC’ for Recommendation 29614 (competent authorities, their powers and resources) was that the FIU did not have free ‘access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it require to properly undertake its functions, including the analysis of STRs’ 615. This incapacity was further worsened by the poor physical infrastructure of the FIU. This included a lack of proper IT equipment, software, information storage facilities and an uninterrupted power supply, which jointly resulted in a decreasing effectiveness of the AML Reporting system over the years. 616

Interpretation of the Participants

With regard to the study on the quality of the STRs, participants from the REs tried to justify their position by saying that often they had insufficient or outdated information about customers, because even careful Customer Due Diligence at times failed to collect adequate information. Often, customers provided incomplete as well as unverifiable information. Therefore, being able to send a report where all fields of an STR form had

614 This refers to the FATF Recommendations version as adopted on 15 February 2012, which corresponds to old number 26 (FATF 2003 version), see FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations (February 2012), above n 327, 5.
616 Ibid.
been completed with necessary information supplied should mean complete and good reporting. They further argued that, if the reports were not good enough to serve the users’ purpose, they should have led to negative criticism from the FIU.

On the contrary, participants from the FIU expressed their serious concerns about both the quantity and quality of the reports they received. They indicated that many of the REs did not report at all and some of them reported only when they had to report. This was evident in the defensive reporting when there was a drive from the FIU or there was newspaper exposure of serious fraud related to some business or person. They stressed that the reports were generally erroneous and often lacked adequate information, which prevented the creation of an audit trail for the potential money laundering offences.

Participants from the ACC reiterated the FIU’s sentiments and added that their enquiry and investigation were heavily affected by the ‘poorly analysed’ reports that they received from the FIU. They said that although they received only a few cases from the FIU, those reports looked more like ‘mere STRs’ (the FIU officers categorically denied this assertion) than ‘probable violation of money laundering law’. What those reports lacked among other things were a proper analysis with regard to ‘probable violations’ of any specific provision of the anti money laundering laws, potential ‘sources of evidence’ and details of witnesses.

Analysis

What appeared in the APG Mutual Evaluation Report about the decline in the the number of STRs leaves hardly any room for debate. It was a mutual evaluation of an AML regime where all participating delegations — the APG assessors and the representatives of the jurisdiction under assessment — contributed and mutually agreed on the report before it could be published. But then again, many could always oppose accepting a lower number of STRs as conclusive proof of an ineffective AML reporting system. In some jurisdictions, its supporters could view the relatively lower number of STRs as a sign of the significant deterrent effect of an efficient AML system.

617 Although some of the ACC officials said that the FIU should provide, in their analysis, additional information with regard to probable violations of AML laws and potential sources of evidence, the analyst argues that these tasks may not be the responsibility of the Bangladesh FIU which is an ‘administrative model’ of an FIU. For further detail, please see section 1.5.1 of Chapter 1.
David Chaikin indicated that annual statistics produced by national FIUs revealed huge under-reporting by the Swiss AML reporting system. Nevertheless, advocates of the Swiss system were barely ready to accept this as a sign of failure. They stressed that the Swiss system in fact effectively deterred money launderers. They argued that Switzerland had a powerful customer vetting and monitoring system even before they had an AML regime, and under the AML regime, as international pressure continued to grow, they had in place an extremely rigorous customer acceptance system and KYC practice.\(^{618}\) Besides, in 1977, they introduced the requirement of collecting information on the beneficial owners of funds, the first developed country to do so.\(^{619}\)

Claims of the supporters of Bangladesh’s AML regime would not be completely incorrect if they mentioned some of its achievements, for example, Bangladesh had been actively pursuing AML since 2000, enacted AML legislation and become the first SAARC nation to criminalise money laundering. However, when the focus is shifted from the AML regime to the AML reporting system in particular, a desperate reliance on improvised techniques to collect information would cast serious doubt on their claim. Besides, it would be difficult to show good reasons (if any) that invalidate the APG’s assessment for FATF Recommendation 10 — customer due diligence and record keeping\(^{620}\) — where Bangladesh was rated ‘NC’.\(^{621}\)

While the above analysis provides some useful hints with regard to the quantitative aspect of effectiveness, the following discussion may reveal some of its qualitative features. The question of quality clearly divided the AML professionals. Producers and users of STRs viewed quality from different standpoints and had differing opinions. As expected, representatives from the REs who were the primary producers of the STRs stressed the ‘conformance to specifications’ meaning of information quality because it was easy for them to measure.\(^{622}\) They measured the quality of their reports mainly on


\(^{620}\) Old (2003 version of FATF Recommendations)Recommendation No 5.


the basis of two simple variables — being able to fill out an STR form with required information for each information field, and feedback from STR users.

When it comes to the first variable, REs could be blamed if they showed negligence in filling out the form with adequate information. But the blame could be shifted to the FIU if even a properly filled out STR form still resulted in a failure to report an ML incident, because the FIU — the developer of the STR form — either asked irrelevant questions or overlooked a relevant question, or both. For example, the STR form circulated by the FIU asked for detailed information about the reporting officer’s name, department/division and designation\(^623\) but did not make it mandatory to report either attempted transactions or suspicious activity in regard to money laundering.\(^624\)

With regard to second variable, it may not be unjust to say that the reporting entities’ argument had very little validity. The APG Mutual Evaluation Report indicated that the FIU barely provided any case specific reaction apart from some general feedback on STRs during a semi-annual workshop for AML professionals.\(^625\) Accepting the absence of negative feedback as sign of good reports, therefore, was a false premise.

On the other hand, the STR users viewed conforming to specifications as a part of the quality indicators only. They said that quality should mean an STR’s capacity to meet its user’s expectation. That is to say, its preparation, mode and time of delivery and the content must be useful for the analysis (by the FIU) and for the enquiry and investigation (of the ACC).\(^626\) However, participants from both the FIU and the ACC mentioned that they were seriously concerned about the quality of the STRs. At the same time, the ACC representatives made a specific criticism of the FIU’s level of analysis, and the FIU, while accepting their limitations, shifted a major part of the responsibility to the negligent REs and other external factors.

\(^624\) APGML, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh, above n 67, 10.
\(^625\) Ibid 112.
As mentioned earlier, many of the AML professionals were not properly aware of their respective roles and the roles of their counterparts. For instance, the FIU is not an investigative body in Bangladesh. Hence, labelling their failure — to identify what particular provisions of the AML law might have been breached and where to go to gather evidence — as a sign of a ‘poorly analysed’ STR (as mentioned by some of the ACC investigators) — are thus ill-founded. Similarly, branding some customers as ‘good’ or ‘legitimate’ (as elaborated in section 4.4.1B) is also an indication of some confusion with regard to the role that a reporting entity official is supposed to perform.

As noted by Chaikin, another way of assessing the qualitative output of the STRs could ‘include an examination of the number of investigations, prosecutions, convictions, blockage and confiscation of funds generated by the STR system’. The APG Mutual Evaluation Report indicated that during their onsite visit in August 2008, a total 78 ML cases were under investigation and most of those cases were initiated under the repealed MLPA 2002. Under the MLPO 2008, three cases were under investigation. The APG’s statistical analysis showed that there had been only two verdicts/convictions up until August 2008 but no further detail could be obtained.

When it comes to confiscation and seizures, the report said that in the four cases initiated in 2002, 2004, 2005 and 2006 under the MLPA 2002, a total of USD 1.4 million worth of property was seized before the APG mutual evaluation. Moreover, in 23 cases filed between 2004 and 2007 under the Criminal Prosecution Code, another USD 670,000 worth of proceeds of crime were seized. Now, given the size of the economy and the level of corruption in Bangladesh, how impressive these figures really are could be an interesting query.

In 2009–2010, Transparency International (Bangladesh) had estimated that corruption was costing 1.4 per cent of Bangladesh’s gross domestic product (GDP) each year.
That is, the total amount of corruption in terms of USD was near about 1.4 billion in 2010 alone when the size of GDP was over USD 100 billion. Comparing only one financial year’s level of corruption with the total amount of the proceeds of crime seized from 2002 to 2007 what we see is that only 0.1 per cent of one year’s total amount for corruption was seized in 6 years of the AML regime.

5.4 Apparently Failed Improvisation

From the above discussion, it will not be premature to conclude that the improvisation of the AML professionals apparently failed to achieve their ultimate objective. Even after the application of so many innovative techniques, the AML professionals could not ensure a continuing free flow of quality information from various sources, and as a result, the actual state of information deficiency remained largely unchanged. Any reflection of improvisation is hardly evident in either the quantitative or qualitative features of STRs. However, whether or not this was a total failure or if such failure or success suggests any new ideas — requires further discussion.

5.4.1 Why Improvisation Remained Largely Ineffective

Before we judge the level of success of improvisation in the current context, it is important to decide on the type of improvisation it is that AML professionals were dealing with. As mentioned in Chapter Two, the bureaucracy in Bangladesh has such historic and cultural elements that actually prevent public agencies from being cooperative, proactive and customer-oriented in most cases (as detailed in section 2.3). For example, in 2010, a Transparency International (Bangladesh) survey found that more than 80 per cent of the households surveyed reported experiencing corruption in dealing with public agencies and services. This result indicates that, among other issues, the level of cooperation between and customer-orientation of public agencies and rest of the society (also between the public agencies themselves) are poor, which resulted in costly and difficult to access public services for the people.

On the other hand, the AML reporting system has some specific tasks to accomplish, which requires more a favourable bureaucratic environment than that of Bangladesh. This does not, however, mean the creation of an ideal problem-free jurisdiction, but refers to a system which matches the ‘increasing international will and capacity to identify, investigate and prosecute money laundering’. In order to demonstrate such coherence with the international community, criminalisation of money laundering alone is inadequate. A jurisdiction must have an effective criminal justice system to trace, freeze and confiscate the proceeds of crimes and take the necessary measures to enhance international intelligence sharing and cooperation.

John Broome mentioned that the ‘investigation of money laundering almost always starts with financial intelligence’ and this intelligence is not just pieces of information but an end product of information processed in a certain way to add more value in it. This process begins with collection and ends with evaluation and the analysis of information. What is more important to this discussion is that information gathering is a huge exercise which includes ‘all available sources including public source material, law enforcement agencies, other government agencies and non-governmental organisations and individuals’.

Judging the above issues, it can be said that the AML professionals in Bangladesh AML reporting system were in a stressed and stressful situation. A lack of coordination among public agencies, the existence of domestic information sharing deficiencies and an inability to access cross-border intelligence and technical assistance through the Egmont Group presented huge challenges to the AML reporting system. The AML professionals were almost always unsure about the sources and methods of information that they must collect to fulfil their AML obligations. The interagency information sharing deficiency was, of course, an old problem but the AML professionals had to continually resolve it in new and innovative ways since they did not possess the most regular means to resolve the crisis in the usual fashion. What made the crisis even more acute were the time constraints for each task. From first detection until reporting,

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635 Broome, above n 37, 37.
636 Hopton, above n 28, 7–8.
637 Broome, above n 37, 375.
639 Ibid 379.
640 Murphy, above n 558, 285.
and then once the case was disseminated to partner agencies for investigation, the AML legislation set a specific time limit for each action to be completed. In a situation like this, resorting to improvised solutions appeared to be a likely consequence.

In this particular context, one important reason why improvisation might have failed to bring the expected result could be the cultural barriers. A too rigid bureaucratic environment in Bangladesh could be part of the explanation as to why new anti-generic ideas may not be welcome in resolving enduring problems. This is because ‘the very concept of improvisation, as it is anchored in modern languages, is a product of cultures that have valourized its opposite — composition — as a norm, even as a higher form’.641 The absence of this cultural accommodation in Bangladesh virtually held the level of improvisation at the stage of unsupervised interim responses to a crisis and barred it from growing as a reliable alternative answer to a social problem.

For successful improvisation another important requirement is predisposition and practice, something Alterhaug described as talent and training. While talent is of course important, the ability to improvise actually largely depends on practice.642 In this current context, the AML professionals were neither chosen based on their inherent ability to improvise nor had they been trained to manage situations like this, except for some exceptions, however.

During the interviews, the analyst observed that a very small percentage of the AML professionals, who were interviewed, mostly from the locally incorporated foreign financial institutes, received limited in-house training on how to use various techniques to collect information from suspect customers without tipping off the subject. However, such training was not common for other AML professionals. Most AML professionals acted alone and applied their own readily improvised techniques from their own position when the situation demanded. There were similarities in their actions, as they had common goals, challenges and almost the same amount of resources to utilise; however, there was hardly any sharing of experiences in an organised fashion.

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642 Alterhaug, above n 578, 99.
Some literature suggests that improvisation actually occurs in phases, especially in art, it is more like a gradual process than an isolated event. Citing Konitz, Berliner mentioned that in the beginning it is just ‘interpretation’ of a theme when improvisers take minor liberties to introduce creativity in melody. When musicians individualise their work and introduce unique patterns of imagination, then they move along the scale of ‘embellishment’. They enter into ‘variation’ when the melody has substantial changes in it with greater personality, but its connection with original written piece is still evident. Finally the ‘improvisation’ takes place when the highest level of intensity is achieved. This means, ‘… [t]ransforming the melody into patterns bearing little or no resemblance to the original model or using models altogether alternative to the melody as the basis for inventing new phrases’.

What we see here is a complex journey from almost mediocrity to excellence, advancing in steps using experiences and training from the previous stage into the next. In Bangladesh’s AML reporting system, this progressive nature of improvisation is probably missing. Consequently, for the AML professionals who were constantly trying to collect any relevant or closely relevant information in order to fulfil their AML obligations, the whole exercise was actually a desperate effort to devise a makeshift solution. Such temporary solutions to a permanent problem may always have a narrow chance of succeeding. Weick observed that:

... [D]eliberate improvisation is much tougher, much more time consuming, and places higher demands on resources, than does deliberate interpretation. If deliberateness is a key requirement for something to qualify as organizational improvisation, and if we construe improvisation in the sense used by Konitz, then full-scale improvisation should be rare in time-pressured settings.

That is to say, it was not ‘purer instances of improvisation’ that we observed in the AML context. Although there had been major improvements in the method of collection, it apparently had little effect on quality. The STRs were poor in both worth and number and there was hardly any sign of satisfaction among the users. Even neutral analysis showed that their qualitative output was declining.

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643 Berliner, above n 568, 67.
644 Ibid 69.
645 Ibid 70.
646 Ibid.
648 Ibid.
In addition to all these reasons, there might be a general reason why improvisation might have failed to achieve its ultimate goal. The AML professionals invested most of their time in improvising methods of collection but not the quality of the information they were going to collect. Sometimes the right method is necessary to collect the right type of information, but focusing mainly on the method may undermine the real objective of the application of such a method. This was partly because the reporting entities hardly felt that there was a strong demand for quality STRs — the collection and reporting of any quality of information would suffice their purposes as far as the reactions of their users were concerned, and partly because there was general lack of understanding about the AML reporting obligations.

### 5.4.2 Lack of Adequate AML Experiences and Training

The above discussion, which is based on some widely referenced literature on organisational improvisation frequently pointed to ‘experience’ and ‘practice’ as two key variables of improvisation. These variables are not only relevant in the context of resolving an information sharing deficiency but also in understanding the general AML obligations for all three components of the reporting system.

The outcome of the empirical data analysis and the literature search revealed that the reporting entities did not know what to report, and sometimes they even did not know what suspicious transactions actually were. They were reporting what they had to report but actually they did not have great confidence in their own process. Therefore, the FIU was receiving reports which were less relevant and less useful than they might be. This is partly because they had not articulated what they wanted and why.

In the interviews, participants from reporting entities claimed that their reporting quality was ‘good’. There was even a correlation between their words and number recorded for similar responses as most of the reporting entities’ AML professionals that were interviewed had the same opinion about quality; however, their claim did not match the overall picture. If they were reporting correctly, it was because of the poor performance of others for which the AML reporting system remained largely unproductive, then this was basically a reflection of their own situation. They were also part of this underperforming system and, thus, part of the problem.
The REs’ personnel were happy with the quality of reports they produced based on the false hypothesis that there was no negative criticism received on their reports. However, the real explanation as to why there was no case specific regular feedback could be very simple. The FIU did not itself know what it was seeking and why it was seeking it in the name of STRs. They could not provide regular feedback because attempting to provide feedback would mean trying to respond to a question to which they did not have the answer. They did not want to admit that they were unable to explain what they wanted the reporting entities to provide. That is, accepting the responsibility to provide feedback would only make the FIU’s task harder, and it was already overburdened by the interagency information sharing deficiency. Therefore, the FIU received any reports and abstained from providing feedback. This is the part of the complications that have been observed.

What this demonstrated was that the FIU apparently did not have a much clearer idea about what they were trying to collect and for what purposes. Nevertheless, getting the right quality of information is fundamentally important to be able to have effective analysis. If the wrong kinds of transactions are being reported as suspicious and the actually truly suspicious ones are overlooked, then it does not matter what analysis the FIU conducts, it is not going to yield any useful result.

The reporting entities cannot provide what the FIU requires if they do not know what they should report. Often the reporting entities ended up becoming more focused on ‘numbers’ than on quality, creating a completely qualitative problem. If the reporting entities knew what they should look for, they would have a better chance of formulating reports that would lead to much more effective analysis and much better products for the ACC or other partner agencies.

It is expected that the FIU should receive what they need and the reporting entities should report more effectively. Although the law imposed reporting obligations on the reporting entities, it is not enough simply to enact legislation and impose reporting obligations, without implementing further education on the matter. If the FIU does not help the REs understand what they need to report and train them to enhance their reporting skills, the disconnection between the FIU’s requirement and the reporting entities’ perceptions will remain as it had always been. In fact, that is the reality in Bangladesh.
As Reuter and Truman noted, ‘Money laundering is complex and often difficult to follow for anyone without [a] highly specialized knowledge of finance, and relatively few agents and prosecutors are in a position to acquire the skills necessary to pursue such cases.’ In most developing economies, the AML professionals just do not have enough knowledge, skill, training and background to deal the AML problems. In this situation, it is more logical for the FIU to assume a more responsible role and take the largest part of the responsibility on their shoulders instead of putting it on the REs for the underperforming reporting regime. This enhanced role of the FIU must not stop within the borders of the AML reporting system, but reach out to their indirect AML partners, that is, to every possible source of information that they might need to explore to keep the AML reporting system running.

5.5 Has Improvisation Really Failed?

Although improvisation remained apparently unsuccessful in resolving the interagency information sharing deficiency, this is only one way of looking at the entire exercise. It has made several notable contributions in the AML context of Bangladesh that could be seen to be highly useful in analysing the gap between compliance and non-compliance and how this gap could be addressed.

Improvisation has helped establish an informal professional network among various public, private and autonomous agencies. This network could be useful in complying with AML obligations when the regular system is unable to provide appropriate guidance. Even within a formal arrangement, this network is useful, because informal interaction is ‘the social glue of the workplace’ and it helps establish a common ground.

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649 Reuter and Truman, above n 2, 187.
650 Jensen and Png, above n 9, 114.
Beside this networking, another important contribution of improvisation was the identification of potential information sources. The application of various improvised techniques of communication enabled the AML professionals to gather first-hand experience about where to search for what information and what quality they might offer. In any situation, this could be a costly task to accomplish.

Nevertheless, the most important thing improvisation revealed, as mentioned in Chapter Three, was a basic social process, which means a core problem in a substantive area and how that problem is continually being resolved.

The core problem as it was observed emerging was a combination of multiple issues that resulted in an interagency information sharing deficiency. Sometimes the reasons for such a deficiency are abstract issues like bureaucratic impediments, cultural limitations, or an unwillingness to share information as sharing information was often viewed as sharing power in the bureaucracy. Sometimes, however, the reasons are rather concrete, for example, the absence of a memorandum of understanding, technical limitations, lack of resources or just the unavailability of the information itself.

The AML professionals’ response to this core problem was unique. They improvised several techniques to overcome their respective information deficiencies and often assisted each other in pursuing the common goal of the reporting regime. An analysis of their efforts to resolve issues further identified that the reporting system had its own set of limitations independent of the external factors identified earlier. Finally, the empirical data analysis and literature review revealed how all those external and internal factors affect the AML reporting system and determine its productivity in the AML context.

The reporting exercise began with the reporting entities sending poor quality STRs, which resulted in ineffective analysis at the hands of the FIU and almost fruitless investigation when the material was forwarded to the ACC. The primary reason for this poor reporting was, as mentioned earlier, the inexperience of both the FIU and the reporting entities who clearly did not know what to look for and why. A weaker KYC regime was also partially responsible for this problem. Secondly, during this reporting process, neither the REs, nor the FIU or the ACC was able to enhance the quality of reports due to external factors such as interagency non-cooperation and limited access to
public databases. This also included the REs’ inability to benefit from a constructive feedback regime. Consequently, we see poor quantitative output of the reporting system with very low or no social impact by the AML regime. As Charles Babbage asked, ‘[I]f you put into the machine wrong figures, “will the right answers come out”?’.\textsuperscript{653} In the simplest terms what this means is — ‘garbage in, garbage out’.

5.6 The Hypothesis

In the AML context, the crisis of information deficiency occurred and put the organisations and persons in this knowledge intensive business under tremendous pressure. The basic reason for this crisis situation in the context of AML reporting system was the interagency information sharing deficiency, as we have already mentioned. Crisis improvisation applies in the AML reporting system in that a ‘judicious combination of formal structure and improvisation can be a useful mode of response in situations where resources are in short supply, circumstances are rapidly changing and communication is difficult’.\textsuperscript{654}

As observed, the gap between information requirements and information availability could be reduced, at least temporarily, through improvisation. In the AML reporting system context the AML professionals used improvisation for the same purpose. The continuing invention of techniques and their employment in ideal situations helped the AML professionals to reduce the pressure of information deficiency and thereby allowed them to fulfil their legal obligations. Sometimes, improvisation was successful, and sometimes it was not, but it usually helped them to remain compliant in terms of the domestic AML standard.

While improvisation succeeded to some extent at the domestic level, its eventual output could not bring a satisfactory rating in the eyes of the international standard setter. Nevertheless, ultimately improvisation succeeded in identifying the core problem of the AML reporting system, the gap between compliance and non-compliance and some useful indication of resources which could be used to reduce this gap.

\textsuperscript{653} Charles Babbage, \textit{Passages from the Life of a Philosopher} (Longman, Green, Longman, Roberts, & Green, 1864) 67.

\textsuperscript{654} Malcolm Brady, ‘Improvisation versus Rigid Command and Control at Stalingrad’ (2011) 17(1) \textit{Journal of Management History} 27, 28.
The analyst argues that the phenomenon of a general shortage of useful information — which could be used to improve government operations and services — could be comparable to the problem of capital formation in developing countries. The apparent reason, as it appeared, behind this information deficiency was a ‘vicious circle’ effect.

Ragnar Nurkse, in the *Problems of Capital Formation in Underdeveloped Countries*, described some basic challenges that developing nations face to form capital — a very necessary condition for economic development. He noted that a poor nation remains poor because it is trapped in a vicious circle of poverty, which implies ‘a circular constellation of forces tending to act and react upon one another in such a way as to keep a poor country in a state of poverty’.

In economically backward nations, this circular relationship badly affects the capital-gathering process in that it influences both the supply and demand of capital in an economy. The supply of capital is affected by people’s ability to save, and demand is affected by their motivation to invest. In the words of Nurkse:

A circular relationship exists on both sides of the problem of capital formation in the poverty-ridden areas of the world.

On the supply side, there is the small capacity to save, resulting from the low level of real income. The low real income is a reflection of low productivity, which in its turn is due largely to the lack of capital. The lack of capital is a result of the small capacity to save, and so the circle is complete.

On the demand side, the inducement to invest may be low because of the small buying power of the people, which is due to their small real income, which again is due to low productivity. The low level of productivity, however, is a result of the small amount of capital used in production, which in its turn may be caused at least partly by the small inducement to invest.

Information deficiency in the context of the AML reporting system could be compared with the above situation in that information or knowledge is comparable with physical capital and therefore, it may play an active role in production. The analyst argues that for any AML regime, information may play the same role as capital plays in economy. Keeping this in mind, Ragnar Nurkse’s description of a vicious circle could be

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656 Ibid 4.
657 Ibid 4–5.
658 Ibid 5.
rephrased to fit the context of information deficiency. In the current context, this could be described as the ‘Problem of information capital formation in poorly regulated AML regime’. Now, the vicious circle that has been observed in this context is:

A circular relationship exists on both sides of the problem of … [information capital] formation in the … [poorly regulated AML regime] …. On the supply side, there is small capacity to … [share information], resulting from the … [limited availability of relevant information]. The … [limited availability of relevant information] is a reflection of low … [level of information sharing among agencies], which in its turn is due largely to the lack of … [general availability of information and related resources]. The lack of … [general availability of information and related resources] is a result of the small capacity to … [share information], and so the circle is complete.

On the demand side, the inducement to … [maintaining a culture of sharing information] may be low because of the … [users’ limited ability and opportunity to effectively use information], which is due to … [limited availability of relevant information], which again is due to low level of … [information sharing among agencies]. The low level of … [information sharing among agencies], however, is a result of the … [lack of general availability of information and related resources] …, which in its turn may be caused at least partly by the small inducement to … [maintaining a culture of sharing information].

One thing that is common in both circles and shown here as the functional equivalent of ‘low level of real income’ is the ‘limited availability of relevant information’. Just like ‘real income’ in economics, the ‘availability of relevant information’ could be considered a more useful indicator of the soundness of a bureaucratic environment where an AML reporting system operates. Here the analyst used ‘relevant’ instead of ‘useful’, because ‘usefulness’ indicates a rather broader aspect of information quality, while ‘relevance’ normally refers only to one of its many features, especially when information quality is ‘considered within the context of the task at hand …’.

In this discussion, the ‘limited availability of relevant information’ would, therefore, mean scarcity of information that is relevant in the AML reporting system context.

Nurkse mentioned that usually problems on the supply side attract most attention due to their serious nature and the degree of difficulty encountered to remove them; however, obstructions on the demand side are also crucial. The literature review and empirical research identified several problems as to why there was a deficiency in the information

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661 Nurkse, above n 655, 5.
662 Ibid.
663 Yang et al, above n 611, 135.
664 Nurkse, above n 655, 5.
supply and why the number of STRs was low. The subsequent analysis then revealed that the FIU’s disinclination to providing feedback on poor STRs could signal of a problem on demand side of the circle too.

### 5.6.1 Challenges on the Demand Side

This might sound a little surprising at first that information deficiency could be a consequence of some problems on the demand side of the circle of information capital formation. When an AML regime is suffering from a desperate shortage of information, then apparently there should not be any shortage of demand; but interestingly, there is.665

Adam Smith’s renowned thesis was that ‘the division of labour depends upon the extent of the market’.666 Nurkse further noted that ‘the inducement to invest is limited by the size of the market’.667 He argued that the size of the market or people’s capacity to purchase in real terms determines the level of capital equipment to be used in the production of goods or services. In other words, in poorer countries this inducement is somewhat subdued due to their small market size or lower domestic purchasing capacity.668

If we go back to our old example of a lack of feedback on STRs, what we see is a small-market effect in the AML context. If the reporting entities had no option but to report all possible suspicious transactions and activities,669 the number of STRs would be far higher. At the same time, if the FIU provided regular case specific feedback and also put the REs under constant fear of regulatory intervention for poor reporting, the REs would recruit more personnel, train them, procure new IT equipment and then dedicate these resources to ensure quality reporting.670

Nevertheless, if the lower number of STRs does not lead to any significant regulatory risk, and their poor quality does not raise any questions, it will not be meaningful for

665 Ibid 5–6.
667 Nurkse, above n 655, 6.
668 Ibid.
669 As of December 2010, when the fieldwork for this research was being conducted, there was no legal obligation to report suspicious activities.
670 Nurkse, above n 655, 7.
them to invest to ensure better reporting. Analysing their situation under the traditional Becker model, the REs may logically see that the benefits of noncompliance outweight the cost of other business or reputational risks, which may or may not occur. They will just make use of existing resources (in addition to those resources’ regular business involvement) to comply with their AML obligations. In most cases, this would be a temporary and sketchy solution of a lower standard; but it would be uneconomic, given the existing level of risk, to invest in capital equipment and resources just to handle a few occasional reports.

The above situation actually exists in the AML regime of Bangladesh. The FIU’s limited ability and opportunity to effectively use information (including the ability to provide constructive feedback) work as a disincentive for the REs (and maybe for other sources of information as well). The FIU’s capacity to handle quality virtually determines whether REs would invest more on quality. When the FIU knows that their own officers do not have the necessary expert knowledge and technical support to analyse good STRs, and the professional freedom to use financial intelligence to contribute to the fight against money laundering, then hardly any good reason remains left as to why they should insist on quality.

When the above conditions are applied in an AML regime, then size of the market of information will not mainly be determined by the total number of reporting entities or geographic area of a jurisdiction. Size should be determined by the volume of production, that is to say, the flow of useful information produced and used.

In the AML regime context, placing the FIU in the position of a potential customer of AML related information and rest of the bureaucracy and individuals as the supplier gave us some suggestion as to why the information market could be portrayed as small. In fact, substituting the entire AML reporting system for the FIU would hardly make any difference in the size of the ‘market’.

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671 Masciandaro, Takáts and Unger, above n 1, 2.
672 Nurkse, above n 655, 7.
673 Ibid.
674 Ibid 8.
What appeared during the empirical data collection, as the participants from the ACC and the FIU indicated, was that they seek more than what they could possibly share if requested. This is partly because, both the FIU and the ACC work with highly classified information relating to law enforcement issues, which cannot be shared with most other agencies. In other words, only a handful number of agencies working in the law enforcement area might have a real interest in what the FIU or the ACC could share. This is another reason why the information market, at least in the AML context, remains small.

Is there any way to enlarge the size of the market and break this circle? It has been observed that some countries were economically backward in the beginning but then something happened that turned the vicious circle into a beneficent one. Nurkse suggested that:

> The difficulty caused by the small size of the market relates to individual investment incentives in any single line of production taken by itself. At least in principle, the difficulty vanishes in the case of a more or less synchronized application of capital to a wide range of different industries. Here is an escape from the deadlock; here the result is an over-all enlargement of market. People working with more and better tools in a number of complementary projects become each others’ customers. Most industries catering for mass consumption are complementary in the sense that they provide a market for, and thus support, each other. … The case for ‘balanced growth’ rests on the need for a “balanced diet”.

How could it be possible to achieve a ‘synchronised application of capital’ in multiple supplementary projects and expand the size of market for information? The answer to this question could be given in two parts. First, in many cases, irrespective of their area of works, most agencies (public or private) actually collect essentially the same type of data and information about individuals and organisations. Later, they process this data or information and add new value to make it fit to their specific business needs. Secondly, ‘[c]omparing and augmenting internal agency data with external information can improve the accuracy and validity of the data in each agency’s own programs’. To be exact, agencies could mutually benefit through collaboration.
Now, if a policy is implemented to assess different types of information needs across bureaucracy and industries, this could be a starting point to break free of the obstacles on the demand side. An initiative may then follow to identify who could produce what types of information goods or services and who might be the target market. As Nurkse observed, ‘An increase in production over a wide range of consumables, so proportioned as to correspond with the pattern of consumers’ preferences, does create its own demand.’

Another thing that could help enlarge the market is cross-border intelligence sharing initiatives. International collaboration in the form of membership of an intelligence sharing network and adherence to international standards may open the door for a new investment of capital in the information service sector. This will benefit the local market because, ‘[t]he size of the market is a basic determinant’ not only for local employment of capital but also for international collaboration.

5.6.2 Challenge in the Supply Side

Nurkse suggested that in the context of economics, the circular relationship on the supply side could be broken by ensuring a clever use of both domestic hidden resources and foreign aid. What he suggested is ‘re-allocation of labour in favour of capital construction’. He argued that, irrespective of the density of population in a country, waste of labour in the form of disguised unemployment or employment in relatively unproductive occupations is common.

If Nurkse’s assumption is true, then this may not be hard to find workers across the bureaucracy and industries of Bangladesh who could be dispensed with, who contribute nothing to output. If this surplus labour could be used in a self-financing mode, this could contribute greatly to more capital supply. Nurkse stressed that in

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678 Nurkse, above n 655, 12.
679 Ibid 20.
680 Ibid.
681 Ibid 38.
682 Ibid 42.
683 Ibid 38.
684 Ibid 32.
685 Ibid 50.
686 Ibid 37.
687 Ibid 39.
some of the poorer countries there is large-scale disguised unemployment in agriculture in that ‘a large part of the population engaged in agriculture could be removed without reducing agricultural output’.\textsuperscript{688} Then again, the transfer of labour from where they are abundant to where they are desperately needed does not guarantee automatic solution to our current problem.\textsuperscript{689}

In order to resolve the issue of the short supply of information capital, an important task would be to identify the area equivalent to agriculture to draw surplus labour. To begin with, all three components of the AML reporting system may start by identifying this additional labour within their respective organisations. Same initiatives could be taken by public agencies, especially those who collect citizen and business information as part of their regular work. For example, the Election Commission, tax authority, driver’s licence issuing authority, immigration and citizenship authority, City Corporation, telecommunication regulatory authorities and the like.

In the context of economics, Nurkse suggested that this surplus labour be employed in the formation of new capital — factories, houses, roads, irrigations and the like, and finance them from their own productive performance.\textsuperscript{690} In our current context, this surplus labour could be employed to contribute in the creation of similarly productive capital, for example, information technology facilities, business specific information standards, database, identity check system, and risk analysis tool as offered by information service companies or credit reporting agencies. Some of these ideas have already been applied in many countries decades ago. For example, the credit-reporting agencies in Australia as defined in the \textit{Privacy Act 1988}.\textsuperscript{691}

There are some other conditions that need to be fulfilled to make the initiatives on the supply side successful. These initiatives could take the form of some projects especially designed to facilitate the use of surplus labour and tools.\textsuperscript{692} The necessary tools could be collected locally in the beginning, if foreign cooperation does not exist, but assistance from ‘advanced [jurisdictions] where capital goods were being produced more

\textsuperscript{688} Ibid 32.
\textsuperscript{689} Ibid 51.
\textsuperscript{690} Ibid 36–7.
\textsuperscript{691} \textit{Privacy Act 1988} (Cth) s 11A.
\textsuperscript{692} Ibid 46–7.
efficiently by means of capital goods693 could be taken when such aid is available. In that case, the risk remains that some of the tools used in theoretically advanced developed country may not be suitable for a developing country where there is an abundant supply of labour that normally does not use highly capital-intensive equipment or means of production.694

‘We should not expect that the new investment workers at once to work on capital formation at a much higher level of efficiency’, 695 observes Nurkse, but this could be a beginning where people have started ‘working, producing, contributing to the expansion of their [jurisdiction’s] productive capacity’. 696

5.7 Strengths and Weaknesses of the Suggestion

The description presented in the previous few sections as proposed hypothesis is ‘unavoidably sketchy, and no way conclusive’. 697 Although the suggestions are motivated by the empirical findings and literature review, they are purely hypothetical and incomplete as far as information capital formation is concerned. Most importantly, ‘capital is not everything’698 and reducing information deficiency alone does not promise a robust AML reporting system. It is ‘a necessary but not sufficient condition of progress’, 699 because, just like economic underdevelopment, information deficiency would also require a change in ‘human endowments, social attitudes, political conditions’700 among other things to overcome its challenges.

The proposed hypothesis on the supply side refers mainly to sources of surplus labour that could be employed in capital construction. Descriptions on the technical aspects of the various methods of utilising those resources, which will vary widely in different contexts, are almost absent.701 Therefore, further research and verification would be necessary to establish the relationship, if any, between information sufficiency and the notion of capital formation in economics.

693 Ibid 44–5.
694 Ibid 45.
695 Ibid.
696 Ibid.
697 Simmons, above n 475, 28.
698 Nurkse, above n 655, 5.
699 Ibid 1.
700 Ibid.
701 Ibid 54.
One important aspect of Nurkse’s theory is the use of surplus labour in a self-financing mode through the mobilisation of domestic resources\textsuperscript{702} or ‘hidden source of saving’,\textsuperscript{703} which would require entrepreneurial vision and political aid in the form of non-interference, or in the form of a ‘facilitation effect’.\textsuperscript{704} Would it be possible to achieve such a goal in the bureaucratic and political framework of Bangladesh where the penetration of corruption is so widespread? The answer will remain unknown until such changes are actually attempted and we have adequate data about their rate of success; however, there are some examples that show that there exists some ‘light at the end of the tunnel’. It may be noted that these examples are not about a pure economic solution but only about positive administrative responses to challenges.

**Case One**

In 1983, the Sonali Bank, the largest nationalised bank in Bangladesh (one headed by a writer and career civil servant) introduced a university employment creation project, providing financial loans to university graduates to start a transportation business. The official goal of this project was to create self-employment among fresh university graduates. The proviso was that the university students would use the loan to buy minibuses and then operate their business under the direct supervision of the bank officials. The project achieved huge momentum, received support from different segments of the society, but finally failed.

The project was the brainchild of the Managing Director of the Sonali Bank who was also a writer. Critics said that he introduced this project from his social conviction as a writer and not as a responsible civil servant. Using his discretionary power, the Managing Director allowed the loans to be sanctioned without proper risk analysis having been undertaken. The Managing Director and the Board of Directors were civil servants who had no financial interest, unlike shareholders in private enterprises. Most of the loans went to student leaders of political parties and non-student third parties who were operating the businesses. Due to a lack of personnel, the bank failed to monitor these irregularities and soon the social commitment of the project disappeared. At the

\textsuperscript{702} Ibid 39.
\textsuperscript{703} Ibid 38.
same time, some of the vehicles fell out of commission due to accidents and poor maintenance. Neither the bank nor the borrowers came forward to invest more to bring them back on the road and into productive capacity for the business again. Ultimately, both the bank and its borrowers simply abandoned the project. It was alleged that the project failed mainly because the authority disobeyed the rules and regulations prescribed for government agencies, which resulted in various legal, bureaucratic and ethical problems.705

**Case Two**

In a similar proactive entrepreneurial initiative taken by a member of the Planning Commission of Bangladesh, a new telecommunication project for adding half a million new fixed telephone connections was prepared in 1993. Normally, such large projects are implemented under the Annual Development Program (ADP) with assistance from foreign loans, for instance, from the World Bank. Such a project does not start until a formal project proposal has been submitted and a foreign loan has been approved through a series of negotiations and assessment over a period. At that time the demand for telephone connections was high. The initiator of this project decided to implement the project swiftly without any assistance from a foreign donor. A member of the Planning Commission shared this idea with the Telecommunication Secretary. The Telecommunication Secretary then started a dialogue with the Finance Ministry. Later, the Finance Ministry agreed to issue debentures in the capital market and collect the funds for this project.706

The project was a remarkable success. The ‘[p]ublic purpose was achieved by … entrepreneurial, and customer-oriented administrative leaders who abided by [the] existing rules’.707 Although here we have described this success story very briefly, it is understandable that the project’s success was brought about by an excellent understanding among the ministries, quick approval for funds, a smooth procurement

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705 Information for this Case was obtained from: Islam, above n 99, 142–4. For part of his article, Mr Islam had interviewed Mr M Nurunnabi Chowdhury, author of *Tale of a Civil Servant* (Hakkani Publishers, 2009).


707 Islam, above n 99, 148.
process and successful communications among public agencies and private stakeholders.\textsuperscript{708}

Case Three

A reliable voter list is an important pre-condition for holding free and fair elections in a democratic country. It was often believed that due to the bureaucratic dilemma, political instability, the prevalence of corruption, and many other similar socio-political constraints, such a voter list would be almost impossible to achieve in Bangladesh. However, a recent research concluded that it is possible to implement such a project successfully if the resources are used under a well-defined management system.\textsuperscript{709}

When democracy was restored in 1991 after almost a decade marred by military coups, repeated periods of martial law, voting irregularities when elections were held, and the repeated calls for voter non-participation by opposition parties, the major political parties of Bangladesh then engaged in a series of confrontations between 1991 and 2006 on several issues, including electoral reform and the non-party caretaker government\textsuperscript{710} headed by a ‘neutral’ head of the government. The situation that resulted from these confrontations was that a military-backed non-party (civil) caretaker government came into power. One of the many vital reform challenges this government faced was the preparation of an accurate and authentic electoral roll. For years, fraudulent entries in the paper-based voters’ list, the high level of inaccuracies in the list, duplication of records and occurrences of vote theft had been some of the unique electoral problems in Bangladesh. The process that was followed to create and upgrade the existing voter list by political governments especially spurred serious debate and controversy. Therefore, there was a consensus among the political alliance and other civil society groups that the new electoral roll should be prepared with biometric data using modern Information Technology.\textsuperscript{711}

\textsuperscript{708} Ibid.
\textsuperscript{710} The purpose of this government is to ensure a fair election free from any type of executive influence. See Oliver Windgatter, ‘Bangladesh’ in Gerhard Robbers, \textit{Encyclopedia of World Constitutions} (Infobase Publishing, 2006) 75, 77–8.
\textsuperscript{711} Islam and Grönlund, above n 709, 189–90.
However, this initiative was not entirely new to Bangladesh. Previously, the Bangladesh Election Commission created a number of similar projects. One of the most notable of these initiatives was the introduction of voter ID Cards under a pilot project for two local elections in 1995. Although the pilot project which was implemented as a preparation for the upcoming 6th Parliamentary Election of 1995/96 was apparently successful, the International Foundation for Electoral Systems (IFES) highlighted a number of serious challenges that the Election Commission was facing. In a pre-election assessment, the IFES warned that there was ‘legitimate concern’ as to whether such a project could ever be implemented on a scale sufficient for a nationwide general election. They indicated that a lack of resources, the inefficiency of the personnel involved, the slow data collection process, poor data management and overall poor management of voter ID Card distribution were some of the serious shortcomings of the pilot project712 which could have made it very difficult to implement the project nationwide. Ultimately, the prediction of the IFES appeared correct as the project remained incomplete due to a number of strategic and technological constraints, after wasting a huge budget as well as national resources.713

Therefore, in 2008 when a general consensus was reached that a new electoral roll should be prepared with biometric data, the Election Commission had already learned a number of valuable lessons from the previous failure. This time they also had the support of all political groups and other groups in the civil society who extended all possible cooperation to make the project a success. The new project was named the ‘Preparation of Electoral Roll with Photographs’ (PERP).714

The PERP project was jointly conducted by the Election Commission of Bangladesh, the Bangladesh Army, and the UNDP.715 This project aimed to issue biometric ID cards which incorporated the most commonly used biometric data — for instance, the photos of face and eyes and handwritten signatures/finger prints — to all eligible voters of Bangladesh. The Bangladesh Army, which has extensive experience in managing many complex UN peace keeping missions across Asia and Africa, was called on to provide

713 Islam and Grönlund, above n 709, 193.
714 Ibid 190.
715 Ibid.
managerial, technical and administrative support to prepare the world’s largest biometric electoral roll of over 80 million voters in an extremely limited time of only 11 months.\textsuperscript{716}

Although the project faced a number of challenges in the initial stage, it was ultimately assessed as a successful one.\textsuperscript{717} As Islam and Grönlund noted: ‘This success has initially and generally been defined by holding the most credible and fair election in the history of Bangladesh on December 29, 2008. [The] UNDP describes this outcome as a “groundbreaking exercise in both scale and scope”.’\textsuperscript{718} Besides the Bangladesh Election Commission, a number of international agencies including the IFES independently audited the outcome of the project. The IFES assessment noted that the biometric data was captured with a very high degree of accuracy and quality, and the list included only the legitimate voters.\textsuperscript{719}

Scholars stated that the project authority effectively handled the critical project success factors, which included setting a realistic goal, time-bound strategic planning, acquiring management support, efficient leadership, successful involvement of stakeholders, resource mobilisation, progress review, positive power and politics, congenial bureaucracy, donor support and a drive for modernisation, among other factors. Most importantly, the project successfully created ‘trust’ in the mind of the general public about the Government’s good will. They believed that the Government had initiated the project to improve government services to the citizens of Bangladesh.\textsuperscript{720}

\section*{5.8 Conclusion}

Under a stressful situation when regular means are unavailable to respond to a growing concern, people often start to improvise new ways of resolving their problems. A general information deficiency caused by numerous bureaucratic impediments presented such a situation of stress for the components of the Anti Money Laundering reporting system of Bangladesh. Their legal obligation to ensure a successful Anti Money Laundering reporting regime was fiercely challenged by the practical challenge of a

\textsuperscript{716} See generally ibid 194.
\textsuperscript{717} Ibid 197.
\textsuperscript{718} Ibid.
\textsuperscript{719} Ibid.
\textsuperscript{720} Ibid 198–201.
general information sharing deficiency, which induced them to produce improvised techniques of informal communications and data collection. While this initiative tended to have some promise in relation to the goal of information sufficiency, it became obvious that the AML professionals had achieved only partial success.

Organisational improvisation requires adequate experience and training to achieve the expected result. In addition, successful improvisers must have sufficient expertise in the substantive area and a clear understanding of the nature of the underlying issues that initially prompted them to improvise. The AML professionals’ inexperience and lack of training in both areas resulted in a situation that indicated that although apparently each of the components in the reporting system employed their best efforts, ultimate success remained largely unattained. The evidence showed that the Anti Money Laundering reporting system failed to produce enough output to establish itself as a properly functional system. The number of Suspicious Transaction Reports and their qualitative inadequacies indicates that the AML professionals’ improvised techniques worked only as makeshift solution to a permanent problem.

What this apparent failure of improvisation indicated could be a useful learning. The core concern of the Anti Money Laundering reporting regime — that is, a general information deficiency — was an ongoing problem, deeply rooted in the basic structure of the society, and which may not be resolved through such makeshift attempts. It also indicated that reduced quality and quantity of Suspicious Transaction Reports were not only the consequence of inexperience or negligence on the part of the reporting system; in fact, in many cases none of the reporting system components had the opportunity to enhance the quality of the information that they had collected or received. This was because they had extremely limited access to useful information that could be helpful in analysis and/or investigation. Consequently, the poor Suspicious Transaction Reports reporting entities filed with the Financial Intelligence Unit had not changed much in quality by the time they had finally reached the investigation, evidence collection and prosecution stage through the Anti Corruption Commission.

This phenomenon of a general shortage of useful information could be comparable with the problem of capital formation in developing countries. There was a shortage of both supply of and demand for good quality information in the market. This argument indicates a general problem among all information users. The abundance of irrelevant
information and scarcity of quality information both support the argument that the demand for quality information in the market was low.

Therefore, the proposed hypothesis could be useful to study this phenomenon more deeply. Understanding why the demand for good information was low could help policy makers devise some plan that could help bring up the demand for quality information. At the same time, it might also be an interesting study as how to best ensure the supply of adequate relevant information that meets specific business needs of various information users.

Agencies — both public and private — may have something to share in exchange for something they want. Using existing resources the agencies concerned may produce enough information goods and services to meet each other’s demand. It is expected that this will enlarge the market for information, create demand, and ensure supply.

What is most important for the success of this proposition is the strong commitment of bureaucracy, something often short in supply in Bangladesh. Nevertheless, there are examples that indicate that success is possible.
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APPENDIX A: OLD AND NEW NUMBERING OF THE FATF RECOMMENDATIONS

THE FATF RECOMMENDATIONS
INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

<table>
<thead>
<tr>
<th>Number</th>
<th>Old Number</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>-</td>
<td>Assessing risks &amp; applying a risk-based approach *</td>
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<tr>
<td>2</td>
<td>R.31</td>
<td>National cooperation and coordination</td>
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<td>3</td>
<td>R.1 &amp; R.2</td>
<td>Money laundering offence *</td>
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<tr>
<td>4</td>
<td>R.3</td>
<td>Confiscation and provisional measures *</td>
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<td>5</td>
<td>SRII</td>
<td>Terrorist financing offence *</td>
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<tr>
<td>6</td>
<td>SRIII</td>
<td>Targeted financial sanctions related to terrorism &amp; terrorist financing *</td>
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<tr>
<td>7</td>
<td>SRVIII</td>
<td>Targeted financial sanctions related to proliferation *</td>
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<td>8</td>
<td>SRVIII</td>
<td>Non-profit organisations *</td>
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<td>9</td>
<td>R.4</td>
<td>Financial institution secrecy laws</td>
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<td></td>
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<td><strong>Customer due diligence and record keeping</strong></td>
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<td>10</td>
<td>R.5</td>
<td>Customer due diligence *</td>
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<tr>
<td>11</td>
<td>R.10</td>
<td>Record keeping</td>
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<td><strong>Additional measures for specific customers and activities</strong></td>
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<td>12</td>
<td>R.6</td>
<td>Politically exposed persons *</td>
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<td>13</td>
<td>R.7</td>
<td>Correspondent banking *</td>
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<td>14</td>
<td>SRVI</td>
<td>Money or value transfer services *</td>
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<td>15</td>
<td>R.8</td>
<td>New technologies</td>
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<tr>
<td>16</td>
<td>SRVII</td>
<td>Wire transfers *</td>
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<td>17</td>
<td>R.9</td>
<td>Reliance, Controls and Financial Groups</td>
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<td>18</td>
<td>R.15 &amp; R.22</td>
<td>Internal controls and foreign branches and subsidiaries *</td>
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<td>R.21</td>
<td>Higher-risk countries *</td>
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<td>20</td>
<td>R.13 &amp; SRIV</td>
<td>Reporting of suspicious transactions *</td>
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<td>21</td>
<td>R.14</td>
<td>Tipping-off and confidentiality</td>
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<td><strong>Designated non-financial Businesses and Professions (DNFBPs)</strong></td>
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<td>R.12</td>
<td>DNFBPs: Customer due diligence *</td>
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<td>23</td>
<td>R.16</td>
<td>DNFBPs: Other measures *</td>
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### E – TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS

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### F – POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OTHER INSTITUTIONAL MEASURES

#### Regulation and Supervision

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#### Operational and Law Enforcement

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#### General Requirements

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#### Sanctions

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### G – INTERNATIONAL COOPERATION

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<td>R.35 &amp; SRI</td>
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<td>R.36 &amp; SRIV</td>
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1. The 'old number' column refers to the corresponding 2003 FATF Recommendation.

   * Recommendations marked with an asterisk have interpretive notes, which should be read in conjunction with the Recommendation.

Version as adopted on 15 February 2012.
APPENDIX B: PARTICIPANT INFORMATION

(Note for Ethics Committee: This is an English translation for the Participant Information Sheet. This will be translated in Bengali (local language of Bangladesh) if the participants are not comfortable with English.

Research project title

Assessing the anti-money laundering reporting system in Bangladesh

The investigators of this study

Supervisor: Prof. John Broome, Faculty of Law/ Centre for Transnational Crime Prevention, [contact information is deleted for privacy reasons]

Student: Md. Zahurul Haq, PhD Candidate, Faculty of Law/ Centre for Transnational Crime Prevention, [contact information is deleted for privacy reasons]

What is the Research aim?

This research project will examine the strengths and weaknesses of the Anti Money Laundering (AML) reporting system of Bangladesh. It aims to identify, and critically evaluate, the factors that impact upon quality of the AML reports. It also aims to understand how the perceptions of different components of the AML reporting system (reporting entities, the FIU and the ACC) affect reporting quality.

Why have I been invited to participate?

You have been invited to participate in this study because you are a representative of a reporting entity/FIU/AML Law enforcement agency who is directly connected with the AML reporting system of Bangladesh.

What will I be asked to do?

- You will be asked to participate in a one on one interview with the researcher that will go for approximately 60-80 minutes.
- You will be asked a series of questions on Bangladesh’s anti-money laundering reporting system. Please see the questionnaire attached herewith.
- The answers you give will be recorded using a tape recorder.
- A transcript will be sent to you to check. If you have any changes you will be requested to mark them on the transcript, and return them to the researcher within two weeks by E-mail.

What kind of questions shall I be asked?

Here is a set of sample question for your understanding-

1. How do you verify customer identity?
2. How do you determine ‘complete’ and ‘correct’ identity of an account holder as mentioned under Section 25 (a) of the Money Laundering Prevention Act 2009 (MLPA 2009)?

3. What makes a transaction ‘suspicious’ to you, as mentioned in Section 23 (a) of the MLPA 2009?

4. How important is it to ensure that all reporting entities follow a standard baseline/method when identifying ‘suspicious activity/transaction’?

5. What kind of operational independence does a law enforcing agency need in order to ensure its proper functioning?

6. Do you think the current reporting system is an efficient system? If yes, then why do you think it is efficient?

**Will my answers be kept confidential?**

All information that is collected during the interview will remain confidential. The information will be stored securely at Centre for Transnational Crime Prevention, University of Wollongong. The information gained from you during the interview will be analysed along with that of the other participants in this study and used in the preparation of a thesis and other academic publications. No personal or identifying data will be included.

Confidentiality and privacy of the participants will be protected in every stage of the research, i.e.

Collection stage: The research activity will be conducted after normal office hours at a neutral venue (chosen as per the convenience of the interviewee) so that participants’ involvement remains undisclosed. Information will be recorded by the researcher himself using an audiotape without any intervention from third party.

Processing stage: Transcribed information will be completely de-identified so that they can no way be linked to any specific person. Participants will be cited with code numbers only.

Use stage: No identifiable data will be used in the PhD thesis and or in any future publications whatsoever.

Storage: Tangible sources of information (questionnaires, participation information sheet, consent form, audiotape etc) will be stored in a protected locker at the office of the researcher’s supervisor, and processed information will be stored in digital format using standard encryption system (used in MS word and or in Adobe acrobat) on a password protected computer. Only the researcher and his Supervisor(s) will have access to this information.

**How do I consent to participate?**

A consent form is attached. By completing this form with your handwritten signature and bringing it on the day of the interview with the researcher and complying with the interview process, consent will be officially given.
What if I change my mind about participation?

At any time during the study you have the right to withdraw your consent by contacting the researcher.

How will I benefit from participating in this study?

This study will not benefit you personally. However, through participating in this research, you may be providing benefit to your institution and other components of the anti money laundering reporting system of Bangladesh.

Will participating in this study be harmful to me in anyway, is there any risk involved?

The information provided will be fully de-identified before publication and it is not anticipated that this study will cause you harm in any way. However, some questions may result in revealing an indication of lack of compliance by your or other organizations. In that case, you are at liberty to decide if you would like to answer to those questions or not.

What will happen if information about corruption and or other kinds of serious irregularity is disclosed during interview?

Questionnaire is designed to collect some basic information on the current anti money laundering reporting system of Bangladesh. Thus, you are requested to reveal only what is relevant. All other information which is irrelevant to the main research question of the PhD research shall be discarded by the researcher.

Who can I ask any questions I have about this study?

If you have any further questions about this study, please contact Prof. John Broome on [contact information is deleted for privacy reasons]. You will also have the opportunity to ask questions before and during the interview.

This study has been reviewed by the Human Research Ethics Committee (Social Science, Humanities and Behavioural Science) of the University of Wollongong. If you have any concerns or complaints regarding the way this research has been conducted, you can contact the UOW Ethics Officer on (02) 4221 4457.
APPENDIX C: CONSENT FORM

(Note for Ethics Committee: This is an English translation for the consent form and it will be in Bengali, where the participant does not understand English)

Consent Form for Reporting Entities/FIU/Law Enforcing Agency

Research Title:
Assessing the Anti-Money Laundering Reporting System in Bangladesh

Researcher’s Name: Md. Zahurul Haq

I have been given information about the project, ‘Assessing the Anti-Money Laundering Reporting System in Bangladesh’ by Mr. Md. Zahurul Haq who is conducting this research as part of his PhD, supervised by Professor John Broome in the Faculty of Law at the University of Wollongong in Australia.

I understand that the only burden associated with my participation in this research is the time involved in the interview and some questions will be related to my work place (name of the financial entity/FIU/law enforcing agency). These questions may reveal some challenges my workplace is currently facing. I have been informed that anonymity of all data will be ensured all through this research. Also neither my name nor any job related information will be used to identify me or my comments in the publications resulting from this study. Since Mr. Zahurul Haq is obtaining approval from the management, so my co-workers or supervisors will know that some of us are participating in this interview. But, they will not know exactly who is participating and who is sharing what information.

I have been informed about the objectives and ultimate benefits of this research. I have read the Participation Information Sheet and have had an opportunity of asking Mr. Haq any questions I may have about the research and my participation. I understand that my participation in this research is voluntary and I am not bound to answer questions which I am not comfortable with. I am free to refuse to participate and I am free to withdraw from the research before it is published. My refusal to participate or withdrawal of consent will not affect my treatment in any way.

If I have any enquires about the research, I can contact Mr. Zahurul Haq [contact information is deleted for privacy reasons] and/or Professor John Broome [contact information is deleted for privacy reasons]. If I have any concerns or complaints regarding the way the research is or has been conducted, I can contact the Ethics Officer, Human Research Ethics Committee, University of Wollongong on +61 2 4221 4457, email: research_services@uow.edu.au.

By signing below I am indicating my consent to

• Participate in the research through an interview
• Answer all questions related to this research, except where I indicate I do not agree to answer a particular question.
• The data collected from me being used for Md. Zahurul Haq’s PhD Thesis, and related publications.
• Check the transcript of the interview and notify the researcher of any changes I would like to be made within two weeks.

Signed ....................................................... Date ....................................................

Name (please print) ..................................................................................
APPENDIX D: GROUNDED THEORY

This Appendix is intended to elaborate on some of the topics on Grounded Theory methodology that has been described in Chapter Three. The researcher presented the discussion on each issue under the same title to facilitate reading.

Roots of Grounded Theory

While responding to the scholars who believe that GT methodology has its root in Symbolic Interactionism, one of the founders of GT, Barney G Glaser, argued that much GT to date, in the area of healthcare profession like nursing and also in the area of management, seemed to use qualitative data, which tended to be Symbolic Interactionism oriented.¹ Nathaniel and Andrew supported this argument (growing use of Grounded Theory among health professionals) and stressed that Grounded Theory is particularly appropriate for nursing and similar health professionals² because it provides explanations of the behaviours of both patients and the professionals concerned as they intermingle in a particular social setting.³ Nathaniel and Andrews observed that, ‘Grounded Theory is a useful methodology for the study of interpersonal activities between nurses and patients and others because social interaction is at the heart of caring process in nursing.’⁴ Glaser argued that research in the area of nursing is normally very interactional, which is a primary cause of SI possession of Grounded Theory. Therefore, those who conduct Grounded Theory research in nursing and those who are involved in QDA (qualitative data analysis) research are easily motivated by Symbolic Interactionism related thinking.⁵ He further argued that some GT users ‘deal with

only one qualitative data type: high interactional, interpretative data, as if all qualitative data is this type. In fact, there are many types of qualitative data, which they leave out ....  

Glaser does not, however, disagree that ‘many GTs use a SI perspective (as well as others), whether bounded or not by it’. He elaborated his view about high interactional and interpretative data and said that the GT method does not use them to achieve any specific target, but just uses them as any other type of data. He further argued that ‘GT looks for the latent patterns which explain what is going on as people resolve their main concern, not the meaning, interpretive patterns that are exchanged, which itself is a small part of the variety of data that GT uses’, and he added that ‘[a]ctually, SI accounts for only a small part of the data that GT is used with’.  

From Glaser’s point of view, Grounded Theory was based in a concept-indicator model borrowed from psychological research. Grounded Theory requires conceptualisation of data. And what is important here is that, as a somewhat simple inductive model, it is capable of generating a theory from almost any kind of data. He basically urged those who seek to utilise Grounded Theory remain open to it as a general methodology that works with any theoretical framework and data available and advised them not to mistake GT as solely a qualitative method on the basis that it uses qualitative data.  

Despite the meticulous clarification by Glaser, a number of scholars continued to maintain that GT and SI have strong compatibilities. Aldiabat and Le Navenec, for instance argued that SI provides a compatible framework for data collection and identifying a contextual explanation of certain human behaviours and GT deals with conceptualisation of data (which includes its collection and coding/ giving it a conceptual name) and the identification of a basic social process in a particular social setting. From this perspective, they maintained, the ‘main goal of Grounded Theory is compatible with the general goal of Symbolic

6 Ibid 10.
7 Ibid 2.
8 Ibid 7.
9 Ibid 15.
10 Ibid.
11 Ibid 4.
13 Ibid 5.
Interactionism: that is, to provide a theory that explores human behaviour, or … an approach to study human conduct and human group life.¹⁵

**Divergences between Glaser and Strauss**

There are a number of areas where the two co-founders of GT diverged after developing the original idea of GT. Some of those areas of disagreements are presented here.

Glaser and Strauss differed considerably with regard to the extent of prior knowledge that a researcher should possess on the substantive area. Both scholars acknowledge that a researcher will not enter the field completely free from prior ideas, but they disagree fundamentally with regard to the use of literature in the emerging theory.¹⁶ Both scholars believe in discovery of theory. Glaser argued that for discovery it is important to learn ‘not to know’,¹⁷ in other words, the researcher should not read extensively on any specific problem area prior to their investigation. Instead, one should read very widely on the general area of interest and review unrelated literature,¹⁸ for instance, writing styles, in order to avoid preconceiving any problem and to maintain the highest possible sensitivity to data. This way, researchers are able to keep themselves open to a wider range of possibilities.¹⁹ He argued that focused reading on any specific problem area is only logical when such problem area has sufficiently emerged and relevant literature could be used to support this emerging theory. If a researcher does not know what the main area of concern is, then how it could be possible to identify the literature that is relevant to the particular area, he maintained.²⁰ On the other hand, Strauss stated that early literature reviews on related disciplines and prior technical knowledge and the personal experiences of a researcher are vital as they provide a clear

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understanding of the subject matter and enhance the researcher’s sensitivity to an emerging theory.21

Another area where both scholars displayed fundamental disagreement is on the question of identifying a research question in the beginning of research that is GT based. While Strauss proposed that a researcher begin with an original ‘generative question’ with regard to some possible hypothesis and concepts that may come from prior experience of a researcher,22 Glaser’s position is, however, just the opposite. He suggests a GT researcher should enter upon a substantive area with no specific problem or hypothesis. He said that a GT researcher should keep their mind open to any probabilities, and enquire about what is going on in the substantive area, so as to determine what the core issue is and how it is continually being handled. Glaser further stressed that if a researcher has trust in the discovery process then they will be less prone to preconceptions. Therefore, the research question in Grounded Theory is not a statement which will identify an observable fact to be investigated.23 Instead, a problem is first identified and then the research questions emerge that ultimately lead to further theoretical sampling.24 Scholars who share the same view have warned that preconceptions may ‘... [shape] the research at the expense of problems of concern to informants’.25

Another two areas where the co-founders of the GT method differ are ‘emergence’ and ‘coding’. Strauss and Corbin described an approach where data analysis is apparently dominated by deduction and verification; this runs the risk that an hypothesis may be dropped if it finally does not turn up in the data.26 Glaser criticises this deductive emphasis, branding this approach to be the one that wonders what ‘might be’ rather than what ‘exists’.27

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21 See Anselm L Straus, Qualitative Analysis for Social Scientists (Cambridge University Press, 1987) 11, cited in Heath and Cowley, above n 16, 143. See also Strauss and Corbin, Basics of Qualitative Research, above n 18, 48–56.
22 See Anselm L Straus, Qualitative Analysis for Social Scientists (Cambridge University Press, 1987) 17; see also Strauss and Corbin, Basics of Qualitative Research, above n 18, 36–8.
23 Glaser, Emergence vs Forcing, above n 18, 22–5. Contra Strauss and Corbin, Basics of Qualitative Research, above n 18, 38.
24 Glaser, Emergence vs Forcing, above n 18, 22–5.
25 Heath and Cowley, above n 16, 143.
26 See also Strauss and Corbin, Basics of Qualitative Research, above n 18, 23–9, cited in Heath and Cowley, above n 16, 144. See also Glaser, Emergence vs Forcing, above n 18, 29–30.
27 Glaser, Emergence vs Forcing, above n 18, 29–30, cited in Heath and Cowley, above n 16, 144.
In the *Discovery of Grounded Theory* (1967), Glaser and Strauss originally referred to two levels of conceptual categories, which could be as many as possible in number, and to the subsequent integration of related categories into theory. Subsequently, Strauss and Corbin (1990) added a third level, inserting ‘axial coding’ between the initial open coding and the selective coding in order to validate relationships between the concepts generated during the initial open coding. The next step, as they described it, would be selective coding or the final integration of concepts in order to create a grounded theory at the higher abstract level of analysis. Glaser, however, suggested starting selective coding right after open coding to only those concepts that are related to the core category that emerges after the constant comparison of data.

Some scholars (for instance, Kendall) maintained that both approaches (to open coding) are actually similar, but that Glaser put more emphasis on the emergence of the codes than does Strauss and Corbin. To Glaser, open coding ‘generate[s] an emergent set of categories and their properties which fit, work and are relevant for integrating into a theory’, while Strauss and Corbin described it as ‘the process of breaking down, examining, comparing, conceptualizing, and categorizing data’. However, ‘this difference is of profound importance for ensuring the theory’s relevance as well as elegance’.

Now, when it comes to choosing Grounded Theory, researchers, especially those who are new in this area are often puzzled over making a selection from Glaser’s classical methodology, or the methodology subsequently developed by Strauss, or adopting a mixture of both. However, choosing a third option could be challenging for novice researchers. Heath and Cowley warned that researchers should proceed with adequate precautions when using both methods in their research, and instead of mixing two techniques, they should maintain clear boundaries between them. Otherwise, one would run the risk of breaching the

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29 Ibid 40–1.
30 Strauss and Corbin, *Basics of Qualitative Research*, above n 18, 158.
32 Glaser, *Emergence vs Forcing*, above n 18, 75.
36 Heath and Cowley, above n 16, 143, where the authors cite Kendall, *Axial Coding and the Grounded Theory Controversy*, above n 33, 743–57.
‘philosophical underpinnings’ of both techniques.\textsuperscript{37} Morse and Richards, who have a different view, however, have suggested trying both methods and urged researchers to ‘[avoid] the abyss created by claims that there is only one way to achieve grounded theory’.\textsuperscript{38}

**The Coding Process of Grounded Theory**

The coding procedure is an important principle of GT that helps analyse the data which in order to generate the theory.

**Preconceptions**

Grounded Theory requires researchers to begin research with no defined hypothesis. It requires the researcher to remain open to the emergence of problems and then conceptualise the main concerns of the persons (participants) involved in the field of research. This process guides the surfacing of a core issue (which concerns the research area) and how such an issue is constantly being processed. Persons in the substantive area employ various types of reactions to handle their core concern which indicates the adoption of a pattern of behaviour. This model of human behaviour is the basis of Grounded Theory.\textsuperscript{39} However, this emergence could be hampered if the researcher tries to ‘force’ a predetermined conception of their mind, induced by previous professional experience, for example.\textsuperscript{40}

**Conceptualisation**

As Judith A Holton noted:

\begin{quote}
[To understand the nature of classical grounded theory, one must understand the distinction between conceptualization and description. Grounded theory is not about the accuracy of descriptive units, nor it is an act of interoparating meaning as ascribed by the participants in a study; rather it is an act of conceptual abstraction.\textsuperscript{41}
\end{quote}

Glasier advised that ‘[i]n the nature of classical grounded theory, one must understand the distinction between conceptualization and description. Grounded theory is not about the accuracy of descriptive units, nor it is an act of interoparating meaning as ascribed by the participants in a study; rather it is an act of conceptual abstraction.’\textsuperscript{41} Glaser mentioned that there are three key properties of

\begin{quote}
\textsuperscript{37} Heath and Cowley, above n 16, 147.
\textsuperscript{41} Holton, above n 39, 272.
\textsuperscript{42} Glaser, *The Grounded Theory Perspective*, above n 17, 192.
conceptualization — the latent pattern naming of concepts, the enduring grab of the concepts and the concepts that are an abstract of a time, a place and a people. What he actually meant by this is that research participants are often unaware of certain of their own behaviours. For example, they are unconscious of why they act in certain ways in order to resolve their main concern. A grounded theory generated using data collected from a substantive area provides an explanation of that behaviour of the participants. It is not a description of participants’ actions, but a generated abstraction. This abstraction is generated from both the actions of the research participants and the inner meaning of such actions.\(^43\)

Participants often, from their social position, may not understand that they are actually demonstrating an underlying pattern of behaviour. The GT method provides a name for this pattern which is not a narrative of what participants are doing, but indication of a hidden pattern of behaviour conceptualised by the researcher. This concept is generated by Grounded Theory methodology and has an instant ‘grab’, in that people (readers) can easily see a pattern and understand why a particular concept was so named. Then again, a generated grounded theory is an abstract of the time, the place and the people, and, although a ‘latent pattern’ of behaviour that specifically applies to a particular context, it has general applicability. For instance, if a pattern applies to women, it may apply to a general gender situation too.\(^44\)

Therefore, ‘[w]hile the descriptive findings of a qualitative research study are most certainly valuable, they do not provide a conceptual abstraction’,\(^45\) and this is the area where classic GT methodology differs from the other (Straussian) GT methodology. Its coding process has the ability to avoid the burden of description and to provide an abstract explanation of the various groups of people responding to a common concern.\(^46\) Finally, in the words of Glaser:

“All is data” is a well known Glaser dictum. What does it mean? It means that exactly what is going on in the research scene is the data, [whatever] the source, whether interview, observations, documents. It is not just what is being, how it is being and the conditions of its being told, but all the data surrounding what is being told. It means what is going on has to be figured out exactly what it is for conceptualization, NOT description.\(^47\)


\(^44\) Ibid.

\(^45\) Holton, above n 39, 272.


Steps in the Coding Process

The following sections present a description of the coding procedure of the GT methodology. The discussion will include an explanation of theoretical sensitivity — the personal quality of a GT researcher, the various coding techniques and the course of generating core category — the main concern of the substantive area and the core process.

Theoretical Sensitivity

While Strauss and Corbin differ greatly from Glaser on how to strengthen ‘theoretical sensitivity’, they apparently share the same view with regard to defining this personal quality of a GT researcher. Glaser has pointed out that ‘at each state of generating theory [there] is reliance on the social psychology of the analyst; that is, his skill, fatigue, maturity, cycling of motivation, life cycle interest, insights into and ideation from the data’.48 Strauss and Corbin elaborated on this view and maintained that ‘theoretical sensitivity’ is ‘the ability to give meaning to data, the capacity to understand, and capacity to separate the pertinent from that which isn’t’.49

Now, if we want to relate this to our previous discussion (conceptualisation), ‘[t]he ability to conceptualize rests with the researcher’s theoretical sensitivity; that is, their ability to generate concepts from data and relate them according to normal models of theory in general’.50 For the purpose of this research project, the analyst carefully avoided logically deduced ‘predetermined ideas’ on the AML reporting system of Bangladesh. He remained ‘sensitive to the data by being able to record events and detected happenings without first having them filtered through and squared with pre-existing hypotheses and biases’.51

Substantive Coding

Glaser noted that ‘[s]ubstantial codes conceptualize the empirical substance of the area of research’.52 A theory is actually grounded on data. During the initial phase of fieldwork, the analyst found all data as a set of descriptive incidents with no underlying pattern. By using

48 Glaser, Advances in the Methodology of Grounded Theory, above n 19, 2.
49 Strauss and Corbin, Basics of Qualitative Research, above n 18, 42.
51 Glaser, Advances in the Methodology of Grounded Theory, above n 19, 3.
52 Ibid 55.
the substantive coding method, incidents described by the participants or collected through other means were conceptualised, that is, the underlying meaning of data was discovered.  

Open Coding

‘Substantial coding’ begins with the conceptualisation of the raw data in order to generate the ‘concepts’ and then their higher form of abstraction as a ‘category’. For example, some incidents described by the participants of this research were ‘putting stringent screening policy in place to identify and share only a certain types of reports/STRs’ or ‘authenticating only those files which were apparently suspicious and leaving them unattended could be risky for the business’ and the like. Once the analyst started to conceptualise this data through a constant comparison of incident with incident the underlying meanings and uniformity in data soon began to emerge. The above incidents, for instance, were conceptualised as ‘rigorous filtering’ and ‘authenticating selectively’ (two initial concepts). Later, these concepts (and many other similar concepts) were named ‘Being Selective’ — a higher level of abstraction or a ‘category’. This initial level of the constant comparison of incident with incident and then, of incident with concept was open coding, which continued until the analyst delimited coding to a core category.  

Glaser described this theoretical analysis of data as an important step toward discovering categories and properties when a GT researcher starts with a ‘conceptual nothing’ and then gradually enters into a theory. During this process, the researchers ask a few simple questions, for instance, ‘what category or property of a category does this incident indicate?’ This process ends only when the researcher feels that a core category, which has strong relationship with other near core or sub-categories, has emerged. A researcher’s ‘trust’ in discovery is the key spirit that keeps him following the process and waiting until a core category emerges.  

Glaser put much emphasis on posing ‘totally neutral’ questions to data, especially during open coding stage. He stressed that neutral questions are scarce but they do exist. The question like — ‘what is actually happening in the data?’, ‘what accounts for the basic problem and process?’, ‘what is this data a study of’ or ‘what is the basic social psychological

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33 Glaser, Emergence vs Forcing, above n 18, 38.
34 See ibid.
35 See ibid.
process or social structural process that processes the problem to make life viable in the action scene?" — help researchers to remain theoretically sensitive.56

**Constant Comparison and Theoretical Sampling**

Constant comparison and theoretical sampling are two basic methods that lead to the development of a grounded theory.57 As indicated in the immediately preceding section, the purpose of the constant comparative method is to facilitate the conceptualisation of the inner meaning of the data and that does not mean just 'giving a name' to a sentence, paragraph, or incident described by informants. As researchers goes through the data, they compare one incident with another and give a conceptual name that indicates the hidden pattern of the data. Similar incidents will then be grouped together to give a higher conceptual name (category), and other concepts that show dissimilarities yet explain other dimensions of the emerging core category will be kept as properties of the core.58 As Holton explained, 'The purpose of constant comparison is to see if the data support and continue to support emerging categories. At the same time, the process further builds and substantiates the emerging categories by defining their properties and dimensions'.59

In this research, the analyst used the constant comparative method in order to look for patterns in the data so that a pattern of many similar incidents could be given a conceptual name. For instance, 'substantiating customer addresses' through a third party agent, or sending a 'thankyou' letter, and ' authenticating' the identity of a customer through professional experience or by comparing that person's appearance with similar photo IDs were all put under a category — improvising authentication. Dissimilar incidents were also named and included as a property under this category.60

When it came to choosing data sources, the analyst allowed the emerging ideas to guide where he went for subsequent data collection. Sources were theoretically sampled (as opposed to 'verification sampling') in that the analyst did not have a predefined hypothesis and, therefore, there was no scope of using a guess or his experience to know exactly where to go to put those preconceived ideas to the test. Once the processes of data collection and

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56 See ibid 51. See also Glaser, Advances in the Methodology of Grounded Theory, above n 19, 57.
57 Holton, above n 39, 277.
59 Holton, above n 39, 279.
60 Glaser, *Emergence vs Forcing*, above n 18, 40.
conceptualisation started, concepts began to emerge and guided further sampling, which then steered theory generation. The process was simple and direct, it was not forced.\textsuperscript{61}

**Interchangeability of Incidents**

Glaser provided further explanation as to how the codes are actually generated. He mentioned that Grounded Theory is based on a concept-indicator model and a concept-indicator model is based on constant comparison (one indicator to another and then indicator with concept). During the process of comparison, the researchers encounter similarities, dissimilarities, and a level of uniformity of meaning between indicators, which reveal a basic homogeneity among them. These indicators are ultimately coded under a particular category.\textsuperscript{62} According to Glaser, these ‘compared incidents can be seen as interchangeable indices for the same concept’,\textsuperscript{63} that is to say, these incidents have a similarity and they could be replaced by one another and still bear the same meaning.

While applying constant the comparative method, the analyst looked for incidents which are interchangeable with each other so that they could be coded in a category. For instance, the incident of ‘conversing casually’ — as stated by a reporting entity official — was compared for similarities, differences and degree in consistency of meaning with the incidents of ‘being inquisitive’ and ‘communicating informally’, as described by participants from the FIU and the ACC respectively when they were attempting to collect additional information from their potential informants through informal ways. This method of comparison served the purpose of generating an underlying uniformity, which in turn resulted in a coded category of ‘improvising informal communication’.\textsuperscript{64}

\textsuperscript{61} Glaser, *Emergence vs Forcing*, above n 18, 103–4.


\textsuperscript{63} Glaser, *Emergence vs Forcing*, above n 18, 41.

\textsuperscript{64} Glaser, *Advances in the Methodology of Grounded Theory*, above n 19, 62.