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## When Corruption is an Emergency: “Good Governance” Coups and Bangladesh

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# WHEN CORRUPTION IS AN EMERGENCY: “GOOD GOVERNANCE” COUPS AND BANGLADESH

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*INTRODUCTION*

In January 2007, President Iajuddin Ahmed declared a state of emergency in Bangladesh amidst violent street protests over feared vote-rigging in the run-up to planned elections.<sup>1</sup> A military-backed interim government ruled Bangladesh for most of the next two years on a platform aimed at cleaning up the country's democratic institutions through an ambitious anticorruption program.<sup>2</sup>

The military takeover in Bangladesh capped a decade of "good governance" coups in South and Southeast Asia, where militaries justified their interventions on the basis of widespread frustration with incompetent and corrupt political leaders.<sup>3</sup> Two other prominent examples were Pakistan and Thailand. General Pervez Musharraf came to power in Pakistan in 1999, after deposing Prime Minister Muhammad Nawaz Sharif, who led an unpopular government marred by graft and ineffective governance.<sup>4</sup> In 2006, the Thai military pushed President Thaksin Shinawatra into exile amidst street demonstrations over the President's allegedly heavy-handed rule, vote-buying, and improper sale of his telecommunications company.<sup>5</sup>

In Bangladesh, Pakistan, and Thailand, the supposed corruption of democratically elected leaders was not only used as one of the primary justifications for the military-backed takeover, but also as an instrument for sustaining it. These military-backed governments claimed that corruption had to be

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1. See *President Declares State of Emergency*, UNITED NEWS OF BANGL., Jan. 11, 2007, available at LEXIS.

2. See Somini Sengupta & Julfikar Ali Manik, *Secular Party Wins Landslide Victory in Bangladesh*, N.Y. TIMES, Dec. 30, 2008, <http://www.nytimes.com/2008/12/31/world/asia/31bangladesh.html>.

3. See *infra* Part IV.B (explaining the "good governance" coups in both Pakistan and Thailand and comparing each to the Bangladeshi experience).

4. See General Pervez Musharraf, Address to Pakistan (Oct. 17, 1999). An English translation is available at [http://www.pakistani.org/pakistan/constitution/post\\_12oct99/musharraf\\_address\\_17oct1999.html](http://www.pakistani.org/pakistan/constitution/post_12oct99/musharraf_address_17oct1999.html). See also Tim Weiner & Steve LeVine, *Pakistan's Ruler Pledges to Curb Corruption*, N.Y. TIMES, Oct. 17, 1999, <http://www.nytimes.com/1999/10/17/world/pakistan-s-ruler-pledges-to-curb-corruption.html>.

5. See Tom Ginsburg, *Constitutional Afterlife: The Continuing Impact of Thailand's Postpolitical Constitution*, 7 INT'L J. CONST. L. 83, 97–98 (2009); John Aglionby, *Thai Military Revives Thaksin Corruption Inquiry*, GUARDIAN (U.K.), Sept. 25, 2006, <http://www.guardian.co.uk/world/2006/sep/25/thailand>.

eliminated before civilian democratic rule could successfully take root and flourish.<sup>6</sup> They revitalized anticorruption commissions and attempted to remake the civilian political landscape by using corruption charges to imprison, exile, or marginalize political leaders, frequently with the complicity of the judiciary and international community. Simultaneously, the military-backed governments passed laws and created other institutions that promoted "good governance" to lay the groundwork for more controlled and tempered political parties and politicians once civilian democratic rule returned.<sup>7</sup>

Curiously, little academic attention has focused on how charges of corruption have been used as a tool by the military to seize political power. For example, anticorruption commissions have been praised by some for producing "significant, sustained reductions of corruption"<sup>8</sup> but criticized by others as "likely to fail" while undermining the "credibility of [politicians'] commitment to reform."<sup>9</sup> Meanwhile, the repeated use of charges of corruption to target democratically elected leaders during military-backed takeovers has largely escaped scrutiny.<sup>10</sup>

Anticorruption campaigns form a central plank of the "good governance" efforts of international organizations' development agendas.<sup>11</sup> Like most "good governance" or "rule

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6. See Clark Neher, *Democratization in Thailand*, 21 *ASIAN AFF.: AM. REV.* 195, 195 (1995).

7. See *infra* notes 163–64, 173–80 and accompanying text (describing the military-backed government's efforts in Pakistan to establish a democracy free from corruption); *infra* notes 202–11 and accompanying text (discussing the military-backed government's attempts in Thailand to revitalize democracy and remove corruption from civilian political institutions).

8. Michael Johnston, *A Brief History of Anticorruption Agencies*, in *THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES* 217 (Andreas Schedler et al. eds., 1999).

9. JOHN R. HEILBRUNN, WORLD BANK INST., *ANTI-CORRUPTION COMMISSIONS: PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?* 1 (2004), available at <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>.

10. See, e.g., USAID, *ANTICORRUPTION AGENCIES (ACAS): OFFICE OF DEMOCRACY AND GOVERNANCE ANTICORRUPTION PROGRAM BRIEF 6* (2006) (stating that "[w]hile [anticorruption agencies] are not likely established with this as their stated purpose, once created, they are often manipulated by the ruling party to attack and eliminate members of the opposition or to punish members of their own party who are perceived as having stepped out of line," but not commenting on the potential abuse by the military of anticorruption agencies).

11. See, e.g., *Democracy & Governance*, USAID, [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/anti-corruption/](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/anti-corruption/) (last visited Jan. 11,

of law” efforts, these campaigns are often portrayed as politically neutral. However, in practice, they are not.<sup>12</sup> Both national anticorruption advocates and the international community are severely constrained in pointing out corruption within the military or the military’s own potential political biases when it prosecutes civilian corruption. The military’s revered status as the protector of the country and the highest emblem of its sovereignty makes it difficult to either bring these charges or remind the public of the military’s past malfeasance. The result is a one-sided picture of corrupt and incompetent politicians versus a disciplined and incorruptible military. In turn, military-backed governments exploit this asymmetry.

This is the anticorruption paradox: while widespread, unchecked corruption undermines the legitimacy of democratic institutions, anticorruption campaigns may also inadvertently threaten democratic institutions in countries with politically active militaries by weakening civilian leaders while leaving the military largely unscathed.<sup>13</sup> As such, anticorruption efforts can help lay the groundwork for a “good governance” coup. Part I of this Article describes how anticorruption and “good governance” campaigns helped justify and perpetuate recent military rule in Bangladesh. After declaring a state of emergency in 2007 (the “Emergency”) and restoring calm, the military-backed government did not immediately move to hold elections. Instead, it proceeded, with the complicity of the international community, to place most of the country’s leading politicians in jail on corruption charges in a sweeping, and seemingly

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2012) (“Corruption poses a serious development challenge. In the political realm, it can seriously undermine democracy and good governance. . . . Corruption also undermines economic development.”); *Governance & Anti-Corruption*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/EXTWBIGOVANTCOR/0,,menuPK:1740542~pagePK:64168427~piPK:64168435~theSitePK:1740530,00.html> (last visited Jan. 11, 2012) (“The World Bank views good governance and anti-corruption as important to its poverty alleviation mission.”).

12. See David Kennedy, *The International Anti-Corruption Campaign*, 14 CONN. J. INT’L L. 455, 456, 465 (1999) (stating that his opposition to the global anticorruption campaign, Kennedy argues that the international community uses the campaign to gain legitimacy for its interventions in the developing world because it is seen as nonpolitical and noncontroversial. Yet, he claims these interventions have both very contestable political and economic presumptions and consequences).

13. For the purposes of this Article, “politically active militaries” refers to those militaries that have a history of directly or indirectly ruling a country.

planned, remake of the Bangladeshi political order.<sup>14</sup> The military justified these drastic steps by claiming that the country had to rid itself of corruption before a return to democracy was possible.

Part II turns to the response of the Bangladeshi courts to this far-reaching anticorruption drive. Despite protests from the military-backed government, the High Court Division of the Bangladesh Supreme Court ordered the release of many of the accused politicians on bail.<sup>15</sup> Although the most far-reaching of these judgments were eventually overturned by the Appellate Division of the Supreme Court,<sup>16</sup> the High Court's orders provided perhaps the first and most visible act of defiance to the military-backed Emergency, speeding the return to civilian rule. This Article claims that in "good governance" coups, the military frequently seeks out validation, or at least acquiescence, by the judiciary, in part because corruption charges against civilian leaders require the judiciary's cooperation to be an effective political instrument. As a result, even as anticorruption efforts may strengthen the military against political actors, the judiciary can use the "good governance" paradigm to become a more powerful counterweight to the military than might otherwise be expected.

Part III describes Bangladesh's return to democracy and the ultimate failure of the military's anticorruption drive. The Bangladesh example shows how the inevitable political maneuvering of the military during an emergency can permeate anticorruption efforts, thereby undercutting not only the

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14. See U.S. DEP'T OF STATE, 62-930PDF, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2008, at 2184 (2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2008/sca/119132.htm> (nonpaginated version) [hereinafter 2008 HUMAN RIGHTS REPORT]; *infra* notes 58–61 and accompanying text (detailing the support of Western nations for the military-backed government's attack on the corruption of the political parties and bureaucracy and suggesting that the West was instrumental in the coup); *infra* notes 79–84 (describing the support of international institutions, such as the World Bank and Human Rights Watch, for the military-backed government's anticorruption efforts).

15. See *infra* notes 106–08, 115–18 and accompanying text (discussing the instances in which the High Court Division granted bail to many accused of corruption).

16. See *infra* notes 106–12, 115–19 and accompanying text (explaining the High Court Division's attempts at taking an aggressive stance against executive power under the 2007 state of emergency and the Appellate Division's reversal of such judgments).

legitimacy of these efforts, but the institutions that undertake them.<sup>17</sup>

Part IV briefly examines similar recent “good governance” coups in Pakistan and Thailand. Anticorruption campaigns in these countries also helped justify military intervention, while the courts similarly played a central role in either perpetuating and legitimating military rule (such as in Thailand and initially in Pakistan) or undercutting it (as in the later stages of Musharraf’s rule in Pakistan).

Finally, Part V uses the lessons learned from these experiences to call for a more pragmatic strategy to fight corruption in which those promoting anticorruption efforts are more openly skeptical of the military’s claims of being an anticorruption savior. It argues that these anticorruption advocates should adopt a more politically savvy strategy that better takes into account local context. Such a strategy would include reforms focused on institutions, processes, democratic elections, and consistent prosecution of low-level actors. An anticorruption model along these lines would be less likely to inadvertently empower the military and undermine democracy.

## I. *CORRUPTION AND EMERGENCY IN BANGLADESH*

### A. *History of Emergencies, Corruption, and Anticorruption Efforts in Bangladesh*

Charges of corruption and poor governance have in many ways been the currency of regime change in Bangladesh. After gaining independence in 1971, the country held its first democratic elections in 1973.<sup>18</sup> The fledgling democratic government led by the charismatic leader Sheikh Mujibur Rahman faced serious internal challenges from military and

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17. This is arguably a variation of the emergency powers paradox pointed out by legal scholar Victor Ramraj, where these powers are “seen as necessary to establish the conditions of relative stability needed for legal, political and economic reforms to take hold, and yet a propensity to invoke these powers . . . casts doubt on a government’s commitment to constitutionalism in the first place.” Victor V. Ramraj, *The Emergency Powers Paradox*, in *EMERGENCY POWERS IN ASIA: EXPLORING THE LIMITS OF LEGALITY* 29 (Victor V. Ramraj & Arun K. Thiruvengadam eds., 2010).

18. TALUKDER MANIRUZZAMAN, *THE BANGLADESH REVOLUTION AND ITS AFTERMATH* 149 (2003).

political factions.<sup>19</sup> At least partly in response to the alarming deterioration in the law and order situation, Sheikh Mujib declared the first state of emergency in independent Bangladesh in 1974.<sup>20</sup> In August 1975, members of the armed forces assassinated Sheikh Mujib, his family members, and key supporters, citing corruption and misrule to justify their takeover.<sup>21</sup>

In the wake of Sheikh Mujib's death, the country lurched through a series of coups and countercoups<sup>22</sup> that lasted until Major General Ziaur Rahman, the former Chief Martial Law Administrator, took over as President of Bangladesh in 1977.<sup>23</sup> While General Ziaur Rahman made some progress towards restoring civilian democracy, he too was assassinated by renegade members of the armed forces in 1981.<sup>24</sup> Martial law was imposed once more after General H.M. Ershad came to power, overthrowing an elected, civilian-led government in a bloodless coup in 1982.<sup>25</sup> General Ershad, like his predecessors, pointed to corruption under the previous regime as a justification for seizing power.<sup>26</sup>

In the late 1980s, the two major political parties, the Awami League ("AL") and the Bangladesh Nationalist Party ("BNP"), spearheaded a mass movement for democratic government. Among other claims, they specifically used allegations of gross corruption by General Ershad and his government to rally the country.<sup>27</sup> After General Ershad was deposed and the first round of democratic elections was held in 1991, Ershad became the

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19. *Id.*

20. LAWRENCE ZIRING, *BANGLADESH: FROM MUJIB TO ERSHAD; AN INTERPRETIVE STUDY* 101 (1993).

21. MANIRUZZAMAN, *supra* note 18, at 175.

22. *Id.* at 177–80, 191–93 (describing the series of coups and conspiracies from various factions as General Ziaur Rahman began to consolidate power).

23. *Id.* at 204–05.

24. ZIRING, *supra* note 20, at 141.

25. *Id.* at 153.

26. *See id.*, at 154 ("Ershad . . . stressed the need to install honest government, and a purge of former ministers and bureaucrats produced a number of trials in which the accused were charged and found guilty of using their offices for private gain.").

27. *Id.* at 165 ("The principal criticism directed at President Ershad centred on the issue of corruption.").



first major political figure in Bangladeshi history to be convicted and serve jail time for corrupt dealings.<sup>28</sup>

Countervailing allegations of corruption by political party leaders at national and local levels became commonplace in the democratic environment after 1991. Such accusations by both parties rose to a crescendo each time elections drew nearer in 1996, 2001, and finally 2007. Transparency International ranked Bangladesh as either the most corrupt or tied for the most corrupt country in the world from 2001 to 2005, and the European Union and United States have consistently demanded the country do more to combat corruption.<sup>29</sup>

In light of both domestic and international pressure, the BNP-ruled government created the Anti-Corruption Commission (“ACC”) in 2004 to replace the Bureau of Anti-Corruption, which was founded in 1957 under the government of Pakistan and had helped sustain several rounds of dictatorship.<sup>30</sup> Yet, from its beginning the new ACC seemed

28. See *Govt Can Now Confiscate Janata Tower Property*, DAILY STAR (Bangl.), Nov. 13, 2008, at 1.

29. See TRANSPARENCY INT’L, ANNUAL REPORT 2005, at 17 (2005), available at [http://www.transparency.org/publications/publications/annual\\_reports/annual\\_report\\_2005](http://www.transparency.org/publications/publications/annual_reports/annual_report_2005) (follow the hyperlink for the language of your choice under “download in PDF”); TRANSPARENCY INT’L, ANNUAL REPORT 2004, at 9 (2004), available at [http://www.transparency.org/publications/publications/annual\\_reports/annual\\_report\\_2004](http://www.transparency.org/publications/publications/annual_reports/annual_report_2004) (follow the “English” hyperlink under “download in PDF”); TRANSPARENCY INT’L, ANNUAL REPORT 2003, at 21 (2003), available at [http://www.transparency.org/publications/publications/annual\\_reports/annual\\_report\\_2003](http://www.transparency.org/publications/publications/annual_reports/annual_report_2003) (follow the hyperlink for the language of your choice under “download in PDF”); TRANSPARENCY INT’L, ANNUAL REPORT 2002, at 16 (2002), available at [http://www.transparency.org/publications/publications/annual\\_reports/annual\\_report\\_2002](http://www.transparency.org/publications/publications/annual_reports/annual_report_2002) (follow the hyperlink for the language of your choice under “download in PDF”); TRANSPARENCY INT’L, ANNUAL REPORT 2001, at 13 (2001), available at [http://www.transparency.org/publications/publications/annual\\_reports/annual\\_report\\_2001](http://www.transparency.org/publications/publications/annual_reports/annual_report_2001) (follow the “English” hyperlink under “download in PDF”); Interview with Iftekhar Zaman, Exec. Dir., Transparency Int’l (Mar. 18, 2009) (on file with authors).

30. See Editorial, *Anti-Graft Commission at Last*, DAILY STAR (Bangl.), Nov. 23, 2004, <http://www.thedailystar.net/2004/11/23/d41123020127.htm>; *Free Anti-Graft Body Bill Passed After Change*, DAILY STAR (Bangl.), Feb. 18, 2004, at 1, available at <http://www.lcgbangladesh.org/corruption/newslinks/The%20Daily%20Star%20Web%20Edition%20Vol.%204%20Num%20259.htm>; Moin Ghani, *A Toothless Tiger in the Making?*, DAILY STAR (Bangl.), Sept. 21, 2003, <http://www.thedailystar.net/law/200309/03/update.htm>; Muhammad Nurul Huda, Editorial, *The Inaction at ACC and the Needful*, DAILY STAR (Bangl.), Feb. 28, 2006, <http://thedailystar.net/2006/02/28/d60228020323.htm> (stating that the Bureau of Anti-Corruption (“BAC”) functioned under the jurisdiction of the Prime Minister’s Office and “virtually did the

doomed to be as ineffective at fighting corruption as its predecessor.<sup>31</sup> Although the ACC's commissioners were selected through a supposedly nonpartisan panel, the three commissioners chosen to head the ACC were known as BNP loyalists.<sup>32</sup> Further, the ACC's rules of procedure and organization were required to be approved by the executive, which engaged in frequent showdowns with the ACC.<sup>33</sup> By August 2005, thousands of cases were stalled as the ACC faced virtual paralysis.<sup>34</sup> Former Law Minister Abdul Matin Khasru

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latter's bidding and served as a mere showpiece of an anticorruption body"); Interview with Fida Kamal, Att'y Gen., Bangl. (Mar. 16, 2009) (on file with authors).

31. A former Director General of the BAC, M.A. Matin, declared later that: "It was impossible for us to work beyond influence since we were dependent on the government." Matin also identified blatant political interference, sham investigations by the executive branch, and dilatory stay orders from the High Court as several key problems with the BAC. *Govt Interference Led to BAC Failure*, DAILY STAR (Bangl.), Nov. 29, 2004, at 1.

32. See Zayadul Ahsan, *How Free Would New Graft Body Be?*, DAILY STAR (Bangl.), Nov. 23, 2004, at 1, available at <http://www.thedailystar.net/2004/11/23/d4112301044.htm> (stating that some Anti-Corruption Commission ("ACC") members either enjoyed direct ties with the Bangladesh Nationalist Party ("BNP") leadership or had been previously appointed to various important posts under the BNP government).

33. The key weaknesses of the ACC statute of 2004 lay in Articles 34 and 36. The statute empowered the ACC to formulate rules of internal organization and procedure. As a statutory public authority, it was expected to elaborate and formulate rules of procedure and organization under the original mandate of the statute in order to ensure functionality and efficiency of the organization. Unlike other "independent" public institutions, however, the ACC was required to seek final approval of these rules from the executive branch. Indeed, the executive branch canceled the commissioners' choices for general secretary and director of the ACC. See Zayadul Ahsan & Julfikar Ali Manik, *Govt, ACC at Loggerheads*, DAILY STAR (Bangl.), Jan. 4, 2005, at 1; see also Anti-Corruption Commission Act of 2004, arts. 34, 36 (Bangl.) [hereinafter ACC Act]. Article 34 states: "Power to Formulate Rules—In order to fulfil [sic] the aims and objectives of this law, the commission may, subject to the prior approval of the President and through a notification in the official gazette, frame rules and regulations." ACC Act, *supra*, art. 34. Article 36 provides:

Power of the Government to Resolve Difficulties—If a situation arises where it is difficult to apply and execute this law because of vagueness about the powers and responsibilities of the commission under it, the government will explain and clarify the matter and give the commission directives and guidelines about what is to be done through an official gazette notification and in accordance with other rules and regulations.)

ACC Act, *supra*, art. 36. An English translation is available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019089.pdf>.

34. See Abdullah A. Dewan, *Corruption, Media and Performance Based Budgeting*, DAILY STAR (Bangl.), Sept. 15, 2005, <http://www.thedailystar.net/2005/09/15/d509151501108.htm>.

alleged that the poor design was in fact intentional, stating: “The government has tied the hands of the commission by forming contradictory and faulty laws to keep it under control.”<sup>35</sup>

*B. Prelude to Emergency: Failure of the Caretaker Regime Process*

It was not just the newly created ACC that failed to make a clean break from the destructive politicization and ineffectiveness that marred its predecessor’s past. Bangladesh’s unique caretaker system, designed to impartially govern the country during elections, became ensconced in the very intraparty fights it was created to avoid, eventually leading to a military takeover in 2007.

Bangladesh’s caretaker system is essentially a symbol of the distrust between the two major political parties. After the transition from military-backed rule in 1991, allegations of corruption and vote-rigging overshadowed the electoral process in Bangladesh.<sup>36</sup> As a result, during the initial tenure of the newly elected BNP-led government, the primary opposition party, the AL, began to agitate for a new election system.<sup>37</sup> In March 1996, after months of crippling impasse, brutal political violence, and a botched election, the BNP government agreed to amend the Constitution to create a caretaker system.<sup>38</sup> Under this system, the party in power relinquishes government administration to a group of advisers led by the most recently retired Chief Justice of the Supreme Court.<sup>39</sup> It is essentially a shadow administration of presumably neutral prominent citizens and qualified technocrats from various fields chosen in consultation with the major political parties. This government’s purpose is to impartially govern the country for up to ninety

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35. *ACC Lacks Transparency Completely*, DAILY STAR (Bangl.), Sept. 18, 2006, at 1.

36. See MD. ABDUL HALIM, CONSTITUTION, CONSTITUTIONAL LAW AND POLITICS: BANGLADESH PERSPECTIVE 394–95 (1998).

37. See *id.*

38. See *id.* at 395–96 (describing the buildup to the creation of the Thirteenth Amendment to the Bangladeshi Constitution, which established the caretaker system).

39. See *id.* at 397.

days after the dissolution of Parliament and assist the Election Commission in holding a free, fair, and credible election.<sup>40</sup>

Two elections in which the two major political parties alternated power were successfully held under this innovative system, with the AL winning in 1996 and the BNP returning to power in 2001.<sup>41</sup> The system, however, came under serious attack in the months leading up to the scheduled election of 2007. The AL accused the BNP of manipulating the rules regarding the age of retirement in order to appoint a partisan Justice as the Chief Adviser to the caretaker government.<sup>42</sup> As a result of this disagreement, the country was plunged into violence orchestrated by the major political parties.<sup>43</sup> Approximately sixty-three people, mostly political party activists and local leaders, were killed in street fights and targeted assassinations in just twenty days.<sup>44</sup> Nonetheless, the BNP-appointed president of Bangladesh, Iajuddin Ahmed, took over the position of Chief Adviser and formed a caretaker government on October 29, 2006.<sup>45</sup>

The AL expressed its immediate suspicion of the president's motives and the situation progressively worsened as the constitutionally mandated ninety-day deadline to hold elections in January drew nearer.<sup>46</sup> On January 3, 2007, the AL withdrew from the scheduled election, citing lack of confidence in the impartiality of the caretaker regime and a flawed voter list, and threatening violence against any individual who participated in the election.<sup>47</sup> Observers worried that the country was headed towards civil war.<sup>48</sup>

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40. See *id.* at 399; A.K.M. Masudul Haque, *Emergency Powers and Caretaker Government in Bangladesh*, 1 J. AUSTRALASIAN L. TCHRS. ASS'N 81, 84 (2008).

41. See Haque, *supra* note 40, at 85.

42. Sabir Mustafa, *Bangladesh: An Emergency Foretold*, BBC NEWS, Jan. 11, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6253889.stm](http://news.bbc.co.uk/2/hi/south_asia/6253889.stm).

43. *Id.*

44. See generally Press Release, Nasiruddin Elan, Odhikar, 63 Persons Killed Due to Political Violence in Last 20 Days, from Oct 27 to Nov 15, 2006 (Nov. 16, 2006), available at [http://www.odhikar.org/pr/pdf/pr\\_political\\_killing\\_nov\\_16\\_2006.pdf](http://www.odhikar.org/pr/pdf/pr_political_killing_nov_16_2006.pdf).

45. See Shakhawat Liton, *President Sworn in as Chief of Caretaker Govt*, DAILY STAR (Bangl.), Oct. 30, 2006, at 1.

46. See Mustafa, *supra* note 42.

47. See *Grand Alliance to Form Vote Resistance Committees*, DAILY STAR (Bangl.), Jan. 9, 2007, at 1, available at <http://www.thedailystar.net/2007/01/09/d7010901107.htm>.

48. See *Hasina Declares Tougher Actions*, DAILY STAR (Bangl.), Jan. 11, 2007, at 1. Sheikh Hasina, the leader of the Awami League ("AL"), alleged that the caretaker

On January 11, as both parties geared up for what seemed likely to be a bloody, nationwide showdown on the scheduled election day, a military-backed midnight coup forced President Iajuddin Ahmed to declare the Emergency and resign from the Office of Chief Adviser.<sup>49</sup> The next day, with the military's support, former World Bank economist Dr. Fakhruddin Ahmed assumed the position as the new chief adviser to the caretaker government.<sup>50</sup>

### *C. The Declaration of Emergency and the Anticorruption Agenda*

The scourge of corruption was presented as a key motivation of the new government from its very inception and the military argued it was uniquely situated to rise above and combat this scourge. Although under the Constitution a caretaker government is only charged with routine government functions and the execution of a fair election, Dr. Fakhruddin Ahmed interpreted his mandate as a license to eradicate corruption and criminality from politics, which he saw as the root cause of the derailment of democracy in Bangladesh.<sup>51</sup> He identified corruption as a key impediment to democracy in his first speech to the nation and vowed to reconstitute a truly independent and activist ACC.<sup>52</sup>

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government was in fact being controlled by the BNP and said that “none should get involved in the one-sided election just to become enemy of the people.” The BNP, on the other hand, insisted that the elections must be held on January 22 to fulfill the ninety-day deadline stipulated by the Constitution. *Id.*

49. See Shakhawat Liton, *Fakhruddin New CA*, DAILY STAR (Bangl.), Jan. 13, 2007, at 1.

50. See Jalal Alamgir, *Bangladesh's Fresh Start*, 20 J. DEMOCRACY 41, 49 (2009) (stating that although it was difficult to determine the regime's exact dynamics, “[g]enerally, it appeared that the hard-line [National Coordination Committee on Corruption and Serious Crime (“NCC”)] and [Directorate General of Forces Intelligence (“DGFI”)] were in charge of political decisions; the ACC was in charge of legally prosecuting those identified by the NCC and DGFI; the civilian authority ran the technocratic aspects of governance, including economic policy; and legislation was prepared by those groups and given to President Ahmed to sign in the form of executive ordinances”); Liton, *supra* note 45.

51. See *CA Vows to Transfer Power Through Polls at Earliest*, DAILY STAR (Bangl.), Jan. 22, 2007, at 1. Dr. Fakhruddin Ahmed's agenda also included reconstituting the Election Commission, implementing a voter identification card scheme, eradicating the influence of black money and criminals in elections, encouraging honest candidates to run for political office, and promoting the independence of the judiciary. *See id.*

52. *See id.*

The military also made its support for an anticorruption drive firmly known. In a major speech during the Emergency period, Army Chief Moeen U. Ahmed envisioned a political system with new players instead of the corrupt leadership of the past. The Army Chief viewed the anticorruption agenda as key to achieving the regime's goals, stating that:

The roadmap to democracy lies, I presume, with objectives as envisioned by the government through anti-corruption drive and reform packages, within [an] affordable time frame that will steer the country away from escapism and build [a] strong foundation of validity on democracy . . . .

We do not want to go back to an "elective democracy" where corruption in society becomes all pervasive, governance suffers in terms of insecurity and violation of rights, and where political "criminalisation" threatens the very survival and integrity of the state.<sup>53</sup>

This thinly veiled threat against civilian politicians foreshadowed the military-backed government's "minus-two" strategy,<sup>54</sup> which aimed to send the leaders of the two major political parties—Sheikh Hasina of the AL and Khaleda Zia of the BNP—into exile, replacing them with new pliant leadership.<sup>55</sup>

Civil society generally applauded the takeover and the choice of Fakhruddin Ahmed as the chief adviser, and there was initial widespread popular support of the anticorruption drive initiated by the military-backed government.<sup>56</sup> The editor of the most popular vernacular newspaper, *Prothom Alo*, expressed a degree of relief with regards to the coup, stating that: "While the country was advancing towards a civil war like situation following confrontations and bloodshed due to the two political alliances locking horns, the armed forces successfully took some steps to rein in the situation."<sup>57</sup>

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53. *Bangladesh to Have Own Brand of Democracy*, DAILY STAR (Bangl.), Apr. 3, 2007, at 1 (quoting Army Chief Moeen U. Ahmed in one of his speeches to the nation).

54. *Bangladesh: The Minus-Two Solution*, ECONOMIST, Sept. 8, 2007, at 66.

55. INT'L CRISIS GRP., ASIA REPORT NO. 151, RESTORING DEMOCRACY IN BANGLADESH 20 (2008), available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/151\\_restoring\\_democracy\\_in\\_bangladesh.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/151_restoring_democracy_in_bangladesh.pdf) [hereinafter ICG].

56. See 2008 HUMAN RIGHTS REPORT, *supra* note 14, at 2177.

57. *Top Ex-Army Men for Purge of Political Parties*, DAILY STAR (Bangl.), Jan. 21, 2007, at 1.

The regime also received the support of Western diplomats, which some claimed were instrumental in the coup,<sup>58</sup> and the military-backed government leaders remained in sustained consultation with them throughout its tenure.<sup>59</sup> Western diplomats reportedly saw the military as “a last resort and necessary evil” to take on the corruption of the political parties and bureaucracy.<sup>60</sup> As a result, the United Kingdom, the United States, and other Western countries and development agencies largely condoned the takeover.<sup>61</sup>

In Bangladesh, like many developing countries, there is a history of perceived “good coups” in which the military moves in to stabilize a political order that is seen to have been mismanaged by the political parties. The 2007 coup, at least initially, fit into this broader narrative.

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58. See ICG, *supra* note 55, at 7.

59. See, e.g., Alamgir, *supra* note 50, at 48 (highlighting that “negotiations over the military’s role were conducted with Western diplomats, not with representatives from either political party”); *Army Pressed for Nat’l Unity Govt*, DAILY STAR (Bangl.), Sept. 18, 2011, at 1 (detailing discussions between the military-backed government and the United States in which Bangladeshi military officers expressed to US diplomats their preference for the next consensus leader for a national unity government); *Diplomats Hope Election Will Be Held Soon*, DAILY STAR (Bangl.), Jan. 23, 2007, at 1, available at <http://www.thedailystar.net/2007/01/23/d7012301096.htm> (discussing how envoys from France, Germany, the United Kingdom, and the United States met with the Bangladeshi foreign affairs adviser to discuss the regime’s plans); *Caretaker Govt Steps into Second Year Today*, DAILY STAR (Bangl.), Jan. 12, 2008, [http://www.thedailystar.net/newDesign/print\\_news.php?nid=18898](http://www.thedailystar.net/newDesign/print_news.php?nid=18898) (describing how Bangladesh’s “development partners,” including the European Union, the United Kingdom, and the United States, were “keeping close watch on the evolving situation ahead of the general elections”); *Foreign Adviser Updates Envoys on Govt Action*, DAILY STAR (Bangl.), Jan. 16, 2008, [http://www.thedailystar.net/newDesign/print\\_news.php?nid=19439](http://www.thedailystar.net/newDesign/print_news.php?nid=19439) (noting how the Bangladesh foreign affairs adviser briefed foreign officials on “the government’s actions over the past year and outlined challenges the government may face” in 2008).

60. ICG, *supra* note 55, at 9. A senior diplomat commented that some colleagues saw the army’s intervention as “the only way to protect our development investments. We were getting robbed by both the Awami League and BNP-Jamaat governments.” *Id.*

61. See *id.* at 7.

### D. *The Drive Against Corruption*

#### 1. Nature of the Emergency Regime

After taking power, the military-backed government quickly passed the Emergency Powers Ordinance ("EPO")<sup>62</sup> and Emergency Power Rules ("EPR").<sup>63</sup> These promulgations laid out the ground rules of the regime and gave it the tools to pursue a zealous anticorruption agenda aimed at removing the extant political class from the helm of the state. Fundamental rights were immediately suspended under the EPR including the freedoms of speech, movement, assembly, and association.<sup>64</sup> The EPR allowed for arrests without warrants, the use of force to execute government orders, and the detainment of any person indefinitely without charges, no right to bail, and specific provisions on the prosecution of corruption.<sup>65</sup> Subsequent amendments to the EPR also allowed the government or the ACC to withdraw any case for trial under a Special Judges' Court with territorial jurisdiction over all of Bangladesh and the power to try any violations of the EPR.<sup>66</sup>

These sweeping rules gave the army and the caretaker regime unprecedented authority to detain and try citizens on potentially unverified charges.<sup>67</sup> The trials, often prosecuted by the ACC, took place in closed courtrooms, labeled as "kangaroo" courts by opponents,<sup>68</sup> beyond the purview of the

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62. Emergency Powers Ordinance (Ordinance No. 1/2007) (Bangl.) [hereinafter EPO]. An English translation of this law is available at [http://www.adh-geneva.ch/RULAC/pdf\\_state/Emergency-Power-Ordinance-2007.pdf](http://www.adh-geneva.ch/RULAC/pdf_state/Emergency-Power-Ordinance-2007.pdf).

63. Emergency Powers Rules (S.R.O. No. 15-Ain/2007) (Bangl.) [hereinafter EPR]. An English translation of this law is available at [http://www.adh-geneva.ch/RULAC/pdf\\_state/Emergency-power-rules-2007.pdf](http://www.adh-geneva.ch/RULAC/pdf_state/Emergency-power-rules-2007.pdf). See *Rules Promulgated to Curb Political Activity*, DAILY STAR (Bangl.), Jan. 27, 2007, at 1, available at <http://www.thedailystar.net/2007/01/27/d7012701011.htm>.

64. EPR, *supra* note 63, r. 3, 5–6; see Haque, *supra* note 40, at 88.

65. EPR, *supra* note 63, r. 10, 15–16, 19(d); see Haque, *supra* note 40, at 89.

66. See Haque, *supra* note 40, at 89. The Special Courts were required to complete trials and sentencing within forty-five days of the trial's commencement (and there was a possible extension of thirty additional days in cases of unforeseeable events). See *id.* at 90.

67. See *id.*

68. See Interview with Mohiuddin Khan Alamgir, Ph.D., prominent politician, Awami League (Mar. 19, 2009) (on file with authors).



press or the general public.<sup>69</sup> One scholar concluded: “The EPR and the EPO, by suspending the safeguards from arrest and detention, effectively legalise arbitrary arrests and detention. The [implication] . . . [is] that everyone is subject to the risk of endless detention without any legal avenues of redress.”<sup>70</sup>

## 2. The Anticorruption Agenda: Tool for Change

The government’s ambitious anticorruption campaign was used as a tool to reconfigure the political landscape of Bangladesh. This agenda was publicized and executed from the regime’s very inception in a manner that suggested a significant degree of preplanning and coordination.

Immediately after the declaration of emergency in early 2007, the military-backed regime began its crackdown on many top politicians, some of whom were commonly viewed as corrupt and who may have been connected with criminal networks through which they facilitated violence and extortion.<sup>71</sup> By January 19, merely a week into the new regime, nearly 2000 people, mostly low-level party activists, were in police custody, while arrest warrants were issued for approximately another 1000.<sup>72</sup> Political activists at the district level were directed to go into hiding by the central leadership of the major political parties.<sup>73</sup>

On February 1, 2007, the ACC initiated an investigation against two major political players—the former communications minister and the business partner of Tarique Rahman (the son of BNP chairwoman and former Prime Minister Khaleda Zia).<sup>74</sup> On February 22, 2007, retired Army Chief Hasan Mashhud Chowdhury was installed as the chairman of the reconstituted ACC,<sup>75</sup> a move that could be interpreted as a signal of the

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69. See Haque, *supra* note 40, at 90. The risk of endless detention was seemingly contrary to Article 31(3) of the Constitution that guarantees open and public trials. See *id.* at 89–90.

70. See *id.* at 90.

71. See *Midnight Crackdown on “Corrupt” Politicians*, DAILY STAR (Bangl.), Feb. 5, 2007, at 1.

72. See *JCD Leaders Rounded up in Raids*, DAILY STAR (Bangl.), Jan. 19, 2007, at 1.

73. See Rakib Hasnet Suman, *BNP Men Told to Avert Arrest*, DAILY STAR (Bangl.), Jan. 20, 2007, at 1.

74. See *Mamun Arrested*, DAILY STAR (Bangl.), Feb. 2, 2007, at 1.

75. *Lt Gen (rtd) Mashhud Made ACC Chief*, DAILY STAR (Bangl.), Feb. 23, 2007, at 1.

military's control over the anticorruption agenda. The caretaker government and army increasingly began to target prominent politicians and created lists of hundreds of high profile politicians, bureaucrats, and businessmen to be arrested on corruption and other criminal charges in the coming weeks.<sup>76</sup> The first high profile detainees were sent to jail on charges of antistate activities, sabotage, and corruption under the EPO.<sup>77</sup> Within the Emergency's first few months, estimates of those netted in the anticorruption drive ranged from 100,000 to 200,000, although there is little reliable data and many were released shortly after being arrested.<sup>78</sup>

Amidst this anticorruption blitzkrieg, on February 5, the government announced that it would sign the UN Convention Against Corruption,<sup>79</sup> providing additional legitimacy for its far-reaching anticorruption activities, which were already broadly supported domestically, and condoned by the international community.<sup>80</sup> According to the 2009 Human Rights Watch Report on Bangladesh: "Several international donor agencies such as the Asia[n] Development Bank, United Nations Development Programme, and World Bank are providing support to the government's anti-corruption efforts. They have rarely raised publicly any concerns about abuses resulting from the campaign."<sup>81</sup> For example, a US\$150 million loan from the Asian Development Bank supported the rapid expansion of the ACC during the military's rule.<sup>82</sup> Human Rights Watch also reported that the international community was generally

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76. See *Midnight Crackdown on "Corrupt" Politicians*, *supra* note 71, at 1.

77. See *Caught Political Bigwigs Detained, Sent to Jail*, DAILY STAR (Bangl.), Feb. 6, 2007, at 1 (noting that these high profile detainees were imprisoned and charged under Section 16(2) of the 2007 Emergency Powers Ordinance).

78. See ICG, *supra* note 55, at 17; *Wadood Bhuiyan's Brother Among 1,449 Held*, DAILY STAR (Bangl.), Feb. 16, 2007, at 1. On March 7, Tarique Rahman, the son of the former Prime Minister and leader of the BNP, Khaleda Zia, was detained by the joint forces on a midnight raid and charged with extortion the next day. See *Tarique Remanded in Extortion Case*, DAILY STAR (Bangl.), Mar. 9, 2007, at 1.

79. United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.

80. See *id.*; *Dhaka to Sign Anti-Graft UN Convention*, DAILY STAR (Bangl.), Feb. 6, 2007, at 1.

81. HUMAN RIGHTS WATCH, WORLD REPORT 2009, at 221 (2009), available at <http://www.hrw.org/world-report/2009/bangladesh>.

82. *Good Governance Program: Bangladesh*, ASIAN DEV. BANK, <http://pid.adb.org/pid/LoanView.htm?projNo=37017&seqNo=01&typeCd=3> (last visited Feb. 10, 2012).

supportive of the military-backed regime, as “no international actors publicly called on the army to return full powers to a civilian government.”<sup>83</sup> Transparency International also worked closely with the military-backed government as an advisor on its anticorruption efforts, hoping to make the most of what it saw as a potential opportunity to strengthen anticorruption institutions during the Emergency.<sup>84</sup>

Among those arrested by the military-backed government were local government officials brought in on dubious corruption charges.<sup>85</sup> These officials were then replaced with individuals reportedly loyal to the military.<sup>86</sup> Prominent journalists and activists also were frequently arrested or intimidated with the prospect of arrest.<sup>87</sup> The military seemed to use corruption charges to both solidify its power and stifle dissent as it attempted to remake the Bangladeshi political order.

Central to that reformulation agenda was its “minus-two” strategy to send into exile former Prime Ministers Sheikh Hasina and Khaleda Zia, the respective leaders of the AL and BNP. This plan failed, however, as the army underestimated their political support and encountered international resistance.<sup>88</sup> In response, the regime arrested Sheikh Hasina on July 16, 2007, on charges of extorting 30,000,000 taka (about US\$500,000)<sup>89</sup> and on September 3, it arrested Khaleda Zia on various charges of graft.<sup>90</sup> As one official reportedly commented: “[W]e gave them the easy way out, but they did not want to go. So we decided to

83. HUMAN RIGHTS WATCH, *WORLD REPORT 2008*, at 245 (2008), available at [http://www.hrw.org/sites/default/files/reports/wr2k8\\_web.pdf](http://www.hrw.org/sites/default/files/reports/wr2k8_web.pdf).

84. See ICG, *supra* note 55, at 8; Interview with Iftexhar Zaman, Exec. Dir., Transparency Int'l (Mar. 18, 2009) (on file with authors).

85. See U.S. DEP'T OF STATE, 42-228PDF, *COUNTRY REPORTS ON HUMAN RIGHT PRACTICES FOR 2007*, at 2161 (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100612.htm> (nonpaginated copy) [hereinafter 2007 HUMAN RIGHTS REPORT].

86. See ICG, *supra* note 55, at 16.

87. See *id.* at 19.

88. See *Ex-Premier Hasina Returns Home*, ASIANEWS.IT, May 8, 2007, <http://www.asianews.it/news-en/Ex-premier-Hasina-returns-home-9200.html>; *Khaleda's Exile Move Runs Out of Steam*, DAILY STAR (Bangl.), Apr. 25, 2007, at 1; *Sheikh Hasina Warrant Suspended*, BBC NEWS, Apr. 23, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6583729.stm](http://news.bbc.co.uk/2/hi/south_asia/6583729.stm).

89. See *Hasina Arrested, Sent to Sub-Jail*, DAILY STAR (Bangl.), July 17, 2007, at 1.

90. See 2007 HUMAN RIGHTS REPORT, *supra* note 85, at 2168; ICG, *supra* note 55, at 21.

make their lives so difficult in the courts that they wish they had gone [into exile]."<sup>91</sup> By the time Khaleda Zia was arrested in September 2007, a large number of the most powerful leaders from the two major political parties had been arrested as well, generally on allegations of corruption, although many were held for months without formal charges.<sup>92</sup>

Given the levels of corruption in Bangladesh, the US State Department described many of the ACC's charges as "credible." Still, as the military's drive against corruption continued, increasing numbers of Bangladeshis and outside observers began to view the detention of these political and business leaders as politically motivated. Fueling this suspicion was the fact that several high-profile politicians, who were widely perceived as corrupt, but who had supported the caretaker government and the military's intervention, were not prosecuted.<sup>93</sup>

## II. BLOCKED IN COURT

Given that most of Bangladesh's prominent political leaders were detained on corruption charges, the battle between the military and politicians came to court. There, the High Court Division of the Supreme Court dealt some of the first and most visible blows against the legitimacy of the military's "good governance" coup. This confrontation between the High Court Division and the military hastened the end of the military's rule. It is also an example of how activist militaries attempt to draw legitimacy from the judicial branch and thus can become particularly susceptible to judicial opposition in "good governance" coups.

As of 2008, the Supreme Court in Bangladesh consisted of a sixty-seven judge High Court Division and an Appellate Division

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91. ICG, *supra* note 55, at 21.

92. See 2007 HUMAN RIGHTS REPORT, *supra* note 85, at 2160, 2168.

93. See 2008 HUMAN RIGHTS REPORT, *supra* note 14, at 2183. The US State Department reported that human rights organizations have estimated that by the end of 2007, the Bangladeshi government had detained some 200 high-ranking politicians, businessmen, and officials as part of its anticorruption campaign. See 2007 HUMAN RIGHTS REPORT, *supra* note 85, at 2161.

of seven judges.<sup>94</sup> Judges are traditionally appointed by the president to the Appellate Division from the High Court Division in their order of seniority, but this practice has been ignored on a number of occasions for allegedly political reasons.<sup>95</sup>

Prominent senior counsel are far more influential in Bangladesh and across South Asia than they often are elsewhere in the world. The fact that a high profile senior lawyer argues a case is typically thought to sway its outcome, and as a result such senior counsel are paid disproportionately more than other lawyers.<sup>96</sup> The ACC hired many of these best-known lawyers of the Bangladeshi bar on retainer.<sup>97</sup> Some critics claimed the ACC did this simply so they would not be available to defend politicians.<sup>98</sup> Others said lawyers were threatened into not representing those facing corruption charges.<sup>99</sup>

Nevertheless, the High Court Division of the Supreme Court provided a constant source of aggravation to the military government during the Emergency, consistently offering limiting interpretations of the government's emergency powers. On February 26, 2007, the High Court declared illegal the detention order against a former AL member of Parliament and three others.<sup>100</sup> It observed that the powers of the High Court Division, which allowed it to issue directions, could not be curtailed by the EPR.<sup>101</sup> This outspoken decision was prominently covered in the media and was among the earliest and most visible challenges to the government's claim to broad emergency powers to remake Bangladeshi democratic

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94. There is only one chief justice of the Supreme Court and he has the power to assign benches in both divisions, as well as significant power in both the appointment and promotion of judges. Since 2008, additional judges have been sworn in. As of October 2011, there are ninety-eight high court judges in Bangladesh. *See Ten HC Judges Sworn In*, DAILY STAR (Bangl.), Oct. 21, 2011, at 1.

95. *See Bangladesh: Culture of Supersession in Supreme Court Will Undermine Rule of Law*, ASIAN HUM. RTS. COMMISSION (May 26, 2008), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-147-2008>.

96. *See* Interview with Rafique-Ul Huq, Defense Attorney (Mar. 20, 2009) (on file with authors).

97. *See id.*

98. *See id.*

99. *See id.*

100. *See Detention of Ex-MP Kamal Majumder Declared Illegal*, DAILY STAR (Bangl.), Feb. 27, 2007, at 1.

101. *See id.*

institutions.<sup>102</sup> As one well-known critic of the military-government explained, it was the first time after the coup that the military began to "lose face."<sup>103</sup>

Throughout the Emergency, the decisions of the High Court Division provided a rallying point for those who opposed the military government's attempts to use the crisis to restructure or "cleanse" Bangladeshi politics. These decisions carried great symbolic weight. Declaring the government's actions illegal significantly undercut the military's claims that its intervention was necessary to promote "good governance." For most of the Emergency, however, these judgments usually remained merely symbolic, as the Supreme Court's Appellate Division stayed or overruled the High Court Division's most assertive decisions.

#### A. Showdown on Bail

The EPR barred "any court or tribunal" from granting bail to those accused or being investigated of offenses under the EPR or certain statutes.<sup>104</sup> Government counsel argued these provisions should be upheld and bail should be denied because the accused might intimidate witnesses, tamper with evidence, or flee the country.<sup>105</sup> With so many leading politicians in jail charged with or awaiting charges of corruption, the no-bail provision took on pivotal political significance. If these individuals could be kept confined and preoccupied with legal cases, the military-backed government would have a freer hand in remaking Bangladeshi politics.

The bar on seeking bail under the EPR was immediately challenged in the Supreme Court and the Chief Justice referred

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102. See Interview with Nazmul Ahsan Kalimullah, Ph.D., Chairman, Dep't of Pub. Admin., Univ. of Dhaka (Mar. 16, 2009) (on file with authors).

103. *Id.*

104. EPR, *supra* note 63, r. 10–11, 19D; see Ridwanul Hoque, *The Recent Emergency and the Politics of the Judiciary in Bangladesh*, 2 NUJS L. REV. 183, 194 (2009) (explaining that "notwithstanding the general legal provision concerning bail, no application for bail can be made to 'any court or tribunal' by a person against whom an inquiry, investigation, or trial is pending concerning an offence under the [emergency power rule] or certain [emergency power rule]-covered statutes" (footnotes omitted)); see also Haque, *supra* note 40, at 89 (explaining how after its initial promulgation, the Emergency Powers Rules were amended to expand government's powers).

105. See Interview with Fida Kamal, *supra* note 30.

the case to a high court division criminal bench consisting of Justices Nozrul Islam Chowdhury and Emdadul Haque.<sup>106</sup> On April 22, 2007, the bench granted bail to Moyezuddin Sikder, a businessman charged with colluding to create an artificial fuel scarcity.<sup>107</sup> Although the government argued that the EPR removed the court's jurisdiction to hear the case, the justices declared that the term "any court or tribunal" in the rules was not meant to include the Supreme Court.<sup>108</sup>

The Appellate Division of the Supreme Court, however, stayed the High Court Division's decision on May 24, 2007.<sup>109</sup> Thus began a pattern where over the ensuing months, the High Court Division would grant bail to politicians who had been jailed on corruption charges, including prominent leaders like Khaleda Zia, only to quickly have the Appellate Division stay most of these orders.<sup>110</sup>

A year later on April 23, 2008, the Appellate Division formally overturned the High Court Division in *State v. Moyezuddin Sikder* and unanimously found that the EPR was intended to remove the Supreme Court's jurisdiction for these bail matters.<sup>111</sup> Further, it reprimanded the High Court Division for writing "lengthy judgments" that embarked upon "[c]onstitutional questions" in deciding bail petitions.<sup>112</sup>

This decision by the Appellate Division did not give the executive an entirely free hand. It declared that if an order was without jurisdiction, *coram non judice*, or if the allegations were

106. *HC to Consider Bail Petitions*, DAILY STAR (Bangl.), Apr. 23, 2007, at 1.

107. See *State v. Moyezuddin Sikder*, (2008) 60 DLR (AD) 82 (Bangl.).

108. Hoque, *supra* note 104, at 194.

109. AIN O SALISH KENDRA, HUMAN RIGHTS IN BANGLADESH 2008, at 16 (Sara Hossain ed.), available at [http://www.askbd.org/web/?page\\_id=430](http://www.askbd.org/web/?page_id=430); *HC Grants Bail to Hasina, Stays Power Plant Graft Case*, DAILY STAR (Bangl.), Nov. 5, 2007, at 1; *Khaleda Granted Bail: Proceedings Stayed*, DAILY STAR (Bangl.), Oct. 1, 2007, at 1; *SC Extends Stay on Hasina's Bail*, DAILY STAR (Bangl.), Aug. 17, 2007, at 1; *SC Stays Hasina's Bail Order*, DAILY STAR (Bangl.), Aug. 3, 2007, at 1.

110. See *The Trial of Sheikh Hasina: International Community Fails to Ensure Due Process*, ACHR WKLY. REV.—ASIAN CTR. FOR HUM. RTS. (Mar. 27, 2008), <http://www.achrweb.org/Review/2008/211-08.html>.

111. *Moyezuddin Sikder*, (2008) 60 DLR (AD) 82 (Bangl.). To justify denying bail, the Appellate Division relied on Bangladeshi Supreme Court precedent decisions from the Privy Council during colonial India and on Pakistani Supreme Court rulings. It also cited to *Solicitor, Government of Bangladesh v. Syed Sanwar*. See *Moyezuddin Sikder*, 60 DLR (AD) at 86–87.

112. *Id.* at 89–90.

made in bad faith, the High Court Division may grant bail, but found that these arguments were not made in the *Moyezuddin Sikder* case.<sup>113</sup> If the Appellate Division provided a window to challenge the EPR’s bail provisions in this decision, it did not seem like a victory to many. A former president of the Bangladesh Bar Association called the decision a “black chapter” in the history of the Bangladesh judiciary.<sup>114</sup>

The *Moyezuddin Sikder* case was not the only time the High Court Division and Appellate Division clashed over the Emergency Powers Rules. Most of the cases the ACC brought during the Emergency were based on alleged acts of corruption that predated both the Emergency and the promulgation of the EPR. Defense lawyers for Sheikh Hasina, in a case implicating her for extortion, argued that applying the EPR’s strict procedural constraints—including the bail provisions—to try alleged pre-Emergency crimes was tantamount to ex post facto legislation.<sup>115</sup>

In February 2008, the High Court Division agreed. Justices Shah Abu Nayeem Mominur Rahman and Shahidul Islam ruled that applying the EPR to the corruption cases against Sheikh Hasina was retrospective and unconstitutional, meaning she could not be barred from seeking bail.<sup>116</sup> In pointed language, the court went on to further hold that curbing the right to bail violated the fundamental rights of the Constitution.<sup>117</sup> It concluded that the “Emergency has not curtailed the power and authority of . . . the [c]ourt.”<sup>118</sup>

Subsequently, the Appellate Division stymied the High Court Division’s stand against the government once again. In May 2008, a month after overruling the High Court in *Moyezuddin Sikder*, the Appellate Division found that the EPR did

113. *Id.* at 89.

114. *SC Strikes Down HC Jurisdiction for Granting Bail in EPR Cases*, FIN. EXPRESS (Bangl.), Apr. 24, 2008, [http://www.thefinancialexpress-bd.com/more.php?news\\_id=31650](http://www.thefinancialexpress-bd.com/more.php?news_id=31650).

115. *See* Bangladesh v. Sheikh Hasina, (2008) 60 DLR (AD) 90, 99 (Bangl.).

116. Bangladesh v. Sheikh Hasina, (2008) 13 BLC (HCD) 121, 123 (Bangl.) (judgment delivered on Feb. 5, 2008); *see* Hoque, *supra* note 104, at 195–98.

117. *Sheikh Hasina*, (2008) 13 BLC (HCD) at 144–45; *see* Hoque, *supra* note 104, at 196.

118. *Sheikh Hasina*, (2008) 13 BLC (HCD) at 148; *see* Hoque, *supra* note 104, at 196.



not act as an ex post facto law nor did it violate the fundamental rights of the Constitution.<sup>119</sup>

Being overturned was not the only setback to judges on the High Court Division who wanted to take a more aggressive stance against executive power under the Emergency.<sup>120</sup> In March 2008, the chief justice moved Justice Rahman and Justice Islam, who had granted bail to Sheikh Hasina and a number of other prominent politicians, to a civil bench where they would no longer hear bail applications.<sup>121</sup> The court said this move was a routine reallocation of benches, while human rights activists argued their transfer was punishment for these justices' outspoken assertiveness during the Emergency.<sup>122</sup>

Justices on the High Court Division voiced their frustration with the powerlessness they felt at continuing to be overruled by the Appellate Division.<sup>123</sup> Justice Nozrul Islam Chowdhury, who had granted the original request for bail for Moyezuddin Sikder, reportedly told a lawyer requesting bail for his client in May 2008 that he should seek bail with Allah instead.<sup>124</sup> He lamented: "We cannot go by the oath we took under the Constitution. [This] is a Court within brackets."<sup>125</sup>

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119. See *Sheikh Hasina*, (2008) 60 DLR (AD) at 90.

120. Another legal battleground was over the evasion of taxes, a charge levied against many leading politicians. The accused were frequently asked to provide wealth statements, which were then used to frame corruption charges. In December 2007, in a case involving the former minister of power, the High Court Division found that the former minister had not been given an opportunity to be heard and explain the discrepancies before criminal charges were brought against him. See *Iqbal Hasan Mahmood v. Bangladesh*, (2008) 60 DLR (HCD) 88 (Bangl.) (judgment delivered on Dec. 5, 2007). Unsurprisingly, the Appellate Division overturned the High Court Division's order on March 19, 2008, allowing the trial to continue. See *SC Clears Way for Trial of Tuku*, DAILY STAR (Bangl.), Mar. 20, 2008, at 1 (reporting on the Appellate Division's decision).

121. See *HC Bench of Justice Nayeem, Shahidul Stripped of Writ Powers*, DAILY STAR (Bangl.), Mar. 18, 2008, at 1; *The Trial of Sheikh Hasina: International Community Fails to Ensure Due Process*, *supra* note 110.

122. See *HC Bench of Justice Nayeem, Shahidul Stripped of Writ Powers*, *supra* note 121; *The Trial of Sheikh Hasina: International Community Fails to Ensure Due Process*, *supra* note 110.

123. See *Bangladesh: A Weary High Court Suggests Appellant Seek Bail from Allah*, ASIAN HUM. RTS. COMMISSION (May 28, 2008), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-149-2008>.

124. See *id.*

125. *Id.*

The far greater willingness of the High Court Division to challenge the government than the Appellate Division is both striking and somewhat mysterious. Some have suggested that this difference was simply the result of different personalities of the judges.<sup>126</sup> Meanwhile, law professor Ridwanul Hoque has argued that perhaps because the High Court Division justices knew they could be later overruled, they attempted to test the waters and assert their judicial powers more strongly against the executive.<sup>127</sup> Another theory is that the executive was simply less successful at capturing the opinion of the lower levels of the judiciary than in the Appellate Division.<sup>128</sup>

The Bangladeshi experience of having the High Court Division more spiritedly protect encroachments by the executive during an emergency is not without precedent in the region. In India, during the 1975–1977 emergency, several High Courts found that detainees could appeal to the court for release even if they were barred under the emergency from moving the court to enforce the rights to life and personal liberty.<sup>129</sup> This safety valve was later blocked by the Supreme Court in *Jabalpur v.*

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126. See Interview with Mahtab Haider, Shameran Abed & Shahiduzzaman, Staff Members, *New Age* (Mar. 17, 2009) (on file with authors) [hereinafter *New Age Interview*]; Interview with Fida Kamal, *supra* note 30; Interview with Rafique-Ul Huq, *supra* note 96.

127. See Hoque, *supra* note 104, at 202. Such an interpretation is seemingly supported by the timeline of political events. The Appellate Division stayed the High Court Division's decision in *Moyezuddin Sikder* just days before the AL general secretary Abdul Jalil was brought into custody by the police. In July, Sheikh Hasina herself would be arrested, and by September, Khaleda Zia was arrested as well. The Appellate Division may have realized the tide was shifting against the leaders of the political parties and did not want to risk its limited political capital trying to support them. See *Jalil, Babar, Sheikh Selim, Altaf, Mintoo, Others Held in Massive Drive*, *DAILY STAR* (Bangl.), May 29, 2007, at 1.

128. See SURYA SREENIVASAN, *JUDICIAL RESPONSES TO EMERGENCY: A COMPARATIVE STUDY OF INDIA AND BANGLADESH* 19 (2009). Still, it is difficult to substantiate whether the military-backed interim government influenced any of the Appellate Division judges or, alternatively, whether the High Court Division may have been pressured by the political parties to support their leaders. See *id.* at 12.

129. 2 H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA* 1479 (4th ed. 2002) ("9 High Courts refused to countenance the monstrous doctrine that a détenu could not secure his release from preventive detention by an application for habeas corpus even if he was detained without the authority of law, or contrary to law, or under a mala fide order or an order based on irrelevant considerations.").

*Shukla*,<sup>130</sup> which effectively allowed detainees to be stripped of habeas corpus rights.<sup>131</sup>

Two examples do not make a pattern, but the similarities of the situations in India and Bangladesh may indicate, somewhat counterintuitively, that apex courts could be less willing to challenge executive emergency powers than subordinate courts. This phenomenon needs to be better understood if courts are to be seen as a meaningful check on militaries during states of emergency.

### B. *The Tide Turns*

During early and mid-2008, against the backdrop of continued pushback by the courts, the military-backed interim government came under increasing domestic and international pressure to hold elections, which it ultimately scheduled for December 2008.<sup>132</sup> By this point, the interim government had failed to actualize its plan to remake Bangladesh's political parties. Now it was faced with a situation in which the country's leading politicians were in jail in the run-up to the elections. It was this change in political circumstances that ultimately led to the release of the hundreds of politicians charged with corruption and other offenses under the EPR.

As negotiations between the military and political parties continued, politicians started being released from jail.<sup>133</sup> The ACC had rushed to prosecute so many so fast it had often not followed all the required procedures and defendants used these irregularities to their advantage.<sup>134</sup> Dozens of high profile politicians were released on bail by the High Court Division in

130. A.I.R. 1976 S.C. 1207 (India).

131. *Id.*; see SREENIVASAN, *supra* note 128, at 12.

132. See New Age Interview, *supra* note 126. The military is particularly susceptible to international pressure because they fear without a civilian government they might lose their United Nations peacekeeping contracts, which account for a large share of their budget. See *id.*; ICG, *supra* note 55, at 7.

133. See AIN O SALISH KENDRA, *supra* note 109, at 77–78.

134. See *id.* at 66. Officials had frequently failed to submit reports in accordance with the filing deadlines of the ACC rules. Many trials were not completed within the statutory time frame of ninety days, nor were investigations completed within the mandated sixty days. In the hurry to revitalize itself, the ACC had even failed to properly appoint many of its officers, meaning the cases they had investigated or prosecuted now became open to challenge. See *id.*

July and August of 2008.<sup>135</sup> By the end of August, the media reported that on a single day, bail was being granted in a different case every sixty-three seconds.<sup>136</sup> Khaleda Zia was released on September 11, 2008.<sup>137</sup> Sheikh Hasina, who had been allowed to go to the United States on medical grounds in June 2008, returned to the country on November 6, 2008, to contest the December elections.<sup>138</sup>

It was widely believed that bail petitions were allowed to go forward in 2008 on political grounds because the legal irregularities that were used to justify the release of various politicians and activists had been present for many months without the accused being released.<sup>139</sup> Furthermore, at that point the government did not even challenge several of the bail requests<sup>140</sup> and, despite its previous directions, the Appellate Division did not stay any of the High Court Division orders.<sup>141</sup>

The State of Emergency was finally lifted on December 17, 2008, and on December 29, the AL led by Sheikh Hasina won 230 of 299 parliamentary seats in national elections that independent observers considered to be generally free and fair.<sup>142</sup>

### III. RETURN TO DEMOCRACY AND THE EFFECT ON ANTICORRUPTION EFFORTS

With the return of democracy, the ACC's investigations during the Emergency-regime—regardless of their actual merits—were discredited as politically motivated. Most of the politicians and businessmen the ACC had prosecuted were released on bail and many had been cleared of charges on technicalities. The civilian politicians that took over in late 2008 had little incentive to continue a campaign that they did not initiate and of which they were once the main target. Since

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135. See *id.* at 77; Ashutosh Sarkar, *Suspects Get Bail, Cases Stayed on Law Loopholes*, DAILY STAR (Bangl.), Aug. 18, 2008, at 1.

136. See AIN O SALISH KENDRA, *supra* note 109, at 66.

137. *Khaleda Set to be Freed Today*, DAILY STAR (Bangl.), Sept. 11, 2008, at 1.

138. *Hasina Returns Home Today*, DAILY STAR (Bangl.), Nov. 6, 2008, at 1.

139. See AIN O SALISH KENDRA, *supra* note 109, at 66.

140. *Id.* at 77.

141. *Id.* at 78.

142. 2008 HUMAN RIGHTS REPORT, *supra* note 14, at 2177.

2009, the democratically elected government has moved to bring the ACC under its control and neutralize it altogether. In February 2011, Prime Minister Sheikh Hasina's cabinet placed a bill before Parliament to amend the Anti-Corruption Act so that the ACC would be required to receive government permission before filing any corruption cases against government officials.<sup>143</sup> The amendments faced opposition from some ruling party lawmakers as well as from international donors and development partners and the bill was subsequently tabled in July 2011.<sup>144</sup> In the meantime, the ACC has returned to its pre-2007 form. In August 2011, it filed a new corruption case against former prime minister and BNP chairperson Khaleda Zia. The BNP has decried these charges as politically motivated and a sign that the AL is orchestrating the ACC's prosecutions to attack political opponents.<sup>145</sup> The ACC in Bangladesh today is likely as compromised and as ineffective as the commission that the military attempted to replace when it came to power during the Emergency.

During the Emergency, Justice Abdur Rashid had warned that the "[d]enial of [the] rule of law in the fight against corruption would ultimately strengthen the climate of impunity in the fertility of which corruption thrives in."<sup>146</sup> Indeed, at the end of the Emergency the country now seems farther than ever from having institutions capable of tackling corruption.

It is not just the ACC that has been tainted by association with the military-backed regime. Ridwanul Hoque writes: "There is no denying that particularly the senior judiciary in Bangladesh incurred a crisis of public confidence during the recent emergency" because of the Appellate Division's perceived failure to stand up to the excesses of the military-backed government.<sup>147</sup> The judiciary, which is seen by many as having its

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143. Anti-Corruption Commission (Amendment) Act 2011 (Bangl.); see *Clip ACC Wings: Govt Nods*, DAILY STAR (Bangl.), Jan. 25, 2011, at 1.

144. Rashidul Hasan, *JS Body for Stronger ACC*, DAILY STAR (Bangl.), July 21, 2011, at 1; Shakhawat Liton, *Some Hope for ACC*, DAILY STAR (Bangl.), May 20, 2011, at 1.

145. *Khaleda Sued: BNP Says Govt. Out to Eliminate Opposition*, DAILY STAR (Bangl.), Aug. 9, 2011, at 1.

146. *Iqbal Hasan Mahmood v. Bangladesh*, (2008) 60 DLR (HCD) 88, 129 (Bangl.) (judgment delivered on Dec. 5, 2007).

147. Hoque, *supra* note 104, at 203.

own deep challenges with corruption,<sup>148</sup> is now also seen as unable to stand up against political pressures. In other words, the ACC's failed anticorruption efforts during the Emergency not only ended up undermining the ACC itself, but arguably the judiciary and its ability to contribute to anticorruption efforts in the future.<sup>149</sup>

#### IV. IN CONTEXT: PAKISTAN AND THAILAND

Part of what is so striking about Bangladesh's experience is that it is not atypical. Many countries with politically active militaries have seen the military use corruption charges against civilian politicians as both a justification for and tool of military rule. Indeed, politicians' corruption is frequently the only point of national agreement that the military can use to legitimize its rule.<sup>150</sup>

Pakistan and Thailand provide recent examples of this phenomenon. In both countries, corruption charges were used to legitimize "good governance" coups and military rule and courts played a key role in legitimizing this governance. The Pakistani and Thai militaries sought court validation as evidence that they were providing better, and in many ways, more "legal governance" than the civilian politicians they replaced. In Pakistan, the courts ultimately rebelled against this role, which assisted in the downfall of military rule. In Thailand, judicial

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148. See *SC Names Probe Panel*, BDNEWS24.COM, Jan. 23, 2011, <http://www.bdnews24.com/details.php?id=185318&cid=2>.

149. Moreover, after the restoration of democracy in 2008, the caretaker-government system became suspect to the political class because it was used as a vehicle to usher in the military regime. On June 29, 2011, after a Supreme Court order declaring the Thirteenth Amendment to the Bangladesh Constitution, Constitution Act of 1996, Act 1 of 1996, which established the caretaker system, "void and ultra vires the Constitution," it was repealed through a constitutional amendment by the AL—the ruling party. The opposition party, BNP, boycotted the vote on the amendment, however, arguing that dismantling the caretaker system would lead to rigged elections. See *Bangladesh Ends Caretaker Government Arrangement*, BBC NEWS, June 30, 2011, <http://www.bbc.co.uk/news/world-south-asia-13973576>; *SC Sets Aside Caretaker Govt System*, BDNEWS24.COM, May 10, 2011, <http://bdnews24.com/details.php?id=195305&cid=2>.

150. This is not to say that there are not other, often more central justifications for military rule, such as paralyzing political deadlock or violence, but the role that corruption charges play in justifying military rule cannot be underemphasized.

decisions, and the judges themselves, became an integral part of affirming the new military-created constitutional order.

Both cases show the central role of courts and corruption charges in underpinning such coups. These examples mirror the paradox found in Bangladesh: that anticorruption advocates' agendas can be appropriated by the military for political interventions that not only undermine democracy but also frequently retard anticorruption efforts.

#### *A. Pakistan*

Charges of corruption and regime change have long been interlinked in Pakistan. General Ayub Khan, who ruled Pakistan from 1958–69, justified the army's intervention as a reaction to the "political chicanery, intrigue, corruption, and inefficiency manifest in every sphere of life."<sup>151</sup> He painted the army as the only institution disciplined enough to save the nation from these "evils" and lay the foundation for liberal democratic constitutionalism.<sup>152</sup>

Ayub Khan's script was followed repeatedly over the following decades, as the Pakistani military frequently intervened to weed out politicians it labeled as corrupt or incompetent. For example, Benazir Bhutto was elected Prime Minister in 1988 in the first democratic election in over a decade, but she was removed twenty months later by President Ghulam Ishaq Khan amidst charges of corruption.<sup>153</sup> Nawaz Sharif then became prime minister, vowing to end the corruption of Benazir Bhutto's government.<sup>154</sup> However, just three years later, in 1993, President Ghulam Ishaq Khan again dissolved the democratically elected government on charges of corruption, nepotism, and extrajudicial killings.<sup>155</sup> Benazir Bhutto was reelected Prime Minister later that year, only to be removed by President Farooq Laghari in 1996—yet again, on corruption charges.<sup>156</sup> Subsequently, Nawaz Sharif returned to

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151. Husain Haqqani, *History Repeats Itself in Pakistan*, 17 J. DEMOCRACY 110, 117 (2006).

152. *See id.*

153. *See id.* at 119.

154. *See id.*

155. *See id.*

156. *See id.*

power in 1997 with both Bhutto and Sharif trading accusations of corruption against each other, which ultimately led to Bhutto being convicted of corruption and going into self-imposed exile in early 1999.<sup>157</sup>

After Sharif attempted to dismiss General Musharraf as chief of the army and then refused to let his plane land in Karachi, General Musharraf staged a successful coup in October 1999.<sup>158</sup> In justifying the military's claim to power, Musharraf pointed to a weak economy, poor national morale, and "corruption of horrendous proportion," stating that "good governance" was a prerequisite to solving the country's problems.<sup>159</sup> Sharif was convicted of hijacking and terrorism for prohibiting Musharraf's plane from landing and was sentenced to life in prison. He was later granted amnesty in exchange for going into exile in Saudi Arabia.<sup>160</sup> In 2000, he was also convicted of corruption for failing to pay taxes on a helicopter.<sup>161</sup> When Sharif unsuccessfully tried to return in September 2007 to run for Parliament, the government reopened another corruption case against him.<sup>162</sup> As a result, both Sharif and Bhutto were out of the country during the October 2007 presidential election, which Musharraf then easily won.<sup>163</sup>

As in Bangladesh, Pakistan's anticorruption agency became a tool for the military under Musharraf's regime, with Musharraf filling its ranks with loyal members and the military personnel. High profile opposition political figures, such as Yousaf Raza Gilani and Asif Ali Zardari, who would later become prime minister and president, respectively, spent several years in jail during this time on corruption charges.<sup>164</sup>

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157. *See id.* at 111.

158. *See id.* at 111, 119.

159. General Pervez Musharraf, *supra* note 4; *see* Weiner & LeVine, *supra* note 4.

160. *See* Haqqani, *supra* note 151, at 111.

161. *See Sharif Accused in Helicopter Case*, BBC NEWS, June 9, 2000, [http://news.bbc.co.uk/2/hi/south\\_asia/784095.stm](http://news.bbc.co.uk/2/hi/south_asia/784095.stm).

162. *See Pakistan Revives Corruption Case Against Sharif*, N.Y. TIMES, Sept. 7, 2007, <http://www.nytimes.com/2007/09/07/world/asia/07iht-pakistan.1.7418984.html>.

163. *See* Declan Walsh & Mark Tran, *Bhutto Returns Home to Rapturous Welcome*, GUARDIAN (U.K.), Oct. 18, 2007, <http://www.guardian.co.uk/world/2007/oct/18/pakistan.benazirbhutto1>.

164. *See* Jane Perlez, *From Prison to Zenith of Politics in Pakistan*, N.Y. TIMES, Mar. 11, 2008, at A8; *Gillani Convicted to 5-year RI*, DAWN (Pak.), June 9, 2002,



Although Pakistani courts have occasionally protected their own jurisdiction and declared military coups illegal once they ended,<sup>165</sup> for the most part they have acquiesced to military forays into civilian rule.<sup>166</sup> During the initial years of Musharraf's government the courts generally followed this pattern, rarely challenging the military's actions. Indeed, most sitting judges took a loyalty oath to the Provisional Constitutional Order underpinning the Musharraf regime.<sup>167</sup> However, several years into the military-backed regime, the Pakistani Supreme Court, and, in particular, Chief Justice Iftikhar Muhammad Chaudhry began to challenge the government in a series of high-profile cases. The court openly questioned the government's policies that led to the disappearances of suspected terrorists and the privatization of a steel mill in which corruption was suspected.<sup>168</sup> It even appeared likely that the court might rule that Musharraf could not head the army and serve as the president at the same

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<http://archives.dawn.com/2002/06/09/top4.htm>. Zardari was first put in jail in 1996 on charges of conspiring to attempt to kill Benazir Bhutto's brother. In 1999, under the Nawaz Sharif's government, Zardari, while still in jail, was found guilty of accepting kickbacks. He was then released on bail in 2004 in what many observers saw as an initial attempt by the Musharraf government to reconcile with the Pakistan People's Party. See Celia W. Dugger, *Pakistan Sentences Bhutto to 5 Years for Corruption*, N.Y. TIMES, Apr. 16, 1999, at A4; *Pakistan Police Re-arrest Zardari*, BBC NEWS, Dec. 21, 2004, [http://news.bbc.co.uk/2/hi/south\\_asia/4113611.stm](http://news.bbc.co.uk/2/hi/south_asia/4113611.stm).

165. *Sh. Liaquat Hussain v. Pakistan*, (1999) PLD (SC) 504 (Pak.) (limiting the use of military tribunals to try accused terrorists); *Asma Jilani v. Punjab*, (1972) PLD (SC) 139 (Pak.) (finding after General Yahya Khan had died that he had been an illegal "usurper" of power and so his actions including the imposition of martial law were unconstitutional).

166. Perhaps most infamously, the Supreme Court in *Begum Nusrat Bhutto v. Chief of Army Staff*, (1977) PLD (SC) 657 (Pak.), declared the imposition of martial law by the military constitutional under the doctrine of necessity.

167. Some judges, however, did not swear this oath. Most notably, Chief Justice Saeed-uz-Zaman Siddiqui refused to swear the oath and was forced to resign instead. *Who Is Saeed-uz-Zaman-Siddiqui?*, TIMES INDIA, Aug. 25, 2008, [http://articles.timesofindia.indiatimes.com/2008-08-25/pakistan/27940296\\_1\\_new-oath-pco-provisional-constitutional-order](http://articles.timesofindia.indiatimes.com/2008-08-25/pakistan/27940296_1_new-oath-pco-provisional-constitutional-order).

168. See *Watan Party & Pakistan Steel Peoples Worker Union. v. Pakistan*, (2006) PLD (SC) 697 (Pak.), Constitutional Petition No. 9 of 2006 & Civil Petition Nos. 345 & 394 of 2006, available at [http://www.supremecourt.gov.pk/web/user\\_files/File/CJD\\_Pakistan\\_Steel\\_Mills\\_Case.pdf](http://www.supremecourt.gov.pk/web/user_files/File/CJD_Pakistan_Steel_Mills_Case.pdf); see also Justice (R) Rasheed A. Ravzi, *The 2007 Lawyers Movement in Pakistan: Cases of Enforced Disappearances in Pakistan*, <http://pakistan.ahrchk.net/chiefjustice/disappearance.php> (last visited Jan. 12, 2012).

time. In response, Musharraf leveled charges of corruption against the chief justice and suspended him in March 2007.<sup>169</sup>

Lawyers from across the country rallied to the chief justice's defense, sparking a nationwide movement to restore him to the Supreme Court. Following this movement, he was reappointed in July 2007.<sup>170</sup> However, after Musharraf won reelection in October 2007, the Supreme Court stayed the election results while it investigated whether Musharraf could have run for office while also holding a position in the military.<sup>171</sup> Faced with this direct challenge to his rule, Musharraf declared an emergency and dissolved the Supreme Court.<sup>172</sup>

Under pressure from domestic groups and international powers, such as the United States, Musharraf passed a National Reconciliation Ordinance ("NRO")<sup>173</sup> in October 2007 that granted amnesty to a substantial number of politicians and bureaucrats, mostly for crimes relating to corruption.<sup>174</sup> This paved the way for Benazir Bhutto to return from exile to contest parliamentary elections.<sup>175</sup> Some felt that Bhutto and her party had cut a deal with the military, providing the military a civilian face to oppose an increasingly popular and politically active judiciary. The NRO was suspended by a panel of judges including Chief Justice Chaudhry shortly after it was passed, but after Chief Justice Chaudhry's removal for the second time it was revived by a panel of judges including the new Chief Justice Abdul Hameed Dogar.<sup>176</sup> General elections were then held in February 2008, in the wake of the assassination of Pakistan People's Party ("PPP") leader Benazir Bhutto—the PPP won<sup>177</sup> After further agitation, Chief Justice Chaudhry and other dismissed Supreme Court judges were eventually reinstated in

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169. See 'Passports of CJP's Family Members Taken Away,' DAWN (Pak.), Mar. 11, 2007, <http://archives.dawn.com/2007/03/11/natl.htm>.

170. Shoaib A. Ghias, *Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan Under Musharraf*, 35 LAW & SOC. INQUIRY 985, 986 (2010).

171. See *id.*

172. See *id.*

173. National Reconciliation Ordinance, Oct. 5, 2007 (Pak.).

174. See Ghias, *supra* note 170, at 1012.

175. See *id.*; Jane Perlez, *Pakistan Strikes Down Amnesty for Politicians*, N.Y. TIMES, Dec. 17, 2009, at A8.

176. See Ghias, *supra* note 170, at 1014.

177. *Id.* at 1017.

March 2009.<sup>178</sup> The popular support received eventually led to the judges' reinstatement.<sup>179</sup> In December 2009, the court under Chief Justice Chaudhry declared the NRO unconstitutional, throwing the country back into a constitutional crisis.<sup>180</sup>

Despite justifying the military's coup in large part on antigraft grounds, Pakistan's Transparency International ranking actually fell during Musharraf's rule, leading some opposition leaders to call his tenure the most corrupt in Pakistani history.<sup>181</sup> Several army officers were seen as corrupt but untouched by the government, while several civilian politicians supposedly had corruption charges dropped in exchange for supporting Musharraf in the 2002 elections.<sup>182</sup> The PPP's 2008 proposed impeachment charge sheet against President Musharraf (who resigned before it could be brought) included hundreds of pages of charges of misconduct, financial irregularities, and violations of the Constitution.<sup>183</sup> Analysts like Ayesha Siddiqi have argued that Pakistani military officers have a strong economic motivation to stay involved in politics, where they can profit from military controlled businesses, land holdings, and official perks.<sup>184</sup>

Pakistan's experience clearly parallels Bangladesh's: in both countries the military used corruption charges to seize power. As in Bangladesh, General Musharraf's fight against corruption in Pakistan frequently became sidetracked by political opportunism that then undermined both democratic and corruption-fighting institutions. The judiciary in Pakistan,

178. *Id.*

179. *Id.*

180. Azhar Masood, *Pakistan's Top Court Rules NRO Illegal*, ARAB NEWS, Dec. 17, 2009, <http://archive.arabnews.com/?page=4&section=0&article=129743&d=17&m=12&y=2009>.

181. See Amjad Mahmood, *PML-N Candidates Vow to Restore Judiciary*, DAWN (Pak.), Feb. 7, 2008, <http://archives.dawn.com/2008/02/07/top13.htm>.

182. See, e.g., Owen Bennet Jones, *Musharraf's Corruption Crackdown 'Failing'*, BBC NEWS, Jan. 23, 2002, [http://news.bbc.co.uk/2/hi/south\\_asia/1777889.stm](http://news.bbc.co.uk/2/hi/south_asia/1777889.stm); *Who is the Arbiter?*, DAWN (Pak.), Dec. 13, 2007, <http://archives.dawn.com/2007/12/13/ed.htm>; see also Press Release, Human Rights Watch, *Pakistan: Entire Election Process Deeply Flawed* (Oct. 9, 2002), available at <http://www.hrw.org/legacy/press/2002/10/pakistan-bck1009.pdf>.

183. Amir Wasim, *Musharraf May Face Corruption, Murder Charges*, DAWN (Pak.), Aug. 11, 2008, <http://archives.dawn.com/2008/08/11/top1.htm>.

184. See generally AYESHA SIDDIQA, *MILITARY INC.: INSIDE PAKISTAN'S MILITARY ECONOMY* (2007).

arguably even more than in Bangladesh, ultimately checked the military's claims on power as it challenged the corruption and poor governance under Musharraf's regime, and helped instigate his departure.

### B. Thailand

The Thai military also has a long history of using corruption charges both as a justification and a tool for their rule. As in the Bangladeshi and Pakistani cases, the Thai military has relied on the courts to validate its rule. Indeed, judges have now been made a central part of Thailand's constitutional order in the military-drafted constitution, along with other "good governance" institutions, in order to help check the power of civilian politicians and political parties.

Between the introduction of democracy in 1932 and 1992, Thailand experienced nineteen coups, making coups the primary vehicle through which Thai political leaders alternated in power.<sup>185</sup> As in Bangladesh and Pakistan, poor governance and corruption were repeatedly invoked as reasons for these coups, in effect becoming the currency of transition. As Clark Neher notes: "By decrying civilian ineptness, corruption, and malfeasance, and by proclaiming threats against the nation's sovereignty, military leaders were able to persuade the bureaucratic polity that the military could do a better job of governing."<sup>186</sup>

As was the case in Pakistan and Bangladesh, the Thai military's justifications for taking over have not always been completely altruistic. For example, many commentators argued that the real reason behind the 1991 coup was that the government was attempting to increase civilian control over the military, including the military's large budget.<sup>187</sup> The military also has often been just as corrupt as the civilian government. General Sunthorn Kongsompong, who led the 1991 coup and its

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185. See Jon S.T. Quah, *Combating Corruption in South Korea and Thailand*, in THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES, *supra* note 8, at 245, 249.

186. Neher, *supra* note 6, at 195.

187. See, e.g., CHRIS BAKER & PASUK PHONGPAICHT, A HISTORY OF THAILAND 245 (2009); Charles P. Wallace, *Junta Frees Deposed Leader of Thailand*, L.A. TIMES, Mar. 10, 1991, at A4.

antigraft drives,<sup>188</sup> left an estate reported at around US\$100 million when he died, despite spending his entire career in government service.<sup>189</sup>

The 1997 Constitution, the first to be drafted by a popularly elected assembly, was more democratic than its predecessors, allowing for direct representation in both houses of the bicameral assembly.<sup>190</sup> It also created a host of independent agencies that were intended to fight graft, including a National Counter Corruption Commission (“NCCC”) that replaced earlier anticorruption institutions, which had proven mostly ineffective.<sup>191</sup>

In 2001, Thaksin Shinawatra was elected prime minister on a populist platform, relying heavily on the rural vote from the country’s poorer North and Northeast.<sup>192</sup> A prominent business tycoon, Thaksin had long been dogged by accusations of corruption.<sup>193</sup> In December 2000, the NCCC indicted Thaksin for illegally registering his assets in the names of staff and business colleagues in the run-up to the 2001 election.<sup>194</sup> The Constitutional Court then had to decide whether to affirm the NCCC’s charges, which would have banned Thaksin from politics. Confronted with the precarious predicament of whether to throw Thaksin out of office immediately after his party had been voted into power, it acquitted him in a controversial eight to seven vote.<sup>195</sup>

Prime Minister Thaksin was subsequently accused of influencing the guardian institutions that the 1997 Constitution

188. See Eric Pace, *Sunthorn Kongsompong, 68; Thai General Led 1991 Coup*, N.Y. TIMES, Aug. 7, 1999, at C16.

189. See Robert Horn, *Asia Buzz: Show Me the Money!*, TIME, Mar. 21, 2001, [http://www.time.com/time/world/article/0,8599,103404,00.html?iid=fb\\_share](http://www.time.com/time/world/article/0,8599,103404,00.html?iid=fb_share).

190. Constitution of Thailand, Oct. 11, 1997, B.E. 2540; see Quah, *supra* note 185, at 249.

191. Constitution of Thailand, Oct. 11, 1997, B.E. 2540, ch. X; see Quah, *supra* note 185, at 249.

192. See Tom Ginsburg, *supra* note 5, at 96; Thitinan Pongsudhirak, *The Tragedy of the 1997 Constitution*, in *DIVIDED OVER THAKSIN: THAILAND’S COUP AND PROBLEMATIC TRANSITION* 27, 32–33 (John Funston ed., 2009).

193. See Ginsburg, *supra* note 5, at 96.

194. See *id.*; Pongsudhirak, *supra* note 192, at 32.

195. Summary Constitutional Court Ruling, No. 20/2544 (2001) (Thai), *available at* [http://english.constitutionalcourt.or.th/index.php?option=com\\_docman&task=cat\\_view&gid=7&Itemid=10&lang=en](http://english.constitutionalcourt.or.th/index.php?option=com_docman&task=cat_view&gid=7&Itemid=10&lang=en); see Ginsburg, *supra* note 5, at 96; Pongsudhirak, *supra* note 192, at 33.

had created to limit political power. For instance, he was blamed for using the appointment process, intimidation, and bribery to undercut the Constitutional Court and NCCC.<sup>196</sup>

In early 2006, demonstrators led by the opposition party alliance, People's Alliance of Democracy, went to the streets in Bangkok decrying what they saw as Thaksin's often authoritarian and corrupt administration.<sup>197</sup> In particular, protestors criticized the tax free sale of Thaksin's US\$1.9 billion telecommunications company and alleged that he was involved in widespread voter fraud.<sup>198</sup> To galvanize support, Thaksin called for elections. Other parties boycotted the election, leading Thaksin's party to achieve an overwhelming victory in April 2006. As a result of the boycott, Thaksin announced he would step aside as prime minister and, in May 2006, the Constitutional Court declared the elections invalid.<sup>199</sup>

In the face of continuing disagreement between the political parties about what to do next, the military seized power in September 2006 while Thaksin was visiting New York City.<sup>200</sup> The military justified its takeover by citing social unrest and corruption, stating that: "There has been social division like never before. Each side has been trying to conquer another with all possible means and the situation tends to intensify with growing doubts on the administration amid widespread reported corruption."<sup>201</sup>

The military reconstituted the NCCC, replacing its members, and giving it new powers to investigate some 10,000

196. See Ginsburg, *supra* note 5, at 96–97; Editorial, *A System of Checks Remains Essential*, NATION (New York), Jan. 22, 2008, <http://www.nationmultimedia.com/opinion/A-system-of-checks-remains-essential-30062978.html>.

197. See Thitinan Pongsudhirak, *Thailand Since the Coup*, 19 J. DEMOCRACY 140, 142–43 (2008).

198. See *id.*

199. Summary Constitutional Court Ruling, No. 9/2549 (2006) (Thai.); see *Thai Court Rules Election Invalid*, BBC NEWS, May 8, 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/4983600.stm>.

200. Seth Mydans & Thomas Fuller, *Army Takes Power While Thaksin is at UN*, N.Y. TIMES, Sept. 19, 2006, <http://www.nytimes.com/2006/09/19/world/asia/19iht-thai.2870024.html>.

201. *Text: Thai Coup-Leaders' Statements*, BBC NEWS, Sept. 19, 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5361756.stm> (quoting statements by leaders of the military coup).

charges of corruption under the Thaksin government.<sup>202</sup> In May 2007, a reconstituted constitutional tribunal banned Thaksin and other top party leaders from participating in politics for five years under charges of election fraud.<sup>203</sup> Thaksin's exile mirrored the similar exiles of Benazir Bhutto and Nawaz Sharif in Pakistan and the military's attempt to exile former prime ministers Khaleda Zia and Sheikh Hasina in Bangladesh.

Thailand's military-backed government wrote a new constitution and approved it by referendum in early 2007, officially relinquishing power after elections were held later that year.<sup>204</sup> The 2007 Constitution promotes guardian institutions to limit the power of political parties even more so than the 1997 Constitution: setting up the Ombudsman's Office, Counter Corruption Commission, Audit Commission, Election Commission, and Constitutional Court.<sup>205</sup> Half the Senate was appointed by a selection committee comprised of the heads of these guardian institutions, including judges from the Constitutional, Supreme, and Supreme Administrative courts.<sup>206</sup> Perhaps tellingly, many of the constitutional provisions surrounding corruption, such as the disclosure of assets, are explicitly binding on political functionaries, but make no mention of military commanders.<sup>207</sup>

These guardian institutions seem premised on the idea that politicians are incorrigibly corrupt and at the root of the country's problems, and thus, they deserve to have their powers tempered.<sup>208</sup> Further, the institutions embody many international "best practices," thereby helping the military

202. See Aglionby, *supra* note 5.

203. Seth MyAdans & Thomas Fuller, *Thai Protesters Ending Airport Blockades*, N.Y. TIMES, Dec. 1, 2008, <http://www.nytimes.com/2008/12/03/world/asia/03thai.html?th&emc=th>.

204. See Ginsburg, *supra* note 5, at 100–02. Ironically, a reconstituted party filled with Thaksin loyalists won the election. The reconstituted Constitutional Court would eventually ban many of the leaders of this party and the party itself for election fraud in the years to come. See *id.* at 102–03; *Thailand Timeline 2001–2011*, CNN, July 3, 2011, <http://edition.cnn.com/2011/WORLD/asiapcf/07/01/thailand.timeline/index.html?iref=allsearch>.

205. See Constitution of Thailand, Nov. 2007, B.E. 2550, ch.X, §§ 204–17, 229–53 (2007).

206. *Id.* ch.X, §§ 113–14.

207. *Id.* ch.X, § 259.

208. See Ginsburg, *supra* note 5, at 91–92 (commenting on guardian institutions in the 2007 Constitution and the idea that political parties are corrupt).

justify its rule as promoting "good governance" more generally.<sup>209</sup>

In Bangladesh and Pakistan, the military took similar steps to strengthen "good governance" while in power. For example, in Bangladesh the military not only revitalized the country's ACC during the coup, it also passed a right-to-information law, set up a human rights commission, and undertook reforms of the judiciary and bureaucracy.<sup>210</sup> In Pakistan, President Musharraf promulgated the Freedom of Information Ordinance in 2002.<sup>211</sup> The Thai military ultimately went much further in institutionalizing such efforts, attempting to use constitutional design to tame the perceived excesses of politicians.

#### V. RECOMMENDATIONS

Emergency powers in developed democracies are traditionally understood to be invoked to deal with a temporary crisis until the normal political order can be restored.<sup>212</sup> In the developing world they rarely serve similar conservative ends. As Victor Ramraj has observed, emergency powers in the developing world are often utilized to try to transform a country "to bring about the basic conditions of stability upon which a constitutional order can take hold."<sup>213</sup> In other words, emergency powers are frequently used in developing countries to attempt to *create* a stable democratic political order, instead of protecting and restoring it.

The "good governance" coups in Bangladesh, Pakistan, and Thailand follow this pattern. Military-backed governments invoked the specter of unmitigated corruption as a moral failing of civilian politicians that justified their intervention into politics. The intervention's goal was stated as eradicating this

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209. See Interview with Nazmul Ahsan Kalimullah, *supra* note 102 (arguing that the passage of the Right to Information Act and creation of a human rights commission was done to appease the international donor community).

210. See ICG, *supra* note 55, at 12–17.

211. Freedom of Information Ordinance 2002 (Pak.).

212. See John Ferejohn & Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 INT'L J. CONST. L. 210, 212 (2004) (arguing that "modern" emergency powers are modeled on the ancient model of the Roman dictatorship in which the Roman Senate could direct the consuls to appoint a dictator for up to six months in case of outside threat).

213. Ramraj, *supra* note 17, at 43.



corruption so that the country can then travel uninhibited down the road to democracy. Yet, these three examples also show that there are serious reasons to doubt that the military can be any more successful than civilian governments in fighting corruption.<sup>214</sup> Instead, anticorruption efforts are often used by the military to consolidate their own power, undercutting fledgling democratic institutions in the process and perpetuating a climate of corruption and poor governance.

The military's use of anticorruption efforts to gain political power does not mean corruption should not be combated, nor should one question its seriousness. Corruption is a drain on economies. It delegitimizes democratic government—as its invocation during military takeovers demonstrates—and it is an injustice in its own right.

Mitigating the dangers involved in anticorruption campaigns would entail a more evenhanded analysis of corruption among politicians and within the military. However, domestic and international anticorruption activists face a dilemma on this point. If they try to paint a more balanced picture by pointing out corruption within the military, they are likely to face a promilitary, nationalist backlash that can undermine their broader anticorruption efforts. If they do not draw attention to corruption within the military, they help foster a political environment in which political parties are seen as corrupt, and the military a savior, creating an asymmetry that promotes military intervention into civilian politics.

In focusing on the underanalyzed dangers of anticorruption campaigns in countries with a politically active military, this Article does not attempt to describe a comprehensive strategy of how to best combat corruption in these contexts. Still, our findings suggest at least three policy recommendations to those wanting to fight corruption: (1) be politically informed and astute, understanding the potential dangers to democratic institutions posed by anticorruption efforts, (2) focus reforms on institutions, processes, fair elections, and prosecuting low-level actors, and (3) be openly

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214. In Pakistan, Musharaff did not declare a state of emergency under the Constitution, but instead placed the Constitution in abeyance. However, his justifications and goals in doing so were arguably quite similar to those of the militaries in Bangladesh and Thailand, which operated under official states of emergency.

skeptical of the military, including implementing a bright line rule against working with military or otherwise nondemocratic governments to fight corruption.

Those who fight corruption must be politically savvy enough to pick which efforts will build momentum in the fight against corruption. Drawing on a wide variety of successful anticorruption experiences both within their country and from around the world can aid immeasurably in this effort. Doing so requires not only looking at experiences where anticorruption efforts have succeeded or failed at reducing corruption, but also where and how they may have contributed to undercutting—or strengthening—the broader democratic process.

To accomplish this, anticorruption activities need to be highly sensitive to local context. Outside “best practices” and international anticorruption rankings<sup>215</sup> can inspire and provide a knowledge base to local activists, but ultimately comparisons should be limited within a country’s own history of combating corruption and the specific forms of corruption that particularly undermine “good governance” and democracy within each country. Building such internal, country-specific anticorruption benchmarks, rather than relying on externally imposed rankings that are insensitive to local factors, should be the key focus for anticorruption activists in developing countries.

Creating broad awareness amongst policymakers and institutional actors about the potential of anticorruption efforts to unintentionally empower the military and undercut civilian democratic institutions can act as a powerful countervailing force to prevent such outcomes. More specifically, judges should be wary of corruption charges brought during a military takeover and realize that in affirming these charges they are aiding the military in their remake of the civilian political order. As the case studies in this Article show, if judges do challenge the military’s plans during a “good governance” coup, they may exercise more power than they might initially assume. Still, there are clear limits to the degree to which the courts can challenge military rule, as the dismissal of Supreme Court judges by

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215. See, e.g., *Corruption Perception Index*, TRANSPARENCY INT’L, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi) (last visited Feb. 16, 2012) (providing access to the Corruption Perception Indices from 1995 to 2011).

General Musharraf in Pakistan demonstrates. Certainly not every court can rely on protestors to take to the streets on its behalf, but the military needs the validation of courts in these coups more than judges might surmise.

Second, international and domestic activists can mitigate the risks of overreach and bias in anticorruption efforts by more broadly focusing reforms on institutions, processes, fair elections, and prosecuting low-level bureaucrats. Stronger institutions like the judiciary can then become new centers of political power that not only can help promote anticorruption efforts against the government, but also help protect against military takeover. By targeting processes, like the government's contracting methods, or laws and policies that are particularly susceptible to corruption, rather than individual political personalities, anticorruption advocates mitigate the risk that they will inadvertently undercut democratic institutions.<sup>216</sup> In promoting truly competitive democratic elections, these advocates help ensure that citizens will choose between competing political parties rather than between civilian political parties and military rule. Bringing low-level bureaucrats to task for graft also makes a tangible difference in people's lives while slowly building a less forgiving environment for corruption.

Finally, anticorruption activists should refrain from supporting anticorruption efforts during a military coup. These efforts are likely to fail and are bound to become politicized at the expense of civilian democratic leaders and institutions. If the military does intervene in governance because of a breakdown in law and order, it should adopt a limited mandate that does not include a broader "good governance" or anticorruption agenda. The international community can play an active role in discouraging the military from adopting any such wider goals that can be abused for political gain.

These recommendations are not meant to be exhaustive. Rather, they show how an understanding of the risks posed by anticorruption campaigns to democratic institutions can help to reframe anticorruption strategies. Corruption in all its forms should be fought against, but not without first understanding

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216. See generally SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* (1999), for a fuller description of this approach.

and adjusting one's strategy to mitigate the unintended adverse consequences to democracy that such a fight can unleash.

#### *CONCLUSION*

Given the history of countries like Bangladesh, Pakistan, and Thailand, we can no longer assume that all fights against corruption promote democracy. Many of these efforts are hijacked for political ends by the military and other self-interested factions and we should not expect otherwise. Anticorruption strategies need to better take this complex reality into account. Claims that democratically elected leaders should be replaced by supposedly "clean" military leaders or neutral technocrats should be evaluated with due skepticism.