

Addressing domestic and transnational corruption: Meeting international standards

Third Master Training Seminar

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

14-17 February 2005 – Islamabad, Pakistan

Agenda

Marriott Hotel Islamabad

Crystal Ball Room

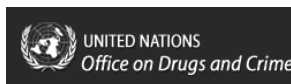
Aga Khan Road

Shalimar 5-PO Box 1251, Islamabad

Phone: +92-51-2826121

Fax: +92-51-2820648

<http://marriott.com/property/propertypage/ISBPK>



Organized in cooperation with the United Nations Office
on Drugs and Crime



Hosted by the National Accountability Bureau of Pakistan

Background and Objectives

The ADB/OECD Initiative's series of training seminars, launched in early 2002, aims to assist Asian and Pacific countries in overcoming capacity deficiencies identified in the context of implementing the Anti-Corruption Action Plan for Asia-Pacific (herein after: Action Plan), the region's instrument against corruption. Capacity building needs addressed as a matter of priority in these seminars are selected by the Initiative's member countries based on their policy dialogue about and evaluation of existing anti-corruption instruments and their individual Action Plan implementation projects. Based on these deliberations, the Initiative's first two training seminars dealt with techniques and practices to improve the effectiveness of prosecuting corruption (February 2003) and with mechanisms to curb corruption in public procurement (July 2004). With the recent signature of the UN Convention against Corruption (herein after: UNCAC) by a growing number of the Initiative's members and on-going preparations of its ratification, a new priority has emerged for them in adjusting national laws and institutions to meet the Convention's mandatory standards.

The UNCAC is an international treaty with global reach. Since December 2003, it has been signed by 113 countries – of which 11 members and observers of the Initiative¹ – and ratified by 12 countries (status as of 6 December 2004). It will enter into force 90 days after 30 states will have deposited their instruments of ratification. The Action Plan, initially adopted on 30 November 2001, specifically targets the Asia-Pacific region and today counts 23 endorsing countries². The UNCAC and the Action Plan share the declared objective of eliminating corruption and bribery, set similar standards and principles, and propose a number of identical means to reach this goal. The two instruments thus are mutually reinforcing processes and have an ideal potential for synergy due to great similarities in terms of involved institutions, thematic coverage and goals. They both provide for preventive measures in the public and private sectors and for legislation and improved procedures to enhance law enforcement and international cooperation. As a means to increase efficiency in implementing anti-corruption tools, they promote information exchange and cooperation with non-governmental actors, and underline the need for technical assistance to support implementation.

In the framework of the Action Plan's self-assessment process, the ADB/OECD Initiative's member countries have conducted an in-depth analysis of their laws and anti-corruption systems in place that address all these aspects. Based on this accumulated knowledge, due attention should now be paid to the mandatory provisions of the UNCAC as clearly the accession of Asian and Pacific countries to this instrument will further strengthen their on-going anti-corruption reform, including under the Action Plan.

Against this background, the objectives of the Initiative's third capacity building seminar are:

- to identify the obligations resulting for signatory states from their ratification of the UNCAC;
- to analyse mandatory provisions of the UNCAC which are critical for the Asia-Pacific region and assess legislative changes and institutional reform required to comply with these provisions
- to assess how to translate resulting obligations into each country's national context.

¹ Australia; China (People's Republic of); Indonesia; Japan; Korea (Republic of); Kyrgyz Republic; Malaysia; Nepal; Pakistan; the Philippines; and Viet Nam.

² Australia; Bangladesh; Cambodia; Cook Islands; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Republic of Korea; Kyrgyz Republic; Malaysia; Mongolia; Nepal; Pakistan; Palau; Papua New Guinea; Philippines; Samoa; Singapore; Vanuatu; and Viet Nam. The People's Republic of China is an observer to the Initiative's Steering Group of endorsing countries.

Structure and methodology

The seminar's introductory session will provide participants with an overview of the UNCAC and the Action Plan and its implementation mechanism; it will further seek to qualify the different types of obligations – mandatory and non-mandatory – and means of implementation at national level as foreseen by the UNCAC, e.g. policy definition, amendment and enactment of laws, action at executive level, and regional and international co-operation. In doing so, it will also explore the role and potential of the ADB/OECD Initiative to support countries in their efforts to translate the UNCAC into their domestic legal and institutional frameworks. In particular in light of the need in most countries to adopt and amend legislation to prepare the UNCAC's ratification, the Action Plan's implementation mechanisms can provide a practical and feasible system to support these efforts in the Initiative's member countries.

Following this overview, the seminar will address in detail selected issues that are of particular importance to Asian and Pacific countries to advance their anti-corruption agenda in compliance with the UNCAC and the Action Plan, and where the UNCAC prescribes clear mandatory standards. The selected themes cover a range of issues with regards to corruption prevention, criminalization and enforcement, as these constitute three fundamental aspects of an effective fight against corruption. A review of the relevant provisions will allow participants to understand the commitment which their countries take by signing and ratifying the UNCAC; practical work and case studies on these topics will assist them in assessing the consequences of this commitment on their country's individual anti-corruption reform strategy and in identifying concrete actions that need to be taken prior to ratification.

Trainers and experts will be selected from ADB and OECD member countries and from the United Nations Office and Drugs and Crime and other specialized UN bodies. In particular in the area of law enforcement and international cooperation, the seminar will make use of the unique experience accumulated by OECD member countries in implementing the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Experts from the ADB and its member economies will be invited to share with seminar participants the ADB's unique experience in implementing governance and corruption prevention assistance programs. The provisions of the UNCAC and the Action Plan's standards and principles have been developed in accordance with other existing international standards³; consequently, the seminar will take due account of these instruments and make use of existing analytical or factual experience with their implementation.

Participants are invited to bring along or consult their countries' legislation applicable to the areas which will be addressed in the seminar, and to be prepared to openly share with their colleagues and the experts their countries' experience in these fields. They are further invited to consult with their governments on possible reform processes undertaken in view of the signing and ratifying of the UNCAC. The seminar's working language will be English; participants are expected to have excellent English skills in reading, understanding and speaking.

³ In particular: The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the ADB Anti-Corruption Policy, the APEC non-binding Principles on Public Procurement, the APEC Anti-Corruption Course of Action, the 40 Recommendations of the Financial Action Task Force on Money Laundering, the International Code of Conduct for Public Officials, the ICC Rules of conduct to combat Extortion and Bribery in international Business, or the UN Convention on Transnational Organized Crime.

Program notes

Corruption prevention

Corruption prevention in the public sector is considered a central precondition of a reliable and efficient public administration. It combines a number of parallel measures aimed at eliminating systemic weaknesses at different levels. Consequently, the UNCAC and the Action Plan alike pay high attention to corruption prevention measures, in particular the adoption and enforcement of codes of conduct for public officials, and transparency and accountability in the management of public finances. Such measures in the civil service however need to be accompanied by similar measures targeting the private sector in order to have an impact on the fight against corruption. The number of private sector initiatives in the Asia-Pacific region aimed at encouraging the establishment of internal control mechanisms and the promotion of corporate ethics and compliance systems among larger companies has increased over the past few years. On the other hand, governments have not focused as much on establishing and enforcing company management and accounting standards.

Theme 1: Codes of conduct for public servants (Mo 14 Feb, 14h00-17h30)

Codes of conduct are important instruments to foster ethical behavior of public servants and to ensure public servants' proper understanding of expectations and norms as regards their exercise of a public function. Codes of conduct usually regulate the receiving of gifts and hospitality and prohibit bribes and other forms of abuse of public authority. In some countries, they further regulate a public servant's involvement in economic and political activities as part of a set of measures to prevent conflict of interest situations.

Article 8 of the UNCAC prescribes that "*in order to fight corruption, each State party shall promote, inter alia, integrity, honesty and responsibility among its public officials [...]*". For the purpose of implementing this goal, the same article commits Parties to the Convention to take note "*of the relevant initiatives and regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials [...]*". The Action Plan similarly, under its Pillar 1, promotes the establishment of "*ethical and administrative codes of conduct that proscribe conflicts of interest [...] and promote the highest levels of professionalism and integrity through, inter alia, [...] the promotion of codes of conduct taking due account of the existing relevant international standards [...], and regular education, training and supervision of officials to ensure proper understanding of their responsibilities.*"

This session will discuss some essential aspects which a public sector code of conduct needs to cover so as to effectively prevent corruption. It will further discuss implementation and enforcement issues, including disciplinary provisions, the potential need for accompanying modifications in the regulatory environment, and the necessity and modus of staff training in public sector ethics issues. As a result, participants will be able to analyze their own administration's codes of conduct and identify potential gaps therein which need to be covered in order to fully meet the obligations under the UNCAC. They will further be able to better understand problems that may arise in the implementation and enforcement of codes of conduct and potential remedies thereto. The International Code of Conduct for Public Officials, contained in the annex to the UN General Assembly resolution 51/59 of 12 December 1996, and the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service will serve as a reference to guide the members of the Initiative in their reform process in this matter.

Theme 2: Management of public finances (Tue 15 Feb, 9h00-12h30)

Corruption results, *inter alia*, from poor management of public finances and entails important losses of public resources. Sound financial management and accountable and transparent government spending are thus critical to effectively prevent and detect corruption. The Action Plan's Pillar 1 consequently promotes the

proper use of public resources. Article 9 § 2 of the UNCAC prescribes that “*each State Party shall [...] take appropriate measures to promote transparency and accountability in the management of public finances*”.

Based on the ADB’s extensive experience in assisting its members to enhance governance in public financial management, this session will discuss a selection of measures foreseen by the UNCAC to achieve the objectives set out in Article 9. In particular, it will address issues arising from the development of transparent procedures for the adoption of national budgets and revenue and expenditure reporting mechanisms, from standards for and oversight of accounting and auditing, and from risk management and internal control. In line with Article 9 § 3 of UNCAC, the session will further identify civil and administrative measures to sanction possible abuse of public finances or the falsification of accounting books, records, financial statements and other documents related to public expenditure and revenue.

Theme 3: Designing and enforcing accounting and auditing standards for the private sector (Tue 15 Feb, 14h00-17h30)

Establishing standards for company management and the maintenance of books and records, auditing and accounting requirements and reporting obligations, and providing for effective oversight and enforcement of these standards are key measures to combat corruption by ensuring that corporations cannot mask bribes as legitimate expenditures and to foster ethical business. The UNCAC’s Article 12 § 3 commits Parties to ensure that their respective domestic laws and regulations effectively prohibit certain acts that may be carried out for the purpose of committing corruption. The Action Plan’s section on corporate responsibility and accountability promotes “*the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omission and falsification for the purpose of bribing a public official, or hiding such bribery, in respect of the books, records, accounts and financial statements of companies*”.

For the purpose of exploring the type of rules and regulations which governments need to put in place to effectively prohibit such practices, participants will discuss the internationally recognized reference in this matter as set forth in the International Accounting and Auditing Standards (IAAS). This session will further assess the respective roles and responsibilities of key players, linkages between private and public sector accounting and auditing, and identify a number of good practices from the Asian and Pacific region. Finally, the session will discuss a number of issues related to the enforcement of accounting and auditing standards and assess the need for strengthening professionalism and education within the accounting profession. In addition to the IAAS, experience accumulated by ADB member economies, as well as by OECD member countries in implementing the OECD Anti-Bribery Provision’s Article 8 on accounting and auditing, will serve to guide the discussion.

Prosecution of corruption

Criminalizing bribery and related practices such as the laundering of the proceeds not only clearly draws the line between acceptable and unacceptable behavior; it is also the fundamental precondition for various procedural measures, such as the provision of international judicial assistance or the confiscation of ill-gotten gains. All parties to the Action Plan, like most countries around the world, have criminalized active and passive bribery of public officials, and money laundering legislation is also in place or currently being established in a growing number of countries. Loopholes or ambiguous regulations however exist, and certain forms of corruption are not yet criminalized in some countries. Reform efforts to ensure that laws and regulations in the areas of corruption and money laundering are as concise and comprehensive as possible therefore remain crucial to effectively deter corruption.

The existence of appropriate sanctions applying to these offenses is a fundamental prerequisite to ensure that laws and penal codes act as an effective deterrent to corruption, as is the effectiveness of law enforcement. In this context, equipping law enforcement authorities with means to depriving criminals of the proceeds of their crimes, through effectively enforcing anti-money laundering legislation and appropriate procedures for the seizure and confiscation of proceeds, is important in ensuring that a strong message is sent that corruption does not pay. In particular in the context of so called “grand” corruption cases, where

criminals will seek to avoid detection and the confiscation of their assets by hiding in foreign jurisdictions, these procedures often imply the need for international legal assistance.

Theme 4: Seizure, confiscation and asset recovery (Wed 16 Feb, 9h00-12h30)

Seizure and confiscation of proceeds of corruption and of evidence thereof is an important tool of law enforcement and often seen as one of the most effective punishments and deterrents for corruption. Seizure of assets during the investigation phase is critical to ensure that evidence that may be needed in a later stage by the prosecuting authorities to form the case is preserved, and that a possible later judgment of confiscation can be executed. Article 31 of the UNCAC sets out the need to establish for procedures which allow to trace, freeze and seize such assets and to regulate the administration of these assets by competent authorities, and to allow for the confiscation of proceeds of corruption and of property or other instrumentalities used in or destined for use in an act of corruption. Furthermore, the return of assets and the cooperation and assistance in this matter between states is a fundamental principle of the UNCAC, which requires signatories to both allow another state party to initiate civil action in its courts and to establish title to or ownership of property acquired through corruption, and allow their courts to order those who have committed an offence to pay compensation or damage to another State Party.

This session will thus address legal provisions, procedures and practical tools which countries need to establish to allow for the seizure, confiscation and recovery of assets. As proceeds of corruption and other stolen assets are often hidden in foreign jurisdictions, particular attention will be paid to difficulties encountered in the context of submitting and executing mutual legal assistance requests for seizure and confiscation, and to remedies thereto as foreseen in the UNCAC. In this context, the session will draw on the experience gained by signatories to the OECD Anti-Bribery Convention in translating into domestic law the provisions of this Convention's Article 3 § 3 on seizure and confiscation, and their policies and practices in dealing with requests for seizure and confiscation received from foreign jurisdictions.

Theme 5: Bribery of national and foreign public officials (Wed 16 Feb, 14h00-17h30)

In terms of criminalization, Articles 15 and 16 of the UNCAC can be considered its centerpieces. Article 15 commits countries to establish as criminal offenses the “*promise, offering or giving to an official, either directly or indirectly, of an undue advantage [...] in order that the official act or refrain from acting in the exercise of his or her official duties*”. It also criminalizes so called “passive bribery”, by establishing as a criminal offense the solicitation or acceptance of a bribe by a public official. Article 16 of the UNCAC commits states to establish as criminal offense the bribing of a foreign public official. This is not yet the case in most countries from Asia and the Pacific but becomes increasingly important in light of these countries' growing involvement in international trade and investment.

In this session, participants will thus discuss the elements of the offenses of domestic and foreign bribery as set forth in the UNCAC, as well as the need for effective, proportionate and dissuasive criminal penalties applicable to these offenses. As regards sanctions, particular attention will be paid to the introduction of the responsibility of legal persons for bribery. This type of sanction is especially important because in bribery cases, it is often the legal person, i.e. a company, which has the actual interest in and benefit from the corrupt behavior, and therefore criminal prosecution of individuals alone does not act as a sufficient deterrent. The experience accumulated by OECD countries in introducing the offense of foreign bribery in the framework of implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the approaches chosen by these countries to introduce criminal liability for legal persons will serve to guide the discussions.

Theme 6: Laundering of proceeds of corruption (Thu 17 Feb, 09h00-12h30)

Ill-gotten gains are usually passed through other transactions to camouflage their origin, and third parties are often involved, thereby considerably aiding corrupt individuals in their criminal behavior. Criminalizing money laundering deters such conduct and thus constitutes an important instrument against corruption. The issue looms large on the agenda of the Initiative's member countries and, as a result, anti-money laundering legislation has been or is currently being established in most countries of the Asia-Pacific region. This recent

adjustments of anti-money laundering legislation in the region has been largely due to the countries' active involvement in the Asia-Pacific Group on Money Laundering (APGML). Article 23 of the UNCAC commits countries to the existence and effective enforcement of anti-money laundering legislation.

To ensure that legislation criminalizing money laundering can be effectively enforced, law enforcement agencies however need to be equipped with adequate investigative means. Consequently, Article 14 of the UNCAC obliges its State Parties to take a number of steps to ensure that suspicious financial transactions can be detected and are reported to respective authorities. These target in particular financial institutions and commit State Parties to establish regulatory and supervisory regimes clarifying, *inter alia*, requirements for customer and beneficial owner identification, record-keeping and the reporting of suspicious transactions. Also for the purpose of preventing and detecting money laundering, the Convention suggests to its signatory States the establishment of a financial intelligence unit. Finally, prosecuting money laundering often involves different jurisdictions and consequently, effective mutual legal assistance is often the key to success.

Making use of the 40 Recommendations of the Financial Action Task Force on Money Laundering to which both the Action Plan and the UNCAC refer, this session will discuss the elements of the offense of money laundering and applicable sanctions, and the rationale and practicalities of a selection of tools that can facilitate the detection and strengthen the prevention of money laundering.

Monday, 14 February 2005

9.00 – 10.30 **Opening session**

Welcoming remarks:

Hon. Mian Imran Masood, Minister for Education, Government of Punjab

Opening remarks and seminar overview:

Jak Jabes, Director, Governance and Regional Cooperation Division, ADB

Frederic Wehrlé, Coordinator Anti-Corruption Initiatives, Anti-Corruption Division, OECD

Keynote address:

Ms. Catherine Volz, Chief, Treaty and Legal Affairs Branch, UNODC

10.30 – 11.00 *Coffee break and Press conference*

11.00 – 12.30 **Meeting international standards**

Overview on the UNCAC's themes and coverage, its tools and instruments of regulations, and its implementation cycles and mechanisms (Ms. Catherine Volz, UNODC)

The role of NGOs in assisting governments to meet international standards (Mr. Shaukat Omari, Executive Director, TI Pakistan)

Introduction roundtable of the seminar participants and experts

12.30 – 14.00 *Lunch hosted by the ADB/OECD Secretariat*

14.00 – 17.30 **Codes of conduct for public servants**

Experts: Mr. Charles A. Caruso; Regional Anti-Corruption Advisor, American Bar Association Asia Law Program

Evening: free

Tuesday, 15 February 2005

09.00 – 12.30 **Management of public finances**

Experts: Ms. Catherine Volz, Chief, Treaty and Legal Affairs Branch, UNODC

12.30 – 14.00 *Lunch hosted by the ADB/OECD Secretariat*

14.00 – 17.30 **Definition and enforcement of private sector auditing and accounting standards**

Experts: Ms. Kathleen Moktan; Principal Financial Management Specialist, Governance and Regional Co-operation Division, ADB
Mr. Asad Ali Shah, Institute of Chartered Accountants of Pakistan

Evening: Visit to the Pakistan Heritage Museum, followed by cultural dances and an outdoor dinner hosted by the National Accountability Bureau Pakistan at "Lok Virsa"

Wednesday, 16 February 2005

09.00 – 12.30 **Seizure, confiscation and asset recovery**

Experts: Ms. Kimberly Prost, Head, Criminal Law Section, Legal and Constitutional Affairs Division, Commonwealth Secretariat
Dr. Faqir Hussain, Secretary, Law & Justice Commission of Pakistan

12.30 – 14.00 *Lunch hosted by the ADB/OECD Secretariat*

14.00 – 17.30 **Criminalizing bribery of national and foreign public officials**

Experts: Mr. Martin Polaine, Senior Crown Prosecutor, seconded to the Independent Police Complaints Commission, UK
Mr. Frédéric Wehrlé; OECD Anti-Corruption Division

Evening: Dinner hosted by the National Accountability Bureau Pakistan (Participants to preferably wear national dresses)

Thursday, 17 February 2005

09.00 – 12.30 **Laundering of proceeds of corruption**

Experts: Mr. David Shannon, Asia-Pacific Group on Money Laundering
Mr. Muhammad Kamran Shehzad, Director, Banking Policy Department, State Bank of Pakistan
Ms. Janet Grace Maki, Solicitor-General, Cook Islands

12.30 – 13.30 **Closing Session**

Brief summary of obligations on ratifying parties to the UN Convention resulting from the issues discussed during the seminar, and outlook to further obligations resulting from the UNCAC
Potentials for synergies in implementing obligations under the UN Convention and the Action Plan through the ADB/OECD Initiative (Mr. Jak Jabes, Mr. Frédéric Wehrlé, Secretariat ADB/OECD Initiative)
Closing roundtable for feedback
Closing remarks by Lt. Gen. Munir Hafiez, Chairman, National Accountability Bureau, Pakistan

13.30 *Press conference (participation on invitation only)*

13.30 – 14.00 *Short lunch hosted by the ADB/OECD Secretariat*

14.00: Sightseeing tour organized by the National Accountability Bureau of Pakistan: Steam train ride, visit to steam train museum and travel to the city of Taxila on the Silk Route for visit of the archeological sites and UNESCO world heritage in Taxila.
