The Role of Preventive Anti-Corruption Bodies under the UNCAC

UNDP Experiences on Institutional Arrangements to Combat Corruption

Regional Conference on Preventive Corruption and Strengthening Cooperation Between Anti-Corruption Bodies in the Arab Region

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Objectives of the Session

• Background (UNDP’s involvement in supporting preventive AC bodies)

• Analysis of various institutional arrangements for combating corruption

• Lessons learned/conditions for success derived from various country cases

• Q & A
Background

- UNDP was one of the pioneer organizations in early 1990s to develop AC programmes (first generation of work on ATI; 1999 flagship manual *Fighting Corruption to Improve Governance*).
- Since then, UNDP has been a leading provider of TA on AC within governance portfolio.
Internal Norms and Standards

8th Crime Congress
GA Res.51/191 UN Declaration

TOCC Negotiation
GA Res.55/61 Adoption of CAC

GA Res.55/181 Asset Recovery

Merida Conference

1996 OAS Convention
1997 EU Convention
1997 OECD Conventions

1999 CoE Conventions

2003 AU Convention

UNCAC 2003

GA Res.58/4 Establishment of Ad Hoc Committee (1st–8th Sessions)
International norms and standards on AC (particularly, UNCAC) continue to evolve.

UNDP need to refocus its energies and priorities in anti-corruption, within its area of comparative advantages.

Kemal Dervis:

“A national system of **democratic governance** that is supportive of inclusive growth, **harmonized with international standards and norms** developed within a legitimate and cooperative multilateral framework, constitutes the crucial software of development.”

--Statement to staff post HLP
November 2006
The Four Pillars of the UNCAC and Technical Assistance

Technical Assistance “UNCAC”

Strengthening State Institutions

Preventive Measures

Asset Recovery

International Cooperation

Criminalization Law Enforcement
**Key Objectives of Primer (Contd.)**

UNDP’s comparative advantages (e.g., focus on preventive measures; recognition of corruption as a governance issue)

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**Interdependence of Cooperation to Prevent and Combat Corruption**

**UNDP as a Democratic Governance Framework**

<table>
<thead>
<tr>
<th>UNCAC Articles</th>
<th>Demand for Programming</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 5: Anti-corruption policies</td>
<td>Policy framework, strategies, coordination, and consultation</td>
</tr>
<tr>
<td>Article 6: Independence of AC bodies</td>
<td>Technical assistance to establish/strengthen oversight institutions</td>
</tr>
<tr>
<td>Article 7: Civil service capacity-building</td>
<td>Public sector reform</td>
</tr>
<tr>
<td>Article 8: Code of conduct</td>
<td>Promotion of integrity, honesty and responsibility among public officials</td>
</tr>
<tr>
<td>Article 9: Public procurement and management of public finance</td>
<td>Promoting a transparent effective system of public procurement and public finance management</td>
</tr>
<tr>
<td>Article 10: Public reporting</td>
<td>Media and civil society empowerment</td>
</tr>
<tr>
<td>Article 12: Private sector</td>
<td>Private sector in delivering services</td>
</tr>
<tr>
<td>Article 13: Civil society</td>
<td>Social audit, and budget tracking</td>
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</tbody>
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Democratic Governance Approach: Holistic Approach to Prevention

UNDP Value-Added

Demand Side of DG/AC
Inclusive Participation
- Civil society
- E-government
- Electoral systems and processes
- Political parties
- Independent journalism

Supply Side of DG/AC
Responsive Institutions
- Parliaments
- Justice
- Public sector reform
- Decentralized and local Governance
- (Economic Governance)

International Principles
- Gender
- Human rights
- Anti-Corruption
Anti-Corruption Bodies – Art. 6 of UNCAC

- Establish anti-corruption body or bodies to
  - Implement, oversee and coordinate the implementation of the anti-corruption policies
  - Increase and disseminate knowledge on corruption
- Independence to enable the body to carry out its functions effectively and free from undue influence
  - Legal independence
  - Political independence – appointment and removal process
  - Realistic budgetary resources and allocations
  - Immunity against civil litigation
- Necessary resources, e.g. specialized staff and training
Analysis of Various Institutional Arrangements

Despite the emphasize on the importance of preventive AC bodies, many AC efforts have failed.

Major Policy Issues:

• Decision on the institutional models for fighting corruption (separate ACA vs. modifying existing ones)

• Decision on the policies and capacity development efforts to empower AC institutions (responsibilities, mandates and power, level of autonomy, resources)

• Ensuring clear rules of engagement (interaction, coordination and collaboration)
Case for and against Specialized AC Commissions/Agencies

Very few examples of successful independent AC Institutions (Hong Kong; Singapore; Botswana; Australia

Advantages:
• Completely new institution enjoys a ‘fresh start’
• Sends a signal that the government takes AC efforts seriously;
• High degree of specialization, expertise, and autonomy
• Greater public credibility; political and legal
• Clarity in the assessment of its progress, successes and failures;
• Faster action against corruption.

Disadvantages:
• Often a technocratic answers to a political problem;
• Greater admin. costs; cost of failure is substantial-public expectation;
• Isolation, barriers, rivalries with other existing agencies
• Vulnerable to attempts to marginalize (e.g., under funding)
Lessons from the Case Studies

**Australia** (Independent Commission against Corruption)

- Success was a result of help and info by public (public perceived it accountable and transparent)
- Three-pronged approach for public sector: HK model (prevention, investigation, and education)
- Focus on systems and organizational changes
- Successful collaboration with other agencies
- Appropriate data to carry out proper risk analysis and assessments (public surveys; hearings)

**Botswana** (Directorate on Corruption and Economic Crime)

- Replicated three-pronged approach of Hong Kong model
- Provide community outreach programmes for public and private sector
- Has predictable budget (US $2.4 million)
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<tr>
<th>Country</th>
<th>Commission Name</th>
<th>Issues</th>
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| Bulgaria                | Commission for Coordinating Actions against Corruption | • National AC strategy lacks education and public awareness  
                         |                                                      | • Lack of judges, prosecutors and investigators specialized in corruption (comprehensive reform of judiciary needed) |
| Indonesia               | Commission for Eradication of Corruption             | • Superficial commitment to fighting corruption (inadequate funding; lack of government’s genuine support)  
                         |                                                      | • Reforms of the judiciary disappointing  
                         |                                                      | • Creative initiatives/promising legislations not followed through |
| Latvia                  | Corruption prevention and Combating Bureau           | • Lack of direction/coordination among various institutions  
                         |                                                      | • Negative perception of public (disparity between crimes registered and individual sentences) |
Lessons from the Case Studies (Contd.)

**Hong Kong:** Success of Independent Commission against Corruption is Generally Attributed to:

- Political will manifested by adequate legal powers and resources to the ICAC;
- Independence of the ICAC;
- Authority of the Commissioner to manage staff;
- Existence of properly enforced legislation against corruption;
- Publicity for prosecutions of corruption;
- A law that obliges public servants to declare their assets and the sources of their funds, when asked;
- A holistic approach to the problem of corruption;
- A supportive public; and the rule of law

**Malaysia:** The success of ACA is attributed to:

- Political will of the government (continuous strengthening of AC legislation and mandates of ACA)
- Adoption of the National integrity Plan (NIP)
- Focus on family (enhance integrity; build ethical society)
Conclusion: Major Lessons Learned

- **Strong political backing** at the highest level of government
- **Political and operational independence** of ACA
- **Realistic costing exercise**: sufficient resources (financial, human and technical) over the long run (address issue of resources upfront)
- **Clearly defined ToR** of specialized agencies
- **Need for sound performance indicators** of ACCs (monitoring methodology and indicators of success)
- **Coordination and clarity in mandates** vital while strengthening existing institutions
- **Solid and comprehensive legal frameworks**
- **Systemic, long-term, coherent and holistic strategy** for combating corruption (prevention, investigation and awareness raising)
- **Support of society** at large
- **Competency and effectiveness of all institutions** involved in AC
Thank You!
Further information
www.undp.org/governance