

Background paper (Friday 7 September, 8:00 – 9:45 am)

Implementing the UN Convention against Corruption

Making Technical Assistance work: The German UNCAC Project

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GTZ German UNCAC Project

0. Summary

The international community has strengthened their efforts to implement the UN Convention against Corruption (UNCAC). The German UNCAC project responds to short term and longer term needs of partner countries and directly contributes to effecting Chapter VI of the Convention in the context of bilateral and multilateral development cooperation. Ownership as exercised by partner countries is encouraged either *ad hoc* or with a longer term focus on strategically important measures, which contribute to governance reform and which in itself are best practices. Such initiatives further contribute to broaden the base for applying the UNCAC in development cooperation in a way that they respond to country specific approaches and at the same time creating learning and feedback loops at the national and international level.

The project is innovative in its approach: It promotes UNCAC as universal anti-corruption instrument, which in turn contributes to de-politicising the combat against corruption. It furthermore facilitates practical and strategic initiatives for compliance according to requests and priorities with the aim to generate best practices.

The project is contemporary in its context: It addresses anti-corruption in the policy dialogue through the UNCAC provisions, it links anti-corruption to governance and adds to the ongoing domestic debate and to international networking.

1. Context

Germany has long been an active partner during the negotiation process up to being among the first signatories of the UN Convention against Corruption in December 2003¹. Complementing the promotion of the Convention at the level of the United Nations, European Union and the G8, Germany has initiated a special facility to support the implementation of the UNCAC in development cooperation².

The Federal German Ministry for Economic Cooperation and Development (BMZ) has commissioned the German Technical Cooperation (GTZ) to implement the German UNCAC Project. The project has an explicit focus on technical assistance and information exchange (TA) and contributes to effect the provisions of Chapter VI of the Convention.

¹ www.bmz.de/cgi-bin/search.pl?sprache=en&query=Corruption

² The term UNCAC Project describes this German technical assistance initiative GTZ.
<http://www.u4.no/projects/project.cfm?id=688>

2. Objective

The project promotes some of the key provisions of the UN Convention against Corruption. It aims at supporting the capacity of developing countries and countries in transition to prevent and combat corruption as well as to assist them in meeting their needs for the implementation of the Convention.

Systemic institutional change of a prophylactic nature is promoted, in which individual responsibility and the political will to change on the part of the partner institutions are essential prerequisites. Rules and norms for the public sector, active involvement of civil society in monitoring public services and denouncing bribery as well as public ethics that can also be extended to the private sphere are starting points in this context. The prime focus of the project is contributing to mainstreaming the Convention in development cooperation.

3. Approach

Following from ongoing technical assistance projects and programmes, particularly in the governance context, which focuses on participation of society in decision making and access to services, transparency of the state and accountability of decision making institutions and individuals, assistance can be provided along ongoing programmes and projects of German development cooperation. All initiatives under the UNCAC project are related to the specific context of partners at the level of national countries and international institutions. The project's country specific activities not only complement efforts of the United Nations Office on Drugs and Crime (UNODC)³ in its capacity as secretary to the Convention, but also link with regional initiatives such as the ADB/OECD Anti-Corruption Initiative Asia and Pacific, cooperates with the OECD Govnet (Network on Governance)⁴, partners with the U4 Anti-Corruption Resource Centre⁵, the Basel Institute on Governance⁶ and supports activities of Transparency International.

For the Convention, this means that development cooperation can take action in areas where it is already well established, i.e. where the intensity and continuity of cooperation at micro, meso and macro level is contributing to reform. For the UNCAC project, it means that – due to the complexity of corruption and to budget restrictions that prevail – particularly relevant themes and appropriate measures are supported.

The approach chosen is pragmatic. It constitutes a best practice. It aims at supporting the creation of a critical mass of initiatives and results in supporting the implementation of the UNCAC at various levels. In this way the UNCAC project complements UNODC's own efforts and demonstrates what TA as stipulated in Chapter VI of the Convention can achieve.

³ www.unodc.org/unodc/en/corruption.html

⁴ The Paris Declaration on Aid Effectiveness (2005) in its statement of resolve requests the international donor community for joint and coordinated action in anti-corruption as expressed through the three DAC principles, which are well linked to the provisions of Chapter VI of the UNCAC. www.oecd.org/searchResult/0,3400,en_2649_37447_1_1_1_1_37447,00.html

⁵ The comparative advantage of U4 lies in the platform it provides for its six partners and through them. It can best be described in concrete terms on the basis of particular themes, including dialogue with parliaments, parties, partner organisations, civil society organisations (CSOs) and the private sector. www.o4.no

⁶ The Basel Institute on Governance is an independent non-profit institution devoted to interdisciplinary research and policy advice in the areas of public, corporate and global governance. Combating corruption has been a particular focus for many years. www.baselgovernance.org/icar/

4. Core themes

Which are the core themes specified by the Convention, and what are TA's options in the short and medium term? If the preventive measures listed in Chapter II of the Convention are to take priority in cooperation, this is because they form the essence of ongoing TA projects in the field of governance. They also mark the boundary to potential contributions on criminal prosecution including asset recovery, which are other important core themes required by Chapters III and V of the Convention. Prevention, criminalization and law enforcement together create the prerequisites to recover stolen assets.

In practical work the focus is on prevention as expressed in Chapter II. However, in view of strengthening capacities to deal with corruption under the provisions of Chapter VI the project also responds to the request of partner institutions for criminalization and law enforcement, mutual legal assistance and asset recovery. From 2005 until mid 2007 20 pilot initiatives have been supported directly in relation to German development cooperation through national or international partners.

4.1 Mainstreaming

The UNCAC serves as true mainstreaming instrument⁷. Echoing the successive loss of reservation to address corruption as a core topic in the policy dialogue, the comprehensiveness of the Convention offers a firm basis and unique opportunities to bring anti-corruption on the development agenda. GTZ operates 67 country offices world wide. The German UNCAC project challenges its decentralised structure to generate experience, channelling knowledge according to demand by partner countries and bringing this knowledge into the policy dialogue. A large number of German TA initiatives address UNCAC either explicitly or implicitly⁸. Examples are found in GTZ supported governance projects and programmes in the area of democratic governance, public administration reform and rule of law, public finance management and public procurement (Art. 5-10 and Chapter III), private sector development (Art. 12), civil society involvement (Art. 13), but also in specific initiatives for the promotion of integrity pacts (Art. 8), judicial reform (Art. 11 and Chapter III) and finally, asset recovery and mutual legal assistance (Chapters IV and V).

Implementing the UNCAC in development calls for regional and international cooperation. To this end the project – in close cooperation with the U4 Anti-Corruption Resource Centre (U4) – initiated an UNCAC resource page at the web portal of the centre, which serves as primer for development practitioners. The U4 UNCAC resource page contributes to mainstreaming anti-corruption in technical assistance⁹. Additionally, it accommodates the results of a broader study in selected countries on how processes of creating national anti-corruption policy frameworks as stipulated in Art. 5 of the Convention are organised.

The assessment and recommendations are expected to be used by legal and development practitioners to promote initiatives for the creation of national anti-corruption policies and strategies. Finally, the results of the study will be used to facilitate the implementation of UNCAC

⁷ Mainstreaming refers to making UNCAC and its potential for promoting governance known to practitioners and legal experts and supporting its provisions according to country specific need.

⁸ Supporting the Implementation of the United Nations Convention against Corruption: What Technical Assistance Can Do. Examples from South Africa, Ghana, Indonesia and Latin American Countries, Eschborn 2007. www.u4.no/projects/project.cfm?id=688

⁹ International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption Montevideo, June 2007, U4 Background Paper, www.u4.no/pdf/?file=/themes/uncac/documents/technical-assistance-background-paper.pdf

in terms of promoting a methodical approach and contributing to the working groups established by the 1st Conference of States Parties (COSP) on the review of the implementation of UNCAC and on technical assistance. The outcome of the study, which is expected to generate a best practise, also complements the efforts of UNODC.

The UNCAC project serves German development policy. Its advisory activities vis-à-vis the Federal German Ministry for Economic Cooperation and Development broadens the scope for making UNCAC the main international anti-corruption instrument in German development cooperation. The expertise generated is used in the policy dialogue with African, Asian and Latin American partner countries. In this regard, the project contributes to Chapter VI of the Convention in a broader context.

The project is engaged in the activities of the OECD/DAC Govnet where anti-corruption in the context of promoting governance is an effort for bringing donor harmonisation in development cooperation forward. Support is also made available to regional initiatives such as the Pan African Forum against Corruption of February 2007 or the cooperation with the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. Regional cooperation offers opportunities for a needs-based support to partner countries. At the same time such initiatives allow to direct German development cooperation more specifically towards anti-corruption in partner countries of the region. With the ratification of the UNCAC by most partner countries, corruption is no longer a taboo theme.

4.2 Advocating compliance

The ratification of the UNCAC requires adapting national legislation (legal compliance) and enacting effective implementing regulations (full compliance). As a first initiative for promoting legal compliance the project had responded to the request of the Indonesian Corruption Eradication Commission (KPK) to support a gap analysis or compliance review. This initiative which commenced in late 2005 and was completed prior to the 1st Conference of States Parties complemented the Indonesian ratification process. In parallel, a legal compliance review was done in Colombia, however in a different way¹⁰.

The Indonesian gap analysis¹¹ compares national anti-corruption laws and initiatives with the provisions of the UNCAC. The analysis was drafted in a consultative process involving national stakeholders and, at a certain point of time, international expertise. The process explicitly took note of the requirements of the Paris Declaration in terms of ownership, which lay with the Corruption Eradication Commission. The Indonesian team of experts was supported at a stage where the gap analysis was already completed with an exclusive view on the national legislation by a team of international experts. The dialogue resulted in a broad reflection on the assessment vis-à-vis international state of the art and subsequent adjustments according to what was considered appropriate by the Indonesian expert team. The consultative process, which was the main component of the German contribution further aimed at a broad follow-up, which has been established and which is expected to bring full compliance forward. The present initiatives serve Indonesia's preparations for the 2nd Conference of States Parties.

Conceptually, the core of the gap analysis or compliance review is an assessment of the legal, procedural and practical consequences of the ratification of the UNCAC. The results promote

¹⁰ The differences in performing gap analyses or compliance reviews are demonstrated in a recent working paper: A Comparison of Compliance Reviews based on the UN Convention against Corruption: Indonesia, Colombia, Cameroon and Germany, Eschborn 2007, www.u4.no/projects/project.cfm?id=688

¹¹ www.kpk.go.id/modules/news/index.php?lang=indonesia

national law-making processes, especially the hands-on implementation of measures targeting prevention and the control of corruption at the national and regional level. The approach complements the efforts of the working group on the review mechanism of the convention and the self assessment checklist in particular. In this regard, the gap analysis in itself and the process in particular are considered a best practice.

German development cooperation remains engaged with the KPK through a number of additional activities, which include the development of a public administration service act, integrity pacts in the public administration, a knowledge centre in the KPK and advanced training in asset recovery for KPK personnel. All activities are part of a broader governance engagement in the bilateral development cooperation. In fact, one could conclude that the gap analysis has accentuated and in fact triggered a chain of follow-up activities for implementing the UNCAC.

Political corruption is one of the core impediments to governance. A potentially innovative and new initiative to measure transparency in party and campaign funding is the CRINIS project of Transparency International (TI)¹². It directly addresses Art 7 of the Convention. The initiative, which was developed and tested by TI in Latin America and which is to be further tested in African and Asian countries for broader application at a later stage, is supported by the German UNCAC project. CRINIS is a diagnostic tool for benchmarking transparency and accountability in political finance. The tool evaluates the levels of transparency built into current national legislation and political financing practices of political parties and candidates during election campaigns, as well as the financial activities of parties in non-election years. It has the capacity to detect weaknesses and strengths in a given country's system. It serves awareness-raising and advocacy for political parties, electoral authorities, corporate donors, voters and other key national and international stakeholders. The CRINIS index¹³, allows for a thorough evaluation of the current situation in each country under review and for comparisons between countries. It helps identifying and sharing best practices. Application of the tool produces recommendations for reform.

4.3 International initiatives

In addition to mainstreaming anti-corruption in German bilateral development cooperation through UNCAC and specific support for compliance at country level, the project addresses international cooperation. The U4 partnership, which serves as kind of institutionalised interface between policy provisions as agreed upon by the OECD development ministers is considered pivotal for transferring messages to the operational level. Cooperating with UNODC, wherever this is feasible, is considered of tremendous benefit for bringing field experience into the working groups established by the COSP.

The recent establishment of a formal cooperation with the secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific¹⁴ underlines the commitment of German development policy to broaden the scope the Convention offers. The project facilitates the work of the secretariat for its work programme 2007/2008 and contributes to linking the work of the OECD Anti-Corruption Division with that of the Govnet's Anti-Corruption Task Team. The Asia Pacific Initiative is considered instrumental in bridging the outcome of policy dialogues and the field level.

¹² CRINIS is a Latin term and stands for 'ray of light'.

¹³ The index is in fact a composite indicator consisting of up to 140 parameters grouped according to a set of main criteria for political transparency. The index measures transparency through the evaluation of records. It does not provide a ranking but shows on a scale the state of legislation, procedures and practice. www.transparency.org/regional_pages/americas/crinis

¹⁴ www.oecd.org/pages/0,2966,en_34982156_34982385_1_1_1_1_1,00.html

The 10th Steering Group meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific to be held in early September in Indonesia is an occasion to address this issue.

The Steering Group meeting is to be followed by an international seminar on asset recovery organised for the Initiative by the Indonesian Anti-Corruption Commission in cooperation with UNODC, the Basel Institute on Governance and sponsored by Germany, the Asia Foundation, the Australian Agency for International Development (AusAID), the Swedish International Development Cooperation Agency (SIDA) and the United States Department of State. The German UNCAC project stands ready to sponsor similar events for African and Latin American countries in 2008, thereby responding to the increasing need for supporting capacities in partner countries for asset recovery and mutual legal assistance.

A functioning and independent judiciary, or more contemporary, rule of law, in addition to an efficient public administration and an active dialogue between the state, civil society and business is one of the core conditions for public and private investment. The Bangalore Principles for Judicial Conduct, which in fact are directly addressing Art. 11 of the Convention are responding to the demand for judicial reform and integrity of the judiciary as one of the basic principles of democratic governance. The Judicial Group on Strengthening Judicial Integrity (JIG), an informal group of chief justices and senior justices worldwide developed principles on judicial integrity, which took off in Bangalore, India, in February 2001. The Principles are designed to provide guidance to judges and to offer the judiciary a framework for regulating their conduct.

On request of UNODC the German UNCAC project has been supporting the process of bringing the Bangalore Principles into the mainstream by way of funding the compilation of a commentary, contributing to revising the Principles according to comments from member states and drafting procedures for the effective implementation¹⁵. The project further advocates German funded projects in the field of law reform and rule of law to apply the Principles. The Bangalore Principles have a sound potential for development cooperation, possessing the capacity to be transferred 1:1 to projects of bilateral and multilateral development cooperation in the field of law and justice. Germany in addition, supports UNODC's judicial integrity programme, where the Principles are considered a key instrument.

4.4 Capacity development

Capacity development together with the fight against poverty is at the centre of German technical cooperation¹⁶. Conceptually, both link up to the promotion of democratic reform and governance in all sectors, which ultimately involves preventing corruption. Yet it would be unrealistic to assume that without directly addressing the issue as one of the fundamental impediments in development, progress in combating corruption will be achieved. The UNCAC project observes an increasing demand for anti-corruption expertise, general and also specific know-how, response to specific requests from partner institutions. This requires additional training capacity and engaging staff in a dialogue on how to make use of anti-corruption knowledge. Additionally, networking within German development organisations as experienced in GTZ's established anti-corruption network of practitioners needs to be continuously fuelled with new and innovative information.

The project supports UNCAC-related initiatives organised by UNODC in response to the resolutions of the 1st COSP such as the expert conference in Montevideo in May 2007, efforts to bring asset recovery forward, facilitate TA and also the review process. In addition, it encourages and sponsors bilateral country activities such as anti-corruption education by the anti-corruption

¹⁵ www.unodc.org/unodc/corruption_judiciary.html

¹⁶ Capacity Development is GTZ's annual theme for 2007. www.gtz.de/en/17870.htm

commission of Sierra Leone in context with post-conflict rehabilitation (Art.6, 7, 8), governance reform in Ghana (Chapter II), the creation and dissemination of a Guide Book on the Prevention and Combating of the South African Anti-Corruption Act (Art. 5, 7, 8, 13), stock-taking of the engagement of non-governmental organisations in anti-corruption in Arabic countries (Art. 13) or strengthening the capacity of e.g. the Indonesian Corruption Eradication Commission and explicitly addressing UNCAC provisions (Art.6, 10, 36).

In Kenya the project cooperates with the GTZ Programme for Good Governance Support. This programme sustains and supports an online whistle blower corruption reporting system at the Kenyan Anti-Corruption Commission (KACC)¹⁷ since mid 2006. The system allows citizens to report corruption cases in an anonymous way. This practice directly reflects on Arts. 8, 13 and 33. The system responds to information, creates material for investigation and prosecution at a certain point of time. It guarantees absolute anonymity to the person reporting a corruption case. The positive results with this information system, in fact a best practice, should encourage other anti-corruption commissions to establish similar structures.

Capacity development for asset recovery as laid down in Chapter V of the Convention, being one of its fundamental principles and an important issue for developing countries where state budgets were plundered is supported on a selective base. The project joins an international asset recovery capacity development initiative led by UNODC, INTERPOL and the International Asset Recovery Centre in cooperation with U4 partners, the United States, Switzerland and others. The project funds and facilitates through the International Asset Recovery Centre an advanced training program for investigators and prosecutors from Indonesian law enforcement agencies. This initiative is related to the above mentioned 10th Steering Group meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the international seminar on asset recovery.

In addition to country specific and international activities, capacity development needs to be dealt with by development organisations themselves. The principles for joint donor action in anti-corruption of the OECD DAC, the national compliance initiatives of the OECD Anti-Bribery Convention, similar initiatives of the anti-corruption conventions of the Council of Europe and finally of the UN are binding provisions. In this respect the project has been active in bringing the potential of these anti-corruption instruments on the in-house agenda of German aid institutions. This in turn triggered a higher demand for base and advanced staff training, to which the anti-corruption training facilitated by the U4 Anti-Corruption Resource Centre contributes, requests for advisory services and making corruption a case for project planning and design and also a consideration for policy planning of GTZ and BMZ. Capacity development in the end reflects learning processes that contribute to improved knowledge of German development organisations.

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¹⁷ www.kacc.go.ke/default.asp?pageid=62