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Office on Drugs and Crime



**REPORT
OF THE
SUB-REGIONAL WORKSHOP
OF THE
ANTI-CORRUPTION PRACTITIONERS NETWORK**

Almaty, Kazakhstan
14 – 15 May 2007

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EXECUTIVE SUMMARY

1 The Anti Corruption Practitioners Network (ACPN) is a project implemented by the United Nations Development Programme (UNDP) through its Bratislava Regional Centre (BRC), in partnership with the United Nations Office on Drugs and Crime (UNODC). The Network is a group of professionals working in state institutions dealing with corruption prevention, education and policy advice, or in law enforcement institutions of Eastern Europe and the Commonwealth of Independent States (CIS). The purpose of the Network is to support the anti-corruption institutions in their daily operational work by allowing the members to share information and practical experiences with their counterparts, to look for solutions to similar problems in different countries and to solicit advice on specific topics. The Network facilitates personal contacts and networking through regular meetings, and through its Website: <http://anticorruption.undp.sk>.

2 The Sub Regional workshop of the ACPN held in Almaty on 14-15 May 2007 gathered practitioners working in anti-corruption institutions in the CIS countries¹, with the aim of presenting and discussing aspects of the fight against corruption that have an international dimension or that may be addressed effectively through international cooperation. The workshop was expected to:

- Initiate the sharing of knowledge between the participants in relation to the presented issues and enhance the practitioners' knowledge of the possibilities offered by the United Nations Convention Against Corruption (UNCAC) for international cooperation;
- Increase the number of Network's members in the sub-region and facilitate the professional networking and cooperation among the practitioners present at the workshop;
- Assess the perceived usefulness of the concept of the ACPN, and participants' interest in becoming members of the Network;
- Initiate a process to establish formal partnerships with the AC institutions represented at the workshop, in the framework of the ACPN;
- Gather information about the state of affairs in the participating institutions and highlight their needs for trainings and technical assistance.

Workshop results:

3 The Workshop addressed aspects of the fight against corruption of primary interest for the participants and kick-started the exchange of information and experiences among the practitioners. The following issues were discussed:

- The UNCAC and its provisions on international cooperation;
- Experiences of European countries in the establishment of Anti-Corruption institutions in the sphere of prevention and repression of corruption;
- Special investigative means and techniques for the fight against corruption;
- How ICTs can be used for establishing cleaner governance;
- Non-state actors in the fight against corruption.

Through the presentations delivered by international experts and a facilitated discussion on the countries' experiences, UNDP and UNODC were able to confirm that the anti-corruption institutions in the region are facing common problems and challenges, particularly in relation to the new international framework introduced by the UNCAC. The necessity to establish or enhance cooperation among AC institutions at the international level was highlighted and recognized by the participants as a priority for effectively fighting corruption.

¹ The workshop gathered participants from: Azerbaijan; Armenia; Belarus; Georgia; Kazakhstan; Kyrgyzstan; Moldova; Russia; Tajikistan; Turkmenistan; Uzbekistan; Ukraine. The list of participants can be downloaded at: http://anticorruption.undp.sk/index.cfm?event=show&content_id=F7D61018-F203-1EE9-B464496403D92466

The ACPN and the related website were presented as tools for promoting the cooperation among the institutions at the regional level. The majority of the participants agreed on the usefulness of the ACPN and expressed their interest in becoming members of the network and in facilitating the establishment of official partnerships between their institutions and UNDP/UNODC for the implementation of the ACPN activities.

The workshop also allowed the organizers and the participants to gather useful information about the institutional and legal framework for fighting corruption present in the countries of the sub-region and to discuss common problems and possible approaches to address them.

WORKSHOP SESSIONS

I. The Mutual Legal Assistance system established by the UNCAC

Ms. Olga Zudova, Senior Legal Adviser, United Nations Office on Drugs and Crime, Regional Office for Central Asia, gave an overview of the structure of the UNCAC and described the system of mutual legal assistance established by the Convention

4 Ms. Zudova described the types of international cooperation supported by the Convention's provisions:

- Extradition (art.44)
- Transfer of sentenced person (art.45)
- Mutual Legal Assistance (art. 46)
- Transfer of Criminal Proceedings (art.47)
- Investigative techniques (art.48 -50)
- Confiscation/recovery/return of assets (art. 46, 51-57)
- Law enforcement cooperation, joint investigation and special judgment recognition/enforcement (art. 54-55)

The UNCAC requires the state parties to "afford one other the widest measure of Mutual Legal Assistance in investigations, prosecutions and judicial proceedings" (art 46.1).

The convention affirms that all the requests shall be executed to the extent not contrary to the domestic law of the requested Party and minimizes the grounds for refusal to execute a request of Mutual Legal Assistance (MLA):

- Simplify or eliminate dual criminality requirement (art.43-2, 46-9?)
- States Parties cannot refuse MLA on grounds of bank secrecy, or because the offence is considered to involve fiscal matters (art. 46-8, 46-22)
- Restrict political offence exclusion to the essential minimum (art. 44-4 – for extradition)
- MLA may be requested orally in urgent circumstances but shall be confirmed in writing forthwith (art. 46-14)
- States Parties may, without prior request, transmit information relating to criminal matters (art. 46-4, 56)

- State Parties may use modern technology to ensure greater effectiveness, e.g: *permit the hearing to take place by video conference* (art. 46-18)

5 Asset recovery is one of the aspects of international cooperation to which the Convention dedicates particular attention. The return of assets is a “fundamental principle of the Convention and state parties shall afford one other the widest measure of cooperation and assistance in this regard” (art. 51). Significant progress brought about by the Convention relates to:

- Measures to Prevent and Detect Transfer of Proceeds (Art.52). Particularly relevant is the request to State Parties to notify financial institutions within their jurisdiction, at the request of another State Party, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny (Art. 52-2b). State parties shall also share financial information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences in accordance with the Convention. (art. 52-5), and shall require public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for sanctions for non-compliance (art.52-6)

- Measures for Direct Recovery of Property (Art.53) Each State party shall: permit other states to initiate civil action in its courts to establish title to or ownership of property (art.53-?); permit its courts to order those who have committed corruption-related offences to pay compensation or damages to another State Party that has been harmed by such offences (art.53-b); when having to decide on confiscation - to recognize another State Party’s claim as a legitimate owner of property (art.53-c)

- Measures for Recovery of Property through International Cooperation (Art.54 - 55). A State Party that receives a request to identify, trace, freeze and seize proceeds for confiscation shall either directly enforce the foreign confiscation order or obtain domestic order of confiscation and enforce it.

- Measures for Return and Disposal of Assets (Art.57). The procedure of return of assets depends on how closely the assets were linked to the requesting State Party. If the proceeds derive from the embezzlement of public funds they shall return to the requesting State; if are proceeds of other offences covered by the UNCAC the confiscated property shall return to the requesting State when it establishes its ownership or when the a damage to the requesting State Party is recognized by the requested State Party.

6 Ms. Zudova highlighted good practices when requesting mutual legal assistance:

- The requests for MLA can be very time consuming therefore should be sent only if all other possibilities have already been exploited. In some cases (like investigation of offshore companies) the request of MLA is the only way to get some results;
- Priority should be given to confiscation in concurrent jurisdiction casework;
- The request should specify clearly in what particular form the reply should be sent and attention should be paid to the fact that in different legal systems the terminology and the content of legal acts can be dissimilar. Avoid using terminology, which is too specific to one's country and maybe unknown to the requested country;
- Evidences/materials should be requested in compliance with the procedural requirements to enable their admissibility at the courts of the requesting State Party, and provide evidences/materials that are admissible at the courts of requesting state;
- Explain the connection between the requested assistance and outcome of the investigation;
- Explain the reasons for urgency of the request , when urgency is paramount;
- Indicate the need for confidentiality, when needed.

- Consultation with government staff located abroad and foreign staff in the country as well as with international organizations can help understanding the proper way of producing a request for MLA
- Refer to guidelines and manuals of the requested states, e.g.: «*Mutual Legal Assistance Guidelines: Obtaining assistance in the UK and Overseas*», issued by UK Home Office in 2004.
- Before sending an official request it also makes sense to send first a draft request to the competent authorities in order to get their feedback on the form and content of the request;
- Always consult before refusing a request:
 - *Is it possible to overcome the problem?*
 - *Is it possible to modify the request?*
 - *Is it possible to postpone the request?*
 - *If it is impossible to overcome the problem clear reasons should be given.*

II. Institutional framework for fighting corruption

Mr. Drago Kos, chairman of the Slovenian Commission for the Prevention of Corruption described the provisions of the international legal instruments supporting the establishment of specialized anti-corruption institutions and presented European examples of institutions in the sphere of prevention and repression of corruption. Brief presentations of the anti-corruption institutional and legal framework in some of the countries represented at the workshop were subsequently delivered by:

- Mr. Yerlan Alibekov, Head of Department on investigation and prevention of corruption, Agency for Fighting Economic Crimes and Corruption (Kazakhstan);
- Mr. Adylbek Sharshenbaev Head, Department on relations with civil society and international organizations, National Agency for Corruption Prevention (Kyrgyz Republic);
- Mr. Jurakhon Kabirov Deputy Director, Anti-Corruption Agency (Tajikistan);
- Ms. Elena Shapkina Senior Researcher, Chamber of Accounts (Russian Federation);
- Mr. Lasha Mgeladze Advisor to the State Minister on Reforms Coordination (Georgia);
- Mr. Alexandru Puzderi, Vice Director of the General Anti-Corruption Department, Center for Combating Economic Crime and Corruption (Moldova).

7 Mr. Drago Kos observed that most international anti-corruption legal instruments devote some attention to the position and powers of institutions fighting corruption, (e.g. UNCAC, art. 6 – 36; The Council of Europe Criminal Law Convention on Corruption, art.20; The Council of Europe Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption: guiding principles N. 3 and 7).

To summarise, the essential mandatory international requirements for the national institutions with respect to the effective fight against corruption are:

- necessary independence and autonomy,
- absence of undue pressure or influence,
- appropriate training,
- enough resources,
- specialisation.

The following features can also be extracted from the above mentioned legal texts:

- there can be one or more anti-corruption bodies in a country;

- establishment and functioning of the anti-corruption bodies have to follow the fundamental principles of the legal system of the country,
- anti-corruption bodies can have preventive², repressive (investigative, law-enforcement) or combined preventive and repressive powers;
- preventive functions should at least include assurance of the implementation of the national anti-corruption policy and dissemination of knowledge about the prevention of corruption.

Practical problems in establishing a specialised anti-corruption body

8 Anti-Corruption bodies should be created by a legal document adopted through a (normal) legislative procedure and providing for the independence of the body in terms of resources and its accountability to the public. The law should identify the functions of the new body and regulate its relations with the existing ones and its position in the institutional set-up of the country.

Particularly problematic is the establishment of independent repressive anti-corruption bodies. These bodies are usually created when corruption is so pervasive and law enforcement agencies so corrupt or ineffective that corruption offences are either not investigated or not prosecuted. If the population still trust the regular law enforcement services, there may be complexities and risks involved in establishing a new one, which are difficult to foresee: division of work between the existing and new institution, division of powers and cases among them, information flow, the level of co-operation, risk of jeopardizing the fight against corruption.

When the anti-corruption body is established and its powers are regulated, it has to be given sufficient resources to hire and train employees, to purchase necessary premises and technical equipment and to pay decent salaries to its staff. Independence in budgeting and spending is a basic pre-condition for its effective work and can be a good indicator of the real intentions in establishing such a body.

Other elements for the success of an anti-corruption institution are:

- to be one element within a wider national anti-corruption policy,
- government commitment and political will,
- co-ordinated action with other stakeholders,
- adequate legislation with clearly defined powers,
- transparency and accountability mechanisms,
- credibility and public trust,
- co-operation with civil society,
- high level of ethics.

Some practical cases of specialised anti-corruption institutions in Europe

9 Several types of anti-corruption institutions have been developed in Europe. They can be divided into three different groups: repressive institutions, preventive institutions, combined institutions.

a) Repressive institutions

Major strengths of these institutions are following:

- high level of specialisation and multi-disciplinary approaches;
- concentration of skills and resources;

² Including educational and awareness raising functions

- fast and efficient action against corruption;
- pro-active and intelligence-led activities;
- high visibility and credibility of the anti-corruption efforts;
- capabilities for long-term corruption investigations.

Major difficulties encountered by these institutions include:

- lack of understanding by other services of the meaning of the term *corruption*;
- not always clear legal basis for investigation and prosecution;
- creation of barriers to investigations of complex cases involving not only corruption;
- decrease of anti-corruption interest of general law enforcement bodies;
- isolation within the criminal justice system;
- direct international police cooperation is sometimes hindered;
- no access to confidential and protected information;
- investigations blocked by different immunities;
- political interference in investigations.

Typical cases of specialised repressive anti-corruption institutions are those of “*Mani Pulite*” in Italy; the “Central Office for the Repression of Corruption” in Belgium; “National Authority for the Investigation and Prosecution of Economic and Environmental Crime – Ókokrim” in Norway and the “National Anti-Corruption Prosecutor’s Office” in Romania.

b) Preventive institutions

Major strengths of these institutions, which also include services for managing implementation of anti-corruption strategies, are the following:

- they focus on the core corruption problems: lack of integrity, transparency and accountability;
- they can undertake a wide variety of measures; from general prevention to specific monitoring;
- they can mobilise and work with a large range of institutions;
- they can concentrate on institutions and/or procedures which are exposed to particularly high risks of corruption;
- they are comparatively inexpensive;
- they can help integrate anti-corruption measures in the overall process of administrative reform and strengthening of good governance;
- they can ensure that anti-corruption strategies are actually implemented and that the progress made is monitored;
- they can ensure that the elements of law enforcement, prevention and public education are pursued in a balanced and mutually reinforcing manner.

Major difficulties encountered by these institutions are:

- it is difficult to assess the real impact of these services;
- the concept of prevention is not always clear to institutions which should cooperate;
- their control functions are limited due to absence of investigative powers;
- due to lack of investigate powers and of possibilities for sanctioning they are sometimes not taken seriously by other institutions;
- they have to convey complaints and reports on concrete corruption cases that they receive to the criminal justice system (and not handle them directly);
- they might serve as cover for the lack of investigation and prosecution;
- their performance depends on the political commitment of the countries’ leadership to implement anti-corruption measures and on the commitment of other institutions to cooperate;
- if they are situated close to the head of government or state (to ensure effective coordination), their independence might suffer.

Typical cases of specialised preventive anti-corruption institutions are those of Central Service for the Prevention of Corruption in France, Commission for the Prevention of Corruption in Slovenia, Anti-Corruption Monitoring Group in Albania, and the Council to Fight Corruption in Armenia.

c) Combined Institutions

Major strengths of institutions combining preventive and law enforcement functions are:

- they can ensure not only planning but also the implementation of anti-corruption measures in all fields;
- they can ensure that enforcement, prevention and public education are implemented in a coherent manner;
- they allow for concentration of skills and resources;
- they do not depend so much on the cooperation of other institutions;
- they can be highly visible symbols of integrity and determination to fight corruption.

Major difficulties encountered by these institutions are:

- the readiness of other institutions to cooperate may be reduced due to the all-purpose approach of these institutions,
- the success and failure of anti-corruption efforts depends on one service;
- they present one very clear target for all forms of pressure and undue influence;
- expectations are very high;
- priorities among their different tasks have to be set;
- their law enforcement functions may make it more difficult for civil society, business community and public administration to cooperate in prevention and education measures.

Typical cases of combined anti-corruption institutions are those of the Office for the Prevention of Organised Crime and Corruption (USKOK) in Croatia, the Bureau for Preventing and Combating Corruption in Latvia and the Special Investigation Service in Lithuania.

Conclusion

10 UNCAC State Parties are held to establish or maintain some kind of preventive institution(s) for the implementation of national anti-corruption strategies. This can provide an opportunity for creating institution with a broad anti-corruption mandate (general prevention, public education, awareness raising and law enforcement). However, with the establishment of new anti-corruption institutions several complex problems have to be addressed:

- what to do with the “old” institutions dealing with the same tasks?
- how to establish fair and useful relations with other institutions in the anti-corruption and related areas?
- how to find and recruit quality and committed leadership and staff for the institution(s)?
- how to ensure enough resources for proper functioning of the institution(s)?

The existence and functioning of specialised anti-corruption institution(s) in a country are one of the most visible and easily accessible indicators of their actual readiness to fight corruption and of the political will to do so. Key elements for the success of these institutions are a good degree of independence and enough resources allocated.

Country Institutional and legal framework for fighting corruption:

a) Kazakhstan

11 Principal state anti-corruption institutions are:

The Commission on Prevention of Corruption and Enforcement of the Civil Service Ethics. Its tasks include the elaboration and implementation of coordinated measures aimed at strengthening the fight against corruption and against the violation of public service ethics.

The Coordinating Council of law enforcement agencies and the Security Council under the authority of the President. These institutions were created in order to consolidate efforts and improve coordination among the law enforcement agencies.

The Disciplinary Councils established within the structure of the Agency for Civil Service Affairs to strengthen discipline in the public service, observance of anti-corruption legislation and Code of Ethics for state officials.

The Agency of the Fighting against Economic and Corruptive Crime plays the leading role in realization of the anti-corruption policy and coordinates the activity of all the ministries and departments with regard to the implementation of the National Action Plan for the State Anti-corruption Programme.

12 On 23 December, 2005 the new State Anti-corruption Programme for the period of 2006-2010 was adopted. Its main objectives are:

- the improvement of the regulatory and legal framework related to the fight against corruption;
- improvement of the state measures on corruption reduction;
- improvement of law enforcement and judiciary systems;
- popularization of the national anti-corruption policy and interaction with civil society;
- international cooperation on anti-corruption.

The Parliament recently approved a law "On introduction of amendments to some legal acts of the Republic of Kazakhstan with a view of improving the fight against corruption". The law brings changes to the Criminal Code, Criminal procedure Code and Criminal execution Code for strengthening criminal and administrative accountability for corruption related offences and crimes, and criminalization of bribery-related offences by foreign and international organizations officials.

In an effort to integrate the Kazakh law enforcement agencies into the international anti-corruption organizations, consultations are conducted with representatives of FBI, Interpol, OSCE, Committee of the Ministries of Justice of European countries, Group on fighting money laundering established by the G8 countries. Kazakh authorities are working on international agreements on mutual legal assistance related to the criminal cases, extradition and assets return. UNCAC ratification is also currently being considered by the General Prosecutor's Office and the Ministry of Foreign Affairs.

b) Kyrgyzstan

13 The Decree of the President of the Kyrgyz Republic (KR) "On urgent measures on combating corruption" of 21 October 2005 established:

- The National Council for Combating Corruption: it is a supervisory body of the National Agency on Corruption Prevention, which aims at unifying the efforts of state and public institutions in the fight against corruption. The Council shall provide for the participation of civil society actors in decision-making against corruption;
- The National Agency on Corruption Prevention was established to ensure the effective and sustained anti-corruption policy and develop fundamentally new approaches towards the fight against corruption and comprehensive measures to prevent corruption.

The Anti-corruption legal framework in the country consists of:

- law "On the fight against corruption"
- law "On countering financing of terrorism and legalization of illegal earnings (money laundering)"
- law "On protection of witnesses, victims and other participants of the criminal proceedings"
- State Strategy on combating corruption and its implementation Action Plan
- governmental set of measures in pursuance of implementation of the State Strategy.

KR's international commitments include:

- 2005 - United Nations Convention against Corruption
- 2004 - Convention on legal assistance and legal relations in prosecution of civil and criminal cases (Kishinev)
- 2003 - Istanbul Anti-Corruption Action Plan
- 2003 - United Nations Convention against Transnational Organized Crime
- 2001 - Anti-Corruption Action Plan for Asia and the Pacific
- Agreements and treaties on legal assistance in prosecution of civil and criminal cases between Kyrgyzstan and Germany, China, Iran, Latvia, Uzbekistan, Kazakhstan, etc.

New legislation:

The current law "On the fight against corruption" has a series of shortfalls: vague definition of the phenomenon of corruption; lacking any system; contradictions between various statutory legal acts; focus on repressive measures at the expense of preventive ones. A new Draft Law of KR "On fight against corruption" incorporates recommendations and legal provisions of the international agreements, including provisions of the UNCAC, and is aimed primarily at preventive anti-corruption measures. It creates new prerequisites for elimination and prevention of contradictions between various anti-corruption laws.

Proposals on introduction of amendments to the Criminal Code of KR:

- criminalization of bribery not only in the financial form, but also as other benefits;
- forfeiture of proceeds of crime and any related profit;
- criminal responsibility for: promise or proposal of some unlawful advantage;
- corruption-related activities of foreign officials or international organizations officials;
- unlawful enrichment or considerable enlargement of property of a civil servant which cannot be reasonably justified on the basis of his legal income.

c) Tajikistan

14 After the acquisition of independence, corruption in Tajikistan increased due to political, economic and social factors. In 1999 state authorities started the introduction of a series of measures for fighting corruption: the laws "On fight against corruption"; "On civil service" and "On state financial control" were adopted, as well as the Code of Ethics for civil servants.

In 2005 a new law "On fight against corruption" was adopted and its provisions were aligned with UNCAC and other international provisions. On 25 September 2006 Tajikistan signed the UNCAC, which became a constituent part of its legal system.

In 2007, in the frame of a general reform of the public administration, the Agency on state financial control and fight against corruption was established. The Agency performs financial control and law enforcement functions and implements financial control and AC activities in all the branches of the state power, banks, civil society organizations, political parties and also private companies and has prosecutorial functions as well.

Important elements of the activity of the Agency are:

- close interaction with other state actors in the fight against corruption;
- close co-operation with mass media, publishing information about the activity of the agency on a regular basis;
- increased role of civil society, religious leaders (the Koran says that bribery is a sin);
- take advantage of international research on AC;
- support AC initiatives of the civil society.

d) Russian Federation

15 Even though Russia has ratified UNCAC there is no specialized AC institution. The fight against corruption is implemented by all the state bodies with the cooperation of other institutions, such as state scientific and research institutes, educational establishments, NGOs and civil society structures. The President is the principal authority and the coordinator of the anti-corruption activity.

All the branches of power perform AC functions through their structures:

- The National Anti-Corruption Council, established within the Presidential administration is tasked with the coordination of the anti-corruption activity of all the public organizations;
- Legislative: the Commission of the State Duma on action against corruption has an advisory role in the design and implementation of corruption prevention measures;
- Executive: anti-corruption activity of the Ministry of Interior, Federal Security Service, Ministry of Justice, Ministry of Finance and other ministries and state agencies.
- Judiciary: anti-corruption control of the General Jurisdiction Courts, of the Constitutional Court, and other types of courts.

A general function of control and supervision against corruption is performed by the Chamber of Accounts. It was established in 1995 as the supreme body for state audit. Its functioning is regulated by the Constitution, the Federal law "On Accounts Chamber" and other legal acts.

It has the following functions:

- control the execution of the federal budget and federal extra-budgetary funds;
- verify the effectiveness and expediency of the disbursement of state funds and the use of the federal property;
- provide expertise on draft federal laws, which can have different degree of influence on the formation and execution of the federal budget.

The State Research Institute of system analysis of the Chamber of Accounts was established in 2002. It performs research in the area of state and international financial control, mostly in the CIS countries.

e) Georgia

16 The National Anti-Corruption Strategy covers issues related to:

- general reform of the public administration;
- rule of law;
- strengthening anti-corruption control in the three branches of the state power;
- fostering civil society participation in anti-corruption monitoring;
- improving the economic environment.

The State Minister on reforms coordination is tasked to monitor the implementation of the National Anti-Corruption Strategy, including:

- annual review of the AC Action Plan;
- monitoring of implementation of the Action Plan;
- report on implementation of the Action Plan and the Strategy (twice a year to the Prime-Minister and the Government);

- revision of AC Strategy if the need arises.

In the beginning of 2006 “The Action Plan on implementation of AC strategy” was approved by the President after consultation with stakeholders. The plan defines the anti-corruption measures to be adopted and the state agencies responsible for their implementation. It consists of three parts:

- strengthening of AC measures (AC analysis of the legislation, development of a corruption monitoring system);
- strengthening of AC mechanisms (reform of the judiciary, law enforcement and public administration systems);
- international obligations (implementation of the recommendations of the international organizations and ratification of international AC conventions).

f) Moldova

17 The National Strategy for preventing and fighting corruption and the Action Plan for its implementation were approved by the Parliament of Moldova on 16 December 2004. The Strategy reflects the new approach to the phenomenon of corruption, blending preventive and repressive measures and at the same time supporting the market economy. The strategy focuses on corruption prevention combining efforts of the public and private sector and the civil society structures and incorporates national and international best practice, as well as requirements and recommendations of the international organizations.

The main thrusts of the Strategy are:

- fighting corruption by effective application of criminal legal norms;
- preventing corruption by eliminating the scope for corruption in public administration and law enforcement system and procedures;
- educating civil society in the spirit of intolerance towards corruption and encouraging active support by civil society to AC efforts.

The Criminal Code provides for the following corruption-related offences by public servants:

- passive corruption
- active corruption
- abuse of power
- abuse of public power or of an official position
- negligent performance of official duties
- illegal remuneration
- official forgery.

Criminal offences of commercial, civil society and other non-governmental organizations managers include:

- bribe taking;
- bribing;
- abuse of official duties.

The specialized AC body is the Center for Combating Economic Crime and Corruption, which was established by the governmental resolution ? 158 of February 11th, 2002 “On institution of the Center for Combating Economic Crime and Corruption”. The institution was constituted by merging Financial and Economic Police Directorate and AC Directorate of the Ministry of Internal Affairs, Financial Guards and the Department of financial control and audit of the Ministry of Finance.

Tasks of the Center:

- prevention, detection, investigation and suppression of financial, economic and tax crimes;
- fighting corruption and nepotism;
- investigation of money laundering activities.

III. Law enforcement Institutions and special techniques for the fight against corruption

Mr. Marin Mrcela, Judge at the County Court in Zagreb, Croatia, described the legal framework necessary for fighting corruption and the special investigative means that can facilitate the investigation of corruption crimes. Participating country experiences in investigating corruption were presented by Mr. Lernik Hovhannisyan, Prosecutor, Department for fight against corruption of the General Prosecutor's Office (Armenia) and Mr. Sergei Gramovich, Senior Prosecutor, Division for fight against corruption and organized crime of the Prosecutor's Office (Belarus)

18 To describe the anti-corruption investigative activities, an "operative" definition of corruption is necessary. Elements of such definition are:

- two parties involved
- forbidden exchange in order to gain own benefits on the expense of public interest
- breach of a moral norm
- breach of a legal norm
- hurts democratic development and *rule of law*.

It is also fundamental to define what is meant by *rule of law*:

- laws are enforced equally and impartially;
- no one is above the law, and under the constitution everyone is held equally to obey the law;
- laws are made and enforced according to established procedures, not to the rulers' arbitrary will;
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law;
- laws are not enacted or enforced retroactively;
- laws are reasonable and enforceable.

Corruption is a widely spread phenomenon, it is present in all the administrative and economic systems under different forms; other than giving and taking bribes, corruption can take the following forms:

- abuse of authority
- abuse in performing governmental duties
- negligent performance of duty
- fraud
- embezzlement
- trading in influence

Corruption is related to other criminal activities and is a tool used by criminal organizations for enhancing their operational capacity: 30% of organized crime revenues (from drugs, arms trafficking, prostitution etc.) is invested for bribing public officials, rewarding members, financing criminal infrastructure; 70% is invested in legitimate businesses (e.g. construction industry). Criminal organizations infiltrate the state structure not only through bribing of public officials but mostly through articulated operations and practices that are very hard to prove and therefore hard to fight. Also to be noted is the international dimension of corruption-related activities, like the fact that money laundering often happens out of the national borders.

Ways and methods to fight corruption

19 Effective laws and regulations constitute the base for institutional action against corruption, but governments also need to design a long-term strategy that must be supported by all the stakeholders. International standards and legal instruments such as the UNCAC and the Council of Europe's Conventions play an important role, but they have to be adjusted to the peculiarities of the national systems.

In order to enhance the capacity of the law enforcement institutions to effectively fight corruption, the introduction of special investigative means and techniques is fundamental. The UNCAC establishes that State Party shall take such measures as may be necessary to allow the use by its competent authorities of controlled delivery and other special investigative means such as electronic or other forms of surveillance and undercover operations. The purpose of these special techniques is to facilitate the gathering of evidence.

Special investigative techniques can be:

- surveillance and interception of telephone conversations or means of remote communication;
- entry on the premises for the purpose of conducting surveillance and technical recording of the premises;
- covert following and recording of individuals and objects;
- use of undercover investigators and informants;
- simulated purchase of certain objects, simulated bribe-giving and simulated bribe-taking;
- controlled transport and delivery of objects from offences.

Such special measures can be applied :

- to the means, premises and objects owned or used by the injured person (with his/her consent)
- to the object of the criminal offence (if there is no knowledge about the identity of the accomplices in the criminal offence).

The special investigative means restrict certain constitutional rights of the citizens, for instance they can restrict the freedom of private communication and violate the private property, therefore attention and caution should be exercised in their application. The law establishes strict limits to their employment: a court order is generally necessary and these measures can be implemented only on a temporary basis. As a matter of principle, special measures cannot constitute an instigation to commit a criminal offence. The law should specify the types of criminal offences to which the special techniques can be applied.

Special investigative techniques can help the law enforcement institution gathering evidence of corruption, but are not to be considered a panacea for fighting corrupt practices. Clear and precise rules are necessary, as well as the implementation of the international standards and the establishment of forms of cooperation at the international level. It is also very important to involve all the institutions and the civil society in a coordinated effort for preventing corruption, to this aim the presence of independent media and the development of education programmes are of primary importance.

Countries examples of law enforcement institutions:

a) Armenia

20 Law enforcement anti-corruption activities are performed mostly by the Prosecutor's Office, National Security Service and Police Service. For the implementation of special AC techniques and to

comply with the recommendations of international organizations, an Anti-Corruption Department has been established within the structure of the Prosecutor's Office and under the supervision of the General Prosecutor. The Department developed the "Prosecutor's Office Programme on strengthening anti-corruption measures", which contains concrete proposals for the elimination of gaps and contradictions in the legislation. As a result, considerable changes and amendments were introduced into the criminal, civil and administrative legislation. The prosecutors of the Department actively participate in various international and regional anti-corruption events (seminars, training workshops), in particular with regard to the repression of money laundering activities; as a result, a new article (on money laundering) was introduced in the Criminal Code. Other important improvement for the anti-corruption work has been the establishment of new inspection procedures giving more possibilities for performing inspections to the investigators. Currently the Prosecutor's Office is working on eliminating the gap between the material damage resulted from a corrupt practice and the reimbursement due by the perpetrator of the criminal offence.

Regarding the investigative service, a special Unit for Combating Economic Crime and Corruption within the Police structure is tasked with detecting and counteracting crimes related to corruption and abuse of office. The unit deals with legal entities and private persons related and implements measures aimed at detection of causes and conditions for corruption.

An effort to improve the legal instruments for fighting corruption has been also undertaken by the Anti-corruption Monitoring Commission, which has identified 59 offences in the Criminal Code containing corruption aspects. In accordance with the recommendations of international organizations, the number of these articles was reduced to 22.

b) Belarus

21 On 26 June 1997, the law "On measures to fight organized crime and corruption" was adopted. The law defined and specified the responsibilities of public officials and civil servants. The powers of the law enforcement agencies were considerably extended and the regulations on declarations of assets of civil servants were set up. In order to achieve successful implementation of this law, departments for the fight against corruption and organized crime were established in the structure of the General Prosecutor's Office and in the Prosecutor's Offices of the regions and of the city of Minsk, as well as in the Military Prosecutor's Office.

On 2 October 2002, President's Decree ? 500 set up a National Programme to improve the fight against corruption for the Years 2002-2006, which was developed by the Prosecutor's Office in consultation with stakeholders. The programme included a set of legal, administrative, economic and educational anti-corruption measures. It emphasized particularly the necessity to strengthen the repression of corruption and coordinate the activity of the law enforcement bodies with other institutions.

Belarus has ratified the UNCAC and the Criminal Law Convention and Civil Law Convention of the Council of Europe. A new law "On fight against corruption" was adopted in compliance with the assumed international obligations. The law defines the Prosecutor's Office as the body responsible for the organization and coordination of the state activities for fighting corruption. It also enumerates the state anti-corruption bodies and defines their powers. Main institutions in the fight against corruption are the special anti-corruption divisions of the Ministry of Internal Affairs, the Prosecutor's Office and the State Security Service.

IV. E-governance solutions for reducing corruption

Mr. Ivar Tallo, UNITAR, Global E-governance Advisor, presented practical lessons from the Estonian experience on how to use ICT for establishing cleaner governance. Mr. Serik Kaparov, Director of the Department of Personnel, Agency for Civil Service Affairs (Kazakhstan) presented the experience of Kazakhstan's reform of the public sector from the ICT perspective and the impact of the reforms undertaken on the fight against corruption.

22 E-government systems have a positive impact in reducing the level of corruption in state institutions, they change the corrupt practices by creating a better observable electronic environment for the delivery of public services.

The use of ICTs has proven to be efficient for corruption prevention: comparing the indexes of corruption perception and e-governance readiness, it appears that the perceived level of corruption is lower in those countries where the ICTs are used widely. During the 1990s, corruption was identified as one of the major problems preventing the establishment of real democracy and limiting economic growth in developing countries. As a response, the international community started developing anti-corruption programmes and activities introducing e-governance as an anti-corruption tool. In 2003 the E-governance Academy located in Tallinn, Estonia, started researching the relations between corruption and e-governance. Examples of projects aiming at the improvement of the public administration by the introduction of e-governance solutions were collected and analyzed.

Good examples of how e-governance systems can help in the fight against corruption are:

Customs-on-line. In 1998 a system of electronic customs services accessible through internet was developed in Estonia. At that time businesses were supposed to fill out declarations for their goods before they crossed the border. Even though in 1998 Internet was not widespread, the procedure turned out to be much quicker. Since bribes are often given to and asked by custom officials in order to facilitate passage of goods and other services, the e-customs clearance can have an effect in eradicating this type of corruption.

e-Cabinet 2000. In August 2000, the Government of Estonia changed its Cabinet meetings to paperless sessions using a web-based document system. The objective of the new web-based system is to automate the preparation process and the proceedings of Cabinet meetings, which includes preparing as many materials as possible digitally. The system prompted the re-thinking of the whole decision making process, enhancing transparency and therefore reducing corruption opportunities.

e-Visas. The whole process of visa request and production can be transferred to Internet. This would simplify the procedure and eliminate opportunities for corruption. Estonia introduced an e-system allowing the release of visas for Armenia.

Transparency is a very important preventive measure. It gives civil society the opportunity to monitor the activity of the public administration and denounce irregularities. In Estonia there were serious problems with the collection of taxes on salaries (an obligation of the employer). The authorities started publishing comparative tables on the declared salaries in different organizations, thus enhancing transparency. The system contributed to reducing tax evasion and black market labor (e.g. if a company appears to pay significantly lower salaries than other comparable companies, chances are that the employer is understating the salaries paid in order to evade taxation).

It is proven that the introduction of e-services has reduced the level of corruption and contrary to common wisdom low internet penetration is not a major problem for the introduction of such systems. On the basis of the Estonian experience, it appears that e-governance systems should better be introduced and assessed gradually, starting with selected areas of the public administration. The way of thinking and the attitude of the public toward the new systems has to be changed before applying them on a large scale.

Kazakhstan public administration reforms and ICT applications

23 On-going reforms in Kazakhstan aim at the establishment of a public service based on the principles of corporate management, transparency and accountability to the civil society, taking into account the international best practices.

The aims of the administrative reform are to:

- increase efficiency of the public administration;
- ensure high quality of state services provided to the business community and civil society;
- reduce the level of corruption;
- involve civil society into the decision making process concerning socio-economic issues;
- increase public administration capacity.

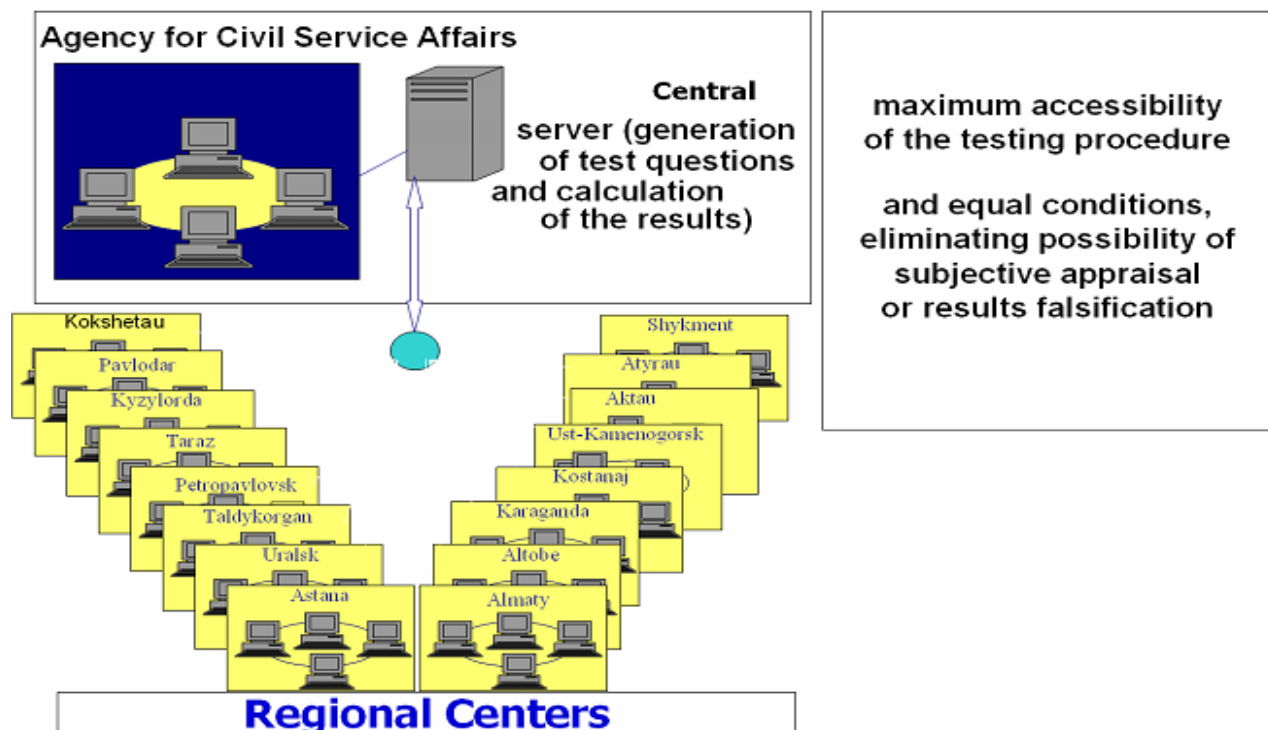
The introduction of e-governance systems is one of the tools that are being implemented for reaching these aims. In order to increase the efficiency of the public administration, a rating system of performance assessment of the state bodies has been introduced; it aims at improving the internal administrative control in the state bodies, increasing the effectiveness of public spending and the quality of the public services provided.

Components of the rating system are:

- Management of human resources;
- Introduction of e-governance;
- Effective implementation of the state programmes;
- Quality of the public services delivered.

The effective application of e-governance systems is further illustrated by the unified distant computer testing for hiring civil servants. The tests are organized on a competitive basis for the selection of the civil servants in all regional centers. This system allows maximum accessibility and equal conditions, eliminating possibility of subjective appraisal and falsification of results.

Scheme of distant computer testing of civil servants on the competitive basis



Civil servants have to pass tests every time they apply for a new position. This system envisages strict controls of all public institutions and will allow the creation of a database containing all the relevant information concerning the state service, including on corrupt behavior of individual civil servants.

As a way to avoid administrative overload, Kazakhstan is also introducing Public Service Centres in all the regional districts with the aim of providing all the public services “at one desk”. The next envisaged step is the introduction of e-governance systems to enable the Centres to deliver services in an effective and transparent way.

V. Non-state actors in the fight against corruption

Ms. Munavara Paltasheva, Executive Director, Forum of Entrepreneurs of Kazakhstan presented the activities of her organization, its relation with the state institutions and its role in fighting corruption. Mr. Adylbek Sharshenbaev Head, Department on relations with civil society and international organizations, National Agency for Corruption Prevention (Kyrgyz Republic) described the activities of his Agency for promoting participation of civil society in various aspects of the fight against corruption.

24 The Forum of Entrepreneurs of Kazakhstan is a non-commercial civil society organization established in 1998 with the support of the President. The Organization has offices in all the main cities in Kazakhstan, and aims at supporting the development of small and medium businesses in the country. The Forum is trying to overcome the problems related to the contradictions and shortfalls of

the public administration and of the business environment by promoting a constructive interaction between the public administration and the business community.

The Forum, financed by the voluntary contribution of the entrepreneurs, tries to defend their interests and create a better legal environment for economic development through lobbying on the legislative process. The organization has reviewed all the state regulations having an impact on the enterprises for the period of 1995-2005, and detected numerous shortfalls. It also co-operates directly with the working groups of the Parliament during the development of draft laws. Achievements so far include:

- Amendments introduced to the Tax Code;
- Discovering shortfalls in the draft "law on fight against terrorism" and organizing broad-based discussion on possible improvements of the law (still on-going);
- Drafting of the law on private enterprises.

In order to render the work of the tax authorities more transparent, the Forum of Entrepreneurs organized consultations and disseminated information through mass media and various on-line channels. The organization also supported the establishment of Centers of free consultations on tax reports providing the possibility to submit the reports on-line, which also helped enhance the capacity of the authorities to monitor tax collection.

The Forum is equally active in promoting e-governance as a way to enhance the effectiveness of public administration. Thanks in part to the work of the Forum, all local and state authorities in Kazakhstan have now their websites where people can find all the necessary information regarding the current activities and contact details. A specific example of e-governance promotion is the establishment of hot lines and computerized services in all the customs offices in order to eliminate personal contacts, thus reducing the time for customs registration and the opportunities for corruption.

However, the public administration remains very rigid and the heavy bureaucracy hampers the development of the small and medium size enterprises by creating opportunities for corruption and abuse of power. One of the major problems identified by the Forum is the Code of the administrative violations, which contains vague provisions leading to misadministration and establishes too many controls creating scope for abuse.

Engaging with civil society on anti-corruption in Kyrgyzstan

25 The support and participation of civil society organizations and of the public in general to the activities of the state institutions is a fundamental element for the functioning of the institutions themselves and is a necessary component for a modern democratic society.

In Kyrgyzstan the main civil society actors active in the fight against corruption are:

- NGOs and youth organizations;
- business community;
- political parties;
- scientific circles and higher education establishments;
- artistic unions, trade unions, etc.

Kyrgyzstan has a vibrant civil society and political pluralism; there are more than 2500 registered NGOs and 97 political parties. The legal status of non-commercial organizations as well as the regulations for their establishment, activities, reorganization and liquidation are defined by the Constitution and regulated by the Civil Code, the law "On non-commercial organizations", other laws and legal acts and international laws and regulations acknowledged and ratified by Kyrgyzstan.

Main legal provisions:

All non-commercial organizations are established on the basis of volunteering, self-government, lawfulness, publicity and openness; participation or non-participation of a citizen in the activity of non-commercial organizations cannot determine any limitation of his rights and freedoms; labor legislation, laws on social service and medical insurance apply to all the staff members of non-commercial organizations.

Main legal acts on interaction with civil society:

- Decree of the Acting President of the Kyrgyz Republic No.251 of 21 June 2005 “On State Strategy for Combating Corruption in the Kyrgyz Republic”;
- Decree of the President of the Kyrgyz Republic ?241 of 11 May 2006 “On measures for development, legalization and introduction of forms of cooperation among the state bodies, local government authorities and civil society of the Kyrgyz Republic”;
- Concept ?200 of 25 March 2004 on cooperation between public associations, social funds (NGOs) and the state bodies.

The National Agency for Corruption Prevention has guidelines for its interaction with civil society in the fight against corruption; the importance of informing and consulting with civil society is highlighted, as well as the necessity to build partnerships and enhance dialogue and cooperation through activities such as seminars, forums and conferences.

Specialized anti-corruption institutions of the civil society in Kyrgyzstan are:

- the public association “Kyrgyz parliamentarians against corruption”;
- the public association “Future without corruption – Transparency International Kyrgyzstan”;
- the social fund “Journalists against corruption”;
- the centre for human rights “Citizens against corruption”.

VI. The Anti-corruption Practitioners Network, a tool for supporting anti-corruption institutions and practitioners.

The Anti Corruption Practitioners’ Network (ACPN) was designed as a tool for supporting the anti-corruption institutions through the sharing of information and technical knowledge. Members of the Network can be practitioners working in anti-corruption agencies dealing with corruption prevention, education and policy advice, or in law enforcement institutions. Through the Network, Members are able to share information and practical experiences with their counterparts, to look for solutions to similar problems in different countries and to solicit advice on specific topics. Mr. Dan Dionisie, UNDP Bratislava Regional Centre, Public Administration Reform and Anti-Corruption Policy Specialist and Mr. Francesco Checchi, UNDP Bratislava Regional Centre, Anti-Corruption Project Associate, presented the features of the Network and of the related website (<http://anticorruption.undp.sk>).

The Anti-Corruption Practitioners Network, its goals and membership

26 The Network is designed to meet the operational needs of the practitioners for interactive sharing of good practices, expertise and experiences. The overall objective of the ACPN initiative is to support national AC institutions in their efforts to meet domestic and international obligations for fighting corruption. To achieve this objective, the Network seeks to establish a peer to peer voluntary cooperation among practitioners working in AC institutions. The cooperation is largely informal, however it is supported through the establishment of formal partnerships between the national AC

institutions and UNDP/UNODC. Network activities are also supported by the UNDP/UNODC focal points present in all the countries of the region, as well as by international experts.

Through the facilitation of inter-country information exchanges, mutual learning and cooperation among AC practitioners, the Network focuses on:

- Highlighting and sharing best practices and other useful information for the daily operational work of the practitioners.
- Updating the practitioners on new techniques and procedures and special methods for the implementation of AC activities: special means for operational AC practitioners have been introduced in several criminal procedure codes of the countries in the region, the network can allow members to share information on the usefulness and potential problems related to these techniques and about the way in which these can best be used.
- Informing about experiences and modalities of implementation of the UNCAC and other international legal instruments: the UNCAC (together with other conventions and with the bilateral agreements existing between several countries in the region) is establishing a common framework for the AC activities. AC practitioners can rely upon instruments like the ACPN for sharing information relative to the implementation of the conventions.
- Exposing and discussing the real state of affairs of the institutions and the problems that the practitioners face in their operational work. Many institutions are not fully independent and suffer from insufficient budget, poor infrastructure and lack of trained personnel. The Network can be an instrument to call the attention of the international community to such problems and seek support from development agencies.
- Creating a resource centre that is really useful for AC practitioners. One of the main functions of the Network is to gather information about the concrete implementation of AC activities. A database will be created using the information contributed by Network members; the relevance and usefulness of the information shared will be tested through consultation with practitioners.
- Providing technical assistance to the anti-corruption institutions: the Network can be used by the members for requesting specific technical assistance (trainings, assessments, project design and implementation). UNDP and UNODC staff and other international experts can be contacted through the Network. Facilitators may also disseminate the requests from ACPN members to other international organizations able to provide the needed type of technical assistance.

27 Principal tool for the facilitation of the exchange of information and technical advice among the members of the Network is the ACPN Website³. This tool allows members to get in contact with each other through a database containing the names and contact details of all the ACPN members, divided into four categories: Practitioners, UNDP/UNODC focal points, international experts and staff. Part of the database is dedicated to the legal and institutional framework of the countries of the region; links to the relevant institutions' websites are also provided.

Members of the Network can equally send queries to the facilitators for requesting specific technical advice and information on AC activities and institutions in the region.

The Network facilitators provide the following services:

³ <http://anticorruption.undp.sk>

- receive and analyze messages from practitioners;
- answer requests for technical advice by contacting UNDP colleagues, experts and practitioners;
- disseminate information to all the Network members;
- solicit the participation of the Network members in online discussions;
- research and propose new topics for discussion;
- facilitate the contact and direct exchange of information between network members;
- gather the information received by the practitioners, analyze it and store in the Database;
- perform research for the maintenance of the database by eliminating obsolete information and monitoring the situation in all the countries of the region concerning AC activities, legislation and institutional framework.

In turn, Network members are requested to:

- read messages from the facilitators and answer to requests of information or technical advice to the best of their ability;
- participate to discussions in the forum, propose topics for new discussions;
- inform Network facilitators about relevant AC developments in their countries;
- support the facilitators in the maintenance of the database by checking regularly the content of the country pages, highlighting possible errors and sending updates.

28 Asked to assess the potential usefulness of the ACPN in their operational activities, participants unanimously appreciated the initiative and expressed interest in joining the Network. A majority of them also offered to facilitate the establishment of formal partnerships between UNDP/UNODC and their institutions, in the framework of the ACPN.