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INTERNATIONAL

ADB TA 4743-BAN
Supporting Good Governance Initiatives II

PROGRESS REPORT

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1 Introduction

Team Members: The inception phase of the project was in June 2007 with the following team of consultants:

International

- Chua Cher Yak ACC Organisational Development Expert (Team Leader)
- D.N.S Shrivastava ACC Organisational Training Needs Expert

Domestic

- Md Safiur Rahman ACC Organisational Training Development Expert
- Abdur Razzaque ACC Organisational Training Development Expert
- Md Seraji ACC Process Systems Expert (not deployed)

Immediate Tasks: The immediate tasks for the team during the inception phase were:

- a) Appreciate the existing situation on the ground, given the efforts of the new ACC management which has embarked on enforcement action against high-profile individuals in Bangladesh.
- b) Assess the relevance of the overall terms of reference, especially in the light of the changed situation in Bangladesh since December 2005, when the Terms Of Reference were drafted.
- c) Address the following issues within the broader context of the Terms of Reference:
 - Review the performance indicators of other such commissions
 - Review the different anticorruption functions based on international benchmarks and whether or not ACC is structured to address such demands;
 - Review the Commission's mandate and functions to ascertain the nature and context of the work
 - Determine the Knowledge, Skills and Abilities (KSA) needed by ACC Senior and Middle Staff
 - Identify international training programmes or attachment training.

An **inception report** was duly submitted in early July; a copy of which is at **Annex A**.

Fresh Mandate and Chairman ACC's Brief: After a brief hiatus of one month, as ACC, Bangladesh was preoccupied with some pressing operational matters, the project resumed in August with a fresh mandate and terms of reference. At the request of ACC, the consulting team was trimmed down to a single person for ease of communication and liason Meetings were held with the Commissioners, all Director Generals, Directors, Dy. Directors and ground officers to discuss and 'float' ideas on the scope of work and to assess the needs of ACC as seen from their perspective. At the end of these sessions, the Chairman presented his brief as follows:

- a) To gear up for impending recruitment by
 - Formulating terms and conditions, selection criteria and selection/recruitment process.
 - Designing training courseware for the initial batch of recruits.
- b) Formulating rules and regulations for ACC officers to can help foster an organizational culture that will enable officers and ACC to serve as the ‘moral-compass’ for the nation and where officers act and behave in a manner that will earn them the ‘moral authority’ to perform the task of corruption control.
- c) Designing a brochure as a public communication document on what ACC has accomplished in its short period of ‘rebirth’, its plans and vision for the future
- d) Formulating a long term strategic plan
- e) Developing an operational and training Manuals encompassing
 - Investigation
 - Intelligence
 - Surveillance
 - Prevention
 - Public Education and Advocacy

2 Progress and Deliverables

Scheme of Action: In view of the ‘fresh’ brief, a new scheme of action embodying the following 4 critical elements was submitted and accordingly endorsed:

- a) An Institutional Development Plan detailing the broad concepts and approach, including the tasks that need to be performed in pursuance of the plan. See Annex B.
- b) A Plan of Consultation Activities, valid up to end 2007 detailing the following: See Annex C.
 - Schedule of Consultation Work
 - On-site visits to present, interviews, discuss, observe and study documents
 - Off-site rewriting and documentation, and submitting written work weekly for discussions during on-site visits
- c) A Checklist of Questions for consultation with officers of ACC, Bangladesh as at Annex D.
- d) Key Issues and Concerns to be addressed in the Bangladesh project as reproduced at **Annex E**.

Upon endorsement of the scheme of action, some commendable progress was made, with ‘actual deliverables’ accordingly submitted. These are detailed at paras 6 to .

Terms and Conditions of Service: In view of the difficulties encountered with the residue BAC staff, many of whom were not properly recruited under rigorous terms and

conditions, it was felt that this is a critical aspect of institutional development. To this end, a document prescribing the following was crafted:

- a) Attributes of an effective ACC officer
- b) Screening-out procedures to weed out unqualified applicants
- c) Post recruitment screening procedures, both during initial training and post-training deployment; embracing 360° evaluation, peer-assessment, staff opinion survey and simulation exercises during training.
- d) Salaries and Conditions of Service.

A copy of the document “Terms and Conditions of Service, Recruitment Criteria and Recruitment Process” is at Annex F.

Rules of Conduct: The need for a code of conduct cannot be over-emphasized as there is a clear need to nurture a corps of serving officers and newly recruited ones that will be equal to the tasks and expectations of a credible anti corruption agency. Such a code of conduct serves to develop officers that conduct themselves in a manner that

- a) **benefits and reflects well** on an organization that is charged with the task of investigating public officers for corruption and other acts of impropriety.
- b) **enhances the worth, prestige and standing** of the organization
- c) **assures the public and wins their confidence and assent** in the Commission’s mission of “relentlessly combating, suppressing and controlling corruption “
- d) **projects** the Commission as a **tough, no-nonsense and uncompromising organization** that applies itself **seriously and unyieldingly** to the tasks as envisaged in its mission
- e) **earns** for themselves and the Commission the **professional credibility and the moral authority and right** to take strong action against those who are bent on corrupt activities
- f) **serves as the moral-compass** for the Bangladeshi society
- g) **serves as** part of an overall system of “**guarding the guards**”

Equally important is a **system of institutionalizing an organizational culture** that can help sustain the desired mode of behaviour amongst the officers. For this purpose, the following are prescribed.

- a) A set of core values under the acronym “DIE-HARDS which rigorously defines what each trait or core value means and the type of behaviour are expected of officers in the course of their daily work-routine.
- b) A Monitoring and Compliance Mechanism
- c) An internal Whistle-blowing Programme (**See Annex G**).

Brochure: The Chairman directed that a brochure be produced to placate various quarters which were keen to learn about what the new Commission has envisaged for itself and how it has distinguished itself from the erstwhile Bureau of Anti Corruption. In this sense, the brochure assumes an importance that is more than just a

communication tool. Evidently, the contents of the communication plan has to be worked from scratch, detailing the strategic directions that has hitherto, not been conceptualized yet. Bearing this in mind, a draft brochure (**See Annex H**) with the theme “The Shape of Things To Come” was drafted to incorporate the following elements:

- a) A ‘thumb-nail’ sketch of the institutional development plan
- b) Background of the current ACC with particular emphasis on:
 - How it has ‘risen from ashes’ of the past, in phoenix fashion?
 - What are its ‘distinctiveness’ as compared to the past?
- c) This need for a distinctiveness that will set ACC apart from its erstwhile past meant that the following key tasks would have to be performed:
 - Crafting of the tag-line of “Tough, No-Nonsense and Uncompromising” and how it operationalise this ideal into reality
 - Crafting the following Vision Statement with clear performance indicators so that the vision is more than just some rhetorical statement.
“To create a strong anti-corruption culture that permeate throughout the whole society”
 - Crating the following Mission Statement, linking with a 4-pronged action which help in the realization of the Mission
 - “To relentlessly combat, control, suppress and prevent corruption”
 - Mapping out the broad indicators to reflect attainment of this ideal, under the caption “The Way To Go”
 - Crafting the Broad Strategic Plan in the form of a at-a-glance visual or schematic
 - Crafting the Operational Framework in the form of a at-a glance visual or schematic Strategic Plan, dubbed “the 4-legged stool in corruption control”
 - Crafted the explanatory notes for the Commission’s logo, though not responsible for the concept

The brochure has since been printed and is often used as an organizational manifesto, both domestically and internationally.

Designing a Basic Course Programme: Design a 4 week course for recruit training with the following features:

- Based on 4 themes of
 - Knowing the Law
 - Knowing the Investigative Craft
 - Knowing the Preventive Methods and techniques in education and advocacy
 - Know the intelligence and surveillance craft
- 1 theme per week
- Experiential based learning, with simulations

- Formulated ‘Course Objectives’
- Drilled down to ‘Lesson Objectives’
- Exposition of the course-philosophy, including the ‘sandwich’ concept and the ‘survival kit’ approach

See **Annex I** for details.

Designing Courseware: At the instructions of the Chairman various simulation exercises were designed as supporting course ware. These serve as hands-on simulation exercises; both table-top and ground simulation exercise for the course. The exercises are enumerated below:

- Exercise Probe **Annex J**
- Exercise Jig Saw **Annex K**
- Exercise Mirage **Annex L**
- Exercise Transcribe **Annex M**
- Exercise Snare **Annex N**
- Exercise Decipher **Annex O**
- Exercise Court Craft **Annex P**
- Exercise Red-Flag **Annex Q**

Strategic Plan To date, the 3rd draft of the Strategic Plan has been submitted. This is a 52 page document incorporating the following:

- a) 5 Strategic directions:
 - To combat corruption through punitive action consisting of 3 inter-related forms of action: investigation, prosecution and adjudication.
 - To pre-empt corruption by reviewing systems and procedures so as to detect systemic flaws that can breed acts of corruption and then institute corrective action by designing-out all ‘corruption-friendly’ systems and procedures while designing-in ‘corruption-unfriendly ones.
 - To prevent corruption through public education and advocacy, to sensitize public officers on the perils of corruption and heighten their awareness of their personal responsibilities in corruption control, in addition to securing public support through public communication plans and community relations programmes.
 - To promote good governance and civil service reforms, as an important adjunct to the anti-corruption programme, by exposing and demonstrating the urgent need for such action through its investigative, pre-emptive and prevention efforts.
 - To promote a culture of intolerance towards corruption through a sanitized environment based on a stringent regulatory regime.
- b) The broad strategic objectives are buttressed by supporting objectives:
 - Supporting Objective 1: Design Organization Structure

- Supporting Objective 2: Design Operating Mechanisms and Institutional Arrangements
 - Supporting Objective 3: Provide HR Support and Good Internal Governance
 - Supporting Objective 4: Provide Sound Financial and Logistical Support
- c) Each Sub-Objective of each Strategic Objective and Supporting Objective is supported by a programme of activities.
- d) All in all, there are about 200 or so corruption-control initiatives to help attain the strategic objectives
- e) For each activity, there are Outcome and Output Indicators provided.

Some example of objectives, sub objectives, programme of activities and outcome and output indicators are given below.

Example

Sub-Objective 1: To take stringent but targeted enforcement action through the following activities:

Activity 1: Implement current laws

- Rigorously implement the 3 laws (The Penal Code. The Prevention of Corruption Act, 1947 and the Anti Corruption Act, 2004)

Activity 2: Adopt a target approach through the following means:

- Rigorously identify corrupt-prone departments where corruption is ‘endemic’, paying special heed to the areas identified above
- Concentrate on high impact areas where the numbers involved would make a collective impact and taking an ‘aggressive’ approach (i.e. high impact but not necessarily high profile personalities)
- Yet, adopt a graduated approach by continuing with the action against high profile personalities, but adjusted to a much smaller scale.
- Persist with a scaled-down operation, rather than a total abandon, while action against the various departments are taking place in keeping with its mission of ‘relentless action’
- Assign a special team, perhaps the Special Investigation Team, to the task.

Sub-Objective 2: To improve the delivery of investigative services through an improvement of the cycle-time and enhanced effectiveness of investigative mechanisms by streamlining the investigative process and slashing unnecessary red-tape:

Activity 1: Review existing operational/investigation process to lessen the “layers” referrals and any procedures that are redundant and does not add value at all e.g.

- Review all complaints through a Committee (Complaints Evaluation Committee) to decide if a complaint should be investigated based on its “solvability factor” and grade them accordingly to “High Pursuability”, “Medium Pursuability” and “Low Pursuability” in expectation that the results will be commensurate with the grading

Activity 2: Improve the investigative process through the following courses of action:

- Conduct all investigation within an acceptable time frame to be determined by ACC, (say, 2 weeks) after the file is assigned to the investigating team on a team basis as investigation consists of a series of parallel action which can only be undertaken on a team basis.
- Require the supervisors to be part of the investigation team, assuming the role of a “playing captain”, guiding and strategizing the investigation real-time as the case progresses.
- Refer the case to the supervisors for a decision on when the investigation is completed, thereby reducing the number of referrals which unnecessarily delays the case.
- Dispense with the conducting of inquiries especially for cases which are assessed to be no pursuable-value at all.

Expected Outcomes/Outputs

- Enhanced operational environment through:
- Enhanced case effectiveness
- Enhanced management of the investigative process, resulting in greater operational effectiveness.

Outcome /Output Indicators

Direct measures:

- Cycle time of cases investigated
- Completion rate of cases investigated
- Prosecution rate of cases investigated
- Conviction rate of cases prosecuted

Proxy Measures:

- Good Public Perception Survey findings
- Favourable world ranking by the Transparency International

See **Annex R** for details of the Strategic Plan.

Compilation of operational and training manual: On the instruction of the Chairman, further efforts in the development of course ware were aborted. Instead efforts were directed towards the compilation of the operational cum training manual. The manual incorporates some of the best practices international in corruption control. The key features are:

- 3 volumes are planned covering:
 - Investigation and Intelligence
 - Surveillance
 - Prevention and Education
- Tentatively
 - Investigation: 24 Chapters

- Surveillance: 9 Chapters
- Prevention, Education and Advocacy: 11 Chapters

(See **Annex S** for Table of Contents)

- As of 15 Feb 2008, Volume I (Investigation) and Volume II (Surveillance) have been completed. (See Annex T and Q respectively)
- Completion date for all 3 volumes is targeted for mid March 08

3 Challenges

Broadly the challenges can be classified as follows:

- a) Lack of or immaturity of operating systems or processes due to the long period of dormancy during the days of now defunct BAC.
- b) Need to enhance the operating environment as systems, processes and procedures do not operate in a vacuum but can only flourish under the right operating climate. Amongst other things, an ideal operating climate includes ‘rule of law’, characterized by a strong judiciary working in unison with the prosecution in establishing the rules of successful adjudication, astute pre-trial evaluation of evidence and appropriateness for prosecution, adjustment of pre-trial procedures and investigative protocol etc to improve prosecution and adjudication. In short, a revamp of the judiciary and prosecutorial system, founded on international practices. Unless this is undertaken at the “strategic level”, training prosecutors at the ‘tactical’ or ‘operational’ level will make no positive impact on the problem.
- c) Operationalising the know-how as embodied in the operational cum training manuals and the Strategic Plan. Whilst the Strategic Plan details “what” should be done”, the manuals prescribe “how” things should be done. Together, they are merely about “Saying what you do”. Operationalising what have been prescribed is about ‘Doing what you Say”

The **specific** challenges falling within these broad ones have already been identified in the Strategic Plan. Suffice it then, to just reproduce the excerpts of the relevant parts of the strategic plan below, without the accompanying details.

- a) First and foremost, since good governance and civil service reforms have not been vigorously pursued centrally in the country, the ACC would have to take on a catalytic role by exposing such needs through its investigative, pre-emptive and prevention function. Ensuring good governance and embarking on civil service reforms are state initiatives which ACC by itself is ill-disposed to undertake.
- b) Second, given that punitive action is one of the three strategic objectives, the ensuing questions must be:
 - What exactly would be the shape and nature of such punitive action? There may be a need to consider how the current high profile, highly visible and aggressive, open action would feature in the policy.
 - Does the immediate impact of such action vindicate the viability of a highly enforcement-oriented strategy?

- Should a largely **enforcement oriented approach and policy**, therefore, be formulated? Granted that enforcement action should stay; can this ‘stringent, high impact action’ approach be sustained? Is sustainability and continuation a matter of concern of the public? Will it alienate rather than draw continued support, given the fact that this high impact strategy essentially is targeted at some high profile personalities? Can sustained enforcement action be possible with first declaring some form of immunity and then proceed on a ‘clean slate’? Will continued action against the high profile figures give rise to accusations of partisanship in approach or at least be perceived as such? Can a graduated approach be reconciled with the current “stringent, high impact”? What would be a good compromise between the ‘stringent, high impact enforcement’ and those corruption offences that are likely to affect the public at large?
- c) Third, ACC Bangladesh’s punitive action, may suffer from the following deficiencies:
- There is an absence of strong enforcement culture and regulatory regime
 - The attempts by the court authority to knit together, for unified action, Investigation, Prosecution and Adjudication as these three elements form that Holy Trinity should be sustained and further enhanced as enforcement is not an end in itself and is pointless if not complemented by effective prosecution and adjudication.
 - Pending an overhaul of the Judiciary, the Court System is plagued by long delays resulting from a huge caseload.
- d) Fourth, are there any special needs to enhance Prosecution? For this, a slew of measures may be necessary
- e) Fifth, are the laws on anti-corruption in Bangladesh adequate for the purpose of effective investigation, prosecution and adjudication as successful investigation, prosecution and adjudication depends as much on effective laws as anything else. It is contended that there are flaws in the anti-corruption laws.
- f) Sixth, assuming that there is legal mandate for such a pre-emptive role in Bangladesh, how should this mandate be
- g) Seventh, what special needs must its pre-emptive function address?
- h) Eighth, what local needs specific to Bangladesh need to be addressed in its public education and public communication Plan? It would be necessary for the public education and communication plan to counter the following, based on a research findings in the country in 1999:
- i) Ninth, there is also a need to tailor the supporting objectives to meet some very country-specific needs:
- Designing Operating Mechanisms
 - Reporting System and Information Management
 - Case Management and the Management of Investigations
 - Provide Human Resource Support and Good Internal Governance.

- Career Development

4 Next steps

Given these challenges, the probable next steps would involve the following:

- a) Though, the completion of manuals would have meant the completion of the project, there is much work that has to be done beyond the current phase of the project. The work so far, are nothing more than a matter of conceptualization and documenting concepts and processes in the form of manuals which will serve as

- Standard Operating Procedures
- Road Map or Implementation Plans

The final consummation is in the actual Operationalising of the plans, epitomized by the dual need of “Saying What You Do” and. “Doing What You Say” In this, it is pertinent to ask: “Is hand-holding necessary during the implementation phase?”

- b) Actual implementation work would entail, amongst other things, the following:

- Compilation of Courseware and training systems and curricula
- Conducting training at various levels:
- Strategic Issues for management
- Managing of Operations,
- Command Vs Ground Operations
- Hands-on training on operational matters for ground operatives, especially on the following operational procedures and mechanisms e.g.
 - Investigation Processes
 - Prevention Techniques
 - Public education and advocacy methods
 - Reporting systems
 - Complaints evaluation procedures
 - Criteria for investigation and prosecution
 - Case management
 - Command and control

- c) Designing operational-support procedures and mechanisms e.g.

- Whistle-blowing protection
- Intelligence System and data base of persons who have been previously investigated
- Evidence evaluation
- Performance Indicators
- Case management System
- Human Resource Development systems such as:

- Merit-based hiring, promotion and job-placement
 - Career development
- d) Designing administrative-support procedures and mechanisms e.g.
- Finance and logistics
 - Good internal governance, esp. system of “Guarding the Guard”
 - Gauges, measures and surveys
- e) Re-engineering the operating environment characterized by ‘rule of law’, independence of action; executed without fear or favour, a pervading sense of good governance, a ‘devolved’ sense of responsibility amongst departmental heads in corruption control; with each head being vicariously responsible for the state of corruption-control in his department. See para 15 b.