



*American Model United Nations*

**Commission on Crime Prevention and Criminal  
Justice**

**Report to the Economic and Social Council  
on Accessibility to Legal Aid in Criminal  
Justice Systems, particularly in Africa**

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## Executive Summary

1 The Commission on Crime Prevention and Criminal Justice (CCPCJ) held a wide-  
2 ranging and substantive discussion regarding international cooperation to improve access  
3 to legal aid in criminal justice systems, particularly in Africa. The CCPCJ quickly came  
4 to a consensus regarding the importance of improving access to legal aid, and many  
5 members of the Commission expressed the view that improving legal aid was essential to  
6 protecting the fundamental right to a fair trial. As such, the bulk of the CCPCJ's  
7 deliberations focused on how to create and implement effective international solutions to  
8 the challenge of lack of access to legal aid. The CCPCJ took the view that it was vital to  
9 address this international issue in both the short term and long term. In the short term, the  
10 Commission took the view that the international community should attempt to try and  
11 bridge the capacity gap in the developing world regarding access to legal aid, and  
12 discussed a number of proposals, including greater reliance on community paralegals,  
13 alternative dispute resolution and a stronger pro bono culture. In the long term, the  
14 Commission agreed that the answer to the challenge of lack of access to legal aid was to  
15 build a culture of respect for the rule of law, and discussed a number of proposals,  
16 including greater judicial transparency and education, to promote this. An informal  
17 subgroup formed within the body to address education regarding access to legal aid, and  
18 within this subgroup, a general consensus was reached that efforts to improve criminal  
19 justice systems throughout the world, but particularly in Africa, were incomplete without  
20 an emphasis on educational strategies that informed the public of their right to legal aid.

## Chapter I:

### Matters calling for action by the United Nations Economic and Social Council

#### *Draft resolutions for adoption by the Economic and Social Council*

21 The Commission on Crime Prevention and Criminal Justice recommends to the  
22 Economic and Social Council the adoption of the following draft resolutions:

#### **Draft resolution II/2**

23 *The Economic and Social Council,*

24

25 *Recognizing* the principle of shared responsibility which encourages cooperation among  
26 States concerning development in criminal justice systems particularly in Africa,

27

28 *Reminding* Member States of the International Covenant on Civil and Political  
29 Rights, specifically Article 14 Paragraph 3 Section B and D,

30

31 *Noting* the widespread lack of knowledge among the African public regarding  
32 their right to legal aid as expressed in Article 12 of the Universal Declaration of Human  
33 Rights (UDHR) and the the disproportionately harsh penalties and unjust convictions  
34 regarding cases in which criminal defendants represent themselves,

35

36 *Stressing* the relevance of the 2007 Resolution 24 which includes the call on  
37 States to restructure State legal systems in a manner more accessible to their citizens,

38

39 *Keeping in mind* the vulnerability of certain populations including but not limited  
40 to children, women, minorities, disabled, elderly, HIV and AIDS positive people groups,

41

42 *Recognizing* that the development of criminal justice systems in African States  
43 should begin at the expressed commitments of African leaders to their peoples,

44

45 *Observing* the Lilongwe Declaration which states that legal aid should be defined  
46 as broadly as possible to include education,

47

48 1. *Stresses* the importance of access to legal aid as a supportive measure in the  
49 creation of the upcoming Millennium Development Goals;

50

51 2. *Urges* all Member States to partner with bilateral and multilateral agencies to  
52 produce national development plans addressing injustices of State criminal justice  
53 systems in a manner that is comprehensive and is conducive to public debate and  
54 dialogue;

55

56 3. *Endorses* the importance of Best Practice Summits in strengthening criminal

57 justice systems through the sharing of information, emphasizing access to legal aid;  
58

59 4. *Stresses* the need for international support in providing funding for strategic  
60 educational programs that inform citizens concerning their right to legal aid;

61  
62 5. *Encourages* States, who have not already done so, to consider adopting  
63 provisions on the right to legal aid constitutionally or legislatively with the desired effect  
64 being increased awareness of civil society on their right to legal aid;

65  
66 6. *Calls upon* the international community to support State efforts in the formation  
67 of independent governmental structures with the purposes of facilitating citizen access to  
68 legal aid;

69  
70 7. *Advocates* that States afford vulnerable populations educational awareness  
71 regarding equal representation and access to legal aid.

## Chapter II:

### Consideration of Accessibility to Legal Aid in Criminal Justice Systems, particularly in Africa

72 At its 2013 session, the Commission considered agenda item 2, Accessibility to Legal Aid  
73 in Criminal Justice Systems, particularly in Africa.

74

75 For its consideration of this item, the Commission had before it the following documents:

76

(a) The United Nations Universal Declaration of Human Rights;

77

78

(b) The United Nations Declaration on Civil and Political Rights;

79

80

(c) The African Union Principles and Guidelines on the Right to a Fair Trial and  
81 Legal Assistance in Africa;

82

83

(d) The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice  
84 System in Africa;

85

86

(e) The Tokyo Rules, i.e. the United Nations Standard Minimum Rules for Non-  
87 Custodial Measures;

88

89

(f) The March 2013 Report on the United Nations Principles and Guidelines on  
90 Access to Legal Aid in Criminal Justice Systems adopted by the General  
91 Assembly in December 2012;

92

93

(g) The United Nations Principles and Guidelines on Access to Legal Aid in  
94 Criminal Justice Systems adopted by the United Nations General Assembly in  
95 December 2012;

96

97

(h) The United Nations African Institute for the Prevention of Crime and the  
98 Treatment of Offenders adopted by the General Assembly in March 2012;

99

100

(i) The 2011 United Nations Organization of Drugs and Crime Access to Legal  
101 Aid in Criminal Justice Systems in Africa Survey Report;

102

103

(j) The 2011 United Nations Organization of Drugs and Crime Handbook on  
104 Improving Access to Legal Aid in Africa;

105

106

(k) The United Nations Economic and Social Council Resolution 2007/24 which  
107 addresses International Cooperation for the Improvement of Access to Legal Aid  
108 in Criminal Justice Systems, particularly in Africa;

109

110

(l) The United Nations Economic and Social Council Resolution 2006/21 on  
111 Implementation of the Programme of Action, 2006-2010, on strengthening the  
112 rule of law and the criminal justice systems in Africa;

113

114 (m) The African Commission on Human and Peoples Rights Resolution 41 on the  
115 Right to Fair Trial and Legal Aid in Africa in November 1999.

### ***A. Deliberations***

116 In general, representatives shared the same concerns. Representatives were especially  
117 concerned with the fact that many affected by the criminal justice system are  
118 economically disadvantaged and lack the financial resources to protect their rights. In  
119 numerous Member States, an issue directly associated with access to legal aid that should  
120 be addressed is the length of time suspects are held at police stations and detention  
121 centers, as well as congestion within prisons and courts. Addressing these concerns will  
122 lead to greater fulfillment of Article 10 of the Universal Declaration of Human Rights,  
123 wherein “everyone is entitled to full equality in a fair and public hearing by an  
124 independent and impartial tribunal in the determination of his rights and obligations and  
125 of any criminal charge against himself.”

126  
127 Another concern that was expressed across the board was that of implementing solutions  
128 pragmatically. The Commission on Crime Prevention and Criminal Justice (CCPCJ)  
129 recommends that Member States consult with the United Nations Organization on Drugs  
130 and Crime (UNODC) for greater technical assistance on the matter.

131  
132 Concern was expressed throughout the body that there exists in some Member States a  
133 deficiency in the education of the public, law enforcement officials and law practitioners.  
134 Specific concerns were raised about the connection of the public to the functions,  
135 procedures and processes of both the legislative and judicial bodies pertaining to them.  
136 These were noted as serious problems that merited closer consideration by the committee.  
137 Many Member States, in periods of rules suspension, deliberated on specific modes  
138 through which the aforementioned parties could be best educated. Those involved in  
139 these deliberations were of the mind that any steps taken to combat lack of access to legal  
140 aid must involve comprehensive education of the community as a whole, or anyone that  
141 may become involved in the legal process. The representatives discussed the importance  
142 of education as a long-term means to work toward a future where legal aid is readily  
143 available to all. The educational methodology discussed was primarily considered as a  
144 means to empower individuals, making them more aware of their rights and further  
145 connecting them to legislative and judicial processes. Empowered individuals would be  
146 better situated to promote transparency in governmental institutions. Many of the specific  
147 modes of empowerment through education proposed are outlined and discussed in draft  
148 resolution II/2. Unfortunately, time constraints prevented this draft resolution from being  
149 brought to the floor for debate and subsequent voting; however, both authors and many  
150 other representatives felt strongly that the relevancy of the issues and solutions brought  
151 forth merited specific inclusion in this report.

152  
153 A number of speakers drew attention to possibilities with regard to new national  
154 initiatives in order to diversify legal aid, expand upon services offered by existing legal  
155 professionals and educate the general public.

156  
157 One common problem that causes congestion in the courts is the diminished priority  
158 given to pro bono cases compared to cases in which individuals can afford legal

159 representation and consultation. As a result, often multiple parties of lawyers get involved  
160 at different stages in cases in the judicial process, resulting in a drawn-out process that is  
161 more convoluted. A way of eliminating the complexities associated with this issue would  
162 be to ensure that a single party of lawyers follows a case throughout the judicial process.  
163 However, governments would need to adequately incentivize lawyers to adhere to this  
164 protocol, which mandates greater funding and resources, and hence, may not be feasibly  
165 pragmatic. The UNODC may perhaps provide technical assistance to help member states  
166 implement this pragmatically to a greater capacity.

167  
168 One such example that would be useful in societies without enforcement of the law  
169 through courts would be non-custodial measures, or alternative dispute resolution (ADR).  
170 In such situations, actors are generally within a community outside of urban centers and  
171 typically do not have sufficient resources to handle the situation through measures typical  
172 to developed nations and/or forms of society, as in Africa. ADR recognizes such resource  
173 deficiencies and constraints. Moreover, ADR involves mediation and arbitration within  
174 the community and district within which parties originate from and where conflict occurs.  
175 In certain societies, increasing the supply of lawyers is not feasible primarily due to  
176 budgetary constraints. An issue with ADR, however, may be the conflicting interests of  
177 parties; ADR works well only in very cohesive communities.

178  
179 Another solution that has been offered is that of the formation of a committee, or a subset  
180 of government specifically involved with the free provision of legal aid, given that parties  
181 can prove insufficient financial resources; this solution was based on domestic policies  
182 such as those of Brazil and South Africa that have been utilized to a greater effect to  
183 address the situation. It is important to note that such an office may not be feasible on  
184 such a large scale and may not effectively target parties who are not in the lower income  
185 bracket, i.e. at the margin. A measure of determining who requires access to legal aid is a  
186 means test, wherein studies are conducted and assessments made in order to better  
187 channel limited resources to the parties that need legal aid most, namely vulnerable  
188 groups.

189  
190 Another proposed solution is that of community-based paralegals. Often, paralegals and  
191 legal assistants possess adequate training to provide accurate legal consultation to those  
192 who require it, although they may not have passed the bar exam, or are not eloquent  
193 enough to become lawyers, despite relevant qualifications. Allowing paralegals to  
194 provide legal consultation would diversify legal aid consultation providers. Moreover,  
195 this would ensure that there are community-based paralegals and assistants that can tailor  
196 their legal consultation efforts to the social, economic, and cultural conditions of  
197 countries, a necessary condition when we examine the diversity in litigation in different  
198 nations and regions.

199  
200 Education of lawyers in Africa is vital. International, online and regional scholarship  
201 would increase the efficacy of a solution to deal with access to legal aid, as it would  
202 allow for greater supply of lawyers in Africa. A possible method of ensuring this is  
203 incentivizing African law students to return and practice law within their home countries  
204 for several years. A number of States in the developing world, particularly the African  
205 States, expressed concerns with such a policy, because concerns were raised that it would



206 impose Western values and further expressed concerns that such a policy would fail to  
207 build a culture of respect for the rule of law.

208  
209 Education of both law enforcement officers and the general public is essential, as they are  
210 both parties in question with regard to the issue. Law enforcement officers are in a  
211 capacity to make citizens aware of their rights with regard to an impartial and fair  
212 tribunal upon citizen's arrest. The general public, on the other hand, can be educated  
213 through the creation and continuation of human rights and legal literacy programs,  
214 making them aware of their rights. Special attention would need to be given to vulnerable  
215 groups such as women, the handicapped and the elderly, as they are more likely to be  
216 exploited by the legal system, especially when unable to access legal aid.

217  
218 In the same vein, Non-Governmental Organizations (NGOs) and legal outreach centers  
219 are an essential part of the solution. Specific organizations and NGOs sponsored by the  
220 Economic and Social Council can be created at the regional and international level to lead  
221 workshops, in order to improve the awareness of these fundamental rights. A more  
222 pragmatic approach, however, would be to work through existing NGOs such as Amnesty  
223 International, as they already have established networks specifically dealing with issues  
224 of human rights and awareness. In terms of legal outreach centers, the number can be  
225 increased in order to engage with the public and raise awareness to a greater capacity  
226 pertaining to proper legal procedures during the course of their various interactions with  
227 law enforcement personnel and detention center processing.

228  
229 Education is imperative as a long-term solution to the issue. However, there are other  
230 more effective solutions formulated in a shorter, implementable time-frame than the  
231 solution of education. Hence, deliberation as to how education, along with other proposed  
232 solutions, can be implemented concurrently is a question that needs to be discussed  
233 further, so that we are adequately addressing both short and long term solutions to this  
234 challenge.

235  
236 The Commission viewed a regional approach to the issue of legal aid as vital due to the  
237 varying cultural and socioeconomic dynamics within the different countries and regions  
238 in question. Some States expressed concerns as to how inclusive the definition of a region  
239 should be. Thus, various levels of implementation are possible: nationwide, statewide,  
240 etc. The Commission did not come to consensus in this regard and urges the Economic  
241 and Social Council to debate this in its implementation to determine which level of  
242 approach is most effective.

### ***B. Action taken by the Commission***

243 The Commission chose to create a subcommittee to address the issue of accessibility to  
244 legal aid in criminal justice systems with more specificity, so that nations with a greater  
245 stake in the issue were able to contribute their opinions. The subcommittee was  
246 composed of Cameroon, Algeria, Mauritius, Sierra Leone, Democratic Republic of the  
247 Congo, Kenya, Italy, Saudi Arabia, Ghana, Brazil, Uganda, Uruguay and Norway.

248  
249 After its meetings from November 23rd to November 25th, the Commission approved for  
250 recommendation for adoption by the Economic and Social Council revised draft

251 resolution II/1 sponsored by Brazil, China, Thailand, Namibia, United Kingdom,  
252 Bahamas, Uganda, Switzerland and Algeria.

253

254 Before passage, the resolution was amended by Amendments A, B, C, D, E and F, which  
255 made the resolution more inclusive. Amendment D proposed by Uruguay, along with  
256 Amendment F, proposed by South Africa and Brazil were primarily responsible for this,  
257 resulting in the addition of operative clause 6, which accounts for communities wherein  
258 typical processes of legal litigation are ineffective or inapplicable due to resource  
259 constraints. This amendment was passed by consensus. As a result, the resolution  
260 (enclosed in chapter III) passed with a vote of 26 in favor, 1 against, and 6 abstentions.  
261 The votes were as follows:

262

263 *In Favor:* Austria, Bahamas, Brazil, Cameroon, Colombia, Croatia, Cuba, Czech  
264 Republic, Germany, Ghana, Italy, Kenya, Namibia, Nigeria, Norway, Republic of  
265 Korea, Sierra Leone, South Africa, Thailand, Tunisia, Uganda, United Kingdom,  
266 United States, Uruguay, Indonesia, Mauritius;

267

268 *Opposed:* Iran;

269

270 *Abstain:* China, Democratic Republic of the Congo, Mexico, Pakistan, Saudi  
271 Arabia, Switzerland.

## Chapter III:

### Resolutions and decisions adopted by the Commission at its 2013 session

#### *The Commission on Crime Prevention and Criminal Justice*

- 272 *Recalling* Article 10 of the Universal Declaration of Human Rights, which stipulates that  
273 everyone is entitled to full equality in a fair and public hearing by an independent and  
274 impartial tribunal in the determination of his rights and obligations and of any criminal  
275 charge against himself,
- 276 *Recalling* the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice  
277 System in Africa,
- 278 *Recognizing* that many affected by the criminal justice system are economically  
279 disadvantaged and lack the financial resources to protect their rights,
- 280 *Fully aware* that judicial systems in various Member States run the risk of political  
281 corruption and may be susceptible to outside influence and interests,
- 282 *Noting* the prolonged incarceration of suspects and pretrial detainees without being  
283 provided access to legal aid or to the courts, and concerned that it violates the basic  
284 principles of universal human rights,
- 285 *Recognizing* that providing legal aid to suspects and prisoners may reduce the length of  
286 time suspects are held at police stations and detention centers, in addition to reducing the  
287 prison population, prison overcrowding, and congestion in the courts,
- 288 *Recognizing* the facts highlighted by the United Nations Principles and Guidelines on  
289 Access to legal aid in criminal justice systems, along with the principles of the Tokyo  
290 Rules,
- 291 1. *Encourages* the establishment of programs allocating government and/or private sector  
292 funding towards international, online and domestic law scholarships while incentivizing  
293 that lawyers return to practice in their home countries;
- 294 2. *Recommends* the complimentary provision of legal and law-related services by  
295 paralegals and legal assistants, reiterating that in some Member States, paralegals and  
296 lawyers do not have the same certifications and should act within their means in order to  
297 better meet the demand for legal consultation, thus diversifying legal aid service  
298 providers;
- 299 3. *Recommends* the provision of legal assistance at all stages of the criminal  
300 process including investigation, arrest, pretrial detention, bail hearings, trials, appeals and  
301 other proceedings to ensure that human rights are protected, including:
- 302 (a) Access to legal assistance immediately upon arrest and/or detention;
- 303 (b) The right to see and consult with a lawyer, accredited paralegal, or legal  
304 assistant;
- 305 (c) Special attention to persons detained without charge, or beyond the expiration  
306 of their sentences, or who have been held in detention/prison without access to courts;
- 307 (d) Special attention to groups such as but not limited to children, young people,  
308 the elderly, disabled people, people with HIV/AIDS, the mentally/seriously ill, refugees,  
309 internally displaced persons and foreign nationals;
- 310 4. *Recommends* that national governments take action to broaden the availability of pro  
311 bono legal aid and consultation through means such as but not limited to the continued

312 mandated pro bono quotas by bar associations;  
313 5. *Urges* the governments of Member States to further strengthen their judicial and legal  
314 institutions, and to promote independence of the judiciary, in order to reduce the risks of  
315 judicial corruption and unfair trials;  
316 6. *Calls for* the creation and continuation of programs encouraging human rights  
317 education and legal literacy programs in educational institutions, taking into account  
318 cultural relevance through consultation of regional bodies, with special attention to the  
319 groups mentioned above;  
320 7. *Welcomes* the use of non-custodial measures in keeping with the Tokyo Rules, such as  
321 alternative dispute resolution for use in communities where inadequate resources and lack  
322 of access to the courts render typical legal procedures ineffective.

Passed, Yes: 26 / No: 1 / Abstain: 6

## **Chapter IV:**

### **Adoption of the Report**

323 In its meeting in November 2013, the draft report of the Commission on Crime  
324 Prevention and Criminal Justice on Accessibility to Legal Aid in Criminal Justice  
325 Systems, particularly in Africa was made available for consideration. The Commission  
326 considered the report, and with no amendments, adopted the report by consensus. The  
327 Member States Iran and Saudi Arabia abstained.