



CHAPTER EIGHT

COMMISSION ON CRIME PREVENTION & CRIMINAL JUSTICE

MEMBERS OF THE COMMISSION ON CRIME PREVENTION & CRIMINAL JUSTICE

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JAPAN

KENYA

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PURVIEW OF THE COMMISSION ON CRIME PREVENTION & CRIMINAL JUSTICE

The Commission on Crime Prevention and Criminal Justice (CCPCJ) is an ancillary body of the Economic and Social Council, and primarily responsible for the Crime Prevention and Criminal Justice program. The Commission is charged with coordinating international efforts to combat national and transnational crime and utilizing criminal law to address such problems as threats to the environment, youth crime and urban violence. Additionally, the Commission is responsible for promoting the efficiency, integrity and impartiality of criminal justice systems. The Commission meets on an annual basis to discuss these areas of concern and reports its findings and recommendations.

Website: www.unodc.org/unodc/en/commissions/CCPCJ/index.html

RATIFICATION AND IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Corruption in both the public and private sectors continues to be a global problem, especially in the developing world. The UN and the World Bank estimate that bribes, misappropriation of aid funds and other forms of corruption cost developing economies 20 to 40 billion U.S. dollars per year. Capital that could be used to improve national infrastructure, aid the poor, fight widespread disease or any number of other worthwhile development projects is used instead to finance the largesse of those in power. Corruption is a problem in the developed world as well, although private sector corruption and tax evasion are more serious issues than public sector corruption. Private entities in developed countries are also crucial to laundering and concealing stolen funds from developing countries.

The idea for a legal instrument to counter corruption was first introduced in 2000. Politicians and experts realized that corruption undermines democracy, sustainable development and the rule of law. The United Nations Convention against Corruption (UNCAC) was adopted by the General Assembly on 31 October 2003. It entered into force 14 December 2005, and there are currently 165 States Parties. The UNCAC has four priorities: prevention, criminalization, international cooperation and asset recovery. Prevention includes measures to stop corruption before it occurs,

such as transparency at elections and the adoption of official government corruption bodies. Criminalization requires countries to cover forms of corruption that are more heinous, like the bribing of judges. International Cooperation monitors the status of countries working together to address acts of corruption. The final area, asset recovery, is a new development in international law, focused on the reparation of assets that corrupt regimes have laundered offshore. This is a particularly important issue for many developing countries where high-level corruption has emptied national treasuries.

Implementation by States Parties is evaluated through the Mechanism for the Review of Implementation of the UNCAC, overseen by the Conference of the States Parties to the UNCAC (COSP). The Mechanism is voluntary and utilizes a combination of self-assessment, peer review by other States Parties and, if the peer reviewer so requests, participation by civil bodies and academic experts. In the first two rounds of the Review, few States Parties fully completed the process. Analysis by the UNCAC Coalition, a global network of civil society organizations, concluded that inadequate enforcement data and lack of access to data has contributed to the low rate of effective participation in reforms. Some countries choose to publically release very little data on internal corruption, and that makes the task of fighting corruption more difficult. Many Member States have also not taken the necessary legislative or legal steps to enshrine the Convention in domestic law, and civil society participation in the process is minimal. Slow responses to Member States' technical assistance requests have delayed implementation. The financial crisis beginning in 2008 also caused many States to focus efforts elsewhere.

The most recent report of the Conference of States Parties addressed the provision of technical assistance, with recommendations that corruption and prevention initiatives should be specific to the needs of the country and context, and should be tailored without being prescriptive. Many participants stressed the importance of educational programs and awareness-raising activities. Furthermore, the correlation between the implementation of human rights and anti-corruption efforts as mutually reinforcing acts was a major theme. Many civil society organizations called for further exploration of how to encourage the public to report corruption and whether States should establish a duty to report corruption. The issue is complicated, in part by the limited regulation of informal economies and their heightened vulnerability to corruption.



Looking ahead, there are several issues that the Commission on Crime Prevention and Criminal Justice (CCPCJ) should consider addressing: cooperation and extradition, capacity-building, ratification and asset recovery. While the Convention itself provides a legal basis for extradition for specified crimes of corruption, most members report that it has not been widely utilized, and the international community must implement international logistical support for such extraditions. Within the framework of the Convention, International Cooperation outlines how members can work together to aid legal efforts to combat corruption, including through law enforcement cooperation and mutual legal assistance. National legislatures need assistance drafting and passing laws to implement the provisions of UNCAC, and law enforcement and executive officials require training to spot the signs of corruption. Ratification of the Convention is still a concern, and the CCPCJ has led efforts to increase ratification and assist new States Parties with the implementation of the Convention. Several major economic powers and global financial centers have yet to ratify the Convention, undermining its legitimacy and effectiveness.

Creating and implementing robust mechanisms for asset recovery is particularly important for States Parties who have suffered as a result of official corruption, the graft by politicians of national resources, and the tax evasion and money laundering activities of private entities. In September 2007, UNDOC and the World Bank established the Stolen Assets Recovery (StAR) Initiative to encourage and facilitate the return of stolen assets. StAR has helped recover over \$5 billion over the past sixteen years, but there is much work to be done in identifying the assets stolen and providing enforceable mechanisms for the recovery of those assets.

Questions to consider from your government's perspective on this issue include the following:

- What additional steps can be taken to discourage corruption in the private sector?
- How can the CCPCJ encourage and increase logistical and technical support for implementation of the provisions of UNCAC?
- How can the UNCAC increase individual accountability to the commitments of States Parties in completing self-assessments and ensuring the publication and transparency of the reports?
- What steps can be taken to urge Member States to ratify the Convention?

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INTERNATIONAL COOPERATION FOR THE IMPROVEMENT OF ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS, PARTICULARLY IN AFRICA

Equality before the law is a key principle of modern legal systems. Legal aid supports this principle in the context of criminal justice systems by providing access to legal counsel for those accused of crimes who are too impoverished to afford an attorney. Due to the complexity and specialized knowledge required to navigate criminal justice systems, criminal defendants who must represent themselves in court typically do not receive fair treatment, and are more likely to suffer disproportionately harsh penalties or to be convicted of crimes they did not commit. Additionally, the lack of affordable or publicly provided legal services for criminal defendants contributes to prison overcrowding especially in some developing and post-conflict countries where the majority of the prison population is awaiting trial due to a lack of an effective legal aid program.

Public defense attorneys can also face a dangerous security environment; if they fear for their lives when visiting prisons or courtrooms, for example, they cannot provide effective or consistent representation for criminal defendants. Lack of resources is a constant problem. Even in developed countries, public defenders are severely understaffed and are thus unable to devote adequate time to the representation of each defendant. Finally, if a country's criminal justice system overall is corrupt, improving the effectiveness of legal aid is even more difficult; if lawyers are taking bribes to expedite or delay cases, or the judiciary is corrupt and lacks independence, access to legal aid may not improve outcomes for criminal defendants.

The United Nations has long recognized the importance of access to legal aid for criminal defendants. In Article 11, paragraph 1 of The



Universal Declaration of Human Rights, the United Nations created a standard that every person charged with a penal offense should be granted all the guarantees necessary for his or her defense. Access to legal aid is especially problematic in Africa, where the criminal justice systems of many post-conflict countries face unique challenges. Prior to the CCPCJ's work on this topic, the African Commission on Human and Peoples' Rights (ACHPR) adopted the Dakar Declaration. This document consolidated the fair trial standards of the African Charter and certain relevant decisions of other human rights bodies. In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The ACHPR also adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa in 2005, which encouraged private legal organizations to provide pro bono assistance. These instruments and discussions eventually led to the adoption of the Lilongwe Declaration of 2004, which supports the right to legal aid in criminal justice and broadens legal aid beyond the notion of legal advice and representation.

After the Lilongwe Declaration, the CCPCJ began to further engage the international community on this issue. Following the adoption of the Declaration, the CCPCJ requested the United Nations Office on Drugs and Crime to convene an open-ended intergovernmental meeting of experts to study mechanisms to strengthen access to legal aid in national criminal justice systems and to explore the development of a declaration of basic principles or a set of guidelines for improving access to legal aid in criminal justice systems. The group met in Vienna, Austria in November of 2011 and produced draft Principles and Guidelines.

In April 2012, the Commission on Crime and Prevention met and adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This set of eighteen guidelines covers the CCPCJ's recommendations for all stages of the criminal justice process, from the pre-trial stages all the way through post-trial and sentencing. Among other items, the Principles and Guidelines recommend cooperation between private and public organizations; a guarantee that defendants will be informed of the availability of legal aid; leveraging the work of paralegals; and providing training and funding for would-be legal aid attorneys. The Commission also noted that legal aid was especially important for children who are accused of crimes.

Looking ahead, the principle challenge for the CCPCJ will be encouraging Member States to accept and implement the Principles and Guidelines and to offer support to Member States in this endeavor, including providing technical assistance to establish formalized legislation. In an area where funding is often difficult to obtain, the CCPCJ will also need to convince Member States of the importance of access to legal aid to establishing and maintaining the equitable rule of law in each Member State.

Questions to consider from your government's perspective on this issue include the following:

- How can the international community aid other countries in developing their own criminal justice systems? What policy barriers remain to the development of a robust criminal justice system and access to legal aid in your own country?
- How must the rule of law adapt to accommodate regional cultures and traditions while maintaining its core principles of equality before the law and equal access to justice?

- How can the international community encourage the establishment of formalized legislation in each Member State that implements the CCPCJ's Principles and Guidelines?

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