



# CMI Policy Brief

## International legislation and conventions on corruption

Corruption has increasingly been understood as one of the greatest challenges of the contemporary world, and as a major obstacle to economic and social development. Corruption undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development, and particularly hurts the poor.

Due to the awareness of this problem by the international community, and the recognition of corruption as an international problem that requires international solutions, several international declarations, conventions and treaties have been made from 1995 onwards on the theme of corruption. Some of these are broad in scope, meant to be binding and ratified by a number of countries, and some are "soft law" instruments (non-binding), demonstrating guidelines and attempting to increase political will on corruption and corruption-related crimes. Both are necessary additions (and encouragements/models) to national legislation.

The most comprehensive international conventions are the **UN Convention against Corruption**, on which negotiations began in 1999 and continue, and the **OECD Convention against Bribery**, which, as of October 2002, has been ratified and implemented by 35 countries. In addition to the OECD and UN conventions, there are a number of regional and issue-specific treaties on the table.

The conventions and treaties address issues like the criminalisation of certain conducts perpetrated by individuals or legal persons, such as bribery, fraud, embezzlement, influence peddling, etc. Most conventions also address international issues such as transnational bribery, international crime, money laundering and extradition. Sometimes they also adopt preventive and transparency measures, such as codes of conduct, conflict of interest regulations, effective accounting and financial management standards, procurement rules, civil society participation, and government openness. Some also address the 'demand side', and the necessary cooperative provisions and international enforcement.

The conventions and treaties also specify measures for enhancing international cooperation in areas like technical and mutual legal assistance, jurisdiction, extradition, bank secrecy, and asset recovery. Furthermore, declarations and conventions on corruption are also meant to provide a forum in which states and governments can assemble to discuss corruption issues and align concepts, develop further international measures against corruption, build a broad international consensus in support of such measures, and promote adequate anti-corruption measures and legislation nationally.

While there have been many developments in international law, the structure remains incomplete. Legal instruments that are binding in nature are not universal or global in their application, and efforts of a global nature are not legally binding. The monitoring mechanisms are weak and generally lacking, and there is only a weak adoption of coherent strategies by the international community to fight corruption through shared experience and information. National efforts to implement established international obligations are also inadequate. Substantive issues that have yet to be addressed include those arising from transnational private-sector corruption and the repatriation of the proceeds of corruption, and particularly the proceeds of "grand corruption" cases.

**This CMI Policy Brief gives a presentation of the most relevant international declarations, conventions and treaties on corruption.**

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"Corruption is the abuse of entrusted authority for private benefit"

### International bodies

OECD  
UN  
EU  
CE  
OAS  
SADC

This is the second issue of *CMI Policy Brief*. The series aims at providing comment and analysis on current policy debates in the field of development and human rights. Findings from recent studies produced at the Chr. Michelsen Institute are included as well. *CMI Policy Brief* is written for policy makers and other interested readers, and is issued on a quarterly basis.

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### **Organisation for Economic Cooperation and Development (OECD)**

#### **Convention on combating bribery of foreign public officials in international business transactions**

The OECD Convention is relatively narrow and specific in its scope. Its sole focus is the use of domestic law to criminalise the bribery of foreign public officials. It applies to both active and passive bribery, but does not apply to forms of corruption other than bribery, bribery which is purely domestic, or bribery in which the direct, indirect or intended recipient of the benefit is not a public official. It also does not include cases where the bribe was paid for purposes unrelated to the conduct of international business and the gaining or retaining of some undue advantage in such business.




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### **United Nations (UN)**

#### **Global convention against corruption**

During 1999-2001, negotiations began to develop this binding international legal instrument, which would be global in both its approach to the subject and in its geographical application. The actual negotiations, scheduled to take place in 2002-2003, are expected not only to produce the specified instrument, but also to provide a valuable forum in which all Member States of the United Nations can assemble to discuss corruption issues, to develop effective measures against corruption, and to build broad international consensus in support of such measures.

#### **Declaration against corruption and bribery in international commercial transactions**

In December 1996, the General Assembly adopted the *United Nations Declaration against Corruption and Bribery in International Commercial Transactions*. The Declaration deals with both private and public sectors. It calls for the enactment and enforcement of laws prohibiting bribery in international transactions; laws criminalising the bribery of foreign public officials; and laws ensuring that bribes are not tax deductible. It also calls for international cooperation in areas such as investigation, prosecution and extradition, and for countries to ensure that bank secrecy is not an obstacle to such cooperation.

#### **International code of conduct for public officials**

*The Code* has been adopted as a tool to guide Member States in their efforts against corruption in the public sector through a set of basic recommendations that national public officials should follow in the performance of their duties. *The Code* deals with the following aspects: (a) the general principles that should guide public officials in the performance of their duties; (b) conflicts of interest and disqualification; (c) disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; (d) acceptance of gifts or other favours; (e) the handling of confidential information; and (f) the political activity of public officials.

#### **Convention against transnational organised crime**

This convention is not yet in force, but incorporates concepts on corruption that are agreed, for the first time, at the general universal level. Among the mandatory offences are: to promise, offer, give, solicit or accept any undue advantage to/by a public official; to act or refrain from acting in any matter relating to an official's public duties; and participation as an accomplice. As optional offences, included in art. 8, are corrupting foreign or international public servants and other forms of corruption. On the issue of corruption measures, art. 9 contemplates the enacting of legislative or other measures to promote integrity; to prevent, detect and punish the corruption of public officials; to ensure effective action by officials; and to provide anti-corruption authorities with sufficient independence to deter undue influence.

**European Union (EU)****Convention on the fight against corruption involving officials of the European Communities or officials of Member States**

This Convention incorporates essentially the same terms as the 1995 Convention on the protection of financial interests (below), but only deals with conduct on the part of officials of the European Community and its Member States. The conduct to which it applies is essentially bribery and similar offences, which States Parties are required to criminalise. It does not deal with fraud, money laundering or other corruption-related offences.

**Convention of the European Union on the protection of its financial interests and protocols thereto**

The Convention (1995) and its two Protocols (1996 and 1997) represent an attempt on the part of the EU to address forms of malfeasance which are harmful to its own financial interests. They are legally binding and address corruption and other financial or economic crimes as well as related conduct, but only insofar as the conduct involved affects the interests of the EU itself. The Convention deals with a list of conduct designated as "fraud affecting the European Communities' financial interests".

**Council of Europe (CE)****Criminal law convention against corruption**

The Convention is drafted as a binding legal instrument and applies to a broad range of occupations and circumstances, but is relatively narrow in the range of actions or conduct that States Parties are required to criminalise. It contains provisions criminalising a list of specific forms of corruption, and extending to both active and passive forms of corruption, and to both private and public sector cases. The Convention also deals with a range of transnational cases: bribery of foreign public officials and members of foreign public assemblies is expressly included, and offences established pursuant to the private-sector criminalisation provisions would generally apply in transnational cases in any State Party where a sufficient portion of the offence to trigger domestic jurisdictional rules had taken place.

**Civil law convention against corruption**

This is the first attempt to define common international rules for civil litigation in corruption cases. Where the *Criminal Law Convention* seeks to control corruption by ensuring that offences and punishments are in place, the *Civil Law Convention* requires States Parties to ensure that those affected by corruption can sue the perpetrators civilly, effectively drawing the victims of corruption into the Council's anti-corruption strategy. The *Civil Law Convention* is narrower than its criminal law counterpart in the scope of the forms of corruption to which it applies, extending only to bribery and similar acts. It is not in force.

**Joint Action of 22 December 1998 on corruption in the private sector**

This convention incorporates many similar provisions to the preceding European instruments, but there is one fundamental difference. Here the focus is on corruption in the private sector. The obligation is to criminalise both active and passive corruption conducted "in the course of business activities", which would include cases where neither the payer nor the recipient of a bribe was connected in any way with public administration, as well as cases where the "business activities" involved business with government.

**The twenty guiding principles for the fight against corruption**

The Principles are multidisciplinary, covering the use of criminal and civil law measures, civil prevention, administrative reform, transparency measures, and research, and are directed at encouraging individual countries to consult one another and coordinate national measures as a further precaution against transnational corruption problems. Attention is also drawn to the links between corruption and other forms of crime, particularly money-laundering and organised crime.



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### **Organization of American States (OAS)**

#### **The Inter-American convention against corruption**

The IACC is the first international convention against corruption ever adopted (from 6 March 1997). It has been ratified by 22 OAS countries, and is broader in scope than the European and OECD instruments, which focus primarily on bribery and its variations. The IACC provisions can be broadly classified into three groups: Preventive Measures; Criminal Offences; and Mutual Legal Assistance.

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### **Southern African Development Community (SADC)**

#### **Protocol on Corruption**

In addition to defining and describing corruption as a problem, the purposes of the SADC *Protocol on Corruption* are threefold: to promote the development of anti-corruption mechanisms at the national level, to promote cooperation in the fight against corruption by States Parties, and to harmonise anti-corruption national legislation in the region. The Protocol provides a wide set of preventive mechanisms which include the development of codes of conduct for public officials, transparency in the public procurement of goods and services, access to public information, protection of whistle-blowers, establishment of anti-corruption agencies, development of systems of accountability and controls, participation of the media and civil society, and the use of public education and awareness as a way of introducing zero tolerance for corruption.



#### **Research on corruption and reform at CMI**

CMI has since 1999 carried out research on corruption and corruption-related issues in the research programme Corruption and Reform.

The major objective is to produce new theoretical and empirical insights into the nature and determinants of corruption in political, economic and social processes, on a multi-disciplinary and comparative basis.

The programme also aims to strengthen ongoing research on economic and political reforms and public administration, and to develop competence at CMI of relevance for the Norwegian Ministry of Foreign Affairs, NORAD and other donor agencies in their efforts to plan and implement anti-corruption strategies.

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### **U4: Utstein Anti-Corruption Resource Centre**

The four female ministers of international development of the UK, the Netherlands, Norway and Germany established the Utstein partnership in 1999. Among other priorities, the partners have developed a common strategy and plans for combating corruption. In September 2002, the web-based U4 Anti-corruption Resource Centre was established at <http://www.u4.no>. CMI developed and is hosting the web site.

U4 is dedicated to the global fight against corruption. It is organised around two purposes. First, the centre guides you to resources like expert answers to a large number of frequently asked questions on corruption, a conceptual dictionary explaining the keywords, toolkits on how to analyse and work against corruption, and on-line training courses, research, documentation and literature. The systematised and annotated links to available information are a gateway to anti-corruption resources on the internet. Secondly, U4 informs you on the Utstein partners and their anti-corruption work.

More information on corruption in general and on the annotated links to sites on the above-mentioned international conventions on corruption is available at <http://www.u4.no/links/treaties.cfm>.

