**APUNCAC: An Initiative to Promote Good Governance and the Rule-of-Law**

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Governance initiatives are increasingly being promoted as a means of fighting corruption, promoting the rule-of-law, and restoring human rights. One type of governance initiative involves the implementation of international conventions designed to fight corruption and promote the rule of law. The flagship international anticorruption convention is the United Nations Convention against Corruption (UNCAC). As of February 2020, 187 UN Member States are parties to UNCAC.

However, corruption and impunity continue, suggesting the need for stronger measures to promote good governance and the rule-of-law. The Anti-Corruption Protocol to the United Nations Convention against Corruption (APUNCAC) would strengthen UNCAC by establishing aggressive measures to fight corruption and impunity. APUNCAC would:

(1) establish a body of UN inspectors empowered to investigate charges of corruption,

(2) establish dedicated anticorruption courts,

(3) include provisions designed to fight money laundering,

(4) include provisions designed to exert extraterritorial jurisdiction over criminals who currently operate with impunity,

(5) seek to promote the rule of law.

**Program Theory**

The theory underlying APUNCAC may be inferred from program documents:

*1. How would UN Inspectors conduct investigations?*

UN Inspectors would conduct investigations in the same way that investigators empowered by the bilateral agreement establishing the Commission against Impunity and Corruption in Guatemala (CICIG) conducted investigations. The CICIG agreement permitted UN Inspectors to conduct investigations on domestic territory in accordance with domestic laws. In the same way, parties to APUNCAC would voluntarily agree to facilitate investigations and prosecute offenders. APUNCAC would essentially create a permanent, multinational version of CICIG.

*2. How would APUNCAC insure that prosecutions would not be thwarted?*

Article 10 defines the crime of obstruction of justice. The definition encompasses judicial misconduct: “A prosecution, trial, disciplinary hearing or oversight hearing regarding an individual accused of corruption or obstruction of justice under this Protocol that is substantially irregular, violates accepted prosecutorial, judicial, disciplinary or oversight norms and practices, and perverts the course of justice shall constitute obstruction of justice.”

Article 10 makes obstruction of justice an offense that may be investigated by a UN inspector. Significantly, a UN inspector may seek a judicial opinion from a justice in the state where the investigation is conducted regarding any alleged act involving obstruction of justice. The UN inspector may recommend charges or disciplinary actions to the appropriate prosecuting authorities or disciplinary bodies. UN inspectors would file reports that would be published online by Transparency International. The reports would be submitted to the appropriate prosecutorial, disciplinary, or oversight bodies.

APUNCAC’s international body of UN inspectors, modeled after CICIG, would have broad powers to investigate obstruction of justice, including manipulation of domestic anticorruption courts, and would aim to provide a powerful check on attempts by corrupt elites to thwart investigations of corruption.

UN inspectors would hand over each case to dedicated anti-corruption courts established and funded by the UN but operated domestically. The courts would be periodically evaluated by the UN Commission on Crime Prevention and Criminal Justice and funding would be redirected based upon the results of the evaluations. The model protocol incorporates special procedures designed to ensure an independent, untainted process for selecting, retaining, and ensuring the accountability of competent justices to serve those courts.

*3. How would APUNCAC insure the cooperation of domestic authorities with UN Inspectors?*

APUNCAC empowers the Commission on Crime Prevention and Criminal Justice to appoint entities to monitor domestic compliance with the terms of APUNCAC, with special emphasis on cooperation, responses to obstruction of justice, and the privileges, immunities and protection of inspectors, staff and surrogates.

Monitors may include national or international human rights institutions. The Commission on Crime Prevention and Criminal Justice would ensure that designated monitors have regular and adequate funding to perform their responsibilities, would conduct periodic reviews to evaluate the performance of designated monitors, and would redirect funding based upon those evaluations.

Article 14 provides a mechanism where a UN inspector may, when obstruction of justice has occurred or when cooperation is inadequate, file a request for censure. Article 15 provides a mechanism where the World Bank and IMF would reduce aid and credits in response to the magnitude and frequency of acts of noncooperation with UN Inspectors. Article 16 makes the Commission on Crime Prevention and Criminal Justice the final arbiter of disputes with regard to the actions of the Commission, the International Commission against Corruption (ICAC), the Anti-Money Laundering Debarment Office, FINCEN, and each state party Conflicts of Interest Board and Fair Political Practices Commission.

*4. What would compel leaders of UN Member States to adopt UNCAC?*

Ratification would be obtained through a coordinated international effort, involving pressure exerted by influential international organizations, in the same way that nongovernmental organizations (NGOs) influenced the ratification of the Rome Statute. Signature and ratification of APUNCAC would be framed as a moral issue and provide a public litmus test for leaders around the world who would be pressed to support APUNCAC or risk public condemnation and loss of office.

**TBRE**

APUNCAC would require a substantial investment of resources by a coalition of nongovernmental organizations (NGOs) to obtain signatures and ratification from UN Member States. APUNCAC would require a substantial investment by each State Party to implement domestic conforming legislation and staff each of the institutions required by APUNCAC. A failure of program theory could have significant negative consequences. Therefore, there is a need to conduct a feasibility study of APUNCAC prior to implementation.

APUNCAC is based on a complex theory of anticorruption. There is a need to examine each assumption of the program theory. A theory-based realist evaluation (TBRE) approach was selected because it is aligned with this task. Realist evaluations focus on the program’s theory--how the intervention is expected to lead to its effects. This approach was adapted for the purpose of conducting a feasibility study.

First, each assumption was identified. Second, each assumption was analyzed, drawing upon relevant empirical and analytical studies. Third, the analyses were integrated to produce an overall evaluation of the program’s feasibility.

The author conducted and published eleven studies. In the process, APUNCAC was adapted and improved. New provisions were inserted and existing language was modified. Difficult practical and operational issues were addressed. The result was a steady refinement, evolution, and expansion of APUNCAC to its present 200-page length. APUNCAC is distinguished by a level of detail that is unusual in an international convention. The detailed language addresses concerns that APUNCAC is not practical, not feasible, and not sensible. The language offers a model of the domestic conforming legislation that would be necessary upon signature and ratification.

The significance of this work is that it demonstrates how a complex anticorruption initiative may be analyzed, prior to implementation, and how the planned initiative may be adapted and improved prior to implementation, avoiding costly mistakes. The design illustrates how theory-based realist evaluation may be adapted and used to evaluate governance initiatives that are not easily evaluated using conventional strategies. The evaluation advances theory and practice with regard to the evaluation of complex governance initiatives and demonstrates how such initiatives may be evaluated prior to implementation so that the information may be used for the purpose of program improvement.

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