

This guide focuses on the two principal anti-corruption conventions in Africa, the AU and UN Conventions. It explains their uses; describes why and how to promote national ratification, implementation and intergovernmental monitoring; and discusses ways to carry out civil society monitoring. It also describes briefly the other conventions and instruments having application to corruption issues in Africa, notably the UN Convention on Transnational Organized Crime, the SADC Protocol Against Corruption and the ECOWAS Protocol on the fight against corruption.

The guide aims to make anti-corruption conventions accessible to a wide range of civil society organisations in Africa, including not only those working in the anti-corruption field but also those working on human rights, labour rights, environmental issues, access to information, debt relief and other social issues. It explains the benefits of the conventions and offers practical tools for organisations interested in ensuring that the conventions have a real impact.

ANTI-CORRUPTION CONVENTIONS IN AFRICA

WHAT CIVIL SOCIETY CAN DO TO MAKE THEM WORK

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**ANTI-CORRUPTION CONVENTIONS IN AFRICA:
WHAT CIVIL SOCIETY CAN DO TO MAKE THEM WORK**

A CIVIL SOCIETY ADVOCACY GUIDE

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ACKNOWLEDGEMENTS

This guide was written and compiled by Gillian Dell, Transparency International's Programme Manager for Conventions. It was prepared as part of a joint Africa conventions programme involving TI, the South African Institute for Security Studies (ISS) and the United Nations Development Programme (UNDP) with the aim of making the two most important anti-corruption conventions in the Africa region more accessible to legislators, members of the executive branch and civil society. By clarifying how they can be used, the guide aims to increase their impact. The guide has benefited from inputs from Lilian Ekeanyanwu, TI-Nigeria; Daniel Batidam, Ghana Integrity Initiative; Djilali Hadjadj of the Algerian Anti-Corruption Association; and Julio Bacio of the TI-Secretariat. It has also benefited from comments from members of the Steering Committee for the programme, notably from Akere Muna, Pascal Karorero, Pauline Tamesis, Chantal Uwimana and Hennie van Vuuren. Valuable feedback was also received from Casey Kelso of TI, Babatunde Olugboji of Christian Aid, Professor Nikos Passas of Northeastern University in the US and Dimitri Vlassis of the United Nations Office on Drugs and Crime (UNODC).

TI wishes to acknowledge the generous support of UNDP for the preparation and production of this guide. Funding for the Advocacy Guide was received from the UNDP Global Programme for Parliamentary Strengthening and the UNDP BMZ Programme for Accountability and Transparency. TI is also grateful for support from Ireland Aid for the printing of this guide.

TI also would like to express its appreciation to Jonathan Shapiro for allowing us use of the cartoons in this guide.

“We must improve service delivery to the people. We must improve our attitudes towards citizens, as public servants. Together, we must work harder to root out crime and corruption, and to create jobs.”

Nelson Mandela, in a speech at Freedom Day Celebrations, 27 April 1999

“Let the corrupt persons return what they have corruptly obtained and let it go back to the real owners. That would make corruption a risky business. Criminalise corruption so that wherever they go, the corrupt can always be apprehended, tried and handed justice. Provide no place to hide. Let the banks and governments which keep and protect stolen wealth open their vaults. This is blood money. It leaves children dying in hospitals which have no medicine, infrastructure which has collapsed, and water unfit for human beings to drink.”

Wangari Maathai, Nobel Peace Prize Laureate, at 9th International Anti-Corruption Conference, Durban, South Africa, 1999



ABOUT THIS GUIDE

Corruption has been undermining countries in Africa economically, politically and socially for decades and the anti-corruption conventions that have been introduced in the last few years offer a real opportunity for change. Binding international frameworks are key to addressing the problem. Experience in Africa teaches that civil society organisations have a key role to play in promoting anti-corruption conventions in all phases from negotiation to follow-up reviews. Civil society groups can press their governments to give priority to convention ratification and implementation through research, analysis and advocacy work. They can help translate the off-putting legal terminology of conventions into language non-lawyers can understand and can explain to the public the usefulness of these conventions for addressing the corruption problem. They can keep track of their government's performance and make it public, adding an important independent perspective to the government's own assessment of its progress. Where they find deficiencies they can campaign for improvement, in coalition with supporters in government and the private sector. The more groups engaged in these activities, the stronger and more effective anti-corruption conventions and anti-corruption efforts in general are likely to be.

Transparency International (TI), the leading global civil society organisation devoted to the fight against corruption, has been actively engaged since its founding in 1993 in promoting the development, ratification, implementation and monitoring of international anti-corruption conventions and other international instruments. In particular, TI and its national chapters in Africa have played an active role in advancing the two main anti-corruption conventions in Africa:

- **African Union Convention on Preventing and Combating Corruption and Related Offences** (2003, AU Convention)
- **United Nations Convention against Corruption** (2003, UN Convention or UNCAC).

TI and its partners in the Africa conventions programme – ISS and UNDP – believe that many more civil society organisations would be interested in promoting conventions if there were wider understanding of these international instruments and their benefits. By clarifying how they can be used, this guide aims to make the conventions more accessible and thereby help mobilise greater support. A wide range of groups are targeted by the guide. It is intended to be useful to groups working specifically in the anti-corruption field, as well as to those working on human rights, labour rights, environmental issues, access to information, debt relief and other social issues. These organisations can draw on one or another section of anti-corruption conventions as a basis for addressing corruption issues relevant for their work and as a basis for developing common positions with other interested stakeholders.

This guide focuses on the two principal treaties in Africa, the AU and UN Conventions: it explains their uses; describes why and how to promote national ratification, implementation and intergovernmental monitoring; and discusses ways to carry out civil society monitoring. It also describes briefly the other anti-corruption instruments having application in Africa, notably

- UN Convention against Transnational Organized Crime (2000, UNTOC)
- SADC Protocol against Corruption (2001, SADC Protocol)
- ECOWAS Protocol on the fight against corruption (2001, ECOWAS Protocol)

We hope that you and your organisation will find the guide useful. We aim to revise and update the guide on a periodic basis and would appreciate your feedback and suggestions. We would also be glad to include in the next edition of the guide information about how your organisation is using anti-corruption conventions to promote change, and we encourage you to send us such information. Please send your comments to gdell@transparency.org.

Other recommended documents on subjects covered by this guide include

- Transparency International's booklet on "Understanding the African Union Convention on Preventing and Combating Corruption and Related Offences" by Akere Muna.
- The Comparative Guide for Legislators on the AU Convention and UNCAC, prepared by the Institute for Security Studies (ISS) in South Africa
- The Legislative Guide to the UN Convention against Corruption commissioned by the UN Office on Drugs and Crime in Vienna
- The Commonwealth Secretariat's Report and Recommendations of its Expert Working Group on Legislative and Related Measures to Combat Corruption
- The Commonwealth Secretariat's Recommendations by its Working Group on Asset Repatriation
- Country and regional studies commissioned by UNDP, ISS and Transparency International

Further references are provided in an Annex to this guide.

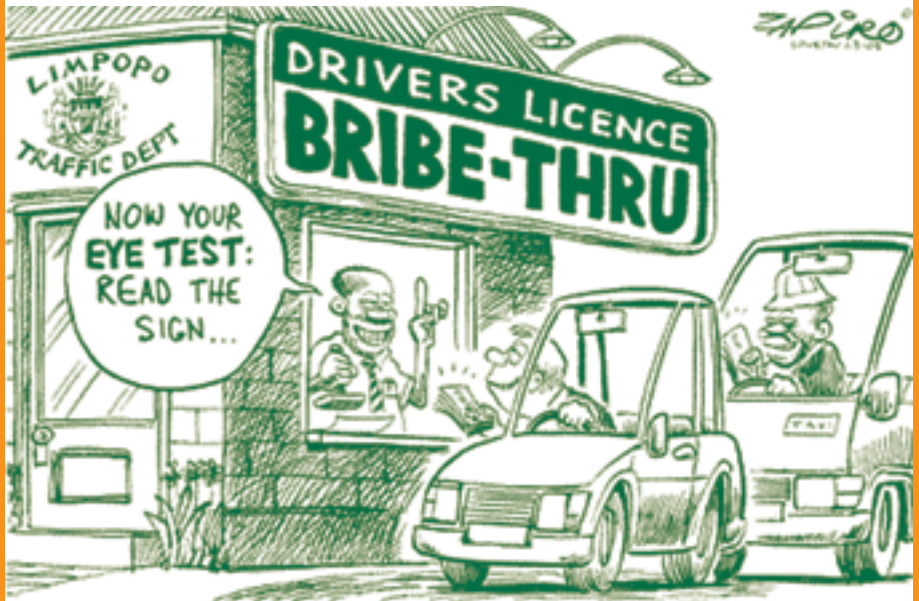




CORRUPTION: WHAT IT IS AND WHY IT MATTERS

“Corruption is indeed the worst disease that a society can have. It is not only inefficient economically, but it is also a source of moral decay, both for the society as a whole and for each and every individual who is caught in its net.”

Alassane Ouattara, former Prime Minister of the Ivory Coast, in a speech at the 9th International Anti-Corruption Conference, Durban, South Africa, 1999



WHAT IS CORRUPTION?

Corruption is defined by Transparency International as ‘the abuse of entrusted power for private gain’.¹ Similar definitions are used by international organisations such as the World Bank and UNDP.² The abuse may be perpetrated by a person with decision-making power in the public or private sectors, may be initiated by that person or induced by a person attempting to influence the decision-making process. (It should be noted that no definition of corruption is provided in the conventions under discussion in this guide; the conventions focus instead on defining corruption offences. Nor is a legal definition of corruption needed to establish an effective national legal framework and system for preventing and punishing corruption.)

Corruption is a manifestation of institutional weaknesses, poor ethical standards, skewed incentives and insufficient enforcement. Corrupt behaviour creates illicit benefits for a person or group by enabling them to circumvent rules designed to ensure fairness and efficiency. It produces unfair, inefficient and wasteful outcomes. The illicit rewards for a small rule-breaking group come at the expense of the community-at-large. There are also individual losers, such as those forced into making extortion payments, those who are barred from entitlements because they are unable to make such payments and those who lose bidding competitions to supply goods or services due to bribes paid by less ethical peers.

Corruption includes a wide range of offences, from the high-level embezzlement of public funds to the petty corruption of traffic police or authorities selling licences. It refers to both domestic and cross-border activities. It may take place in the public or private sector. It may take the form of bribery of public sector officials, high or low, domestic or foreign. Alternatively, it may involve bribes paid to private sector employees. Corruption may also take the form of embezzlement, misappropriation or other diversion of property by a public official or by a private sector employee. In addition to these offences, corruption is also understood to cover nepotism and favouritism in public sector recruitment and promotion, although these are not legal concepts. Such behaviour is generally covered by administrative law provisions on recruitment and promotion rather than under criminal law. There are further offences relating directly or indirectly to corruption, including laundering of the proceeds of corruption – a key part of the corruption equation – as well as aiding corruption and obstructing justice.

WHY DOES CORRUPTION MATTER?

Corruption harms and undermines societies in many ways. As stated in the preamble to the UN Convention, corruption poses a serious threat ‘to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.’ When corruption is widespread in a country, the adverse effects are felt in different ways by people throughout society, from businesspeople to school teachers to hospital patients.

CORRUPTION CAUSES DAMAGE IN MANY WAYS.

Corruption causes poverty and creates barriers to overcoming it

Corruption affects poor people the most as they are the most vulnerable. These often include women, children, the elderly and those wrestling with chronic disease. Without resources at their disposal they simply have fewer options when confronting barriers to accessing basic public services and other resources. They also tend to be most affected by the misallocation of public resources and the resulting inhibited economic development. Programmes to combat poverty are also adversely affected by corruption and are thus made ineffective.

Corruption violates human rights

Corruption violates political and civil rights by distorting or rendering useless political institutions and processes and undermining the functioning of the judiciary and law enforcement authorities.

Corruption also violates economic and social rights by denying equitable access to public services such as health and education, placing obstacles in the way of earning a livelihood in the public or private sector and, as mentioned above, by distorting decision-making processes regarding the allocation of resources.

Corruption undermines representative democracy

In countries with a system of elected representatives entrusted with decision-making power, corruption enables wealthy individuals or institutions to wield disproportionate influence in national, provincial and local politics. This can be the result of buying citizens' votes in elections or of buying the votes of parliamentary representatives on matters such as taxation, distribution of public resources, regulation of business, or even foreign policy.

Corruption is a barrier to economic development

Corruption acts as a barrier to development by distorting public spending, undermining efficiency and discouraging investment and growth. It thwarts efforts by the private sector to take advantage of business and growth opportunities and undermines economic competition.

Corruption is a cause of environmental damage

Corruption facilitates abuse of the environment and misuse of natural resources. It denies people the right to clean and non-toxic surroundings as well as the public dividends from natural resources.

Corruption is a tool of organised crime

Corruption is a means for organised crime to facilitate the drugs and arms trade as well as human and organ trafficking.

CORRUPTION IS A CROSS-BORDER PROBLEM

In today's globalised world, states are increasingly interconnected through trade, investment, financial transactions and communications. This means that corruption in one country is a matter of concern in other countries because

- the harm and injustice becomes better known elsewhere
- it interferes with trade and investment opportunities in the country affected by corruption;
- it may lead to misuse of international development assistance; and
- corrupt networks based in one country operate abroad, bringing corruption to other countries; the potential risk is all the greater where a state weakened by corruption becomes a haven for organised crime.

In Africa, as in other regions, the corruption problem has a variety of cross-border components. *Bribe payments* are often arranged and made across borders. The proceeds of corruption are concealed by *laundering* funds across borders. (This may be done via deposits in foreign banks, through cross-border acquisitions or by transferring funds to anonymous shell companies or trusts in haven jurisdictions.) Individuals involved in corruption can often *escape law enforcement* efforts by leaving the country where investigations or prosecutions are taking place or where a court judgement has been handed down.

These features mean that corruption must be addressed on an international basis and that cross-border cooperation is essential for the prevention, detection and prosecution of corruption. Holding those suspected of corruption accountable, however, is often hampered by the complexities of such cooperation. Governments may be prevented from investigating or prosecuting the corrupt when evidence, witnesses or corrupt persons are located abroad. If foreign governments do not cooperate, enforcement of criminal law is inhibited. Similarly, when the proceeds of corruption are located abroad, it is difficult to recover funds or property without the assistance of foreign institutions.

NEED FOR INTERNATIONAL COOPERATION: CASE EXAMPLES

Angola and Nigeria: In 2004, ABB, the power and automotive technology multinational, settled charges brought by the US Securities and Exchange Commission (SEC) that alleged that from 1998 through early 2003 ABB's US and foreign-based subsidiaries doing business in Angola, Nigeria and Kazakhstan offered and made illicit payments totaling over US\$ 1.1 million to government officials in these countries.

Source: www.sec.gov/litigation/litreleases/lr18775.htm

Angola and Nigeria: Baker Hughes is alleged to have made improper payments in Indonesia, India, Brazil, Nigeria, Angola, and Kazakhstan. In March 2002, the company announced that it had been advised that the SEC and Department of Justice were conducting investigations into possible violations of the FCPA's anti-bribery, books and records, and internal control provisions for improper payments in Nigeria, Angola and Kazakhstan. The SEC has issued subpoenas seeking information about the company's operations in Angola and Kazakhstan in August 2003 and April 2005 respectively.

Source: Report by Lucinda Low on FCPA Prosecutions, 5 May 2006 and Baker Hughes 10-K (March 1, 2006).

Benin: From 1999 to 2001 Titan Corp, a leading provider of information and communications products headquartered in California, paid more than US\$3.5 million to high officials of Benin and, in 2001, funnelled US\$2 million into the incumbent president's reelection campaign – and then falsified financial reports to cover it up. In March 2005, Titan Corp pleaded guilty in the US to bribing country officials in Benin and agreed to pay US\$28 million to settle the charges, brought by the U.S. Justice Department and the Securities and Exchange Commission.

Source: www.sec.gov/litigation/litreleases/lr19107.htm

Equatorial Guinea: It was reported in 2005 that the SEC in the US was examining payments by four big U.S. oil companies – Amerada Hess, ChevronTexaco, Exxon-Mobil and Marathon – to officials of Equatorial Guinea, their relatives and businesses they controlled. The SEC investigation resulted from government inquiries related to the Riggs Bank affair. The large payments uncovered in the course of an overall Senate Committee investigation of account transactions at Riggs raised concerns about possible corruption, voiced by Senators at a hearing in August 2004. With US\$700 million in Riggs Bank accounts and certificates of deposit for the Equatorial Guinea government, its officials and their relatives, the country was the Banks' biggest single customer. Using wire transfers, about US\$35 million was drained from an account that held oil revenue for the country's people and into off-shore companies, according to the report by Senate investigators. The US Senate

Committee also raised questions about the role of the UK bank HSBC.

Source: www.guardian.co.uk/hearafrica05/story/0,15756,1496561,00.html

Ghana: The World Bank in 2000 suspended its support for a US\$100 million water project after it was awarded to Enron's Azurix unit. "We were concerned the award was sole-source, without real competition," a World Bank official said last week. "We advised the government we couldn't finance it, because of the way the procurement was done. After the award, the bank's Ghana director, Peter Harrold, sent a harshly worded letter to Ghana's then-Vice President John Atta-Mills canceling the loan and alleging corruption. "We cannot have made it plainer to you that the key issue is transparency," he wrote. "The arrangement you have reached with Azurix is one that has been arrived at on a completely nontransparent basis." World Bank officials cited a draft schedule of payments showing an unexplained, US\$5 million up-front payment by Enron. A new Ghanaian government has since suspended the award, and is now seeking competitive bids.

Source: www.seen.org/pages/media/20020805_ws_j_corruption.shtml

Lesotho: Multinational companies were put on trial in Lesotho accused of paying huge bribes to a local official, a case virtually unprecedented in Africa. The case began in June 2001 with the trial of Masupha Sole, ex-chief executive of the Lesotho Highlands Development Authority, who was convicted on 13 counts of bribery linked to the controversial World Bank-financed Lesotho Highlands Water Project. The case embarrassed some of the biggest names in construction engineering. At least a dozen companies (among them Sir Alexander Gibb and Company, and Balfour Beatty of the UK, ABB, Impregilo of Italy, Acres International of Canada, Lahmeyer of Germany, and Sogreah, Dumez, Cegelec of France) were found to have bribed Mr. Sole and the Lesotho courts have managed to get convictions of several of them. Acres was the first to be debarred by the World Bank in 2004, two years after the Lesotho High Court had convicted this company. Acres International will not be eligible for World Bank contracts for three years.

Source: web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20229958~menuPK:34463~pagePK:64003015~piPK:64003012~thSitePK:4607,00.html

Nigeria: In 1999 it was announced that Enron would build gas-fired power plants near Lagos. Costs of the project were estimated at about US\$500 million. Before the main plant was built, Enron was to start supplying power from three 30-megawatt barge-mounted plants burning either oil or gas. The barges were to begin operation as early as the fall of 1999. For Nigerians, the project was important because, though Africa's largest nation is rich in energy resources, it faced persistent power crises and blackouts. By September 1999, the cost estimate for the new power com-

plex was up to US\$800 million. By February 2000, apparently before any construction had begun, the deal was facing political problems. The contracts were called into question by the World Bank, Nigeria's national utility, the National Electric Power Authority and other Nigerian states. The World Bank reportedly said the deal should have been competitively bid and that the final contract was overly favourable to Enron.

Source: www.seen.org/pages/media/20020805_wsj_corruption.shtml

Nigeria: Officials at a foreign subsidiary of Halliburton allegedly paid \$2.4 million to a Nigerian tax official to obtain favourable tax treatment in connection with the construction and expansion by TSKJ of a multibillion dollar natural gas liquefaction complex and related facilities at Bonny Island in Rivers State, Nigeria. The SEC is conducting a formal investigation, and the U.S. Department of Justice is conducting a related criminal investigation. Halliburton disclosed the payments to the SEC, and has said that it is cooperating with the SEC investigation and plans to ensure that the foreign subsidiary repays all applicable taxes to Nigeria, possibly as much as US\$5 million. The company also conducted an internal investigation and fired several employees as a result.

In October 2004, representatives of TSKJ, a foreign subsidiary of Halliburton, testified before Nigerian courts. The Department of Justice is also investigating other Halliburton subsidiaries, which could possibly implicate fertilizer plant contracts in Nigeria. The SEC has issued a subpoena to Kellogg Brown & Root's former chairman, Jack Stanley, who was alleged to have received unlawful payments.

Source: www.sec.gov/Archives/edgar/data/45012/000004501204000246/halupdatesnigeria.htm

Source: www.sec.gov/Archives/edgar/data/45012/000101540204002626/body_8k.htm

Source: Report by Lucinda Low on FCPA Prosecutions, 5 May 2006 and Halliburton 10-Q filing (October 31, 2005).

Nigeria/ Abacha: Abacha was the military dictator of Nigeria from November 1993 until his death in June 1998. According to post-Abacha governmental sources, some US\$4 billion in foreign assets have been traced to Abacha, his family and their representatives. In the autumn of 1999, Switzerland became the first country to block assets in the Abacha case. Apart from Switzerland, further countries received requests for judicial assistance from Nigeria, notably the UK, Luxembourg, Liechtenstein, and the Channel Islands. In these countries, too, substantial amounts of money were blocked.

US\$458 million of the Abacha assets of US\$505 million that were frozen in Switzerland were finally handed over to Nigeria in 2005. US\$40 million remain frozen in Switzerland for the time being because, according to the Federal Supreme Court,

they are not of evidently criminal origin; US\$7 million will be transferred to an escrow account in Nigeria. Nigeria has undertaken to use the returned assets to fund a variety of development projects.

South Africa: South Africa's 1998/1999 UK£3 billion Strategic Defence Procurement package was a major defence procurement which generated corruption allegations against British, French, German, Swedish and Italian companies involved in the deal, including BAE Systems and Thomson-CSF. High-ranking members of the government, including Vice President Jacob Zuma, were accused of taking "kick-backs" and of funnelling lucrative contracts to companies in which they or their families had a personal interest.

Source: www.africa-confidential.com/index.aspx?pageid=21

Uganda: It is alleged that there may have been improper payments in violation of the FCPA by persons and/or entities involved with AES Corp's Bujagali hydroelectric power project in Uganda. According to AES's May 2004 10-Q filing with the SEC, there is a Department of Justice investigation underway with which AES is cooperating.

Source: [Report by Lucinda Low on FCPA Prosecutions, 5 May 2006](#)

HOW CAN CORRUPTION BE COUNTERED?

To address the corruption problem in individual countries a comprehensive and global approach is required. National and international systems of transparency and accountability must be built up.³

This includes introduction or strengthening of preventive and punitive measures. The *preventive measures* are intended to create conditions that promote good, honest, transparent and efficient public management, as well as high standards in the private sector. The punitive measures punish corrupt actions taken, by means of judicial or administrative organs.

Countering corruption also requires enhanced *international cooperation*. Individual governments can make progress with domestic preventive and punitive measures but, given the international aspects of corruption, they will also need to cooperate with other governments in order to have lasting success. This may take the form of mutual legal assistance. Cross-border international cooperation in law enforcement is often key to the successful prevention and prosecution of corruption cases.

Development cooperation is also a necessity since some countries will neither be able to address domestic corruption nor help other countries in cross-border law enforcement without technical and financial assistance.

Anti-corruption conventions provide a framework for strengthening preventive and punitive measures. They also address the need for international cooperation and provide frameworks for technical assistance.

- 1 Sometimes the definition is limited to ‘the abuse of public power’ but this fails to capture corruption within the private sector, sometimes called private-to-private corruption.
- 2 The World Bank defines corruption as the abuse of public office for private gain. UNDP has a similar definition.
- 3 See for example, TI Source Book, *Confronting Corruption: The Elements of a National Integrity System*, by Jeremy Pope, Transparency International (3rd ed. 2000). See also, *Combattre la corruption – enjeux et perspectives*, ed. Djilali Hadjadj (2002), an adaptation of the Source Book to the context of francophone Africa.

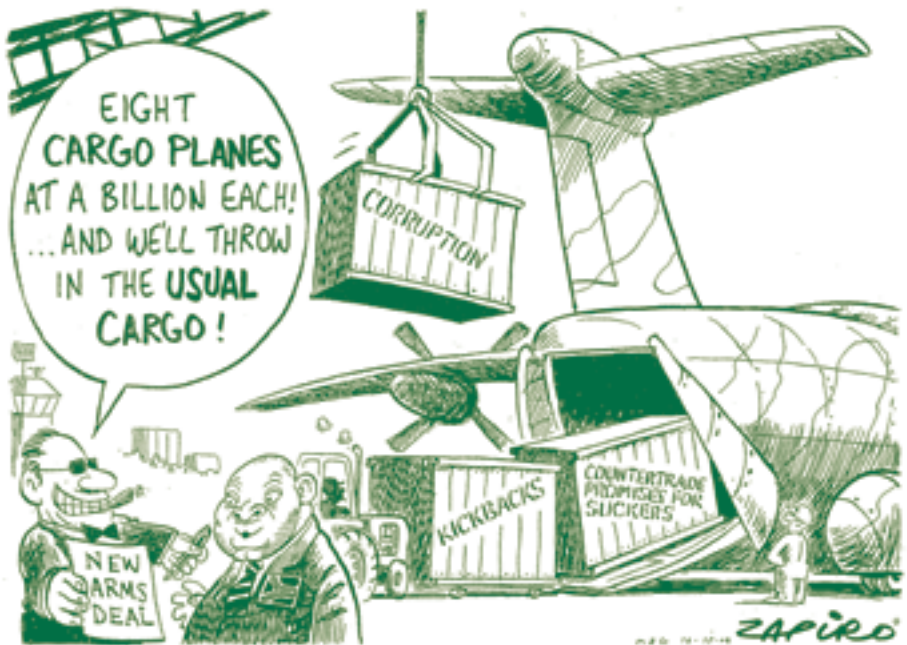


ANTI-CORRUPTION CONVENTIONS IN AFRICA:

WHAT THEY ARE, HOW THEY'RE USEFUL

If fully enforced, this new instrument [the UN Convention] can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development, it can help us achieve the Millennium Development Goals.

United Nations Secretary-General **Kofi Annan** in his statement on the adoption by the General Assembly in 2003 of the United Nations Convention against Corruption



Anti-corruption conventions in Africa provide an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem. They also provide a basis for collaborating with other countries in doing so.

Both the AU and UN Conventions, as well as the other anti-corruption instruments relevant for Africa, are the manifestations of an international consensus that emerged in the early 1990s identifying corruption as an important problem needing to be addressed and in particular requiring internationally-agreed solutions.

The end of the Cold War removed, at least for a period, the national security rationale for tolerating and supporting corrupt regimes around the world. At the same time, the post-Cold War agenda of democratisation, accountability and transparency focused the attention of the global community, including major international financial and development institutions, on the corruption problem.

Moreover, there was concern in the international community in the 1990's that the corruption problem was growing. New corruption opportunities had resulted from worldwide initiatives to privatise and deregulate. Some researchers also claim that reductions in trade barriers in the 1980's and 90's produced not only increased market access but also increased competition among multinationals and – as a by-product – increased corruption in a number of important sectors. Additional impetus for the international anti-corruption agenda derived from the fact that multinational companies based in the United States had long considered themselves disadvantaged in global markets due to the 1977 Foreign Corrupt Practices Act, which imposed criminal penalties for engaging in foreign bribery. The US government consequently became a leading sponsor of efforts to find a solution through an international regime to limit cross-border bribery.

Of the series of international conventions developed in the last decade, the AU and UN Conventions are among the most recent, both having been adopted in 2003.

WHAT ARE ANTI-CORRUPTION CONVENTIONS?

Conventions are binding written international agreements between groups of states which establish commonly agreed rules and standards and express a high level of shared political commitment. Their adoption by assemblies of governments such as the UN General Assembly or regional assemblies establishes international or regional consensus on the matters covered. This consensus is further strengthened when the conventions are signed by a significant number of governments in those assemblies. They become binding when a predetermined number of countries ratify them. (See discussion below on steps in bringing them to life).

Anti-corruption conventions cover standards and requirements in the prevention, detection, investigation, and sanctioning of acts of corruption. Some conventions have a very broad scope; others are narrower and may cover only a limited number of countries or anti-corruption measures.

Some conventions, such as the UN Convention, contain both mandatory provisions, which are binding on the states that ratify, and non-mandatory or optional provisions which the states may implement, but need not. In general, the optional provisions represent good practice but in some cases there are legal obstacles to their introduction into a country's legal system.

The anti-corruption measures required by conventions are implemented by legislation, regulations, policies and practices.

HOW ARE THEY USEFUL?

Anti-corruption conventions are especially important in providing a framework for addressing cross-border issues. They facilitate international cooperation in law enforcement by requiring countries to make the same conduct illegal, harmonising the legal and institutional frameworks for law enforcement and establishing cooperative mechanisms. They also establish, to varying degrees, valuable common standards for domestic institutions, policies, processes and practices which buttress anti-corruption efforts at the national level.

The existence of anti-corruption conventions is evidence of how seriously the international community takes the anti-corruption problem and the need for common solutions. The standards and requirements that these conventions establish for governments carry great weight, given the conventions' binding nature and international backing, and they remain in place while national governments come and go.

Conventions can therefore generate peer (government to government) and public pressure on governments to comply with the standards and requirements laid down. They serve as tools for citizens and civil society organisations to hold their governments accountable on matters of anti-corruption performance. They provide fora in which governments can meet to discuss corruption issues, align concepts and review anti-corruption efforts, with inputs from non-governmental actors.

WHY ARE THERE MULTIPLE ANTI-CORRUPTION CONVENTIONS IN AFRICA?

In Africa, as already indicated above, anti-corruption conventions have been developed at the global, regional and sub-regional level. Each of these conventions has evolved in response to specific demands, pressures and needs at particular points in time. They represent, step- by-step, an evolution in the approach to the corruption problem from the late 1990s through 2003. The UNTOC Convention, adopted in 2000, is limited as to subject matter and in the course of its negotiation, many countries became convinced of the necessity to develop an international anti-corruption convention specifically addressing the corruption problem in a comprehensive way. The SADC and ECOWAS Protocols, developed next in time, represented an approach that was broader in subject-matter coverage but narrower in geographical coverage. The

SADC Protocol interestingly originated in considerable measure due to civil society advocacy in the southern Africa sub-region. Both Protocols offered the possibility that countries already working together on other sub-regional issues could add anti-corruption commitments to existing areas of cooperation.

The Protocols, however, represented a piecemeal approach, geographically speaking, whereas a continent-wide approach had the potential to be more effective. The subsequent negotiation of the AU Convention entailed crystallisation of common African priorities and standards and implied potentially a degree of harmonisation across the whole region.

However, for many African countries, there was also a clear interest in reaching agreement on a global convention, inasmuch as this could offer advantages in the form of improved cross-border cooperation with countries in other regions and, in particular, offered the potential of a better global framework for asset recovery. The UN Convention negotiations were seen to offer an opportunity for African countries with regard to global aspects of the corruption problem and the outcome is seen as a success in that regard.

With the resulting multi-layered collection of anti-corruption agreements it is important that governments and civil society organisations determine where the conventions overlap and where they differ and also determine in which fora review of implementation is likely to be the most effective. The ISS Comparative Guide mentioned in the introduction provides key assistance for doing so.

ISSUES IN THE UN CONVENTION NEGOTIATIONS

There were marked North-South differences on some issues in the UN Convention negotiations. The G77 countries favoured stronger provisions on asset recovery and money laundering, more flexibility with regard to the requirement of dual criminality and recognition of the crime of illicit enrichment.

Asset recovery was identified from the start as a central issue for the Convention. A study prepared as background for the negotiations showed that between 1995 and 2001, Haiti, Iran, Nigeria, Pakistan, the Philippines, Peru and the Ukraine had claimed losses ranging from US\$ 500 million to US\$ 35 billion due to the corruption of former leaders or senior officials whose money had been channelled out into foreign bank accounts. There are further examples, including Zaire (now Congo) and China. The debates on the asset recovery provisions continued through to the end of the negotiations and hinged on the details of a range of provisions, including the know-your-customer provisions and the specific measures to allow States Parties to recover property, in particular in relation to confiscation. The final text resulted from a process of reconciliation of the needs of the countries seeking the return of the assets with the legal and procedural safeguards required by the countries whose assistance is needed.

On the separate issue of a review mechanism, there was general acceptance of the need for follow-up but no agreement on the details. Elaborated models for monitoring mechanisms were presented early on in the negotiations by a handful of developed countries. These were resisted on the one hand by G77 countries, many of whom were concerned about whether such a system could function fairly, and by influential developed countries including France, Germany, Japan and the USA, which opposed the creation of a costly monitoring organisation. In the end, the question of including a monitoring mechanism or body was deferred to the Conference of States Parties.

On other controversial issues, such as the provisions on private sector corruption and political party finance, although there was considerable support for mandatory provisions on these subjects, no consensus could be reached and the provisions were made optional.

WHAT TOPICS DO THE AU CONVENTION AND UN CONVENTION COVER?

Both the AU and UN Conventions take a comprehensive approach to preventing and combating corruption. Both include preventive and punitive measures, as well as provision for international cooperation. However, they differ not only in geographical coverage, but also in the scope and detail of their provisions.

With regard to mandatory and non-mandatory or optional provisions, in the AU Convention the mandatory provisions are indicated by the words “undertake to” or “shall adopt” or “commit themselves to”. Some mandatory obligations are qualified by being subject to the provisions of domestic legislation. In the UN Convention, there are effectively three degrees of obligation namely: (1) mandatory, using the wording “shall adopt”; (2) “required to consider”, using the wording “shall consider adopting” or “shall endeavour to”; and (3) optional with the wording “may adopt”. Some of the mandatory obligations in the UN Convention are qualified by being subject to the fundamental principles of the state’s legal system.

PREVENTIVE MEASURES

On the subject of preventive measures, the UN Convention’s provisions are somewhat more detailed than those in the AU Convention and the two conventions differ in some aspects. (See also the Box on pages 26–27 on the UN Convention provisions.) Taken together the two conventions cover the following areas:

- Anti-corruption policies and practices
- Preventive anti-corruption body or bodies
- Public sector ethics and procedures
- Public procurement
- Public sector finance
- Public reporting, access to information, whistleblower protection

- Public education
- Private sector standards, including accounting and auditing standards
- Money laundering

PUNITIVE MEASURES

The two conventions also provide for punitive measures. As referred to in the introduction, they call for governments to establish or consider establishing certain criminal offences. More specifically, they both call for adoption of the necessary legislation and other measures to establish as criminal offences under their domestic laws the acts of corruption identified namely:

- Bribery of national public sector officials
- Bribery of foreign public sector officials
- Bribery of officials of public international organisations (UN only)
- Bribery of private sector decision-makers (UN optional, AU mandatory)
- Illicit enrichment by a public official (UN optional, AU mandatory “subject to domestic law”) – defined in UN Convention as ‘a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income’
- Embezzlement, misappropriation or other diversion of entrusted property by a public official
- Embezzlement by persons working in private sector entities (UN optional, AU mandatory)
- Trading in influence (UN optional, AU mandatory “subject to domestic law”) – involving bribery of a public official in order to capitalise on his or her influence in a public institution.
- Abuse of functions (UN optional) – involving bribery of a public official to induce the performance an unlawful act.

In addition, associated criminal offences are:

- Laundering the proceeds of corruption – a key part of the corruption equation
- Concealment or continued retention of the proceeds of crime
- Aiding and abetting corruption
- Obstruction of justice

The UN Convention further provides for such matters as:

- Criminal, civil or administrative liability of legal persons,
- Long statute of limitations
- Sanctions, immunities, release pending trial, parole
- Suspension or reassignment of public officials
- Disqualifications of persons from holding public office for a period of time
- Freezing, seizure and confiscation of proceeds of corruption offences
- Protection of witnesses, experts, victims, reporting persons
- Compensation for damages
- Specialised bodies or persons for anti-corruption law enforcement

INTERNATIONAL COOPERATION BETWEEN LAW ENFORCEMENT AUTHORITIES

Some of the most important provisions in the two conventions are those on international cooperation. These cover topics such as:

- Extradition
- Mutual legal assistance in investigations, prosecutions and judicial proceedings
- Law enforcement cooperation, including joint investigations and special investigative techniques

OTHER MEASURES

One or both of the conventions also contain important provisions relating to

- Asset recovery³ (UN and AU)
- Technical assistance (UN)
- Mechanisms for implementation (UN and AU)

ABOUT ASSET RECOVERY

The AU and UN Conventions both contain provisions on the freezing and forfeiture of assets obtained through committing offences covered under the two conventions. These range from a brief and general article in the AU Convention to five pages of detailed provisions in UN Convention Chapter V covering various aspects of the subject, including detailed provisions dealing with international cooperation in the tracing, freezing and confiscation and recovery of assets. The UN Convention provisions address the issue for the first time on a global basis.

The UN Convention Chapter V states that the return of assets pursuant to that chapter is “a fundamental principle” of the Convention” and States Parties “shall afford one another the widest measure of cooperation and assistance in this regard”.

WHAT ARE THE HIGHLIGHTS OF THE AU CONVENTION?

AU

KEY INFORMATION

Adopted: 11 July 2003
Signatories: 40 (as of 12 June 2006)
Ratifications: 15 (as of 31 July 2006)
Entry into force: 5 August 2006
(30 days after the deposit of the 15th instrument of ratification)
Open to: Member states of the African Union (53)
Website for updated information
www.africa-union.org/root/au/Documents/Treaties/treaties.htm

The African Union (AU), founded in July 2002, is the successor organisation to the Organisation of African Unity (OAU). It aims to promote democracy, human rights and development across Africa, especially by increasing foreign investment through the New Partnership for Africa's Development (NEPAD) programme. Its first chairman was South African president Thabo Mbeki and it is currently chaired by President Denis Sassou-Nguesso of the Republic of Congo. The AU covers the entire continent except for Morocco.

The AU Convention on Preventing and Combating Corruption was adopted by the heads of state at the African Union Summit held in Maputo on 11 July 2003. The AU Convention provides a comprehensive framework and is unique among anti-corruption instruments in containing mandatory provisions with respect to private-to-private corruption and on transparency in political party funding. It has not yet attained the number of ratifications required for entry into force. Other strong points of the AU Convention are mandatory requirements of declaration of assets by designated public officials and restrictions on immunity for public officials (Art. 7) The AU Convention also gives particular attention to the need for the media to have access to information (Art. 12)

THE OBLIGATIONS OF THE PARTIES FALL INTO THE FOLLOWING CATEGORIES:

Preventive measures

The AU has extensive provisions on preventive measures in the public and private sectors. These include requirements in the public service of declarations of assets and establishment of codes of conduct. Also included are requirements of access to information, whistleblower protection, procurement standards, accounting standards, transparency in the funding of political parties and civil society participation. It also requires states to establish, maintain and strengthen independent national anti-corruption authorities.

Criminalisation

The AU Convention calls for criminalisation of a wide range of offences, including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property and contains a broad definition of the term public official. Moreover, it includes offences relating both to public sector corruption and private sector (private-to-private) corruption.

International cooperation

The AU Convention establishes an international cooperation framework which has the potential to improve mutual law enforcement assistance within Africa. It also provides a framework for the confiscation and seizure of assets.

Follow-up mechanism

The follow-up mechanism provided for in AU Convention Article 22 calls for an Advisory Board of eleven members elected by the AU Executive Council, serving for a period of two years, renewable once. The Board has broad responsibilities for promoting anti-corruption work, collecting information on corruption and on the behaviour of multinational corporations operating in Africa, developing methodologies, advising governments, developing codes of conduct for public officials, and building partnerships. In addition, it is required to submit a report to the Executive Council on a regular basis on the progress made by each State Party in complying with the provisions of the AU Convention. At the same time, States Parties are required to report to the Board on their progress in implementing the AU Convention within a year after the coming into force of the AU Convention and thereafter on an annual basis through reports by national anti-corruption authorities to the Board. Further, States Parties are required to ensure and provide for the participation of civil society in the monitoring process.

Apart from the above requirements, the AU Convention contains a number of provisions quite unique among regional anti-corruption conventions:

- Art 5(2) calls for States Parties to strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of the State Party shall be subject to the respect of the national legislation in force.
- Art 11 (2) calls for States Parties to establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of tender procedures and property rights.
- Article 14 calls for minimum guarantees of a fair trial.
- Article 19, on the subject of international cooperation, calls on States Parties to
 - Collaborate with the countries of origin of multinationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions
 - Foster regional, continental and international cooperation to prevent corrupt practices in international trade transactions
 - Encourage all countries to take legislative measures to prevent corrupt public

officials from enjoying illicitly-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.

- Work closely with international, regional and sub regional financial organizations to eradicate corruption in development aid and cooperation programmes by defining strict regulations for eligibility and good governance of candidates within the general framework of their development policy.

WHAT ARE THE HIGHLIGHTS OF THE UN CONVENTION?

“The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply, in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalisation of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen...”

United Nations Secretary-General Kofi Annan in his statement on the adoption by the General Assembly in 2003 of the United Nations Convention against Corruption

UN

KEY INFORMATION

Adopted:	31 October 2003 by the UN General Assembly
Signatories:	140 (Opened for signature on 9 December 2003 and closed on 9 December 2005.)
Ratifications:	61 (as of 31 July 2006)
Entry into force:	14 December 2005 (90 days after deposit of 30th ratification)
Open to:	All countries and regional economic organisations
Website for updated information:	www.unodc.org/unodc/en/crime_convention_corruption.html

The UN Convention – the most recent and possibly the last anti-corruption convention to be developed – was negotiated in seven negotiating sessions over a two-year period at the United Nations Office in Vienna by representatives of 129 countries from all regions, including numerous countries in Africa. Representatives of Transparency International also participated in this process. Following the conclusion of the negotiations in October 2003, the text of the Convention was presented for approval by the General Assembly on 31 October 2003. Once approved, it was opened for the states to sign, starting with a signing conference in Merida, Mexico on 9-10 December 2003. International Anti-Corruption Day on 9 December marks the anniversary of this signing conference.

In its eight Chapters and 71 articles, the UN Convention obliges the States Parties (i.e. participating countries) to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, detection and sanctioning of corruption, as well as the cooperation between State Parties on these matters. The UN Convention is unique as com-

pared with other anti-corruption conventions not only in its global geographical coverage but also in the extensiveness and detail of its provisions.

A noteworthy aspect of UN Convention is that it employs a very broad definition of the term ‘public official’ which includes any person holding a legislative, executive, administrative or judicial office of the state. It also covers officials of public international organisations and requires punitive measures for those who bribe them.

**THE OBLIGATIONS OF THE PARTIES
TO THE UN CONVENTION FALL INTO THE FOLLOWING CATEGORIES,**
with some of the provisions mandatory and others optional:

Preventive measures

Of all existing anti-corruption Conventions, the UN Convention has the most extensive and detailed provisions for preventive measures in the public and private sectors. These cover subjects including preventive anti-corruption bodies, public sector ethics, public contracting and public financial management, public reporting and access to information, private sector standards (accounting, auditing, codes) and measures to prevent money laundering. The Convention also requires states to consider measures to enhance transparency in the funding of political candidates and of political parties. For detailed examples of preventive measures, see Box on preventive measures at pages 26-27.

Criminalisation

The UN Convention includes mandatory and optional provisions calling for the criminalisation of a wide range of offences. The offences covered include bribery (domestic or foreign), embezzlement, trading in influence, abuse of functions, illicit enrichment, laundering of proceeds, and obstruction of justice. Moreover, there are optional provisions relating to bribery and embezzlement in the private sector i.e. private-to-private corruption.

International cooperation

The UN Convention also provides a comprehensive international cooperation framework which has the potential to improve mutual law enforcement assistance, notably in extradition and investigations. The detailed provisions, largely mandatory, replicate provisions in the UNTOC Convention covering specific aspects of law enforcement cooperation such as extradition, gathering and transferring evidence, assisting investigations and prosecutions. They include requirements that States Parties consider joint investigation, the transfer of criminal proceedings and special investigative techniques. States may not refuse assistance on the basis of bank secrecy and can involve dual criminality requirements only in limited cases.

Asset recovery framework

One of the Convention’s most noteworthy aspects is that it elaborates the first truly global asset recovery framework. It establishes that: “*The return of assets pursuant to*

this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.” (Art. 52) The UN Convention Chapter V provisions on asset recovery are groundbreaking, the outcome of tough and extensive negotiations. One set of provisions calls for states to require domestic financial institutions to adopt stringent ‘know your customer’ procedures, particularly with respect to those entrusted with prominent public functions and their family members and close associates’, to whom ‘enhanced scrutiny’ should apply. Other provisions address the recovery of property under individual states’ domestic laws and through international cooperation on confiscation. The aim is to encourage states to ensure that domestic law permits courts to order those who have committed offences established under the convention to pay compensation or damages to states that have been harmed by those offences. Further measures cover the freezing or seizure of property in a requested state, once competent authorities in a requesting state have issued orders, and there is also a positive obligation placed on the requested state to take measures to identify, trace and freeze or seize the proceeds of crime.⁵ There is also a specific provision covering return of property to its prior legitimate owners.

Technical assistance and information exchange

In terms of the overall composition and balance of the UN Convention, the provisions on technical assistance and information exchange are key. These take account of the need for “enhanced financial and material assistance” to developing countries as well as technical assistance to developing countries and countries in transition to help them implement the Convention. Without such assistance, some countries will not be in a position to implement UN Convention requirements.

Implementation mechanism

UN Convention Chapter VII provides for an implementation mechanism under the auspices of the Conference of States Parties. The first session of the Conference is to be convened within a year after entry into force of the Convention and regularly thereafter. The responsibilities of the Conference of States Parties include:

- Facilitating activities of States Parties to provide technical assistance and to implement the Convention, including through mobilisation of voluntary contributions
- Reviewing periodically the implementation of the Convention by States Parties
- Making recommendations to improve the Convention and its implementation, including recommendations about technical assistance needs
- Using relevant information produced by other international and regional mechanisms eg. other mechanisms for monitoring other conventions
- Putting into effect supplemental review mechanisms and establishing any review body it deems necessary to assess the measures taken by States Parties (and difficulties encountered) to implement the Convention.

The States Parties are required to provide information about the measures they have taken to implement the Convention.

Based on experience with other anti-corruption conventions, an effective monitoring mechanism is essential for the UN Convention. It remains to be seen what the Conference of State Parties will decide regarding supplemental review mechanisms and review bodies. Transparency International has developed proposals in this connection, which take into account cost considerations, the need for technical assistance and the importance of coordination with other monitoring systems.

The secretariat for the Conference of States Parties is the United Nations Office on Drugs and Crime (UNODC) which has its main office in Vienna and also has a number of regional offices, including one in Africa.

The extent of the UN Conventions's provisions on the private sector is particularly noteworthy. They include, *inter alia*, government obligations to

- Promote standards and procedures, such as codes of conduct, to safeguard the integrity of private entities
- Promote transparency among private entities
- Prevent misuse of procedures regulating private entities, including those regarding subsidies and licences granted by public authorities
- Prevent conflicts of interest by imposing restrictions on private sector employment of public employees leaving the public sector
- Ensure auditing controls in the private sector
- Ensure accounting and auditing standards
- Prohibit of tax deductibility of expenses that constitute bribes

Some provisions to pay attention to in the UN Convention are

- Requirement of civil, criminal or administrative liability of legal persons i.e. companies (Art. 26)
- Recognition of need for long statutes of limitations (Art. 29)
- Recognition of the right of entities or persons who have suffered damages from corruption, to initiate legal proceedings for compensation. (Art. 35)

EXTENSIVE UN CONVENTION PROVISIONS ON PREVENTIVE MEASURES

Public sector ethics and procedures

- requiring recruitment and promotion based on efficiency, transparency and objective criteria such as merit, equity and aptitude (Art. 7)
- requiring codes or standards of conduct for the correct, honourable and proper performance of public functions (Art. 8)

Public procurement

- requiring systems based on transparency, competition and objective criteria (Art. 9)

Public sector finance

- requiring appropriate measures to promote transparency and accountability with respect to, *inter alia*, procedures for the adoption of the national budget, timely reporting on revenue and expenditure, accounting and auditing standards and related oversight, effective and efficient systems of risk management and internal control (Art. 9)

Public reporting, access to information, whistleblower protection

- requiring that members of the public be allowed to obtain information on the organization, functioning and decision-making processes of its public administration (Art. 10)
- requiring that the public has effective access to information (Art. 13)
- requiring protection of witnesses, reporting persons and victims of corruption (Arts. 32 and 33)

Public education

- requiring public information activities and public education programmes, including school and university curricula (Art. 13)

Private sector standards, including accounting and auditing standards

- requiring prohibition of off-the books accounts and transactions, of recording non-existent expenditure, of incorrect identification of liabilities, of use of false documents and intentional destruction of bookkeeping documents earlier than foreseen by law (Art. 12)

Money laundering

- requiring a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (Art. 14)
- ensuring that the authorities dedicated to combating money laundering have the ability to cooperate and exchange information at the national and international levels (Art. 14)
- requiring that governments consider establishing a financial intelligence unit (Art. 14)

The above are only selected excerpts from the articles indicated.

WHAT ARE THE HIGHLIGHTS OF THE UNTOC CONVENTION, SADC PROTOCOL AND ECOWAS PROTOCOL?

The UNTOC Convention also plays a role in the region, covering corruption as an element of organised crime. In addition, the two subregional Protocols of SADC and ECOWAS could also potentially do so, by giving impetus to subregional anti-corruption efforts.

KEY INFORMATION

Adopted:	15 November 2000 by the General Assembly of the United Nations
Signatories:	147 (Opened for signature on 12 December 2000; closed on 12 December 2002)
Parties:	121 (as of 12 June 2006)
Entry into force:	29 September 2003
Open to:	All countries and regional economic organisations
Website for updated information	www.unodc.org/unodc/en/crime_cicp_convention.html

The UN Convention against Transnational Organized Crime (UNTOC) recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat organised crime. There are three supplementary agreements including a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and a Protocol against the Smuggling of Migrants by Land, Sea and Air; and a Protocol against the Illicit Manufacturing of and Trafficking in Firearms.

THE OBLIGATIONS OF THE PARTIES FALL INTO THE FOLLOWING CATEGORIES:

Prevention

With respect to corruption, the UNTOC Convention calls in general terms for effective measures to promote integrity and to prevent the corruption of public officials and specifically calls for public authorities to be provided with adequate independence in order to deter the exertion of inappropriate influence on their actions.

Criminalisation

As part of the Convention's international framework for addressing transnational organised crime, it requires States Parties to criminalise corruption, focusing particularly on bribery of public officials. It also calls for effective measures to detect and punish the corruption of public officials.

Anti-money laundering

UNTOC further requires criminalisation of money laundering and the establishment of a domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering. States are also called on to fight corruption in the private sector.

International cooperation

To fulfil its aim of addressing cross-border aspects of organised crime, the UNTOC Convention provides for a broad framework for international cooperation which has the potential to improve mutual law enforcement assistance. These provisions provided the basis for the international cooperation provisions in the UN Convention against Corruption. The provisions are largely mandatory and cover specific aspects of law enforcement cooperation such as extradition, gathering and transferring evidence, assisting investigations and prosecutions. They include requirements that States Parties consider joint investigations, special investigative techniques and the transfer of criminal proceedings.

Technical assistance

The States Parties are called upon to enhance financial and material assistance to developing countries regarding Convention implementation, to provide technical assistance to developing countries and countries in transition, and to provide more training programmes and modern equipment to developing countries.

Implementation

The Convention calls for the Conference of Parties to be convened within a year after entry into force. Its role is to improve the capacity of States Parties to combat transnational organised crime and to promote and review the implementation of the Convention. The Conference is required to agree on mechanisms for facilitating activities and the exchange of information; for cooperating with other institutions and non-governmental organisations; for periodically reviewing the implementation of the Convention; and for making recommendations to improve the Convention and its implementation. As of June 2006, the Conference of Parties had met twice, one questionnaire on the Convention and Protocols had been distributed and another has been approved for distribution. The Conference Secretariat (UNODC) has also prepared an analytical report on the responses received to the first questionnaire. Information about the Conference sessions is provided on the UNODC website.

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) PROTOCOL AGAINST CORRUPTION

SADC

KEY INFORMATION

Adopted:	14 August 2001
Signatories:	13
Ratifications:	9
Entry into force:	6 July 2005
Open to:	Member States of SADC
Website:	www.sadc.int

SADC began as a loose alliance of states, formed in Lusaka, Zambia in 1980 and was transformed from a Coordinating Conference into a Development Community (SADC) in 1992 by Declaration and Treaty in Windhoek, Namibia at a Summit of Heads of State and Government. The Member States are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

The SADC Protocol against Corruption was adopted by the SADC Heads of State and Government at their August 2001 Summit held in Malawi making it the first anti-corruption treaty in Africa. Considerable credit for its adoption is due to the South African Human Right Trust (SAHRIT). The Protocol was signed by Heads of State and Government of all 14 SADC Member States. At least nine countries needed to ratify the Protocol for entry into force and it became operational in July 2005.

The preamble notes the serious magnitude of corruption in the region and its destabilising effects, particularly that it undermines good governance. The Protocol provides for both preventive and enforcement measures and demonstrates a degree of political will in the region to combat corruption. The purpose of the Protocol is threefold, namely (1) to promote the development of anti-corruption mechanisms at the national level; (2) to promote cooperation in the fight against corruption by state parties; and (3) to harmonise anti-corruption national legislation in the region

THE PROTOCOL PROVIDES FOR THE FOLLOWING CATEGORIES OF OBLIGATIONS:

Preventive measures and mechanisms including the following:

- development of code of conduct for public officials
- transparency in public procurement of goods and services
- easy access to public information
- protection of whistleblowers

- establishment of anti-corruption agencies
- development of systems of accountability and controls
- participation of the media and civil society
- use of public education and awareness as a way of introducing zero tolerance for corruption.

Criminalisation

State Parties are required to establish as criminal offences acts of corruption including bribery of and diversion of property by public officials as well as trading in influence with respect to such officials. Acts of corruption also include bribery of employees of private sector entities and trading in influence with respect to such persons. They further include the fraudulent use or concealment of corruptly-obtained property, as well as participation in any collaboration or conspiracy to commit acts of corruption. Article VI of the Protocol criminalises the bribery of foreign officials.

Confiscation and seizure

The Protocol addresses the issue of proceeds of crime by allowing for their confiscation and seizure thereby making it more difficult to benefit from proceeds of corruption. State Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and confiscation of property, instrumentalities or proceeds obtained, derived from or used in the commission of offences established in accordance with this Protocol.

International cooperation

The offences under the Protocol are deemed extraditable offences making it difficult for criminals to find a safe haven in one of the SADC countries. Moreover, the Protocol can provide the legal basis for extradition in the absence of a bilateral extradition treaty. The Protocol also provides for judicial cooperation and the widest measure of mutual assistance among State Parties concerning requests from authorities investigating and prosecuting of acts of corruption.

Implementation mechanism

The Protocol requires the establishment of a Committee which shall be made up of stakeholders under the auspices of the Southern African Forum Against Corruption (SAFAC) which should also be the designated authority to implement the Protocol at national level. The responsibilities of the Committee include: gathering and dissemination of information and intelligence on corruption among Member States; organising training programmes; putting into place a programme of implementation of the Protocol; and providing technical assistance to State Parties where necessary. The Committee has to report to Council on progress made by each State Party in complying with the provisions of the Protocol.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) PROTOCOL ON THE FIGHT AGAINST CORRUPTION

ECOWAS

KEY INFORMATION

Adopted:	21 December 2001
Ratifications:	1 (As of June 2006)
Entry into force:	Upon ratification by at least 9 signatory states
Open to:	Any State may accede to the Protocol
Website:	www.ecowas.int (No easily accessible information on the Protocol)

The Economic Community of West African States (ECOWAS) is a regional organisation of 15 West African nations formed in 1975. (There were 16 nations in the group until recently when Mauritania withdrew.) The main objective of ECOWAS at its formation was to achieve economic integration and shared development so as to form a unified economic zone in West Africa. Later on, the scope was expanded to include socio-political interactions and mutual development in related spheres. The 15 member nations are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

The ECOWAS Protocol on the Fight against Corruption was adopted with the objective of strengthening effective mechanisms to prevent, suppress and eradicate corruption in each of the State Parties through cooperation between the States Parties.

The Protocol calls upon States Parties to harmonize their national anti-corruption laws, to adopt effective preventive measures against corruption and to introduce proportionate and dissuasive sanctions.

THE OBLIGATIONS OF THE PARTIES FALL INTO THE FOLLOWING CATEGORIES:

Preventive measures

The ECOWAS Protocol provides for preventive measures in the public and private sectors. These include requirements in the public service of declarations of assets and establishment of codes of conduct. Also included are requirements of access to information, whistleblower protection, procurement standards, transparency in the funding of political parties and civil society participation and many other requirements. It is also required to establish, maintain and strengthen independent national anti-corruption authorities.

Criminalisation

The Protocol calls for criminalisation of a wide range of offences with respect to public officials or employees of companies in the private sector, including bribery, trading in influence and aiding and abetting the commission of corruption offences. The Protocol further requires States Parties to establish diversion of property by a public official as an offence, as well as accounting and money laundering offences. States are also required to prohibit and punish bribery of foreign public officials. Additional provisions relate to the protection of witnesses and victims, effective sanctions and liability of legal persons.

International cooperation

The ECOWAS Protocol provides an international cooperation framework which has the potential to improve mutual law enforcement assistance within West Africa and with other parts of Africa. This includes assistance and cooperation with respect to the offences of illicit enrichment and foreign bribery. It also provides a framework for the confiscation and seizure of assets and extradition.

Follow-up mechanism

The Protocol calls for establishment of a Technical Commission to monitor implementation at both national and sub-regional levels, as well as gathering and disseminating information, organising training programmes and providing assistance to States Parties. The Technical Commission is to be composed of experts from Ministries in charge of Finance, Justice, Internal Affairs and Security and shall meet at least twice every year.

The corruption issue is also addressed, but much less extensively, in the ECOWAS Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security adopted on 10 December 1999.

HOW DO THE INSTRUMENTS COMPARE IN THEIR COVERAGE AND TREATMENT OF ISSUES?

A comparative guide prepared by the Institute for Security Studies (ISS) in South Africa compares the provisions of the AU and UN Conventions and the two Protocols and provides valuable guidance on this question. See Annex for reference.



- 4 The recovering of illegally obtained assets is always preceded by three stages: 1) investigative measures to trace the assets; 2) preventive measures to immobilize the assets (freezing, seizing); and 3) confiscation. Only once these three stages have been completed is the recovery of the proceeds of crime possible.
- 5 Each signatory must furnish copies of all laws and regulations giving effect to this set of provisions and any subsequent changes to the UN Secretary General. (Art. 60) The discussion here on asset recovery draws on unpublished papers by Tim Daniels and Alan Perry of the law firm Kendall Freeman.



CHALLENGES IN BRINGING CONVENTIONS TO LIFE AND THE ROLE OF CIVIL SOCIETY

Civil society organisations have an important role to play in keeping convention ratification, implementation and monitoring high on government agendas. Other issues compete for government attention and political will over a sustained period of time cannot be taken for granted. Civil society organisations need to put pressure on key actors, mobilise supporters and attract the attention of the media.

Civil society organisations' efforts are essential to securing government action with regard to:

- Signature – (of the AU Convention)
- Ratification or accession
- Translation into law and practice
- Establishment of effective monitoring mechanisms
- Ensuring civil society inputs to monitoring mechanisms

Civil society work on these subjects is a challenge in that it involves promoting legal instruments and processes that are, in part, quite technical and which ordinary citizens may perceive to be beyond their understanding, experience or field of interest. Also challenging is the fact that convention provisions are often formulated in general terms and civil society organisations, like their governments, need to interpret these requirements and to identify ways of measuring whether the government has done what is required by the convention.

To take advantage of conventions, civil society organisations need to develop effective communications and advocacy strategies. This requires an understanding of the challenges in bringing conventions to life.

WHAT ARE THE PRACTICAL RATIFICATION AND IMPLEMENTATION CHALLENGES FOR GOVERNMENTS?

In order to comply with their obligations under anti-corruption conventions, national governments typically need to introduce new legislation and new or enhanced structures, policies and practices. They also need to ensure that there are adequate resources for the government departments responsible for following up and that sufficient attention is paid by those departments to the new obligations. Implementation of anti-corruption conventions requires considerable government commitment, especially in the case of broad conventions such as the AU and UN Conventions which cover topics crossing a range of ministerial responsibilities. Translation of convention provisions into law and practice may require allocation of significant human and financial resources for analysis, for drafting legislation including budgetary appropriations, for shepherding this draft legislation through parliament and for producing appropriate changes to regulations and guidelines for the executive branch. These challenges require sustained efforts directed from the top to ensure that the convention is taken seriously and given priority. At operational level, convention implementation needs experienced staff in the executive and legislative branches to push reforms through.

Some of the challenges associated with ratification and implementation are

- Leaders must demonstrate sufficient political will and send a clear message to ministers, senior government officials and elected representatives as to their support for the convention. This is not always done.
- Responsible government officials need to ensure that the necessary steps are taken. They may be distracted by other government business and fail to give the conventions the priority they deserve
- Implementation may be costly and complicated. Government officials may be unwilling to invest the time and resources.
- Opponents of anti-corruption programmes may seek to obstruct or delay each of the steps, especially for implementation. The signing of an anti-corruption convention is usually a popular step. Legislative ratification may bring out the first signs of opposition. Enactment of implementing laws is likely to meet increased resistance. Enforcement of laws is invariably the most difficult step.
- Delays in implementation by some countries may be used by other countries as an excuse for delaying action.

WHAT ARE THE STEPS IN BRINGING A CONVENTION TO LIFE AND WHAT IS THE ROLE OF CIVIL SOCIETY?

NEGOTIATION

A convention is negotiated by a group of states, generally within an institutional framework.

The negotiation phase has been completed for the three conventions and two protocols discussed in this guide.. It is possible, however, that supplementary agreements or protocols may be negotiated in the future, as need arises.

Civil society's role: Civil society organisations should play a role in negotiations by developing proposals regarding convention provisions, submitting these to governments and negotiating bodies and supporting those positions with advocacy activities. Transparency International contributed in this way to the AU and UN Convention negotiations.

TRANSPARENCY INTERNATIONAL'S ROLE IN AU AND UN CONVENTION NEGOTIATIONS

Transparency International was given observer status for both the AU and UN Convention negotiations. In November 2001 and September 2002, representatives of Transparency International participated actively in two expert meetings in Addis Ababa to discuss drafts of the African Union Convention and made oral interventions on numerous topics at those meetings. The TI team, which included lawyers from Cameroon and Zimbabwe, also prepared written submissions to the AU Secretariat for circulation to delegates. Some of their proposals were reflected in the final AU Convention text, including proposals on illicit enrichment, access to information, funding of political parties, civil society and the media, fair trial guarantees and the follow-up mechanism.

TI representatives were also present at all seven negotiating sessions of the UN Ad Hoc Committee for the Negotiation of the UN Convention against Corruption that met in Vienna between January 2001 and October 2003. TI's representatives made oral presentations, submitted detailed written comments and met with delegations to explain their positions. TI also circulated position papers to TI National Chapters around the world for submission to their national governments. TI's papers and statements were taken into account by the delegations and incorporated by some into their positions.

ADOPTION

Once the negotiating states have reached agreement, the convention is placed before an assembly of the states participating in the treaty-making process for a formal act by which they express their consent and by which the form and content of the proposed treaty are established. Treaties negotiated within an international organisation will usually be adopted by resolution of a representative organ. The members of the organisation constitute the principal potential parties to the treaty.

This stage has been completed for the three conventions and two protocols discussed in this guide.

Civil society's role: No action is currently needed in Africa. When needed, civil society organisations should bring pressure to bear at national and international level to help assure adoption of an international anti-corruption instrument

SIGNATURE

After a convention is adopted it is then opened for signature by states. Signature indicates their intent to become Parties and is usually done by the executive branch of government. There is usually a time limit for signature, after which states wishing to become parties must do so by accession.

For the period 2006–2007, signature is expected to remain on the agenda in many countries in Africa with respect to the AU Convention. As of August 2006, about one quarter of African countries have not yet signed the AU Convention. The UN and UNTOC Conventions are no longer open for signature.

Civil society's role: In those countries that have not yet signed the AU Convention, civil society organisations should campaign at national and international level to promote action by their governments.

RATIFICATION OR ACCESSION

To become a party to a convention, and thus bound by its requirements when it enters into force, a state must express its consent by ratification or accession to the Convention. The procedures for doing so are laid down under national law and often involve approval by a national legislative body following consideration of the text. The approval process sometimes involves passage of national legislation. Sometimes publication in an official gazette is required as part of the process. Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It usually occurs after the treaty has entered into force.

By ratifying or acceding a state becomes a “State Party” to the treaty. Sometimes states ratify with “reservations”, stating that they consider certain specified passages or articles in the instrument non-applicable or non-binding in their case. Permissible

reservations may be specified in the convention. If not, the Vienna Convention on the Law of Treaties applies. This establishes that any reservation made should not be incompatible with the object and purpose of the treaty.

During 2006-2007, ratification or access to the AU and UN Convention will remain on the agenda in many African countries. The pace of ratification of the AU Convention has been disappointingly slow.

For the UN Convention, a majority of African countries have not yet ratified, although the Africa region has been the best represented with regard to UN Convention ratifications through August 2006. (22 ratifications). The same is true but to a lesser extent for the UNTOC, which, as of August 2006, had still not been ratified by a number of African countries including Angola, Burundi, Congo, Guinea Bissau, Mozambique, Sierra Leone, Swaziland, and Zimbabwe.

Civil society role: In those countries that have not yet ratified the AU and UN Conventions civil society organisations should campaign at national and international level to promote such action. Actions to consider in promoting ratification are discussed below in Chapter V.

DEPOSIT OF INSTRUMENT OF RATIFICATION OR ACCESSION

The final step in the ratification process is generally for the government of the ratifying country to deposit an instrument of ratification with an institution or office designated in the treaty. It should be noted that countries sometimes make important *reservations* when they deposit their instrument of ratification, which affect their treaty obligations.

Deposit is expected to remain on the agenda for both the AU and UN Conventions, given that many countries have not yet ratified the Conventions. The same is true for the UNTOC Convention.

Civil society's role: In those countries that have not yet ratified the Conventions or ratified but not yet deposited their instruments of ratification, civil society organisations should remind their governments that the act of ratification at national level is not enough for the country to become a party and that the instrument must be deposited. It is not uncommon for deposit to take place a considerable time after ratification.

ENTRY INTO FORCE

A convention has application to states that have ratified it only once it enters into force, which usually depends on ratification by a minimum number of states. The convention will specify how many ratifications must be deposited for entry into force. It will also fix an amount of time between the deposit of the threshold instrument and the actual entry into force. For additional countries ratifying, the convention may also fix an amount of time to elapse before entry into force in those countries.

For the UN Convention, the 30th ratification was deposited on 15 September 2005 with entry into force 90 days later on 14 December 2005. The UNTOC Convention entered into force on 29 September 2003 and the SADC Protocol on 6 July 2005.

The 15 ratifications required for entry into force of the AU Convention were reached in July 2006 and entry into force took place on 5 August 2006. The ECOWAS Protocol will enter into force upon ratification by at least 9 signatory states.

Civil society's role: In the negotiation phase of conventions, civil society organisations should try to influence the discussions to ensure that the threshold number of ratifications needed for entry into force is not too high. When entry into force takes place, civil society groups should use this opportunity to draw public attention to the convention and to the fact that countries that have ratified are now bound by it.

NATIONAL IMPLEMENTATION INTO LAW

Before or after ratifying, States Parties must review whether their national legislation is consistent with convention requirements and make any necessary changes in law implied by the convention.

In many constitutions the ratification of a treaty makes it part of domestic law and some countries give a treaty priority over domestic law. For example, Article 45 of the Constitution of Cameroon gives priority of ratified treaties over national law. Some states transform convention requirements into domestic law by supplementing or amending existing legislation, without invoking the specific terms of the convention. Others 'adopt' or 'incorporate' the convention into domestic law, so that its terms are retained intact and given formal validity in the national legal order.

Considerable work will be needed on this front in countries in the Africa region in connection with both the AU and UN Conventions, as well as the UNTOC Convention and the two Protocols, to translate agreed requirements into law and practice.

Civil society role: Civil society organisations can have an impact by reminding their governments to make implementation a priority and by exerting pressure for the highest standards in the implementation process rather than the lowest ones.

To play a role in convincing governments to implement conventions, civil society organisations need to carry out their own research and analysis of existing legislation and its consistency with convention requirements. This can form the basis of proposals to government on changes needed and commentary on government positions. Civil society organisations can play an important role in influencing the interpretation of convention requirements at national level and, more specifically, in contributing to the government drafting process for legislation, regulations and guidelines. Where multiple conventions apply, the task is more complicated. Interpretation of convention requirements is discussed in Chapter VI below.

NATIONAL TRANSLATION INTO INSTITUTIONAL STRUCTURES, POLICY AND PRACTICE

Apart from changing the legislative framework where necessary, States must review and make changes to the structures, policies and practices of state institutions to bring them into line with convention requirements. This will include ensuring that legal prohibitions are actually enforced. Governments must provide funding and staffing for organisations administering anti-corruption programs.

Considerable work will also be needed on this front in countries in the Africa region in connection with the AU Convention, UN Convention and other instruments to translate their requirements into policy and practice.

Civil society's role: While legislation establishes an important framework, the key question is whether convention requirements are translated into policy and practice and civil society organisations need to be especially active at this stage. At the same time, obtaining the information necessary for advocacy may be particularly difficult at this stage. As with implementation into law, civil society organisations need to carry out their own research and analysis of existing institutions, policy and practice and their consistency with convention requirements and this can form the basis of proposals to the government on changes needed.

CIVIL SOCIETY LEGISLATIVE REFORM INITIATIVES: EXAMPLES FROM KENYA AND SOUTH AFRICA

African civil society organisations have been active in influencing government legislation in key areas covered by the AU and UN Conventions. Entry into force of the two conventions will significantly bolster such efforts. Civil society activities have included analysing existing legislation, drafting model laws and mobilising civil society coalitions to support reform efforts.

In Kenya, the public procurement bill of 2004 has been a central focus for reform. An important civil society initiative on this bill has been led by the Center for Governance and Development. The Center commissioned an analysis of the draft legislation by a prominent Kenyan lawyer, who found important flaws in the draft. For example, the lawyer noted as an important deficiency that whistleblower protection was lacking. Drawing on this analysis, the CDG mobilised a coalition of civil society organisations to support proposed amendments to the draft procurement bill. On another subject of importance for anti-corruption efforts, public sector integrity, over a two-year period TI Kenya has led efforts for enactment of the Public Officers' Ethics bill.

Access to information was the focus of a nation-wide civil society campaign in South Africa that led to the passage of one of the world's most advanced pieces of legislation on the subject. In 1996, the Institute for Democracy in South Africa (Idasa) catalysed the creation of a small coalition, the Open Democracy Campaign Group (ODCG), which brought together a diverse range of organisations concerned with social justice to promote the then-stalled Open Democracy Bill. They built relationships with a government Task Force on Open Democracy, parliamentarians and committees considering the law and made a point of providing constructive policy options. They also worked very cohesively together to put forward their case, including an effective division of labour between the groups. The resulting South African access to information legislation covers all three branches of government, provincial and local bodies and any public functionary performing a public function under law. Moreover, indicative of the trend, the South African law grants access to information held by private bodies if that information is required for the exercise or protection of any rights.

CONFERENCE OF THE STATES PARTIES

The Conference of States Parties is made up of the countries that have signed and ratified a convention. It is convened to discuss important issues in relation to the convention, including procedures for follow-up and review of the status of convention implementation. One or more meetings may be convened of all the parties to a convention or, on occasion, of all the signatories, to establish rules of procedure and follow-up and review of the status of a convention.

The AU Convention and the Protocols do not explicitly call for a Conference of States Parties.

The UN Convention Chapter VII provides for a Conference of States Parties to be convened within one year after entry into force of the Convention and then regularly thereafter. The role of this Conference is to improve cooperation between the States Parties and to promote and review implementation of the UN Convention. Draft Rules of Procedure were adopted for the Conference in January 2006 and will be adopted by the first Conference, which is scheduled to take place in December 2006. The UNTOC simply requires that the Conference of the Parties will be convened within one year after entry into force of the Convention. The UNTOC Conference has met twice and will meet for a third time in October 2006.

Civil society role: It is important that civil society organisations convey their views on the importance of follow-up by the parties to conventions and contribute to a public discussion. See also Section VII below on Monitoring. The Rules of Procedure adopted for the UN Convention Conference govern whether your organisation can apply for credentials to attend the Conference of States Parties.

INTERGOVERNMENTAL FOLLOW-UP AND MONITORING:

All of the instruments discussed here provide for an institutionalised follow-up and review process, albeit with different formats. There is additionally the NEPAD APRM review process. This kind of monitoring is needed to ensure that states translate their commitments into actions. Intergovernmental review processes for anti-corruption conventions generally involve the following elements: (1) government responses to a questionnaire; (2) review of the responses by a secretariat and/ or selected experts; (3) preparation of a report on country performance; (4) discussion of the report in a review body, often consisting of other government representatives (“peer review”); the review may also include a visit to the country to learn more about the actual situation (“on-site review”); and (5) adoption and publication of the report.

Such review mean that states need to commit resources, both to support the reviewing body and to marshal the information about their own performance required for review. Moreover, where the monitoring finds their performance lacking, governments may be called on to devote resources to correcting deficiencies. An emerging challenge in an increasing number of countries is that they are covered by multiple conventions and are subject to multiple review processes, which stretches the capacity of even the most developed countries. Since the negotiation, implementation and monitoring processes can be costly in terms of human and financial resources, some less developed countries may require financial and technical assistance in order to participate, to manage the process and, when needed, to institute recommended reforms. Such assistance, provided by more developed countries, may be a prerequisite to the participation of the less developed countries in international anti-corruption conventions at all stages from negotiation through implementation into monitoring.

Two conventions-related review processes are currently in operation and relevant for Africa, both in the early stages. These are the NEPAD African Peer Review Mechanism (APRM) and the UNTOC review process. They will both most likely continue to develop. The review processes for the AU and UN Conventions and the two Protocols still remain to be introduced. Regarding the UN Convention monitoring is likely to be a topic at the first Conference of States Parties due to take place in December 2006.

Civil society’s role: Civil society organisations should make contributions both to the development and maintenance of effective review processes and to the review processes themselves. In particular, in 2006-2007 civil society organisations should bring pressure to bear to ensure that effective monitoring is promptly introduced for the UN Convention, as well as for the AU Convention once it enters into force. This includes making suggestions for a design that will assure effectiveness.

Once a system is introduced, civil society organisations will also need to work to ensure that the system is adequately resourced and evolves to become more and more effective. They should also make sure that they can contribute their own independent views about country performance to the review process. This should preferably be a formally recognised contribution. At the end of the process, civil society groups should

publicise country assessments and recommendations and press for follow-up. Civil society's role in various stages of monitoring is discussed in the following paragraphs.

- **Government responses to questionnaires:**

In most review processes, governments are requested to provide responses to questionnaires. In the NEPAD-APRM process it is foreseen that civil society will make inputs into government responses. At present, government responses in that process and the UNTOC monitoring process are not made public, but over time it is expected that such publication will become standard.

Civil society's role: Civil society organisations can help keep government 'honest' by monitoring publicly available responses and commenting on these to the government itself, to the monitoring body and to the public. If a government does not agree to publication of its self-assessment, civil society organisations should press it to explain its reasoning. Civil society groups should also prepare, submit and publish their own responses to the questionnaires.

- **Published reports:**

Thus far, two NEPAD reports have been published, for Ghana and for Kenya. UNODC surveys of responses to the first questionnaire on the UNTOC Convention are available on the UNODC website. In other monitoring systems, such as those of the OAS in the Americas, the Council of Europe and the OECD for the industrialised countries, the written reports resulting from the monitoring are published on the websites of the respective organisation.

Civil society's role: An important role for civil society organisations is to ensure that monitoring reports are published. Civil society groups should themselves publicise these reports, make the conclusions and recommendations known and apply pressure on governments to take action to implement the changes required. If their governments do not act within a reasonable time frame, civil society groups should publicise this failure to comply with international obligations.



IV.



DEVELOPING AN ADVOCACY STRATEGY

Your organisation can play a significant role in promoting signature, ratification, implementation and monitoring of anti-corruption conventions. To do so, you need to develop effective communications and advocacy strategies. This calls for the preparation of a strategic plan describing your advocacy objectives. The main steps in developing such a plan are described below.



IDENTIFY KEY ISSUES BASED ON RESEARCH

For advocacy regarding ratification or accession, your organisation needs to determine what the process is to your country; whether it is in progress; if so, what stage it has reached; and, if not, why not.

For advocacy regarding implementation, your organisation should first evaluate what improvements are needed in the national system in order for it to comply with the requirements and standards under the two conventions and make decisions about priority areas. Even if national legislation is deficient in many areas, it will probably be more effective to highlight a few key ones. Your organisation will also need a solid understanding of the legislative and executive branch decision-making processes in your country, including those relating to budgeting and resource allocation.

Having conducted an initial evaluation, if your organisation intends to conducting ongoing campaigns, it will want to conduct periodic research or monitoring to update the initial findings.

IDENTIFY KEY PLAYERS

In order to have an impact in relation to signature, ratification, implementation and monitoring, it is important to identify the key players with influence on the decision-making processes. Depending on the stage of the process of introducing the convention and the country's political system, this may include the president or prime minister, the cabinet or the legislature. Other government officials who may have a direct or indirect influence on ratification and implementation processes include ministers of justice, finance and foreign affairs and those officials that work most closely with them on relevant matters.

It is desirable to identify particular actors responsible for, or able to play a role in, moving the process forward and to try to work with them. Ratification and implementation work will likely involve efforts to influence actors in both the legislative and executive branches, to influence draft legislation, regulations, policies and practices. This can potentially involve a wide range of actors, given the breadth of the AU and UN Conventions. The implementation of the preventive measures alone may involve all or almost all government institutions.

If civil society organisations do not have direct access to the key decision makers, then they should see if they can access such people indirectly via existing contacts.

IDENTIFY KEY AUDIENCES AND MESSAGES

There are different approaches to advocacy and the choices made will vary from country to country, from group to group and from issue to issue. The question is: what will persuade the target audience to take the actions wished for?

In some countries and for some issues it may be productive to take a cooperative attitude towards government. In those cases, civil society organisations may prefer to target key decision-makers with behind-the-scenes communications. In other countries or on other issues it may be necessary to publicly challenge government leaders, for example where they seem to deliberately delay action. In that case, organisations may seek to mobilise citizens through the media and through public education programmes.

In developing messages, it is important to identify some key benefits to be gained in the country by ratification and implementation, in terms of improvements in the quality of life in the country. If progress is slow, it will also be desirable to send a message about the need for prompt action.

IDENTIFY MEANS AND MATERIALS FOR DELIVERING THE MESSAGES

Once your organisation has identified key players and messages, as described above, it will need to establish the best way of keeping their issue high on the agenda of the persons identified.

Direct communication with the executive branch and parliamentarians

This may include personal meetings and short briefings as well as in-depth research, letters and phone calls.

Training materials and courses

A very effective way to influence government decision-makers at different levels is to provide them with training materials and training courses on anti-corruption conventions.

Public activities

These include rallies, workshops, concerts and other public events, as well as development of posters, postcards, flyers and other promotional material. Examples of public activities by TI National Chapters in Africa can be found in the Tools section at the end of this Chapter as well as on the TI web pages describing TI activities on International anti-corruption day.

Communication via electronic media

Such media include websites and emails. If used well, these can mobilise support in a short period of time among a wide range of groups and individuals.

Working with the media

Coverage in print and broadcast media can be one of the most effective ways to get your message across. The objective, however, must be carefully considered. There are occasions when media coverage may undermine your efforts to influence government policy and practice.

Possible vehicles for conveying messages to and through the media include:

- Press releases, web sites and press conferences. See Tools at the end of Chapters V and VI.
- Surveys and exclusive reports. An example is the Americas Conventions Report Card described in Chapter VI.
- Informal meetings and public workshops
- Letters to the editor, newspaper articles or op-eds. See Tools at end of this Chapter and Chapter V for sample letter to the editor and op-ed

To get the message across, it is important that the presentation is clear, concise and simple and uses repetition to good effect.

STEPS TO GETTING MEDIA COVERAGE

- Analyse which media outlets reach your target audiences most effectively and what kind of content is the most appropriate.
- Identify key dates for approaching the media.
- Target journalists who are interested in your specific topic or have written about your organisation. Place your calls in the morning or late afternoon, be persistent in getting a direct contact and do not settle for leaving a message with a receptionist.
- If you are organising a media event call ahead of the event twice, but not too far in advance – call the first time a week before and then one or two days before.
- Try to list your event in planning diaries so that you can draw wide attention to it.
- Try the following points in talking to journalists
 - Find out if the journalist has a specific deadline
 - Find out when journalists have their planning meetings
 - Have written statements prepared, with a prioritised list of exactly what you want to say. Be brief and clear, animated and lively.
 - Provide compelling reasons why your story warrants an article
 - Make your pitch interesting and unique
 - When answering inquiries, if you don't have an answer to a question, say so and offer to find out the answer.
- Follow up if a journalist writes about your event and thank him or her for the coverage. If there are inaccuracies, call to make a correction.
- Call every journalist who attended your event after it is over. Offer to provide additional information or an interview. Also call journalists you spoke to before the event but who did not attend.
- Have clear messages, use short sentences and repeat your messages.
- For television: emphasise the visual appeal of your event. This is the medium of pictures not words.

IDENTIFY KEY PARTNERS TO WORK WITH

The broad coverage of the anti-corruption conventions means that a wide range of civil society organisations and private entities may potentially see them as benefiting their cause. There are many examples of civil society coalitions and networks campaigning in the anti-corruption field. Potential partners include organisations working on human rights, labour rights, the environment, access to information, monitoring public budget processes, corporate social responsibility, health, education and many other topics.

IDENTIFY KEY DATES AND EVENTS

Civil society organisations should keep in mind opportunities to bring pressure to bear on special occasions at the national and international level. These include occasions when the media will be especially interested in stories relating to global efforts to fight corruption. International anti-corruption day on 9 December is one such day.

Consideration should also be given to the opportunities for direct or mediated influence on or around regional and international fora. In each region, there are a range of regional meetings where pressure can be exerted. It is generally possible to make submissions in advance of such meetings and to attract press attention with messages released around the time of the meetings. Transparency International has been active in advocating convention ratification and implementation in such fora as the Group of 8 Summits and meetings of NEPAD and of the African Union.

TOOLS FOR DEVELOPING AN ADVOCACY STRATEGY

The tools provided below are included to help with

- Identifying issues and the means for delivering messages
- Using key dates
- Using international events

1) IDENTIFYING ISSUES AND THE MEANS FOR DELIVERING MESSAGES

Many civil society organisations in Africa have actively worked at a national level to raise awareness of the AU and UN Conventions and promote ratification and implementation. Below are some examples of TI National Chapter efforts to promote national implementation of the AU and UN Conventions.

EXAMPLES OF TI NATIONAL CHAPTERS ACTIVITIES PROMOTING AU AND UN CONVENTIONS

The Algerian Association for the Fight against Corruption, TI's group in Algeria has written letters to the government, met with government officials, commented on draft legislation and conducted workshops in order to promote ratification and implementation of the UN Convention.

The TI group in Ghana, the Ghana Integrity Initiative, wrote to their government to press for ratification of the AU and UN Conventions and has worked with the local chapter of APNAC (African Parliamentarians Against Corruption) to promote ratification. Together with APNAC they convened a public meeting on this subject at which government officials made public commitments to ratify promptly.

TI-Nigeria has featured AU and UN Convention ratification and implementation prominently in international anti-corruption day activities. It is part of the Zero Corruption Coalition which conducted two training sessions for journalists in 2005 on reporting corruption, including a segment on the Conventions and how they can be used to combat corruption and enhance the legal framework on anti-corruption. TIN also frequently refers to the two conventions in advocacy work on legislation on such subjects as access to information, whistle-blower protection, transparency in the procurement process and provisions for combating political corruption

Transparency Maroc, the TI national chapter in Morocco, has developed a printed guide to the UN Convention against Corruption, which it has distributed widely in the country. It has also commented on some of the government's draft legislation to implement the Convention.

2) USING KEY DATES

International anti-corruption day on 9 December provides an excellent opportunity for promoting convention ratification and implementation. Another key date is entry into force of the convention, which has already occurred for the AU and UN Convention, UNTOC Convention and SADC Protocol. It still lies ahead for the ECOWAS Protocol. The sample press release below on the entry into force of the UN Convention below shows how a key date may be used for advocacy purposes.

EXAMPLE: TI PRESS RELEASE ON UN CONVENTION

FIRST GLOBAL CONVENTION AGAINST CORRUPTION TO ENTER INTO FORCE

*Seven of G-8 have yet to ratify the first truly global anti-corruption convention
Berlin, 16 September 2005*

With ratification yesterday by Ecuador of the United Nations Convention against Corruption (UNCAC), the first truly global tool in the fight against corruption will enter into force on 14 December 2005. This milestone has been reached despite the fact that, of the Group of Eight industrialised nations (G-8), only France has ratified this essential agreement.

"The G-8 needs to show that they are in this fight to win. Wealthier countries can hardly call on their poorer neighbours to take the fight against corruption seriously when they themselves are unwilling to act," stated Transparency International chief executive, David Nussbaum. "The next ratifications must include all the

major industrialised countries, or the G-8's pledges will be worth no more than the paper they're printed on."

Bribe payments, the laundering of corrupt income and the flight of corrupt officials are cross-border phenomena and demand an international solution. The UN Convention against Corruption addresses this. It is a powerful legal instrument that will:

- *Accelerate the retrieval of funds stolen by dictators and other public officials, such as under Nigeria's Abacha regime, via faster and better cooperation between governments.*
- *Push banking centres like Switzerland and the UK to become more responsive to such investigations and take action to prevent money laundering.*
- *Enable global judicial action against the corrupt, no matter where they are hiding. Even without great resources, nations will be able to pursue foreign companies and individuals that have committed corrupt acts on their soil.*
- *Activate, for all parties, including major non-OECD trading powers such as China, Russia and Saudi Arabia, a prohibition on the bribery of foreign public officials, drying out a major channel for dirty money.*
- *Provide a framework for domestic anti-corruption legislation, introducing, in particular, whistle-blower protection, freedom of information and accountability systems for the public sector.*
- *Require measures to enhance accounting and auditing standards in the private sector and punish non-compliance.*

Thus far, 129 countries, including the G-8, have signed, giving it an unprecedented geographical reach. Yet only a quarter of them have ratified, meaning that widespread adoption into national law is still a long way off.

Countries must do more than sign the right documents; they must translate the UN Convention's provisions into action. The follow-up conference in late 2006 for signatory states must generate an explicit and effective system for reviewing each country's implementation of the convention.

TI is the leading global non-governmental organization devoted to the fight against corruption.

Contact for the media: Add name, telephone and e-mail address

3) USING INTERNATIONAL EVENTS

The African Union and its Special Programme NEPAD are examples of international institutions where civil society organisations in Africa can bring pressure to bear on ratification, implementation and monitoring.

Due to its broad membership (all African countries except Morocco) the African Union (AU) is the best forum to influence the agenda of African countries. Civil society organisations can participate and lobby at different levels of the AU's structure. One avenue is the Pan-African Parliament that is to become the highest legislative body of the African Union. It meets once a year and can best be influenced by starting at national level. Another option is the AU Commission, which consists of 8 Commissioners and plays a central role in the day-to-day management of the African Union. On anti-corruption matters, civil society organisations should work with the Commissioner responsible for the Political Affairs portfolio which deals with issues of good governance and civil society organisations. Last but not least, civil society can aim to influence high level AU summits, which take place twice a year (usually one in January and one in July). Efforts to influence discussions and decisions at these meetings should begin early, well ahead of the meeting. This may be done through contacts with the organisation and host country planning the meetings as well as through approaches at national level.

Despite the criticism of NEPAD (The New Partnership for Africa's Development) in the past, it constitutes a good forum for advancing the ratification, implementation and monitoring of anti-corruption conventions in the African region. For one, civil society organisations can participate at national level in the African Peer Review Mechanism. Other NEPAD fora to consider are its two main structures: the NEPAD Heads of State Implementation Committee (HSIC) composed of 20 countries (4 of each of the 5 regions of Africa) and the NEPAD Steering Committee. The HSIC meets once every four months and provides a high level framework with the presence of a large press corps covering the meeting that civil society organisations can take advantage of to communicate their messages. The Steering Committee of NEPAD comprises the Personal Representatives of the NEPAD Heads of State and Government. This Committee oversees projects and programme development.

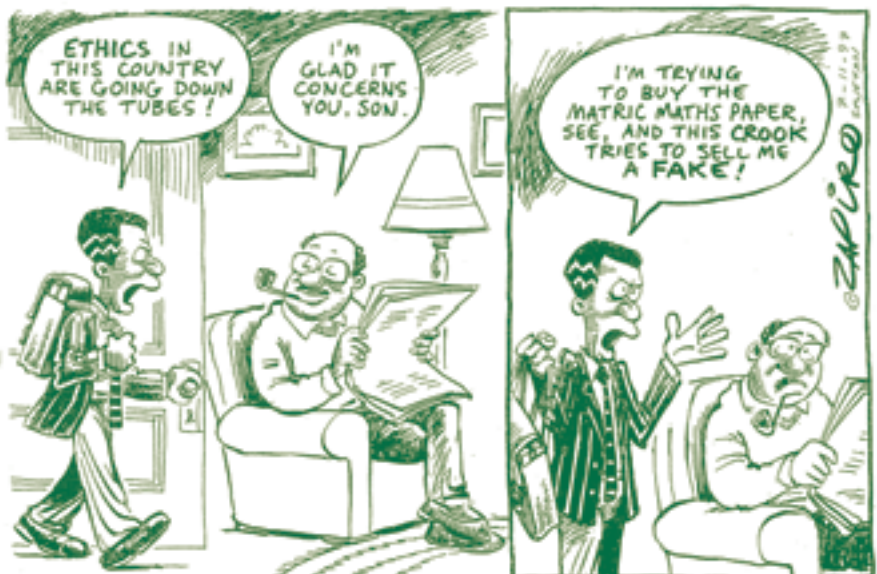


PROMOTING SIGNATURE, RATIFICATION AND ACCESSION

Some countries in Africa have not yet ratified or acceded to the AU and UN Conventions. In those countries, it is important for civil society organisations to campaign for their governments to take the necessary action.

To promote ratification or accession of those conventions in your country, your organisation should consider the following steps:

- Determine if the Conventions have been ratified or acceded to by your government and if the instruments have been deposited.
- If the Conventions have not been ratified or acceded to, research the process for ratification or accession in your country; determine the stage the government has reached in that process and any obstacles to completing the process.
- Determine the entry points for civil society advocacy at national and international level.
- Develop an advocacy strategy.



HAVE THE CONVENTIONS BEEN RATIFIED?

To determine the status of ratification of or accession to a given anti-corruption convention in your country, the easiest first step is to check with the international organisation (UN, AU, SADC, ECOWAS) where the instruments of ratification and accession are deposited. Information about respective deposited instruments is made available on the UN and AU websites but is not currently accessible on the SADC and ECOWAS websites. If the instrument has not been deposited then it will be necessary to study the ratification process in your country in order to bring pressure. Generally, in any given country, the information should be available from one or more responsible ministries, such as the foreign, justice or interior ministries, potentially from the president's or prime minister's office, and from appropriate parliamentary committees.

As part of your advocacy work you may want also want to determine the status of ratification in other countries. If other countries are ahead, you may want to point this out to your government.

WHAT IS THE RATIFICATION PROCESS?

The procedures for ratification or accession are laid down under national law and generally involve approval by a national legislative body and by the head of state. Publication in an official gazette may also be required.

In many countries, there is a rule or practice requiring that prior to ratification the government must first make any changes in the national legal framework required by the convention. This will then slow down the ratification process but can give an impetus to implementation.

TOOLS FOR PROMOTING RATIFICATION AND ACCESSION

The tools below help with:

- Determining the status of ratification in your country and other countries
- Understanding the ratification process in your country
- Determining the entry points for civil society advocacy
- Developing advocacy materials

1) DETERMINING THE STATUS OF RATIFICATION IN YOUR COUNTRY AND OTHER COUNTRIES

The following table on signature and ratification of anti-corruption conventions in Africa is based on information available on AU, UN and SADC websites as of 1 August 2006.

SIGNATURE AND RATIFICATION TABLE

Country	Convention / Instrument			
	UNCAC Convention	UNTOC Convention	AU Convention	SADC Protocol
Algeria	S+R	S+R	S	N/A
Angola	S	S	-	S
Benin S+R	S+R	S	N/A	
Botswana	-	S+R	-	S+R
Burkina Faso	S	S+R	S	N/A
Burundi	A	S	S+R	N/A
Cameroon	S+R	S+R	-	N/A
Cape Verde	S	S+R	-	N/A
Central Afr. Republic	S	A	-	N/A
Chad	-	-	S	N/A
Comoros	S	A	S+R	N/A
Congo	-	S	S	N/A
Cote d'Ivoire	S	S	S	N/A
Democratic Republic Congo (Zaire)	-	A	S	S
Djibouti	S+R	A	S	N/A
Egypt S+R	S+R	-	N/A	
Equatorial Guinea	-	S+R	S	N/A
Eritrea	-	-	-	N/A
Ethiopia	S	S	S	N/A
Gabon	S	A	S	N/A
Gambia	-	S+R	S	N/A
Ghana	S	-	S	N/A
Guinea	S	A	S	N/A
Guinea-Bissau	-	S	-	N/A
Kenya	S+R	A	S	N/A
Lesotho	S+R	S+R	S+R	S+R
Liberia	A	A	S	N/A
Libya	S+R	S+R	S+R	N/A
Madagascar	S+R	S+R	S+R	N/A

Malawi	S	S+R	-	S+R
Mali	S	S+R	S+R	N/A
Mauritania	-	A	S	N/A
Mauritius	S+R	S+R	S	S+R
Morocco	S	S+R	N/A	N/A
Mozambique	S	S	S	S
Namibia	S+R	S+R	S+R	S
Niger	-	S+R	S	N/A
Nigeria	S+R	S+R	S	N/A
Rwanda	S	S+R	S+R	N/A
Sao Tome & Principe	S	-	-	N/A
Senegal	S+R	S+R	S	N/A
Seychelles	S	S+R	-	S
Sierra Leone	S+R	S	S	N/A
Somalia	-	-	-	N/A
South Africa	S+R	S+R	S	S+R
Sudan	S	S+R	-	N/A
Swaziland	S	S	S	S
Tanzania	S+R	-	S+R	S+R
Togo S+R	S+R	S	N/A	
Tunisia	S	S+R	-	N/A
Uganda	S+R	S+R	S+R	N/A
Zambia	S	A	S	S+R
Zimbabwe	S	S	S	S+R

Signature (S), ratification (R), accession (A)*

* This table does not show signature and ratification of the ECOWAS Protocol. Mali is the only country to have ratified so far.

2) UNDERSTANDING THE RATIFICATION PROCESS IN YOUR COUNTRY

The ratification process varies from country to country and it will be necessary to determine which institutions bear responsibility and, if possible, which individuals within those institutions. The information below gives a quick overview of some of the systems in the Africa.

SAMPLE LEGAL REQUIREMENTS FOR TREATY RATIFICATION AFRICA

Angola: The National Assembly approves treaties.

Botswana: The ratification of international treaties does not require parliamentary approval. A decision of the Cabinet is sufficient, to allow for prompt ratification.

Egypt: In practical terms, the President decides whether to ratify. In procedural terms ratification requires the consent of the Council of Ministers, and, following this, the consent of the People's Assembly. Before promulgation laws are subject to review by the Constitutional court.

Ghana: The ratification of a treaty in Ghana requires approval by the Parliament.

Kenya: Ratification and implementing legislation require Cabinet approval. Implementing legislation need not be drafted prior to ratification. The Attorney General's Office advises the Ministry of Foreign Affairs on ratification and prepares implementing legislation.

Namibia: The President, with input from the Cabinet, ratifies international agreements. The information is then shared with the National Assembly,

Rwanda: The President ratifies all international agreements and sends them to the National Assembly.

Senegal: The President ratifies international agreements after authorisation by the National Assembly. The National Assembly authorises after consultation with the Foreign Minister.

South Africa: The President ratifies international agreements after approval by the National Assembly and the National Council of Provinces.

Swaziland: Ratification is achieved either by an act of Parliament or by a resolution of at least two third of the members of both Chambers of Parliament.

Tanzania: The Cabinet must first pass the ratification legislation, followed by the approval of Parliament and the signature of the President.

Uganda: The President ratifies treaties after the Parliament has passed the necessary legislation to implement the treaty.

3) DETERMINING THE ENTRY POINTS FOR CIVIL SOCIETY ADVOCACY

To influence the ratification process in your country you will need to analyse the process, how far along it is, what are the obstacles are and how you can influence the process. As an example, below is a detailed explanation of the process in Nigeria.

NIGERIA CASE STUDY: DOMESTICATION OF TREATIES AND CONVENTIONS AND ROLE OF CIVIL SOCIETY

By Lilian Ekeanyanwu

Powers

The President of the Federal Republic of Nigeria has the Constitutional powers to sign and ratify treaties and conventions on behalf of Nigeria. In practice, this power is usually delegated to certain public officials in relevant government ministries such as the Ministry of Foreign Affairs and Ministry of Justice and in the case of the UN Convention, the Independent Corrupt Practices and Other Related Offences Commission – the ICPC. These officials usually have responsibility during the negotiation and signing of the treaties.

However, Section 12 of the 1999 Constitution stipulates that no treaty shall have the force of law except to the extent such treaties have been enacted into law by the National Assembly. The National Assembly may refuse to enact a law “domesticating” a treaty or can give partial consent by excising some of the provisions of the treaty. In that event, only the part approved by the National Assembly becomes part of the domestic law.

The Constitution defines the scope of powers of the National and State Assemblies to make laws. The National Assembly has the exclusive right to make laws in respect of matters listed in the Exclusive Legislative List, and shares legislative powers with State Assemblies in respect of matters in the Concurrent Legislative List, while only the State Assemblies have legislative powers in respect of matters in the Residual Legislative List. In addition, S.12[2] of the Constitution allows the National Assembly to delve into the Residual Legislative List to give effect to treaties. However, in such cases, the Bill for domestication of the treaty must be ratified by a majority of all the Houses of Assembly in the Federation.

Process

The domestication process commences with the signing of the instrument by the designated official. The instrument then goes through some administrative review aimed at identifying any areas of incompatibility with the Constitution or other laws. This task is usually undertaken by the Department of International Law and Treaties at the Federal Ministry of Justice. Thereafter, the document may pass through several ministries and government departments whose mandate and activities are relevant to the subject of the treaty or convention.

Intense advocacy by stakeholders is needed at this stage to bring the particular convention to the front burner. Treaties signed by the country have been known to remain inactivated for up to ten years.

At the end of the review process, a legal instrument to enact the provisions of the treaty into law is presented to the National Assembly. This is usually in the form of an Executive Bill even though nothing in the Constitution or any other law prevents the bill being presented as a Private Members' Bill. An Executive Bill means that the instrument is presented by the President indicating that he has special interest in the subject. This enables the Bill to go through a fast track mechanism which abridges the time for processing bills.

The legislative process within the National Assembly entails that each house of the Assembly deliberates on the Bill and may decide to refer it to Committees for in depth analysis and review. It is then presented to the full house which may either adopt or reject the recommendations of the Committees. At present there is a House of Representatives Committee on Conventions and Treaties in the National Assembly, currently headed by Hon. Usman Bugaje a legislator with well known activist antecedents and a strong anti-corruption stance. It is expected that he will provide support for the ratification of the anti-corruption conventions.

It is important to engage in lobbying at this stage to ensure that the members of the Committees give attention to the assignment and also to ensure that the Bill is not watered down.

It is also necessary for civil society organisations to engage in intense public enlightenment and awareness-raising. The aim will be not only to create awareness on the contents of the Bill but will also provide understanding of the benefits of specific sections of the Law. This will assist in building resistance against diluting the Law.

Public hearing

This is a mechanism within the legislative process which enables the legislators to access the views of the public and experts in a particular field. Notices of Public Hearings on Bills and other issues are advertised in the media with calls for Memoranda from interested members of the public. After the hearing, the Bill goes back to the Committees which harness and articulate the views of the public and experts and present a report to the full house. Their recommendations are also presented at this stage and the National Assembly may adopt their recommendations with or without amendments. Thereafter the Bill will be either passed or thrown out.

It is usual at this stage for civil society organisations to mobilize and engage experts in relevant fields to make presentations in support of their views.

4) DEVELOPING ADVOCACY MATERIALS

The following advocacy materials include a letter to the editor and a letter to the government on the AU and UN Conventions and a sample press release about the AU Convention.

A) SAMPLE LETTER TO THE EDITOR ON AU AND UN CONVENTIONS

Dear Editor,

On 11 July 2003, African governments adopted the AU Convention at the African Union Summit in Maputo. On 9–11 December 2003, Heads of State and Ministers gathered in Merida, Mexico, for the signing of the United Nations Convention against Corruption. These two instruments are of key importance because they establish frameworks for addressing the corruption problem at the regional and global level. Our government has shown the importance it attaches to fighting corruption by signing both. (NOTE: Check if this is true for your country.)

Corruption – the abuse of entrusted power for private gain – undermines the economic, social and political foundations of our societies. Whether it occurs in the public or private sectors, it deepens global poverty and thwarts development.

For the first time, these two new Conventions provide internationally agreed standards for the prevention and criminalisation of corruption. They also provide a

comprehensive framework for international cooperation to combat corruption, including mechanisms for the recovery of stolen assets. As such, they have the potential to facilitate international anti-corruption efforts for years to come.

Signing a convention is not enough, however. The two conventions must be ratified and implemented by individual states. The government of our country has the opportunity to demonstrate its commitment to tackling the scourge of corruption by ratifying and implementing as soon as possible. We urge our government to announce this month the date by which it intends to have ratified the historic UN and African Union Conventions. Without such an announcement, the credibility of the government's commitment to anti-corruption efforts is left vulnerable.

The government should also support efforts to establish effective monitoring systems for the two Conventions. With respect to the UN Convention, the States Parties will decide the exact form of the review process at sessions of the Conference of States Parties (NOTE: The first session will be in December 2006), so that media and civil society organisations will need to be especially vigilant to ensure that an effective system emerges. The plans for AU Convention monitoring will also need to be kept under public scrutiny.

Sincerely,

B) EXAMPLE: TI-ALGERIA'S LETTER TO GOVERNMENT ON THE AU AND UN CONVENTIONS

Algiers, 3 January 2004

Transparency International Contact Group in Algeria

To the Head of Government

Re : Ratification of the AU and UN Conventions ; the AACC colloquium of December 2003 on the conventions

Sir,

On 8 and 9 December 2003, our association organised a colloquium in Algiers having as its central theme international conventions against corruption, notably those recently adopted by the United Nations and the African Union. This colloquium took place within the framework of the celebration of the first international anti-corruption day, 9 December, and was a great success. It was joined by representatives of the anti-corruption organisation Transparency International, and brought together representatives of Algerian government institutions – including the head of the Algerian delegation to the Vienna negotiations on the UN Convention –

of civil society, of the private sector, of trade unions, of the professions and of the media, which permitted a very rich debate, underlining the importance of ratifying and implementing the UN and AU Conventions. As an outcome of this colloquium, the participants adopted two documents addressed to the Ministers of Foreign Affairs and of Justice, calling on them to use their powers to start as soon as possible the process of ratification of these two important conventions.

We noted with satisfaction that just after this colloquium, your government sent an important delegation led by the Justice Ministry to the signing conference for the UN Convention in Merida, Mexico. Our hope is that your government will now go beyond this signature and commence the process of ratification of this important Convention.

Respectfully yours,

*Djilali Hadjadj,
Spokesman of the Algerian Anti-Corruption Association*

C) EXAMPLE: TI PRESS RELEASE ON AU CONVENTION

Press Release:

Transparency International urges NEPAD leaders to ratify AU Anti-Corruption Convention

Curbing corruption an essential step towards realising NEPAD goals.

Berlin, 22 November 2004

As the Heads of State and Government Implementation Committee (HSIGC) of the New Partnership for Africa's Development (NEPAD) opens its meeting this week in Algiers, Algeria, Transparency International (TI), the leading non-governmental organisation dedicated to fighting corruption worldwide, calls on leaders attending the Algiers meeting to ratify the African Union Convention on Preventing and Combating Corruption. TI also calls on these leaders to ratify the UN Convention against Corruption as a vital global counterpart to the AU Convention, particularly with regard to mutual legal assistance and asset recovery.

Being at the vanguard of NEPAD places additional responsibility on HSGIC leaders to ratify this important convention, especially as African leaders, through NEPAD, have agreed "to combat and eradicate corruption, which both retards economic development and undermines the moral fabric of society." The Convention represents a regional consensus on what states should do in the areas of prevention, criminalisation, international cooperation and asset recovery. Among its corruption prevention measures are requirements for the declarations of assets by public officials, access to information, anti-corruption education and whistleblower protection.

Good governance, according to TI's chairman Peter Eigen, is at the heart of the fight against poverty and economic underdevelopment. "By tackling corruption, nations strike at a root cause of war, human rights abuse and poverty. We urge governments to back their words with action and ratify the AU Anti-Corruption Convention. We also urge them to promptly ratify the UN Convention against Corruption, which establishes global standards complementing the AU Convention's regional standards."

TI is concerned that the chief promoters of NEPAD - Nigeria, South Africa, Senegal and Algeria - have not yet ratified the AU Anti-Corruption Convention. By ratifying the AU and UN Conventions, these countries will send a clear signal of their commitment to NEPAD, an initiative they have been vigorously promoting.

Of the six countries that have ratified the AU Convention and deposited instruments of ratification with the AU, only two are HSGIC countries (Rwanda and Libya). HSGIC countries that have not ratified the regional instrument are, Algeria, Angola, Botswana, Cameroon, Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Mali, Mauritius, Mozambique, South Africa and Tunisia. Angola, Botswana, and Egypt have not even signed the Convention. Among the non-HSGIC ratifying countries are Comoros, Lesotho, Namibia and Uganda.

The backing of the AU and UN Conventions by African leaders sends the powerful message that they recognise the harmful effects of corruption on national economies. This support is even more significant against the backdrop of the bold decision by African leaders to adopt and initiate a peer review mechanism as part of the monitoring process of NEPAD. HSGIC comprises leaders of 19 nations from AU's five sub-regions and reports to the AU Summit annually.

TI is the leading global non-governmental organization devoted to the fight against corruption.

Contact for the media: Add name, telephone and e-mail address



VI.

**PROMOTING
IMPLEMENTATION
INTO LAW,
POLICY
AND PRACTICE**

If your government has ratified the UN and AU Conventions and other anti-corruption instruments, it is necessary to monitor whether they have translated the convention requirements into law, policy and practice. Part of this process involves interpretation of convention standards. Civil society organisations can have an impact by reminding government to make implementation a priority and by pushing for the highest possible standards to be applied in the implementation process.

To promote full implementation of one or more of the conventions in your country, your organisation should consider the following steps:

- Get a clear understanding of what the conventions require in their mandatory provisions and encourage in their non-mandatory provisions. Remember that the convention provisions are relevant not only for the legislative framework but also for regulations, policies and practices. Your organisation may be interested in looking at the conventions in their entirety or at specific provisions, depending on your focus.⁶
- Determine what international standards are relevant and useful in interpreting the convention provisions you are interested in.
- Research existing legislation, regulations, policies and practices in your country and their consistency with convention requirements. In this connection, you will need to develop a good understanding of domestic constitutional law and fundamental legal principles, as these influence your country's ability to implement certain convention provisions. Your initial focus should be on whether an adequate legislative framework is in place.
- Develop conclusions about changes needed and determine whether to (1) work on all changes or identify priority areas; (2) go for high standards or take a minimalist approach.
- Develop proposals for reforms.
- Research the processes for implementation in your country, including legislative, regulatory, policy making and translation into practice. Analyse government positions on implementation, if available.
- Determine the entry points for civil society advocacy at national and international level.
- Develop an advocacy strategy.

HOW SHOULD CONVENTION REQUIREMENTS BE INTERPRETED?

The greatest challenge in connection with convention implementation lies in interpreting the standards and requirements laid down in the convention.

The process of interpretation can be made more manageable by reference to:

- Guidance material on the convention prepared by the negotiating conference or by the secretariat responsible for follow-up, such as the Legislative Guide on the UN Convention commissioned by UNODC.
- Questionnaires and indicators developed as part of monitoring processes.
- International standards developed by international intergovernmental organisations, especially the organisation responsible for follow-up.
- International standards developed by other respected international bodies or organisations.
- International best practice or model legislation developed by respected institutions.

Examples of international standards on preventive measures developed by respected institutions are provided below in the Tools section.

HOW SHOULD YOU RESEARCH YOUR NATIONAL SYSTEM AND DETERMINE CHANGES NEEDED?

Civil society analysis and assessment can take a variety of forms including:

- Detailed desk studies on implementation into law of all or a range of convention provisions
- Detailed expert reports on country performance with respect to enforcement or application of laws.
- Summary expert reports on country performance with respect to implementation into law and practice
- Polling of public perceptions with regard to performance indicators established in the convention.

In analysing national implementation civil society organisations may refer to a range of studies that have been prepared specifically to analyse compatibility of national systems with convention requirements. These include:

- Country studies commissioned by UNDP, UNODC and other organisations to assess the legal framework and other elements of the system in a range of developing and transition countries, with a view to assessing steps to be taken for UN Convention implementation including:

- Country studies commissioned by UNDP regarding the legislative framework in the following countries: Burkina, Ethiopia, Gambia, Kenya, Lesotho, Malawi, Mozambique, Nigeria, Senegal and South Africa.
- Country studies commissioned by TI for the following countries: Algeria, Burundi, Cameroon, Kenya, Liberia, Nigeria, Sierra Leone, South Africa, Togo and Uganda.
- The Institute for Security Studies has also commissioned regional studies for Africa as well as country case studies on implementation in Kenya, Mozambique, Nigeria, Senegal and South Africa. www.ipocafrika.org/conventions.
- Country reports prepared as part of the NEPAD African Peer Review Mechanism www.nepad.org/2005/files/aprm.php

EXAMPLE OF EAST AFRICA

The ISS-commissioned review of East Africa found that the legal and institutional framework relating to corruption varies enormously from country to country with some countries such as Tanzania, Uganda, Kenya, Ethiopia, Rwanda, Madagascar and Mauritius having specific and relatively modern and good legislation and others such as Eritrea, Sudan and Burundi having either outdated or no legislation at all. In the countries with good frameworks, the legislation complies with the AU and UN Conventions and has provisions that ensure that the anti-corruption agencies have substantive powers and legal backing to execute their mandates. On the other hand, the study found that some of the laws on code of conduct for leaders have loopholes that will militate against effective implementation. The review also found that the laws and mechanisms in place often are not implemented for a range of reasons including inadequate resources, lack of capacity, weak institutions and political will.

Civil society organisations may also find useful information in country studies that review country performance in areas covered by the conventions, even though they have not been produced with the conventions in mind. These include:

- TI National Integrity System studies in a range of countries in Africa. These are studies of the key institutions, laws and practices that contribute to integrity, transparency and accountability in a society, based on a holistic approach to countering corruption.
See www.transparency.org/policy_and_research/nis/regiona
- Country studies produced as a basis for anti-corruption work, by institutions such as the UN, World Bank and others, as well as by independent researchers
- Studies by organisations such as the International Budget Project, which has carried out studies on budget transparency in African countries. See the Tools section below.

WHAT PROPOSALS FOR REFORMS?

The AU and UN Conventions are very broad, taking a systemic approach to the corruption problem and including a wide range of preventive and punitive measures. The components of an anti-corruption system are interconnected and, in principle, should not be considered separately. Moreover, the provisions can be used as a basis for promoting minimum standards of performance or as a platform for advocating the highest standards. In making proposals for reforms, civil society organisations must thus consider how extensive should their proposals be and what standard should they press for.

It may be difficult to conduct advocacy work on implementation with respect to all the issues covered by the conventions and it may be necessary to prioritise. If your organisation is specialised in a particular area, then the choice of priority areas will be relatively easy. Otherwise, the selection might focus on:

- The mandatory provisions of the conventions and/ or
- The most important weaknesses in your country's system

With regard to the standards promoted, governments may choose to interpret convention provisions to require a low standard of performance. In that case, it will be up to civil society organisations to make a convincing case for higher standards, to argue for best practice. In that connection, in countries where technical assistance is provided to the government for convention implementation, it will be important to try to ensure that technical assistance advisers liaise with civil society organisations.

MONITORING BUDGET TRANSPARENCY AS A BASIS FOR PROPOSALS

Monitoring budget transparency can yield valuable information about public access to budget information and the openness of the budget process and thus provide the basis for proposals on implementation regarding AU and UN Convention provisions on these subjects.

There are increasing numbers of examples of budget monitoring in Africa. In 2004, the International Budget Project (IBP) conducted a survey in 36 developing countries to assess transparency in national budgeting processes. Among the countries covered were 9 in Africa: Botswana, Burkina Faso, Ghana, Kenya, Malawi, Namibia, South Africa, Uganda and Zambia. Using the Open Budget Questionnaire developed by the IBP, the project evaluated public access to budget information and the openness of the budget process from the perspective of civil society organizations. The data indicated that among the countries surveyed South Africa had some of the best practices and Zambia some of the worst.

See Tools section below

and www.internationalbudget.org/openbudgets/index.htm

Another approach was taken by civil society groups in **Malawi** which worked closely with the Parliamentary Budget and Finance committee on the identification of key Priority Poverty Expenditures (PPEs) in the 2001–2002 budget. The groups, working on health, education and agriculture, helped identify 12 PPEs and then lobbied with partial success for safeguards to ensure that the funds for those 12 PPEs would not be cut or transferred. They followed up with efforts to monitor the expenditures – the first time this had been done in Malawi. To that end, they developed and tested survey tools, drew up samples for each sector and finally, in January 2002, collected the data. The survey generated important findings about actual expenditures in all three PPE areas. The most important of the general conclusions was that in all cases the amount budgeted was very different from the amount spent. The findings were first shared with the Government and then released to the media and to donors.

See www.internationalbudget.org/resources/Malawi.pdf

COORDINATED EFFORTS TO PROMOTE NATIONAL IMPLEMENTATION: TWO TI INITIATIVES IN OTHER REGIONS

TI's Progress Report on OECD Convention Enforcement

On 7 March 2005, TI publicly released its first annual assessment of government enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials. The TI Progress Report on OECD Convention Enforcement provides a clear, concise overview and assessment of government enforcement performance in 24 of the 36 OECD Convention signatory countries with recommendations for improvements. The report concluded that there had been few bribery cases and that enforcement efforts must be stepped up substantially to achieve widespread awareness in the business community that foreign bribery does not pay. The most important recommendations of the Progress Report called for OECD Convention parties to:

- Strengthen coordination of government enforcement by creating a national office for that purpose
- Improve access to enforcement systems through enhanced complaint procedures and whistleblower protection
- Continue the OECD monitoring programme beyond 2007

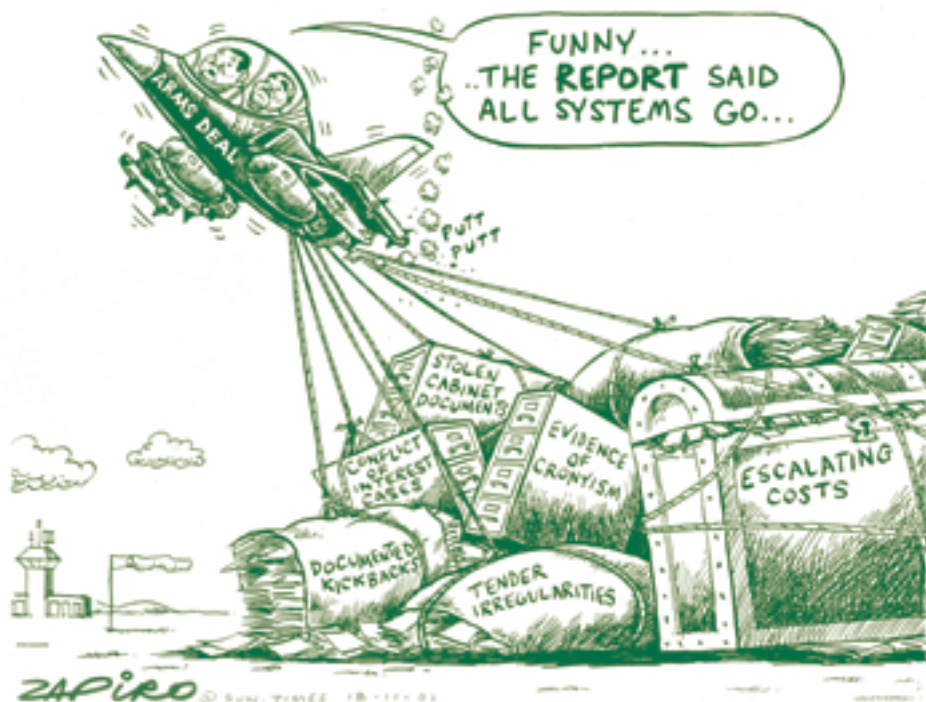
A second TI Progress Report was released on 26 June 2006.

To read the reports go to:

www.transparency.org/global_priorities/international_conventions

TI's Americas Conventions Report Card

TI is developing an Americas Conventions Report Card for inclusion in its first publication examining regional progress in the implementation of the OAS and UN Conventions with respect to provisions in two priority areas, namely: public contracting and public integrity. The initial exercise in 2005 / 2006 will cover 10 countries. The Report Card will be produced on a regular basis to provide a clear and media-friendly assessment of convention implementation by a range of countries in the areas selected. It will serve as a powerful advocacy tool for national civil society campaigns on the topic areas and more generally for civil society efforts to bring pressure to bear in favour of the conventions. See Tools section below for an excerpt from the public integrity questionnaire.



TOOLS FOR ADVOCATING IMPLEMENTATION

The tools discussed in this section are designed to assist in:

- Interpreting convention provisions
- Determining the status of implementation in your country and other countries
- Understanding the legislative process in your country
- Developing advocacy materials

1) INTERPRETING CONVENTION PROVISIONS

The following texts provide examples of selected inter-governmental and non-governmental standards that have been developed on the basis of international consultation processes and may be useful in interpreting convention provisions. The first text lists examples of international standards on preventive measures developed by respected institutions, including standards referred to in the African Peer Review Mechanism (APRM). The second text is a set of principles on the right to know developed by the Open Society Justice Initiative together with partner organisations and the third is a set of standards on public contracting developed by Transparency International.

It should be noted that apart from standards on preventive measures, there also exist standards relating to other areas covered by the anti-corruption conventions. For example, in the area of international cooperation, the UN has developed a range of useful materials, including model laws and other tools.

A) INTERNATIONAL STANDARDS ON PREVENTIVE MEASURES

The following are selected standards listed by topic area.

PUBLIC SECTOR ETHICS AND CODES OF CONDUCT FOR PUBLIC OFFICIALS (OAS ART. III (1,2,3); UN ARTS. 7 AND 8):

- United Nations, International Code of Conduct for Public Officials (1997)
www.un.org/ga/documents/gares51/gar51-59.htm
- Africa Leadership Forum, Draft Code of Conduct for African Parliaments (1998)
www.africaleadership.org/
- OECD Council Recommendation on the Guidelines for Managing Conflict of Interest in the Public Service (June 2003)
www.oecd.org/dataoecd/13/22/2957360.pdf
- OECD Recommendation on Improving Ethical Conduct in the Public Service (May 1998)
www.oecd.org/dataoecd/60/13/1899138.pdf
- International Criminal Police Organization (Interpol) Code of Conduct for Law Enforcement Officers
www.interpol.int/Public/Corruption/IGEC/Codes/Default.asp
- Interpol, Global standards to combat corruption in police forces/ services
www.interpol.int/Public/Corruption/Standard/Default.asp
- INTOSAI Code of Ethics for Auditors in the Public Sector:
www.intosai.org/3_ETHICe.html.

- Council of Europe Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns (8 April 2003)
[http://portal.coe.ge/downloads/REC%20\(2003\)4.en.pdf](http://portal.coe.ge/downloads/REC%20(2003)4.en.pdf)
- South Africa, Code of Conduct for Persons in Positions of Responsibility (1998)
www.oecd.org/dataoecd/13/22/2957360.pdf

PUBLIC PROCUREMENT (UN ART. 9)

- WTO Agreement on Government Procurement (1994)
www.wto.org/english/docs_e/legal_e/gpr-94.pdf
- UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html
- Transparency International's Minimum Standards for Public Contracting. See Tools below.

MANAGEMENT OF PUBLIC FINANCES (UN ART. 9)

- International Monetary Fund Code of Good Practices on Fiscal Transparency (2001)
www.imf.org/external/np/fad/trans/code.htm
- International Monetary Fund Code of Good Practices on Transparency in Monetary and Financial Affairs: Declaration of Principles (1999)
www.imf.org/external/np/mae/mft/code/index.htm
- OECD Best Practice Guidelines for Budget Transparency
[www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125692700623b74c1256a4d005c23be/\\$FILE/JT00107731.PDF](http://www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125692700623b74c1256a4d005c23be/$FILE/JT00107731.PDF)
- INTOSAI's Lima Declaration of Guidelines on Auditing Precepts (1977)
www.intosai.org/Level2/2_LIMADe.html

MEASURES RELATING TO THE JUDICIARY AND THE PROSECUTION SERVICES (UN ART. 11)

- The Bangalore Principles of Judicial Conduct (2002)
www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

PRIVATE SECTOR (UN ART. 12)

- International Financial Reporting Accounting Standards
www.iasb.org/standards/summaries.asp

- International Standards on Auditing
www.icaew.co.uk/library/index.cfm?AUB=TB2I_25595#history
- TI Business Principles for Countering Bribery
www.transparency.org/global_priorities/private_sector/business_principles
- International Chamber of Commerce Rules of Conduct and Recommendations for Combating Bribery and Extortion (2005)
www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf
- OECD Guidelines for Multinational Enterprises
www.oecd.org/document/3/0,2340,en_2649_34529562_36649987_1_1_1_34529562,00.html
- OECD Principles of Corporate Governance (new version 2004)
www.oecd.org/dataoecd/32/18/31557724.pdf
- OECD Policy Framework for Investment (adopted May 2006)
www.oecd.org/document/61/0,2340,en_2649_34529562_33696253_1_1_1_34529562,00.html
- OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones (June 2006)
www.oecd.org/document/6/0,2340,en_2649_34529562_36887622_1_1_1_34529562,00.html

PARTICIPATION OF SOCIETY (UN ART. 13)

- Reports of the Inter-American Commission on Human Rights and decisions of the Inter-American Court on the issue of access to information
- United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998)
www.unece.org/env/pp/
- Article 19, Model Freedom of Information Law
www.article19.org/pdfs/standards/modelfoiaw.pdf
- Open Society Justice Initiative, Ten Principles on the Right to Know. See Tools below.
www.justiceinitiative.org/Principles/index

MEASURES TO PREVENT MONEY LAUNDERING (UN ART.14)

- United Nations Office on Drugs and Crime, An Overview of the UN Conventions and the International Standards Concerning Anti-Money Laundering Legislation (February 2004)
www.imolin.org/pdf/imolin/overview.pdf
- Bank for International Settlements, Basel Committee on Banking Supervision, Prevention of criminal use of the banking system for the purpose of money-laundering (December 1988)
www.bis.org/publ/bcbsc137.htm
- Bank for International Settlements, Basel Committee on Banking Supervision, Customer Due Diligence for Banks (October 2001)
www.bis.org/publ/bcbs85.htm
- Financial Action Task Force, Forty Recommendations
www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html
- Wolfsberg Group Statement on Monitoring, Screening and Searching (September 2003); Anti-Money Laundering Principles for Correspondent Banking; and Wolfsberg Anti-Money Laundering Principles on Private Banking
www.wolfsberg-principles.com/standards.html

THE NEPAD APRM REFERS TO THE FOLLOWING STANDARDS:

- International Monetary Fund Code of Good Practices on Fiscal Transparency
- Guidelines for Public Debt Management
- Code of Good Practices on Transparency in Monetary and Financial Affairs
- OECD Best Practice Guidelines for Budget Transparency
[www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125692700623b74c1256a4d005c23be/\\$FILE/JT00107731.PDF](http://www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125692700623b74c1256a4d005c23be/$FILE/JT00107731.PDF)
- Core Principles for Effective Banking Supervision
- International Accounting Standards
- International Standards on Auditing

B) OSJI'S TEN PRINCIPLES ON THE RIGHT TO KNOW

Released by the Open Society Justice Initiative on the third International Right to Know Day, 28 September 2005.

1. Access to information is a right of everyone.

Anyone may request information, regardless of nationality or profession. There should be no citizenship requirements and no need to justify why the information is being sought.

2. Access is the rule – secrecy is the exception!

All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.

3. The right applies to all public bodies

The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

4. Making requests should be simple, speedy, and free.

Making a request should be simple. The only requirements should be to supply a name, address and description of the information sought. Requestors should be able to file requests in writing or orally. Information should be provided immediately or within a short timeframe. The cost should not be greater than the reproduction of documents.

5. Officials have a duty to assist requestors

Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.

6. Refusals must be justified.

Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy. These exceptions must be clearly and specifically defined by law. Any refusal must clearly state the reasons for withholding the information.

7. The public interest takes precedence over secrecy.

Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information.

8. Everyone has the right to appeal an adverse decision.

All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.

9. Public bodies should proactively publish core information.

Every public body should make readily available information about its functions and responsibilities, without need for a request. This information should be current, clear, and in plain language.

10. The right should be guaranteed by an independent body.

An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

Drawn from comparative law and practice in the over 60 countries world-wide that have freedom of information laws, these principles provide a clear set of standards to guide civil society groups and legislators in their efforts to increase public access to information.

www.justiceinitiative.org/Principles/index

C) TI'S MINIMUM STANDARDS FOR TRANSPARENCY IN PUBLIC CONTRACTING

Transparency International's Minimum Standards for Public Contracting, originally published in the Global Corruption Report in 2005, provide a framework for preventing and reducing corruption based on clear rules, transparency, and effective control and auditing procedures throughout the contracting process. These are a helpful tool for governments, businesses, civil society, monitors and journalists to measure if a contracting system provides minimum transparency assurances.

The standards focus on the public sector and cover the entire project cycle, including needs assessment, design, preparation and budgeting activities prior to the contracting process; the contracting process itself; and contract implementation. The standards extend to all types of government contracts, including:

- procurement of goods and services
- supply, construction and service contracts (including engineering, financial, economic, legal and other consultancies)
- privatisations, concessions and licensing
- subcontracting processes and the involvement of agents and joint-venture partners.

Public procurement authorities should:

1. Implement a code of conduct that commits the contracting authority and its employees to a strict anti-corruption policy. The policy should take into account possible conflicts of interest, provide mechanisms for reporting corruption and protecting whistleblowers.
2. Allow a company to tender only if it has implemented a code of conduct that commits the company and its employees to a strict anti-corruption policy.
3. Maintain a blacklist of companies for which there is sufficient evidence of their involvement in corrupt activities; alternatively, adopt a blacklist prepared by an appropriate international institution. Debar blacklisted companies from tendering for the authority's projects for a specified period of time.
4. Ensure that all contracts between the authority and its contractors, suppliers and service providers require the parties to comply with strict anti-corruption policies. This may best be achieved by requiring the use of a project integrity pact during both tender and project execution, committing the authority and bidding companies to refrain from bribery.
5. Ensure that public contracts above a low threshold are subject to open competitive bidding. Exceptions must be limited and clear justification given.

6. Provide all bidders, and preferably also the general public, with easy access to information about:

- activities carried out prior to initiating the contracting process
- tender opportunities
- selection criteria
- the evaluation process
- the award decision and its justification
- the terms and conditions of the contract and any amendments
- the implementation of the contract
- the role of intermediaries and agents
- dispute-settlement mechanisms and procedures.

Confidentiality should be limited to legally protected information.

Equivalent information on direct contracting or limited bidding processes should also be made available to the public.

7. Ensure that no bidder is given access to privileged information at any stage of the contracting process, especially information relating to the selection process.

8. Allow bidders sufficient time for bid preparation and for pre-qualification requirements when these apply. Allow a reasonable amount of time between publication of the contract award decision and the signing of the contract, in order to give an aggrieved competitor the opportunity to challenge the award decision.

9. Ensure that contract 'change' orders that alter the price or description of work beyond a cumulative threshold (for example, 15 per cent of contract value) are monitored at a high level, preferably by the decision-making body that awarded the contract.

10. Ensure that internal and external control and auditing bodies are independent and functioning effectively, and that their reports are accessible to the public. Any unreasonable delays in project execution should trigger additional control activities.

11. Separate key functions to ensure that responsibility for demand assessment, preparation, selection, contracting, supervision and control of a project is assigned to separate bodies.

12. Apply standard office safeguards, such as the use of committees at decision-making points and rotation of staff in sensitive positions. Staff responsible for procurement processes should be well trained and adequately remunerated.

13. Promote the participation of civil society organisations as independent monitors of both the tender and execution of projects.

2) DETERMINING THE STATUS OF IMPLEMENTATION IN YOUR COUNTRY AND OTHER COUNTRIES

The following texts provide examples of monitoring carried out by Transparency International and by the International Budget Project. The first example involves monitoring designed to check implementation gaps in relation to the OAS and UN Conventions and provides excerpts from a questionnaire used for that purpose. The second example involves monitoring of budget transparency conducted in Africa and other regions and provides excerpts from the questionnaire used for that exercise.

A) TI'S AMERICAS CONVENTIONS REPORT CARD

One method for assessing implementation in your country that may lend itself well to advocacy work is through concise expert reports on the status of implementation. TI developed questionnaires for that purpose, to examine implementation of the OAS and UN Conventions in the areas of public integrity and public procurement. The following text provides excerpts from the questionnaire on public sector integrity.

MAPPING TOOL FOR THE REPORT CARD ON PUBLIC INTEGRITY BASED ON THE OAS AND UNITED NATIONS ANTI-CORRUPTION CONVENTIONS

DISCLOSURE OF REVENUES, ASSETS AND LIABILITIES

The normative standards that apply to the disclosure of revenues, assets and liabilities are established specifically in Article III, paragraph 4 of the OAS Convention and in Article VIII, paragraph 5 of the UN Convention. Of particular relevance are the developments made with the OAS Committee of Experts First Round Questionnaires, and most specifically the committee's Recommendations issued to the countries of the region studied in the past three years. Such recommendations, based on their regularity, demonstrate a consensus as to which elements characterize adequate regulatory framework and conduct relating to the disclosure of revenues, assets and liabilities.

The model that is derived from these international provisions and from the advances in the Follow-up Mechanism outlines the following accepted standards for the disclosure of revenues, assets and liabilities:

1. Requirement on the part of high-level and high-ranking public officials to report where they maintain their chattels and assets.
2. Requirement to submit statements of income, assets and liabilities at the time of

assuming a public position and again at the time of leaving a public position, as a minimum.

3. Existence of procedures to ensure this requirement is met.
4. Verifiability of the information contained in such statements.
5. Public disclosure of and accessibility to such statements.

QUESTIONNAIRE ON THE DISCLOSURE OF REVENUES, ASSETS AND LIABILITIES

DISCLOSURE OF REVENUES, ASSETS AND LIABILITIES

Standards and questions on institutional and legal framework

Existence of a provision requiring public officials to submit statements of income, assets and liabilities that are verifiable and public

	Response	YES	NO	N/A
Question 25	<i>Does the legal system in your country stipulate that public officials are required to report their income, assets and liabilities?</i>			
	<i>Source:</i>			
Question 26	<i>Does the legal system in your country stipulate that public officials are required to report their chattels?</i>			
	<i>Source:</i>			
Question 27	<i>Does the provision requiring income, assets and liabilities to be reported apply to the high-est-level public officials of the Administration?</i>			
	<i>Source:</i>			

...

STANDARDS AND QUESTIONS ON PERCEPTIONS REGARDING PERFORMANCE

Mechanisms and practices for compliance with the requirement to submit a statement of income, assets and liabilities (NB: A mechanism is defined as the procedures or agents by which a specific objective is achieved.)

	Score	0	1	2	3	4
Question 30	<i>Public services apply support procedures to help public officials comply with their requirement to submit the statement (such as direction, training, information)</i>					
	<i>Source:</i>					

Question 31	<i>Income, asset and liability statements are subjected to procedures to verify the veracity of the information performed by the proper governmental bodies or units.</i>						
<i>Source:</i>							
Question 32	<i>The income, asset and liability statements are public or are at the disposal of the public through means that are accessible to the citizenry.</i>						
<i>Source:</i>							

...

PERFORMANCE INDICATORS AND STATISTICAL DATA:

34. Please specify what percentage of legally required public officials have in fact met this requirement to date:

35. Please specify the number of administrative or criminal proceedings that have been initiated for non-compliance with the requirement to submit a income, asset and liability statement in 2004:

B) IBP PROJECT ON OPEN BUDGETS – EXCERPTS FROM QUESTIONNAIRE

The International Budget Project (IBP) conducted a survey on public access to budget information and the openness of the budget process from the perspective of civil society organisations. The information they collected is relevant for evaluating country performance under the AU Convention and the UN Convention with regard to access to information and public sector finance, although the survey did not aim to examine compliance with convention standards. The survey was conducted by means of the [Open Budget Questionnaire](#) in countries including: Botswana, Burkina Faso, Ghana, Kenya, Malawi, Namibia, South Africa.

THE FOLLOWING ARE EXCERPTS FROM THE QUESTIONNAIRE:

BUDGET DOCUMENTS AND INFORMATION

Estimates for the budget year and beyond

1. Does the executive's budget or any supporting budget documentation present expenditures for the budget year that are classified by administrative unit (that is, by ministry, department, or agency)?

- a. All expenditures are classified by administrative unit.
- b. Expenditures are classified by administrative unit, but some small units are not shown separately.
- c. Expenditures are classified by administrative unit, but a significant number of units are not shown separately.
- d. No expenditures classified by administrative unit are presented.
- e. Not applicable/other (please comment).

Comments:

2. Does the executive's budget or any supporting budget documentation present expenditures for the budget year that are classified by functional classification?

- a. All expenditures are classified by functional classification, and the categorization is compatible with international standards.
- b. All expenditures are classified by functional classification, but the categorization is not compatible with international standards.
- c. Some, but not all, expenditures are classified by function.
- d. No expenditures classified by function are presented.
- e. Not applicable/other (please comment).

Comments:

BUDGET PROCESS

Formulation Phase

66. How far in advance of the release of the budget is the day of its release known?

- a. The release date is set in permanent law.
- b. The executive announces the release date at least two months in advance.
- c. The executive announces the release date less than two months but more than two weeks in advance.
- d. The executive announces the release date two weeks or less before the release, or makes no announcement.
- e. Not applicable/other (please comment).

Comments:

Approval Phase

74. How far in advance of the start of the budget year does the legislature receive the budget?

- a. The legislature receives the budget at least three months before the start of the budget year.
- b. The legislature receives the budget at least six weeks, but less than three months, before the start of the budget year.
- c. The legislature receives the budget less than six weeks before the start of the budget year.
- d. The legislature does not receive the budget before the start of the budget year.
- e. Not applicable/other (please comment).

Comments:

Execution and Monitoring Phase

83. How often does the executive release to the public in-year reports on actual expenditure (organized by administrative unit, economic classification and/or function)?

- a. In-year reports on actual expenditure are released at least every month.
- b. In-year reports on actual expenditure are released at least every quarter.
- c. In-year reports on actual expenditure are released at least semi-annually.
- d. In-year reports on actual expenditure are not released.
- e. Not applicable/other (please comment).

Comments:

Final Reports and Audit Phase

102. How long after the end of the fiscal year does the executive release to the public a year-end report or another document that discusses the budget's actual outcome for the year?

- a. Reports are released six months or less after the end of the fiscal year.
- b. Reports are released 12 months or less (but more than six months) after the end of the fiscal year.
- c. Reports are released more than 12 months after the end of the fiscal year.
- d. The executive does not release a year-end report.
- e. Not applicable/other (please comment).

Comments:

3) UNDERSTANDING THE LEGISLATIVE PROCESS IN YOUR COUNTRY

In order to ensure the adoption of legislation required for implementation, it is necessary to understand the legislative process. Below is a discussion of the legislative process in South Africa, excerpted from the South African government's website, illustrating the numerous actors involved and the many potential entry points for civil society advocacy. It is also necessary to understand the role of the executive branch in policy- and rule-making.

A BRIEF EXPLANATION OF THE SOUTH AFRICAN LEGISLATIVE PROCESS

When a change in policy is being made, the government often first puts forward its proposals in a Green Paper, which is a discussion document on policy options. It originates in the department of the Ministry concerned and is then published for comment and ideas. A submission date is usually given for input from civil society. This document forms the basis for a White Paper which is a broad statement of government policy. Comment may again be invited from interested parties.

Once these inputs have been taken into account, the Minister and officials within the State department concerned may draft Legislative Proposals. At this stage the proposals are also considered by the Cabinet. Occasionally this document may be gazetted as a Draft Bill, for comment by a defined date, or given to certain organisations for comment. Once all comments have been considered the document is taken to the State Law Advisers who check the proposals in detail and their consistency with existing legislation. These proposals are then printed by Parliament, given a number and go to be Tabled or introduced in either the National Assembly or the National

Council of Provinces. The document is now no longer a Draft Bill. It is a Bill and the introduction or tabling is called the first reading. After the reading it is put on the Order Paper and it goes to a Committee for consideration.

The committee consists of members of the different parties represented in Parliament who discuss the Bill. They sometimes call expert witnesses or invite submissions to help refine it, after which they may amend it. When the committee has approved the Bill, it goes for Debate in the House in which it was tabled. Once that House has agreed to the Bill, it is transmitted to the other House and the same procedure is followed.

When both Houses have passed the Bill it is allocated an Act number and then goes to the State President to be signed. It is then published in the Government Gazette as an Act and it then becomes a law of the land.

Sometimes there are no Green and White Papers and the process begins with the legislative proposals originating in the Ministry or Department.

For more details see:

www.polity.org.za/html/govdocs/legislation/process.html?rebookmark=1

4) DEVELOPING ADVOCACY MATERIALS

Below is an example of advocacy material on a topic covered by the conventions, namely a sample press release on access to information.

EXAMPLE: TAC-ODAC PRESS RELEASE ON ACCESS TO INFORMATION

Embargoed until the 28th September 2005.

The Right to Know, the Right to Live: TAC and the Open Democracy Advice Centre (ODAC) launch right to know campaign.

Today ODAC and the TAC launch a special new campaign, supporting the implementation of the Right to Know. "We believe that the right to access information can make the difference between accessing your rights, or not." said Muke Iani Dimba, ODAC regional co-ordinator. "Implementation of the right to know in South Africa is not living up to the standards set by our Constitution, or our legislation. The results of the Open Society Institute Justice Initiative study show that we are lagging behind in achieving openness as far as access to information is concerned."

Dimba was responding to the results of a ground-breaking international study testing access to public information. Five countries, Peru, Armenia, Macedonia, Bulgaria and South Africa took part in the survey, which involved sending one hundred

requests for information to different state institutions and monitoring the results. Only public bodies were involved, as only South Africa has a law that provides for access to privately held information.

Shockingly, despite its internationally-renowned law, South Africa did the worst of the five countries in most categories, with the government not responding at all to 53% of the requests and releasing information to only 17% of the requests.

“Access to information is necessary for individuals to make informed decisions about their own health. It is also necessary for communities and civil society in order to hold government accountable and to assist government with the implementation.” said Njogu Morgan from TAC. In the light of the findings presented by the survey, it is unfortunate that the Minister of Health is prepared to go to court with the TAC to block access to life saving information about the ARV rollout. ”

The two organisations will release a poster and pamphlet at a press conference on Tuesday the 28th September, international right to know day. They plan to continue to raise the issue for the right to know month of October, ahead of TAC’s case against the Minister of Health for annexure A to the Treatment Plan, meeting with government and civil society to consult on what can be done to improve the situation.

The press conference will be held at 9th Fl, Auckland House, cnr Biccard and Smit Sts, Braamfontein.

Contact _____

⁶ The UNODC Legislative Guide to the UN Convention provides a very useful tool for understanding that Convention.



**PROMOTING AND
CONTRIBUTING TO
INTER-
GOVERNMENTAL FOLLOW-UP
AND
MONITORING**

An effective monitoring mechanism must instil public confidence, maintain commitment to reform, ensure continuity, establish benchmarks, encourage open dialogue at national and international levels, promote reform efforts at the national level, develop a broad basis of support among non-government segments of society, and create reasonable expectations.

Joseph Gangloff, US Department of Justice, in a paper presented to the 11th International Anti-Corruption Conference in Seoul, South Korea, May 2003.

‘While peer review mechanisms may be costly, they provide civil society with an important means to push a government to implement a convention. But we cannot rely only on a mechanism; civil society must be very active in promoting the convention in society and making it a priority.

Valeria Merino Dirani, Member of the Board of Directors of Transparency International, in a presentation at the 11th International Anti-Corruption Conference in Seoul, South Korea, May 2003



Experience teaches that in order to ensure that the commitments made are translated into action, a convention needs an intergovernmental monitoring process. A designated body should regularly check the progress national governments are making in carrying out their treaty obligations and, where this is inadequate, put pressure on governments to improve their performance. Such processes are foreseen in the conventions and protocols discussed in this guide.

To promote and contribute to convention monitoring, your organisation should consider the following steps:

- Where there is no monitoring process in place (this is the case for the UN and AU Conventions except to the limited extent they are monitored under the APRM process)
 - Get a clear understanding of what the convention provides on monitoring
 - Join advocacy efforts to promote UN and AU Convention monitoring – TI is mobilising support
- Where there is a monitoring process in place (this is the case for the UNTOC Convention):
 - Learn about the process, including the opportunities for civil society inputs, the schedule, the topics already covered and the topics coming up.
 - Determine if the process is functioning well and, if not, what might be done to improve it. One important issue is whether sufficient resources are allocated to conduct the monitoring. Another concerns the transparency of the monitoring.
 - Determine what inputs your organisation would like to make to the monitoring process. Civil society inputs are not thus far provided for under the UNTOC monitoring process.
 - Determine whether there are outputs of the monitoring process that require follow-up. Other issues include whether the process is sufficiently transparent.
 - Develop an advocacy strategy.

HOW DOES INTERGOVERNMENTAL MONITORING WORK IN GENERAL?

In a *self-evaluation process*, a government is generally given a questionnaire and asked to provide its own assessment of how it is doing in complying with convention requirements. While this can provide very useful information, the drawback is that the government may not be sufficiently self-critical or may try to paint a picture that is rosier than warranted. The information is therefore not entirely reliable and in most systems is supplemented with information from other sources. In some monitoring systems this information is submitted to a committee of independent experts which can ask questions and make recommendations.

In a *mutual evaluation*, or ‘*peer review*’ process, government representatives evaluate one another on their performance, generally taking government responses to a questionnaire as the starting point. In existing anti-corruption convention monitoring systems⁷ for the OAS and OECD Conventions, as well as the Council of Europe Conventions on Corruption, the examination is conducted on a non-adversarial basis, relying heavily on mutual trust among the participating states. The secretariat of the responsible organisation plays an important role in supporting or stimulating the monitoring. The process brings pressure to bear through a mix of formal recommendations and informal dialogue. It may also include public scrutiny, comparisons and rankings. For the review process to have maximum impact, relevant documents including the final report should be made available to the public, adding public pressure to peer pressure.

Intergovernmental review processes for anti-corruption conventions generally involve the following elements: (1) government responses to a questionnaire; (2) review of the responses by a secretariat and selected experts; the review may also include a visit to the country to learn more about the actual situation (“on-site review”); (3) preparation of a report on country performance; (4) discussion of the report in a review body, often consisting of other government representatives (“peer review”); and (5) adoption and publication of the report.

SOME FEATURES OF AN EFFECTIVE MONITORING SYSTEM

Experience of monitoring systems teaches that some of the key features for effectiveness are:

- Serious commitment by governments. A critical mass of governments must take the process seriously and exert their influence on peers lacking the same commitment
- Inputs of information from a wide range of sources, including government self-assessments, non-governmental inputs, research by experts and in-country fact-finding by experts
- Preparation of a report by independent experts including assessments and recommendations
- A strong, adequately resourced secretariat
- Frank, open and constructive discussion of the assessments and recommendations within a group of experts or government peer representatives and adoption of the report
- Identification of technical assistance needs
- Publicity given to the final report
- Follow-up on the recommendations in the report

HOW DOES INTERGOVERNMENTAL MONITORING HELP?

Governments face many competing priorities, often contend with limited resources and may not take their convention commitments seriously enough. Where government performance is inadequate, an effective monitoring system promotes implementation by providing a framework for peer pressure and mutual support, as well as a channel for public pressure. Reporting schedules and review committee discussions or review team visits help stimulate government action. By this means, monitoring helps sustain momentum for implementation and builds public confidence that the convention is being taken seriously.

It should be pointed out to governments that they can benefit from monitoring in the following ways

- It helps them give the necessary attention and focus to a high priority issue
- It provides them with guidance and feedback on implementation; reviews provide authoritative interpretation of the convention provisions
- It provides a forum for discussion of issues and sharing of good practice
- It identifies difficulties faced and technical assistance needs
- It helps ensure that those countries that promptly implement also benefit from the efforts to assure collective participation; it reduces "free riding"
- It provides public recognition of steps taken and progress made

WHAT ARE THE MONITORING CHALLENGES FOR GOVERNMENTS?

Monitoring, while necessary, represents a challenging task for governments. It requires them to commit resources, both to support the reviewing body and to marshal the information about their own performance required by reviewers. Moreover, where the monitoring finds their performance lacking, governments may confront criticism from reviewing bodies and be called on to devote resources to correcting deficiencies.

A further emerging challenge is that an increasing number of countries are covered by multiple conventions and are subject to multiple review processes, which stretches the capacity of even the most developed countries. This means coordination of monitoring processes is necessary.

Since the negotiation, implementation and monitoring processes can be costly in terms of human and financial resources, some less developed countries may require financial and technical assistance in order to participate, to manage the processes and to institute needed reforms. Such assistance, provided by more developed countries, may be a prerequisite to the participation of the less developed countries in international anti-corruption conventions at all stages from negotiation through implementation into monitoring.

HOW DO EXISTING MONITORING SYSTEMS IN AFRICA WORK?

Monitoring is under way for the UN and AU Conventions within the APRM and also for the UNTOC Convention within the UNTOC Conference of Parties and these systems are described in summary form in the texts below.

NEPAD AFRICAN PEER REVIEW MECHANISM (APRM)

Started: 2005

Number of countries: 24

Methodology: Self-assessment, expert panel and peer review

Scope of review: Reviews cover 91 indicators

Rate of monitoring: Each country reviewed every 2-4 years;
2 countries reviewed so far

Number of APR Panel meetings per year: Approximately 6

In country visits: Yes

Reports published: Country reports and action plans

Follow-up: Not yet known

Civil society participation: Yes

Current staffing (estimate): 6 coordinators and 6 personal assistants
at the APRM Secretariat

Estimated cost: At beginning of peer review process each state
was to pledge a minimum of US\$100,000

www.nepad.org/2005/files/aprm.php

NEPAD's African Peer Review Mechanism (APRM) began to function in early 2005. The New Partnership for Africa's Development (NEPAD) is an economic development programme of the African Union. It focuses on education, health, regional infrastructure, agriculture, market access and preservation of the environment. The APRM is based on a mutually agreed instrument, voluntarily acceded to by member states of the African Union, setting up an African self-monitoring mechanism with the aim of fostering the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration. This will be done through sharing experiences and reinforcing successful and best practice, including identifying deficiencies and assessing the needs of capacity building. As of March 2006, 23 states had acceded. It encourages participating states to ensure that their policies and practices conform to agreed political, economic and corporate governance values. It covers 91 indicators in four focus areas: (1) Democracy and Political Governance; (2) Economic Governance and Management; (3) Corporate Governance; and (4) Socio-Economic Development. There are a set of objectives, standards, criteria and indicators for each

of the focus areas and countries are supplied with Guidelines to Prepare for and Participate in the APRM. The process is intended to be transparent, accountable and participatory.

Under the first two focus areas, the standards to be applied include the UN and AU anti-corruption conventions and the criteria include questions about corruption and transparency. Thus, to a limited extent the process includes monitoring of government anti-corruption activities and measures performance against convention requirements. Now that the AU and UN Conventions have entered into force, this part of the review may expand but this may depend on how the monitoring processes provided for in the two conventions develop.

The APRM review process includes five stages: (1) a country self-assessment and action plan following national consultation with key stakeholders; (2) an APRM Secretariat draft report to support an expert team; (3) an on-site review visit by the expert team and preparation of a country report; (4) an expert team country report presented to and considered by the APR Panel of Eminent Persons; and (5) a report tabled for peer review by the APR Forum, which is a committee of participating heads of state and government.

In 2005, the APR Panel finalised reviews for Ghana and Rwanda and their reports were presented to the 3rd Summit of the APR Forum in June 2005. At the 4th Summit in January 2006, heads of state were due to conduct “peer review” of Ghana and Rwanda, with a view to sharing of experiences and assisting the two countries in addressing weaknesses identified. The review process has now been completed for Ghana and Kenya and is currently under way in Benin, Mauritius, Nigeria, Tanzania and South Africa.

THE GHANA APRM REVIEW AND THE ROLE OF CIVIL SOCIETY

Based on a text by Daniel Batidam, Ghana Integrity Initiative

Ghana was among the first group of countries to sign the Memorandum of Understanding (MOU) on 9 March 2003, a positive initiative for which it deserves credit. In May 2003, the government created a Ministry of Regional Cooperation and NEPAD,, which was the designated focal point for the APRM in the country. It also instituted a National Governing Council in compliance with the requirement for participating countries to have an independent self-assessment of its governance in the four APRM areas. This Council was composed of highly qualified and esteemed professionals and public personalities independent of the government. The Governing Council appointed four reputable national independent think-tanks and research institutions to undertake the country self-assessment in each of the four thematic areas of the APRM and to make appropriate recommendations to guide the Council in drafting a National Programme of Action (POA). Ghana submitted its final consolidated self-assessment report and a draft National POA to the APRM Secretariat in March 2005.

While there is much to commend about Ghana's participation in the APRM, many civil society groups in Ghana - including the Ghana Integrity Initiative (GII), the local chapter of TI - have expressed reservations about the process on the grounds that it did not allow for civil society participation. Moreover, almost a year after the APRM "Country Review Report of the Republic of Ghana" was prepared, civil society and the Ghanaian public as a whole had not been given access to the contents of the report. The report has now been published. www.nepad.org/2005/files/aprm.php

UNITED NATIONS

UNTOC CONVENTION MONITORING

Started: Not yet established fully; first steps taken at first and second Conference of Parties

Number of countries: 112

Methodology: Factual responses to questionnaire, secretariat overview analytical and assessment report, plenary discussion and follow-up questioning

Scope of review: Questionnaires on selected topics, based on programme of work of the conference of parties

Rate of monitoring: Planned to cover all countries each year in the first two years, then every second year

Number of meetings per year: One meeting per year in the first two years, then one every second year

In country visits: None discussed thus far. May have in country visits for assessments of technical assistance needs as follow-up to assessments.

Civil society participation: Not yet established

Follow-Up: Some initial steps

Reports published: Secretariat overview report

Current staffing (estimate): Potentially 7–9 persons employed in Crimes Convention Section

Estimated cost: Not yet known

The UNTOC Convention entered into force in September 2003 and the Conference of the States Parties has met twice since then, once in 2004 and once in 2005. The review process is in development so that it is too early to make observations on how it works. Developments under the UNTOC are of particular interest in providing lessons for UNCAC monitoring, but account needs to be taken of the fact that the provisions in UNTOC on monitoring are far less enabling than those in UNCAC.

One such development was the decision by the Conference of the Parties to set up an open-ended interim working group to advise and assist it in the implementation of its mandate on technical assistance. It requested the secretariat to develop an information base for assessing challenges in implementing the Convention and its Protocols and decided that the working group should perform the following functions:

- (i) Review needs for technical assistance in order to assist the Conference of the Parties on the basis of the information bases established by the secretariat;
- (ii) Provide guidance on priorities based on multi-year programmes approved by the Conference of the Parties and its directives;
- (iii) Take into consideration, as appropriate and readily available, information on technical on technical assistance activities of the secretariat, as well as of States, and on projects and priorities of States, other entities of the United Nations system and international organizations, in the areas covered by the Convention and its Protocols;
- (iv) Facilitate mobilisation of potential resources.

The Conference also requested the secretariat, on the basis of guidance provided by the Conference of the Parties and its working group, to develop project proposals to address the needs identified, taking into consideration equitable geographical distribution, and different legal systems as appropriate.

WHAT IS THE ROLE OF CIVIL SOCIETY WITH REGARD TO INTERGOVERNMENTAL MONITORING?

Civil society organisations have an important role to play in intergovernmental monitoring. They can help ensure that an effective monitoring system is put in place. Civil society's advocacy regarding effective monitoring systems can make a real difference. For example, TI's activities to date have included:

- Currently promoting prompt introduction of effective UN Convention monitoring; efforts to promote AU Convention monitoring are about to commence
- Successfully advocating introduction of OAS Convention monitoring with civil society inputs
- Successfully advocating publication of OAS Convention country reports
- Successfully advocating adequate resources and civil society inputs for OECD Convention monitoring

Once a monitoring system is running, civil society organisations can enrich the monitoring process by offering their own independent views on country performance, thereby helping to ensure that the inputs into the process are balanced. TI National Chapters in the Americas have regularly made contributions to the OAS Convention Follow-Up Mechanism and their submissions are published on the OAS website.

Civil society organisations can work to ensure that the outputs in the form of country assessments and recommendations are publicised and receive follow-up. Many TI National Chapters are also active in this way.

TI'S ADVOCACY ROLE CONCERNING THE OAS FOLLOW-UP MECHANISM

Starting in 1998, Transparency International pushed for the creation of an OAS Convention Follow-Up Mechanism, submitting recommendations and promoting the idea in international meetings. In May 2001, the first Conference of the States Parties to the OAS Convention meeting in Buenos Aires reached a consensus in favour of such a mechanism, reflected in the 'Buenos Aires Report', which lays out the most important aspects of the mechanism.⁸ This report was submitted to the Conference of States Parties at the thirty-first regular session of the OAS General Assembly on 3–5 June 2001 and was adopted by Resolution 1784 (XXI-0/01).

Since the creation of the Mechanism, TI has made recommendations to improve its effectiveness. TI has pressed for a more transparent mechanism, with all submissions and reports to be made public, and including formal participation of civil society in the process. TI has also engaged in a formal process of follow-up on the recommendations including country visits, especially after recommendations are issued, to monitor compliance.

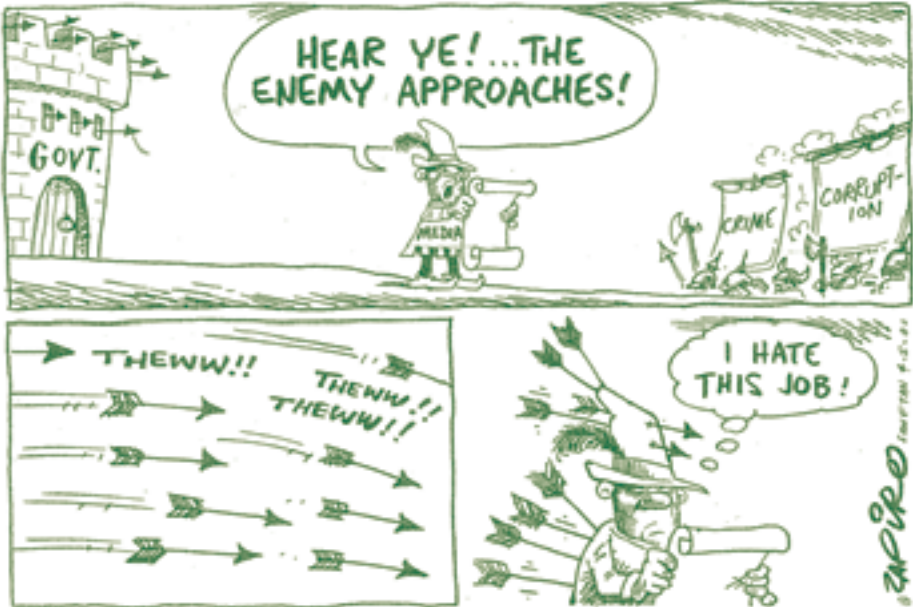
To read the recommendations that TI made to strengthen the Follow-up Mechanism, please visit www.transparency.org/tilac

TI PROPOSALS ON UN CONVENTION AND AU CONVENTION MONITORING

The UN Convention entered into force in December 2005 but no monitoring system will be introduced before the first meeting of the Conference of States Parties, due to take place in December 2006. In this context, a key role of civil society organisations is to ensure that an effective monitoring mechanism is in fact established. With this in mind, starting in December 2004, TI organised a Study Group on Follow-up Monitoring of the UN Convention to develop ideas for consideration by the Conference of States Parties. The Study Group consisted of individuals with extensive experience in monitoring other anti-corruption conventions and in follow-up programmes for other UN instruments. It held four meetings between December 2004 and September 2005, devoting substantial time to reviewing the monitoring of other anti-corruption conventions and several other international instruments. The Study Group also took up the concerns about follow-up monitoring that were raised during the Vienna negotiations that led to the adoption of UN Convention, and considered how these should be addressed. They included concerns about cost, fairness and duplication of the work of other monitoring systems. The results of the Study Group discussions have been summarised in a report containing a set of recommendations. These include recommendations for a strong secretariat; a survey of implementation and of technical assistance needs; coordination with monitoring programmes of other anti-corruption conventions; transparency in the

follow-up process; and active involvement of civil society, trade unions and the private sector.

Starting in June 2006, TI has also begun work on developing proposals for monitoring the AU Convention.



TOOLS FOR CIVIL SOCIETY INVOLVEMENT IN MONITORING

The tools in this section help with

- Understanding the monitoring process
- Developing advocacy materials

1) UNDERSTANDING THE MONITORING PROCESS: EXAMPLES OF SYSTEMS OF INTERGOVERNMENTAL MONITORING IN OTHER REGIONS

In this section, summary information is provided on monitoring programs for the following instruments for comparison purposes to assist civil society organisations in making proposals about monitoring systems in Africa. Information is provided on:

- GRECO review of Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption as well as several other standard-setting instruments (GRECO is the Group of States against Corruption)
- Inter-American Convention against Corruption (OAS Convention)
- ADB-OECD (Asian Development Bank and OECD) Anti-Corruption Action Plan for Asia-Pacific (ADB-OECD Action Plan)

I) GRECO: COUNCIL OF EUROPE CONVENTIONS AND OTHER INSTRUMENTS

GRECO MONITORING

Started: 2000

Number of countries: 39

Methodology: Peer review with evaluation teams and plenary discussion; questionnaire and other inputs, including from civil society

Scope of review: Each evaluation phase on given themes and specific provisions.

Rate of monitoring for 1st evaluation/compliance round: 8–13 countries per year; 34 countries in 3 years

Rate of monitoring for 2nd evaluation round: 7–18 countries per year; 39 countries in 3 years

Number of Plenary meetings per year: 3–5

In-country visits: Yes

Civil society participation: Yes

Follow-up: Compliance reports. Thereafter, “addenda” – which are additional reports made if there is non-compliance.

Reports published: Evaluation and compliance reports, with government agreement

Current staffing (estimate): 10 persons employed at the secretariat

Estimated cost: Overall budget of EUR 1,660,000 for 2005

www.greco.coe.int/

II) OAS: INTER-AMERICAN CONVENTION

OAS CONVENTION MONITORING

Started: 2001

Number of countries: 28 (of 33 signatories)

Methodology: Self-assessment and peer review with review teams and expert committee discussion

Scope of review: Each review phase covering selected articles of the Convention

Rate of monitoring: Currently 10 countries per year; 28 countries in 5 years

Number of Committee of Experts meetings per year: 2

In-country visits: No

Civil society participation: Yes

Follow-up: Yes, starting in 2006.

Reports published: Country report with recommendations, civil society reports

Current staffing (estimate): 6 professionals devoting approximately 30% of their time to monitoring

Estimated cost: Annual budget of US\$ 350,000 for 2005

www.oas.org/juridico/english/followup.htm

The OAS Convention follow-up process got off to a very slow start because there was no reference to monitoring in the Convention. This meant that it had to be introduced afterwards, which required four years of effort. Monitoring did not fit readily into the OAS' traditional role of providing help when requested by member governments. As a result of pressure by civil society and several governments, monitoring got under way. The monitoring process is still evolving and still needs strengthening.

III) ADB-OECD ACTION PLAN

MONITORING OF THE ANTI-CORRUPTION ACTION PLAN FOR ASIA-PACIFIC

Started: 2002

Number of countries: currently 25

Methodology: Self-assessment and peer review discussion

Scope of review: Stocktaking of measures, institutions, legislation; thematic reviews

Rate of monitoring for stocktaking report: Horizontal study of 25 countries;

Rate of monitoring thematic review: Horizontal study of 21 countries in 1 year

Number of Steering Group Meetings per year: 2

In-country visits: No

Civil society participation: Participate in seminars, conferences and in Advisory Group

Follow-up: Yes, continuous self reporting on progress in Steering Group and regular updates of stocktaking and on recommendations to thematic reviews

Reports published: Self-assessment and stocktaking reports

Current staffing (estimate): 3.5 persons

Estimated cost: Annual budget of approx USD 350.000

www1.oecd.org/daf/asiacom/

The approach to corruption in the Asia-Pacific region thus far has been via a non-binding instrument and an evolving soft review process. Countries that have endorsed the Anti-Corruption Action Plan for Asia-Pacific assess and review progress in their efforts to implement the Action Plan in various ways, including self-assessment and mutual reviews that are supported by horizontal analytical studies. The mechanisms for review of anti-corruption policies and frameworks aim foremost at guiding the national and regional anti-corruption agenda by identifying of legal and institutional weaknesses and priorities for future reform. A report that takes stock of the legal and institutional frameworks to fight corruption assists the countries in detecting needs for reform. (Second round completed in 2005.) Thematic reviews addressing issues that the endorsing countries have identified as common priorities add to these mechanisms. The first such review was launched in 2004 on public procurement and is expected to be completed in 2006.

2) UNDERSTANDING THE MONITORING PROCESS: SAMPLE NEPAD APRM INDICATORS

Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism: www.nepad.org/2005/files/aprm.php

2.7 Objective 5: Ensure accountable, efficient and effective public office holders and civil servants

...

2.7.3. Indicative Criteria

a. Are the provisions in the constitution and other laws and regulations effective in ensuring the accountability of public office holders?

...

c. Is there a code of conduct for public officer holders or a citizens' charter?

2.8 Objective 6: Fighting corruption in the political sphere

2.8.2 Indicative criteria

a. Are there independent and effective institutions, mechanisms and processes for combating corruption?

b. Are there precedents for dealing effectively with proven cases of corruption?

c. What is the overall assessment of the level of corruption in the country?

d. Are there measures for enhancing integrity and probity in public life?

2.8.3 Examples of indicators

a. Constitutional provisions for fighting corruption and effectiveness of institutions carrying out the mandate

b. Accessibility of the proceedings of Parliament and the reports of its various committees to the public.

c. Requirements for periodic public declaration of assets by public office bearers and senior public officials

d. Results of overall assessment of corruption in the country.

3) DEVELOPING ADVOCACY MATERIALS

AFRICAN ANTI-CORRUPTION CONVENTION: IMPLEMENTATION IS KEY

TRANSPARENCY INTERNATIONAL CALLS ON CIVIL SOCIETY TO ENSURE EFFECTIVE MONITORING OF THE CONVENTION

Berlin, 04 August 2006

A major African-initiated anti-corruption convention becomes effective on 5th August, sending a positive signal of improving transparency and good governance for the continent.

Fifteen countries have now ratified the African Union Convention on Preventing and Combating Corruption and Related Offences (AU Convention) and made a binding commitment to implement its provisions. Some 37 other African countries, however, have so far failed to ratify including Nigeria, Senegal, Kenya and Egypt. Transparency International (TI) applauded the entry into force of the Convention, adopted two years earlier, that sets strong regional standards to practically fight corruption.

The organisation challenges African countries that have sat on the side-lines to demonstrate their commitment to the regional anti-corruption agenda: "Fifteen ratifications represent less than one-third of the membership of the African Union. Ratification must take place in a larger number of countries to truly affirm that African countries are indeed committed to combating the scourge of corruption," said Akere Muna, Vice Chair of TI's international movement.

The Convention requires African government officials to declare their assets, adhere to ethical codes of conduct, provide citizens access to government information about budget spending and to protect those who blow the whistle on state fraud.

Leading the way in certain aspects, the Convention establishes procurement standards, accounting standards, transparency in the funding of political parties and recognises the need for civil society participation. The Convention also requires African countries to establish as criminal offences bribery, diversion of property, trading in influence, illicit enrichment, money laundering and concealment of property.

In addition, a framework is provided for cross-border law enforcement cooperation within Africa. This is essential to ensure that no countries on the continent provide a safe haven for those from who steal from the public in other African countries nor for their stolen assets.

African countries need to do more than formally adopt this new, higher standards to prevent corruption. Giving the treaty teeth will require many further steps, Akere Muna noted: "Ratification is the beginning of a process and not an end to itself. The requirements of the Convention will now have to be translated into national laws, policies and practices and the appropriate institutions put in place at the level of the

AU Commission. TI and its chapters in Africa will encourage the participation of civil society and media, as stated in article 12 of the Convention, in monitoring the implementation of the convention."

The best way to keep up the momentum for implementation is to monitor the progress of countries on implementation of the requirement. The AU Convention provides for an Advisory Board to carry out this role. The AU must move swiftly to establish this Board and ensure that it is adequately resourced, professionally staffed, transparently run and that civil society has a recognised channel for making inputs to the review process.

"This Convention is a valuable tool for civil society organisations, trade unions and the private sector to hold their governments accountable," said Gillian Dell, TI Programme Manager. "They should seize the opportunity to mobilise public support for the Convention and press for ratification, implementation and monitoring. In particular, civil society groups in Nigeria, Senegal, Kenya and Egypt should demand to know why their governments have not yet ratified."

The AU Convention was adopted by African Heads of State and Government in July 2003 at the AU summit in Maputo, Mozambique and required 15 ratifications before coming into force.

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- 7 Inter-American Convention against Corruption (1996); OECD Convention on Combating Bribery in International Business Transactions (1997); Council of Europe Civil and Criminal Law Conventions against Corruption (1999);
- 8 Report of Buenos Aires on the Mechanism for Follow-Up on Implementation of the Inter-American Convention against Corruption

ANNEX: USEFUL WEB LINKS AND READING MATERIAL

READINGS

United Nations Office on Drugs and Crime

[Compendium of International Legal Instruments on Corruption](#)

(Second edition, New York 2005)

This book contains 21 major relevant international and regional treaties, agreements, resolutions and other instruments. These include both legally binding obligations and some soft-law instruments intended to serve as non-binding standards. The first section of the book contains a very useful summary of international legal instruments. Unfortunately, the ADB-OECD Action Plan for Asia and Pacific is omitted from this comprehensive and highly useful text.

United Nations Office on Drugs and Crime

[Legislative Guide to Promote the Implementation of the United Nations Convention against Corruption](#) (2006)

The objective of this practical guide is to assist states seeking to ratify and implement the UNCAC by identifying legislative requirements, issues arising from those requirements and various options available to states as they develop and draft the necessary legislation.

Adede, Dr. A.O.

[Domestication of International Obligations](#) (15 September 2001)

L'ETWAL INTERNATIONAL, A Foundation for Law and Policy for Contemporary Problems)

www.kenyaconstitution.org/docs/07d017.htm

This article describes the procedure of implementation of international treaties by states so that the rights and duties contained in such treaties may become applicable and enforceable in the state concerned.

IDASA

[Africa Budget Watch](#) (newsletter)

www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D18

The Africa Budget Watch is a quarterly newsletter with news, training opportunities and research articles on regional budgetary issues. It also provides an opportunity for civil society organisations and other stakeholders across Africa to discuss and share information.

Institute for Security Studies

[A Comparative Analysis: – SADC Protocol Against Corruption \(2001\); – AU Convention on Preventing and Combating Corruption \(2003\); – UN Convention Against Corruption \(2003\), \(November 2004\)](#)

www.iss.co.za/pubs/Other/CorruptHandbookNov04/Contents.htm

The South Africa-based Institute for Security Studies (ISS) has produced a comparative analysis of the SADC Protocol Against Corruption, AU Convention on Preventing and Combating Corruption and UN Convention against Corruption, which is intended to contribute to more effective implementation in the SADC region.

Low, Lucinda

[The United Nations Convention against Corruption: The Globalization of Anticorruption Standards](#) (May 2006)

www.transparency.org/global_priorities/international_conventions/readings_conventions#un

This paper provides an overview of the UN Convention against Corruption with a particular focus on its chapters dealing with criminalisation and international cooperation, as well as its provisions for civil liability and collateral consequences.

Muna, Akere

[Understanding the African Union Convention on Preventing and Combating Corruption and related Offences](#) (TI, 2004)

The author is a Lincoln's Inn barrister, member of the Cameroon Law Society and member of the Board of Transparency International and prepared for TI a useful explanatory booklet of about 50 pages on the African Union Convention aimed at legislators, journalists and NGO activists.

Podesta, Guillermo Jorge

[Notes on Asset Recovery in the U.N Convention Against Corruption](#) (2003)

www.abanet.org/intlaw/hubs/programs/Annual0316.03-16.06.pdf

The article is essential for those interested in how the UN Convention will promote asset recovery even though it deals with a draft of the Convention rather than the final text.

Polaine, Martin

[The 2003 United Nations Convention against Corruption: Criminalisation](#)

www.transparency.org/global_priorities/international_conventions/readings_conventions

This paper analyses UNCAC's provisions on the criminalisation of corruption with emphasis on the bribery of national and foreign public officials.

Posadas, Alejandro

Combating Corruption Under International Law, Duke Journal of Comparative and International Law, Vol. 10, No. 2, (Spring/Summer 2000)

This article reviews the history of the development of the international legal framework with regard to corruption. It looks at the origins of efforts to address the issue starting with post-Watergate investigations and continuing with unsuccessful efforts at the United Nations during the late 1970's and early 1980's. It then examines the emergence and development of international anti-corruption initiatives from the 1990's to the present, resulting in large measure from new international realities of the post-Cold War era. It considers the lessons learned from the experience thus far, the current status of international efforts and raises some questions about existing measures to combat bribery and corruption under international law.

Webb, Philippa

The United Nations Convention Against Corruption: Global Achievement or Missed Opportunity? (1993)

<http://admin.corisweb.org/index.php?fuseaction=search.searchResults>

This article explores what happened between the first discussions of an international anti-corruption convention at the United Nations in the late 1970s and early 1980s and the adoption of the UNCAC by the UN General Assembly in October 2003. It discusses the main features of the anti-corruption conventions preceding UNCAC, analyses the UNCAC and reviews its negotiating history, concluding with a consideration of the prospects for the UNCAC.

WEB LINKS

[United Nations Office on Drugs and Crime UN Convention Against Corruption](http://www.unodc.org/unodc/en/crime_convention_corruption.html)
www.unodc.org/unodc/en/crime_convention_corruption.html

This site, covering the United Nations Convention against Corruption (UNCAC,) is maintained by the United Nations Office on Drugs and Crime (UNODC). The full text of the Convention is available in all six UN languages, English, French, Spanish, Arabic, Russian and Chinese. Background information on the Convention, concise overviews of the Convention's highlights, an up-to-date list of signatories and parties, as well as Convention - related documentation, speeches and press releases are all posted on the site. There is also information on country projects, inter-agency-coordination and a link to the Mexican government website on the High-level Political Conference for the purpose of signing the UN Convention. Aside from being a primary resource on UNCAC, the site has more general information on corruption such as an Anti-Corruption toolkit, web links, information on global trends and judicial integrity.

[African Union](http://www.africa-union.org/home/Welcome.htm)

www.africa-union.org/home/Welcome.htm

In its section on Official Documents the website of the African Union provides a list of all Treaties relating to the African Union and a list of signatories. Among the treaties listed is the African Union Convention on Preventing and Combating Corruption.

[TI Conventions Web Pages](http://www.corisweb.org/article/archive/336/%20)

www.corisweb.org/article/archive/336/%20

These pages, currently under revision, summarise the main anti-corruption conventions, and provide information on the status of signature and ratification in different regions

[TI Pages on the International Anti-Corruption Conference \(IACC\)](http://www.transparency.org/iacc/index.html)

www.transparency.org/iacc/index.html

The IACC is a conference taking place every two to three years bringing together anti-corruption practitioners and policy-makers to discuss key issues and conclusions gathered from the latest experiences worldwide. The last four conferences have included workshops on anti-corruption conventions.

[African Parliamentarians Network Against Corruption](http://www.apnacafrica.org/)

www.apnacafrica.org/

This website provides information on the African Parliamentarians Network Against Corruption (APNAC). This network aims at coordinating and strengthening the capacity of African Parliamentarians to fight corruption and promote good governance. The website provides information on anti-corruption events held in Africa, activities and projects carried out by APNAC and its national chapters.

[ISS Internet Portal on Corruption – Conventions Focus](#)

www.ipocafrika.org/conventions

These pages on the ISS Southern African Internet Portal on Corruption feature details of anti-corruption conventions that are of relevance to African states. This includes a collection of African anti-corruption laws, a copy of this guide as well as a legislative guide which has been written for use by African policy-makers and Members of Parliament. The web pages also include a focus on the SADC Protocol Against Corruption (a regional instrument relevant to Southern Africa) featuring information on the status of signature and ratification of the Protocol. Also available are electronic copies of handbooks prepared by the ISS for policy-makers in the thirteen SADC members states comparing existing national legislation with provisions of the SADC Protocol Against Corruption.

[International Budget Project](#)

[/www.internationalbudget.org/index.htm](http://www.internationalbudget.org/index.htm)

The International Budget Project was formed within the Center on Budget and Policy Priorities in the U.S in 1997 and assists non-governmental organizations (NGOs) and researchers in their efforts both to analyze budget policies and to improve budget processes and institutions. Its website contains information about the work of civil society budget monitoring groups in Africa, Asia and Latin America.

[International Money Laundering Information Network \(IMoLIN\)](#)

www.imolin.org/imolin/index.html

IMoLIN aims to assist governments, organisations and individuals in the fight against money laundering. It includes a database on legislation and regulation throughout the world (AMLID), an electronic library and a calendar of events in the anti-money laundering field.

[Open Society Justice Initiative](#)

www.justiceinitiative.org

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York. The OSJI website contains information on freedom of information initiatives.

SAHRIT-Human Rights Trust of Southern Africa

www.sahrit.org

The Southern African Human Rights Trust (SAHRIT) is a human rights NGO whose mandate focuses on promoting good governance, child rights, training, anti-corruption, and democracy. SAHRIT assisted in facilitating in the development and final adoption of the draught SADC Protocol against corruption, this was distributed to member states through the legal sector of SADC for ratification. SAHRIT is engaged in a two year project on increasing demand for accountability and respect for human rights through utilisation of enforcement mechanisms, which project covers six countries in the sub-region including Zimbabwe.

U4 Website: Anti-Corruption conventions and treaties

www.u4.no/links/treaties.cfm

The Utstein Anti-Corruption Resource Center, set up by donors for bilateral donor agencies includes a section on anti-corruption conventions and treaties providing summaries of and links to all anti-corruption conventions, as well as other international instruments. It includes an article on how conventions can provide useful tools for bilateral donor agencies at headquarters and in the field and how donors can support convention implementation in developing countries.

UNICORN

www.againstcorruption.org

UNICORN is a Global Unions Anti-corruption Network set up by the international trade union bodies, the Trade Union Advisory Committee to the OECD (TUAC), Public Services International (PSI) and the International Confederation of Free Trade Unions (ICFTU). UNICORN focuses on multinationals and corruption and compiles information on trade union action in combating corruption.

IDASA – Africa Budget Project

www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D18

This is the website of the Africa Budget Project (ABP), which is part of the Budget Information Service, located in Cape Town, South Africa. It is also the regional partner of the International Budget Project (IBP), located at the Center on Budget and Policy Priorities in Washington, DC. The ABP works to build capacity in civil society and legislatures to participate effectively in budgetary processes in African countries. They are strategically placed to utilise the demand for applied budget work and nurture strong budget organisations that can effectively engage with budgetary issues.

Every effort has been made to verify the accuracy of the information contained in this booklet. Transparency International does not accept responsibility for the consequences of the use of this guide in other contexts or for other purposes.

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Designed by: Susanne Bax

Printed by: Köllen Druck + Verlag

Prepared and printed with funding from the UNDP Global Programme for Parliamentary Strengthening, the UNDP BMZ Programme for Accountability and Transparency and Ireland Aid.

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ISBN 3-935711-14-X