

African Union Convention on Preventing and Combating Corruption (2003/2006)

Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 5 August 2006. The Advisory Board on Corruption established in terms of article 22 of the Convention held its first meeting in May 2009.

Preamble

The member states of the African Union;

Considering that the Constitutive Act of the African Union recognises that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspiration of the African peoples;

Further considering that article 3 of the said Constitutive Act enjoins member states to co-ordinate and intensify their co-operation, unity, cohesion and efforts to achieve a better life for the peoples of Africa;

Cognisant of the fact that the Constitutive Act of the African Union, *inter alia*, calls for the need to promote and protect human and peoples' rights, consolidate democratic institutions and foster a culture of democracy and ensure good governance and the rule of law;

Aware of the need to respect human dignity and to foster the promotion of economic, social, and political rights in conformity with the provisions of the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

Bearing in mind the 1990 Declaration on the Fundamental Changes Taking Place in the World and their Implications for Africa; the 1994 Cairo Agenda for Action Relaunching Africa's Socio-economic Transformation; and the Plan of Action Against Impunity adopted by the nineteenth ordinary session of the African Commission on Human and Peoples' Rights in 1996 as subsequently endorsed by the sixty-fourth ordinary session of the Council of Ministers held in Yaounde, Cameroon in 1996 which, among others, underlined the need to observe principles of good governance, the primacy of law, human rights, democratisation and popular participation by the African peoples in the processes of governance.

Concerned about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African states and its devastating effects on the economic and social development of the African peoples;

Acknowledging that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent;

Recognising the need to address the root causes of corruption on the continent;

Convinced of the need to formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption, including the adoption of appropriate legislative and adequate preventive measures;

Determined to build partnerships between governments and all segments of civil society, in particular, women, youth, media and the private sector in order to fight the scourge of corruption;

Recalling Resolution AHG-Dec 126(XXXIV) adopted by the thirty-fourth ordinary session of the Assembly of Heads of State and Government in June

1998 in Ouagadougou, Burkina Faso, requesting the Secretary-General to convene, in co-operation with the African Commission on Human and Peoples' Rights, a high level meeting of experts to consider ways and means of removing obstacles to the enjoyment of economic, social and cultural rights, including the fight against corruption and impunity and propose appropriate legislative and other measures;

Further recalling the decision of the 37th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa in July 2002, relating to the New Partnership for Africa's Development (NEPAD) which calls for the setting up of a co-ordinated mechanism to combat corruption effectively.

HAVE AGREED as follows:

Article 1: Definitions

1. For the purposes of this Convention;

'Chairperson of the Commission' means Chairperson of the Commission of the African Union;

'Confiscation' means any penalty or measure resulting in a final deprivation of property, proceeds or instrumentalities ordered by a court of law following proceedings in relation to a criminal offence or offences connected with or related to corruption;

'Corruption' means the acts and practices including related offences proscribed in this Convention;

'Court of Law' means a court duly established by a domestic law;

'Executive Council' means the Executive Council of the African Union;

'Illicit enrichment' means the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income;

'Private sector' means the sector of a national economy under private ownership in which the allocation of productive resources is controlled by market forces, rather than public authorities and other sectors of the economy not under the public sector or government;

'Proceeds of corruption' means assets of any kind corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to or interests in such assets acquired as a result of an act of corruption;

'Public official' means any official or employee of the state or its agencies including those who have been selected, appointed or elected to perform activities or functions in the name of the state or in the service of the state at any level of its hierarchy;

'Requested state party' means a state party requested to extradite or to provide assistance under this Convention;

'Requesting state party' means a state party making a request for extradition or assistance in terms of this Convention;

'State party' means any member state of the African Union which has ratified or acceded to this Convention and has deposited its instruments of ratification or accession with the Chairperson of the Commission of the African Union.

2. In this Convention, the singular shall include the plural and vice versa.

Article 2: Objectives

The objectives of this Convention are to:

1. Promote and strengthen the development in Africa by each state party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors;

2. Promote, facilitate and regulate co-operation among the state parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa;
3. Co-ordinate and harmonise the policies and legislation between state parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent;
4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights;
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

Article 3: Principles

The state parties to this Convention undertake to abide by the following principles:

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance;
2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
3. Transparency and accountability in the management of public affairs;
4. Promotion of social justice to ensure balanced socio-economic development;
5. Condemnation and rejection of acts of corruption, related offences and impunity.

Article 4: Scope of application

1. This Convention is applicable to the following acts of corruption and related offences:

- (a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- (d) the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the state or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;
- (e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
- (f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in

consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;

(g) illicit enrichment;

(h) the use or concealment of proceeds derived from any of the acts referred to in this article; and

(i) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more state parties with respect to any other act or practice of corruption and related offences not described in this Convention.

Article 5: Legislative and other measures

For the purposes set-forth in article 2 of this Convention, state parties undertake to:

1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in article 4 paragraph 1 of the present Convention;

2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a state party shall be subject to the respect of the national legislation in force;

3. Establish, maintain and strengthen independent national anticorruption authorities or agencies;

4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services;

5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities;

6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals;

7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences;

8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitisation of the media, and the promotion of an enabling environment for the respect of ethics.

Article 6: Laundering of the proceeds of corruption

States parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action;

(b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;

(c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences.

Article 7: Fight against corruption and related offences in the public service

In order to combat corruption and related offences in the public service, state parties commit themselves to:

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service;
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitise and train public officials on matters of ethics;
3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard;
4. Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service;
5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

Article 8: Illicit enrichment

1. Subject to the provisions of their domestic law, state parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment.
2. For state parties that have established illicit enrichment as an offence under their domestic law, such offence shall be considered an act of corruption or a related offence for the purposes of this Convention.
3. Any state party that has not established illicit enrichment as an offence shall, in so far as its laws permit, provide assistance and co-operation to the requesting state with respect to the offence as provided in this Convention.

Article 9: Access to information

Each state party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

Article 10: Funding of political parties

Each state party shall adopt legislative and other measures to:

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) Incorporate the principle of transparency into funding of political parties.

Article 11: Private sector

State parties undertake to:

1. Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector;
2. Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights;
3. Adopt such other measures as may be necessary to prevent companies from paying bribes to win tenders.

Article 12: Civil Society and media

State parties undertake to:

1. Be fully engaged in the fight against corruption and related offences and the popularisation of this convention with the full participation of the media and civil society at large;
2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;
3. Ensure and provide for the participation of civil society in the monitoring process and consult civil society in the implementation of this Convention;
4. Ensure that the media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.

Article 13: Jurisdiction

1. Each state party has jurisdiction over acts of corruption and related offences when:
 - (a) the breach is committed wholly or partially inside its territory;
 - (b) the offence is committed by one of its nationals outside its territory or by a person who resides in its territory; and
 - (c) the alleged criminal is present in its territory and it does not extradite such person to another country.
 - (d) when the offence, although committed outside its jurisdiction, affects, in the view of the state concerned, its vital interests or the deleterious or harmful consequences or effects of such offences impact on the state party.
2. This Convention does not exclude any criminal jurisdiction exercised by a state party in accordance with its domestic law.
3. Notwithstanding the provision of paragraph 1 of this article, a person shall not be tried twice for the same offence.

Article 14: Minimum guarantees of a fair trial

Subject to domestic law, any person alleged to have committed acts of corruption and related offences shall receive a fair trial in criminal proceedings in accordance with the minimum guarantees contained in the African Charter on Human and Peoples' Rights and any other relevant international human rights instrument recognised by the concerned states parties.

Article 15: Extradition

1. This article shall apply to the offences established by the state parties in accordance with this Convention.
2. Offences falling within the jurisdiction of this Convention shall be deemed to be included in the internal laws of state parties as crimes requiring extradition. State parties shall include such offences as extraditable offences in extradition treaties existing between or among them.
3. If a state party that makes extradition conditional on the existence of a treaty receives a request for extradition from a state party with which it does not have such treaty, it shall consider this Convention as a legal basis for all offences covered by this Convention.
4. A state party that does not make extradition conditional on the existence of a treaty shall recognise offences to which this Convention applies as extraditable offences among themselves.
5. Each state party undertakes to extradite any person charged with or convicted of offences of corruption and related offences, carried out on the

territory of another state party and whose extradition is requested by that state party, in conformity with their domestic law, any applicable extradition treaties, or extradition agreements or arrangements existing between or among the state parties.

6. Where a state party in whose territory any person charged with or convicted of offences is present and has refused to extradite that person on the basis that it has jurisdiction over offences, the requested state party shall be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting state party, and shall report the final outcome to the requesting state party.

7. Subject to the provisions of its domestic law and any applicable extradition treaties, a requested state party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting state party, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure that the person is present at the extradition proceedings.

Article 16: Confiscation and seizure of the proceeds and instrumentalities of corruption

1. Each state party shall adopt such legislative measures as may be necessary to enable:

(a) its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement;

(b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;

(c) repatriation of proceeds of corruption.

2. The requested state party shall, in so far as its law permits and at the request of the requesting state party, seize and remit any object:

(a) which may be required as evidence of the offence in question; or

(b) which has been acquired as a result of the offence for which extradition is requested and which, at the time of arrest is found in possession of the persons claimed or is discovered subsequently.

3. The objects referred to in clause 2 of this article may, if the requesting state so requests, be handed over to that state even if the extradition is refused or cannot be carried out due to death, disappearance or escape of the person sought.

4. When the said object is liable for seizure or confiscation in the territory of the requested state party the latter may, in connection with pending or ongoing criminal proceedings, temporarily retain it or hand it over to the requesting state party, on condition that it is returned to the requested state party.

Article 17: Bank secrecy

1. Each state party shall adopt such measures necessary to empower its courts or other competent authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing this Convention.

2. The requesting state shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless with the consent of the requested state party.

3. State parties shall not invoke banking secrecy to justify their refusal to co-operate with regard to acts of corruption and related offences by virtue of this Convention.

4. State parties commit themselves to enter into bilateral agreements to waive banking secrecy on doubtful accounts and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession.

Article 18: Co-operation and mutual legal assistance

1. In accordance with their domestic laws and applicable treaties, state parties shall provide each other with the greatest possible technical co-operation and assistance in dealing immediately with requests from authorities that are empowered by virtue of their national laws to prevent, detect, investigate and punish acts of corruption and related offences.

2. If two or several state parties have established relations on the basis of uniform legislation or a particular regime, they may have the option to regulate such mutual relations without prejudice to the provisions of this Convention.

3. State parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat corruption and related offences and to exchange expertise relating to preventing and combating corruption and related offences.

4. State parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes, codes of ethics or organising, where necessary and for the benefit of their personnel, joint training courses involving one or several states in the area of combating corruption and related offences.

5. The provisions of this article shall not affect the obligations under any other bilateral or multilateral treaty which governs, in whole or in part, mutual legal assistance in criminal matters.

6. Nothing in this article shall prevent state parties from according one another more favourable forms of mutual legal assistance allowed under their respective domestic law.

Article 19: International co-operation

In the spirit of international co-operation, state parties shall:

1. Collaborate with countries of origin of multi-nationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions;

2. Foster regional, continental and international co-operation to prevent corrupt practices in international trade transactions;

3. Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin;

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

5. Co-operate in conformity with relevant international instruments on international co-operation on criminal matters for purposes of investigations and procedures in offences within the jurisdiction of this Convention.

Article 20: National authorities

1. For the purposes of co-operation and mutual legal assistance provided under this Convention, each state party shall communicate to the Chairperson

of the Commission at the time of signing or depositing its instrument of ratification, the designation of a national authority or agency in application of offences established under article 4(1) of this Convention.

2. The national authorities or agencies shall be responsible for making and receiving the requests for assistance and co-operation referred to in this Convention.

3. The national authorities or agencies shall communicate with each other directly for the purposes of this Convention.

4. The national authorities or agencies shall be allowed the necessary independence and autonomy, to be able to carry out their duties effectively.

5. State parties undertake to adopt necessary measures to ensure that national authorities or agencies are specialised in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Article 21: Relationship with other agreements

Subject to the provisions of article 4 paragraph 2, this Convention shall in respect to those state parties to which it applies, supersede the provisions of any treaty or bilateral agreement governing corruption and related offences between any two or more state parties.

Article 22: Follow up mechanism

1. There shall be an Advisory Board on Corruption within the African Union.

2. The Board shall comprise 11 members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognised competence in matters relating to preventing and combating corruption and related offences, proposed by the state parties. In the election of the members of the board, the Executive Council shall ensure adequate gender representation, and equitable geographical representation.

3. The members of the Board shall serve in their personal capacity.

4. Members of the Board shall be appointed for a period of two years, renewable once.

5. The functions of the Board shall be to:

(a) promote and encourage adoption and application of anticorruption measures on the continent;

(b) collect and document information on the nature and scope of corruption and related offences in Africa;

(c) develop methodologies for analysing the nature and extent of corruption in Africa, and disseminate information and sensitise the public on the negative effects of corruption and related offences;

(d) advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;

(e) collect information and analyse the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under article 18(1) hereof;

(f) develop and promote the adoption of harmonised codes of conduct of public officials;

(g) build partnerships with the African Commission on Human and Peoples' Rights, African civil society, governmental, Intergovernmental and non-governmental organisations to facilitate dialogue in the fight against corruption and related offences;

(h) 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 this Convention;

(i) perform any other task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union.

6. The Board shall adopt its own rules of procedure.
7. States parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each state party, through their relevant procedures, shall ensure that the national anticorruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.

FINAL CLAUSES

Article 23: Signature, ratification, accession and entry into force

1. The present Convention shall be open for signature, ratification or accession by the member states of the African Union.
2. The Convention shall enter into force thirty (30) days after the date of the deposit of the fifteenth instrument of ratification or accession.
3. For each state party ratifying or acceding to the Convention after the date of the deposit of the fifteenth instrument of ratification, the Convention shall enter into force thirty (30) days after the date of the deposit by that state of its instrument of ratification or accession.

Article 24: Reservations

1. Any state party may, at the time of adoption, signature, ratification or accession, make reservation to this Convention provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purposes of this Convention.
2. Any state party which has made any reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Chairperson of the Commission.

Article 25: Amendment

1. This Convention may be amended if any state party makes a written request to the Chairperson of the Commission.
2. The Chairperson of the Commission shall circulate the proposed amendments to all state parties. The proposed amendments shall not be considered by the state parties until a period of six (6) months from the date of circulation of the amendment has elapsed.
3. The amendments shall enter into force when approved by a two-thirds majority of the member states of the AU.

Article 26: Denunciation

1. Any state party may denounce the present Convention by sending notification to the Chairperson of the Commission. This denunciation shall take effect six (6) months following the date of receipt of notification by the Chairperson of the Commission.
2. After denunciation, co-operation shall continue between state parties and the state party that has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal.

Article 27: Depository

1. The Chairperson of the Commission shall be the depository of this Convention and the amendments thereto.
2. The Chairperson of the Commission shall inform all state parties of the signatures, ratifications, accessions, entry into force, requests for amendments submitted by states and approvals thereof and denunciations.
3. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations.

Article 28: Authentic texts

The original of this Convention, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Chairperson of the Commission.