

Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries

OECD-AFDB JOINT INITIATIVE TO SUPPORT BUSINESS INTEGRITY AND ANTI-BRIBERY EFFORTS IN AFRICA



Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries

OECD-AfDB JOINT INITIATIVE TO SUPPORT
BUSINESS INTEGRITY AND ANTI-BRIBERY
EFFORTS IN AFRICA



This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries, or those of the African Development Bank.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:

OECD/African Development Bank (2012), *Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries*, OECD Publishing.
<http://dx.doi.org/10.1787/9789264169586-en>

ISBN 978-92-64-16952-4 (print)

ISBN 978-92-64-16958-6 (PDF)

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Corrigenda to OECD publications may be found on line at: www.oecd.org/publishing/corrigenda.

© OECD, AfDB 2012

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.

Foreword

Corruption and the lack of transparency and accountability in business transactions remain high on the list of investment risks in Africa. Effective measures to promote private sector transparency and accountability, prevent conflicts of interest, deter the bribery of public officials, and ensure the effective investigation and prosecution of bribe-givers and recipients, will help curb corruption risks that have hampered Africa's economic development, investment climate and progress towards achieving the Millennium Development Goals.

For over ten years, the Organisation for Economic Cooperation and Development (OECD) has been actively involved in the fight against bribery and corruption, with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions being the first and only international convention focusing exclusively on curbing the supply side of bribery. The African Development Bank (AfDB), a major contributor to good governance and anti-corruption efforts in Africa, has partnered with the OECD to strengthen anti-bribery frameworks and promote business integrity in order to provide an attractive environment for investment and sustained growth in the African region. In 2008, a declaration was signed between the two organisations introducing a **Joint Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa**.

This report aims to take stock of the various business integrity and anti-bribery legislation, policies and practices to combat bribery of public officials in business transactions in twenty African Countries: Benin, Burkina Faso, Cameroon, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda and Zambia. The report identifies the main trends in these countries and concludes with a set of recommendations to support their business integrity and anti-bribery efforts, and strengthen existing frameworks and practices. The findings of this report formed the basis of developing an **Anti-Bribery and Business Integrity Course of Action for Africa**, endorsed at the Joint Initiative's first Regional Meeting in Malawi in 2011, and which sets out a number of specific and concrete steps that countries in the region will endeavour to undertake in their anti-bribery and business integrity efforts.

Table of contents

Abbreviations	8
Executive summary	13
Introduction	17
Notes	20
<i>Chapter 1. International and African regional initiatives to combat</i>	
bribery of public officials in business transactions	21
1. Introduction	22
2. International initiatives	22
3. African regional initiatives	25
4. Main trends and areas for further development	28
Notes	31
<i>Chapter 2. Bribery and related offences</i>	35
1. Introduction: Prohibiting bribery of public officials in business transactions	36
2. Criminalisation of bribery	36
3. Related offences	51
4. Main trends and areas for further development	53
Notes	54
<i>Chapter 3. Prevention, detection, investigation and prosecution</i>	
of bribery	59
1. Introduction	60
2. The role of specialised anti-corruption agencies	60
3. Whistleblower protection	64
4. Disclosure of income and assets of public officials	67
5. Fighting bribery in business transactions by improving public procurement	68
6. Fighting bribery through the recovery and return of proceeds of corruption	69
7. Fighting bribery by making bribery a predicate offence to money laundering	73
8. Other mechanisms for preventing and detecting bribery	75

9. Investigation and prosecution: specialised anti-corruption agencies with investigative and/or prosecutorial powers	76
10. Inter-agency cooperation in the investigation and prosecution of bribery	78
11. Statistics	80
12. Main trends and areas for further development	80
Notes	82
Chapter 4. Business integrity	85
1. Introduction: The role of business in promoting business integrity and preventing bribery	86
2. Accounting and auditing standards	86
3. Promotion of standards for corporate integrity	89
4. Main trends and areas for further development	97
Notes	98
Chapter 5. Participation of civil society and the role of the media	101
1. Introduction	102
2. The role of civil society organisations	102
3. The role of the media	105
4. Main trends and areas for further development	111
Notes	111
Chapter 6. Recommendations	115
Recommendation I.: Strengthening anti-bribery legislation	116
Recommendation II.: Strengthening the effective implementation of anti-bribery and related laws; promote co-operation across agencies; and increasing resources for the investigation and prosecution of bribery of public officials.	118
Recommendation III.: Strengthening awareness of anti-bribery laws in government departments, agencies and other institutions	119
Recommendation IV.: Strengthening means of detecting and reporting bribery of public officials	119
Recommendation V.: Strengthening business integrity and accountability	120
Recommendation VI.: Promoting the involvement of the public, civil society and the media	120
Annex A. Status of ratifications of OECD Anti-Bribery Convention, African Union Anti-Corruption Convention, and UNCAC by the twenty African countries	123
Annex B. Details on international and African regional initiatives to combat bribery of public officials	125
Notes	132

Annex C. Criminalisation of bribery and public procurement laws: relevant laws and applicable provisions in the twenty African countries	135
Notes	156
Annex D. The establishment of specialised anti-corruption agencies and other relevant bodies in the twenty African countries	159
Notes	169
Annex E. Accounting and auditing standards in the twenty African countries	175
Notes	185

Tables

Summary of the OECD Anti-Bribery Convention, UNCAC and the AUC	29
Overview of the anti-bribery instruments covered by the present Chapter and that are in force and their status of ratification in the twenty African countries	30
2.1. Overview of the criminalisation of bribery in the twenty African countries	37
2.2. Overview of sanctions for bribery	48
2.3. Countries with sanctions of debarment or blacklisting from public procurement	50
2.4. Countries with illicit enrichment offences	52
3.1. Overview of anti-corruption agencies established in the twenty African countries	63
3.2. Countries with income declaration laws	67
3.3. Asset recovery mechanisms in selected countries	72
3.4. Anti-money laundering legislation in the twenty African countries	74

Abbreviations

ABWA	Association of Accounting Bodies of West Africa
ACA	Anti-Corruption Act
ACB	Anti-Corruption Bureau
ACC	Anti-Corruption Commission
ACCA	Anti-Corruption Commission Act (Zambia)
ACCA	Association of Certified Chartered Accountants (UK)
ACCU	Anti-Corruption Coalition Uganda
ACECA	Anti-Corruption and Economic Crimes Act (Kenya)
ACIS	Sofala Commercial and Industrial Association (Mozambique)
ACSF	African Corporate Sustainability Forum
ADF	African Development Fund
AFDB	African Development Bank
AFIC	Africa Freedom of Information Centre
AfriCOG	Africa Centre for Open Governance (Kenya)
AIA	Access to Information Act (Uganda)
AICC	African Institute of Corporate Citizenship
APRM	African Peer Review Mechanism
ARMP	Autorité de Regulation des Marches Publics (Burkina Faso, Senegal)
ASCE	Autorité Supérieure de Contrôle D'État (Burkina Faso)
AU	African Union
AUC	African Union Convention on Preventing and Combating Corruption
BAA	Business Action for Africa
BAAC	Business Action Against Corruption
BACT	Business Against Corruption Toolkit
BCCC	Business Code of Conduct for Combating Corruption (Malawi)
BIANCO	Bureau Independent Anti-corruption (Madagascar)
BPCB	Business Principles for Countering Bribery (Ti)
BPP	Bureau of Public Procurement (Nigeria)
BUSA	Business Unity South Africa
CASCA	Cellule D'Appui aux Structures de Contrôle de L'Administration (Mali)
CBC	Commonwealth Business Council

CBI	Code of Business Integrity (Nigeria)
CCB	Code of Conduct Bureau (Nigeria)
CCT	Code of Conduct Tribunal (Nigeria)
CENTIF	Cellule Nationale de Traitement des Informations Financières (Senegal)
CHRAJ	Commission on Human Rights and Administrative Justice (Ghana)
CIPE	Center for International Private Enterprise (Usa)
CNLCC	Commission Nationale de Lutte Contre la non Transparence, la Corruption et la Concussion (Senegal)
CODESRIA	Council for the Development of Social Science Research
CONAC	Commission Nationale Anti-corruption (Cameroon)
CONBI	Convention on Business Integrity (Nigeria)
CPA	Corrupt Practices Act (Malawi)
CPROA	Corrupt Practices and other Related Offences Act (Nigeria)
CSO	Civil Society Organisation
DAC	OECD's Development Assistant Committee
DANIDA	Danish International Development Agency
DEI	Directorate for Ethics and Integrity (Uganda)
DFID	Department for International Development (UK)
ECOWAS	Economic Community of Western African States
ECSAFA	Eastern Central and Southern Africa Federation of Accountants
EFCC	Economic and Financial Crimes Commission (Nigeria)
EITI	Extractive Industries Transparency Initiative (World Bank)
EPPAA	Ethiopian Professional Association of Accountants and Auditors
FAIR	Forum for African Investigative Reporters
FATF	Financial Action Task Force
FEACC	Federal Ethics and Anti-corruption Commission (Ethiopia)
FONAC	Front des Organisations Nationales Anti-Corruption (Benin)
FRA	Fiscal Responsibility Act 2007 (Nigeria)
FRC	Fiscal Responsibility Commission (Nigeria)
GAAP	Generally Agreed Accounting Principles
GBC	Ghana Business Code
GCA	Global Coalition for Africa
GCCC	Gabinete Central de Combate À Corruption (Mozambique)
GOVNET	DAC Network on Governance
GPG	General Procurement Guidelines (South Africa)
HACLCC	Haute Autorité de Coordination de la Lutte Contre la Corruption (Burkina Faso)
IACAC	Inter American Convention against Corruption
IACD	Integrity and Anti-Corruption Division of AfDB
IAS	International Accounting Standards
IASB	International Accounting Standards Board

ICAG	Institute of Chartered Accountants of Ghana
ICAN	Institute of Chartered Accountants of Nigeria
ICC	International Chamber of Commerce
ICPAK	Institute of Certified Public Accountants of Kenya
ICPAU	Institute of Certified Public Accountants of Uganda
ICPC	Independent Corrupt Practices and Other Related Offences Commission (Nigeria)
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
IGE	Inspection Générale de L'État, General Inspectorate of State
IGG	Inspector General of Government (Uganda)
IGA	Inspectorate of Government Act (Uganda)
IMF	International Monetary Fund
IP	Integrity Pact
ISA	International Standards on Auditing
KACC	Kenyan Anti-corruption Commission
MENA	Middle East and North Africa
MNE	Multinational Enterprise
NAAB	National Accountants and Auditors Board (Ethiopia)
NACF	National Anti-corruption Forum (South Africa)
NASB	Nigerian Accounting Standards Board
NBAA	National Board of Accountants and Auditors (Tanzania)
NCP	National Contact Point
NEITI	Nigeria Extractive Industries Transparency Initiatives
NEPAD	New Partnership for Africa's Development
NGAAP	National Generally Accepted Accounting Principles
NGO	Non-governmental Organisation
NPA	National Procurement Authority (South Africa)
NPPA	National Public Procurement Authority (Sierra Leone)
NRMC	Non-regional Member Country
NSASS	Nigerian Statement of Accounting Standards
NTF	Nigeria Trust Fund
OAS	Organisation of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
OECD	Guidelines OECD Guidelines on Multinational Enterprises 2000
OECFM	Ordre des Experts Comptables et Financiers de Madagascar
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
OLC	Observatoire de Lutte contre la Corruption (Benin)
ONECCA	Ordre des Experts-comptables et Comptables Agréés
ODPP	Office of Director of Public Procurement (Malawi)

PACCAA	Prevention and Combating of Corrupt Activities Act (South Africa)
PAIA	Promotion of Access to Information Act (South Africa)
PBA	Public Procurement Authority (Ghana)
PCCA	Prevention and Combating of Corruption Act (Tanzania)
PCCB	Prevention and Combating of Corruption Bureau (Tanzania)
PCCBD	Prevention and Combating of Corruption Board (Tanzania)
PDPAA	Public Procurement and Disposal of Assets Authority (Uganda)
PGC	Plano Geral de Contabilidade (Mozambique)
PIDA	Protected Disclosures Act (South Africa)
PPOA	Public Procurement Oversight Committee (Kenya)
PPRA	Public Procurement Regulatory Authority (Tanzania)
PPVC	Public Procurement Verification Committee (Benin)
PSC	Public Services Commission (South Africa)
RCC	Revised Criminal Code (Ethiopia)
RCCEB	Rules of Conduct to Combat Extortion and Bribery (ICC)
RENLAC	Réseau National le Lutte Anti-corruption (Burkina Faso)
RMC	Regional Member Country
ROSC	Report on the Observance of Standards and Codes (World Bank)
RPPA	Rwanda Public Procurement Authority
SADC	Southern Africa Development Community
SAFAC	Southern African Forum Against Corruption
SAHRIT	South Africa Human Rights Trust
SAP	South African Police Services
SCM	Supply Chain Management (South Africa)
SFO	Serious Fraud Office
SIDA	Swedish International Development Co-operation Agency
SIU	Special Investigations Unit (South Africa)
SOCAM	Society of Accountants In Malawi
SP	State Party
SYSCOA	Système Comptable Ouest Afrique
SYSCOHADA	Système Comptable Ohada
TI	Transparency International
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNGC	United Nations Global Compact
UNODC	United Nations Office of Drugs and Crime
UOEMA	Union Économique et Monétaire de l'Afrique de l'Ouest
USAID	United States Agency for International Development

WABA	West Africa Business Association
WAEMU	West African Monetary and Economic Union
ZCC	Zero-corruption Coalition (Nigeria)
ZPPA	Zambia Public Procurement Authority

Executive summary

Bribery raises serious moral and political concerns, undermines good governance and sustainable economic development, and distorts competition. To attract investment and facilitate economic growth, it is essential that countries address the problem of bribery of public officials in business transactions and take steps to promote business integrity.

For over ten years, the Organisation for Economic Cooperation and Development (OECD) has been actively involved with tackling bribery from the supply side and promoting the adoption of ethical practices by businesses since the mid 1990s. The OECD Convention on Combating Bribery of Foreign Public Officials (the OECD Convention)* has harnessed a vast amount of knowledge and experience through the monitoring and follow-up processes it has adopted in this area and is attracting ratifications and accessions by an increasing number of countries. Within Africa, South Africa is a party to this Convention. The African Development Bank (AfDB), a major contributor to good governance and anti-corruption in Africa, has partnered with the OECD to strengthen anti-bribery frameworks and practices, and promote business integrity to provide an attractive environment for investment and sustained growth in the African region.

At the end of 2008, the African Development Bank (AfDB) and the Organisation for Economic Co-operation and Development (OECD) signed a declaration introducing a Joint Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa. This Initiative aims to assist African countries in their fight against the bribery of public officials in business transactions and to improve corporate integrity and accountability, while sustaining growth through an environment conducive to attracting foreign investment. The overall objectives of the Joint Initiative are to increase the capacity for effective anti-bribery enforcement, reinforce global anti-bribery efforts, enhance public sector integrity and contribute to the opening of a new era of transparent and accountable business in Africa.

Despite existing reforms that have yielded some positive results for African economies, African countries still face significant obstacles to

* The OECD Convention entered into force on 15 February 1999.

economic development. Corruption and lack of transparency and accountability in business transactions remain high on the list of investment risks in Africa. Specific measures to promote private sector transparency, accountability and ethics, prevent conflicts between private profit and public interest, deter active bribery of public officials, and ensure the effective prosecution of bribe takers and givers are ways to help overcome these obstacles that have hampered Africa's economic development and progress towards achieving the Millennium Development Goals.

The Joint Initiative seeks to highlight and enhance the complementarities between the African Union Convention on Preventing and Combating Corruption, the UN Convention Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Within a framework of strong African ownership and leadership, the OECD and AfDB will work together to design and help put in place effective policies to combat the bribery of public officials that draw from all of these instruments. Through the involvement of African business and industry, and policy-makers, the Joint Initiative will also focus on providing technical support to Africa's private sector with a view to improving standards of corporate integrity and accountability.

This study is a Stocktaking Report of Business Integrity and Anti-Bribery Legislation, Policies and Practices (including international and regional initiatives) to combat bribery of public officials in business transactions in Twenty African Countries: Benin, Burkina Faso, Cameroon, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda and Zambia. The report aims at identifying the main trends in these Countries and concludes with a set of recommendations for supporting Countries business integrity and anti-bribery efforts, and strengthening their existing frameworks and practices. It will form the basis of developing a Course of Action to be endorsed at the first Regional Meeting of the Initiative in the first half of 2010. An Anti-Bribery and Business Integrity Task Force for Africa will also be established to be composed of senior African government officials, business and industry experts, and members of civil society, who will serve as the national focal points for implementing the Course of Action.

The Report finds that all of the twenty countries have been engaged in enacting new laws on bribery and corruption, amending their penal codes to meet the requirements of the conventions to which have ratified or acceded. Despite these efforts some gaps remain in the countries' anti-corruption laws. These include, for example, the lack of a definition of 'public official' in some cases or a definition of 'public official' that is too narrowly; the lack of a provision concerning active bribery of a foreign public official; as well as the lack of a provision holding legal persons liable for bribery.

Most of the countries studied in this Report have importantly focused on preventive measures at the public administration level to curb bribery. This is especially apparent by the enactment of legal frameworks for public procurement. Challenges, however, remain and the lack of awareness of public procurement rules and their thorough implementation remain an area for further improvement. Ensuring the integrity of public officials is another area of focus, and many of the countries have introduced laws on asset declaration and illicit enrichment. However, monitoring procedures is one of the main challenges in this context.

The Report finds that much progress has been made in nearly all the twenty countries in setting up specialised anti-corruption agencies entrusted with fighting bribery. The mandates of these agencies vary, though all are required to raise public awareness. Their mandates notably do not always extend to prosecution, making co-operation with other agencies difficult. This Report further finds that many countries have yet to strengthen their laws on detection and that the introduction of whistleblower protection and access to information laws widely remain an area for further development.

In contrast to the reforms that have been adopted in relation to public procurement and ensuring integrity of public officials, the progress in raising business integrity notably through accounting and auditing standards has been slow. As a result, the accounting and auditing standards of many countries do not reflect the international standards that could help deter bribery. Most of the countries have left the formulation and adoption of business codes of conduct to the private sector and there is evidence of some progress in this area. However, local chambers of commerce seem to have played a limited role in initiating business codes so far.

There are indications that civil society organisations (CSOs) are contributing to the anti-corruption efforts, as well as the media. There are examples of where CSOs have engaged in formulating proposals for improvement, including in relation to the need for legislation on freedom of information and whistleblower protection. However, there remains an element of caution amongst policy-makers, state agencies and businesses to engage with CSOs in monitoring policies and practices within anti-corruption agencies and businesses.

While significant efforts are being made to combat bribery there are areas that could be strengthened further to meet the common goal of attractive investment and achieving sustained growth in Africa. Chapter VI of this Report makes a number of recommendations in respect of strengthening (1) anti-bribery legislation; (2) effective implementation of anti-bribery and related laws, co-operation across agencies and increasing reviews; (3) awareness of anti-bribery laws in state departments and agencies; (4) business integrity and accountability and (5) promoting the involvement of

the public and the media. This stock taking study and the suggested recommendations will provide a platform for further discussion, exchange of ideas and the adoption of a Course of Action to be followed in the region under the umbrella of the AfDB/OECD Initiative.

Introduction

In the wake of the global economic crisis, countries also face a crisis of a different kind: A global crisis of confidence in how the world does business. Corruption has played a key role in this crisis of confidence. Even if the crisis originated thousands of miles away from Africa, the continent cannot afford to stay out of the global reflection on the way to recover from the economic crisis and to restore confidence in how business is done. To do this, African governments and businesses must work together to stamp out corruption in international business transactions. No one can postpone this effort for when economic times get better.

Hundreds of millions of dollars are wasted every year on bribes. The World Bank estimates that an astronomical over \$1 trillion is paid in bribes every year and that the proceeds of corruption stolen from developing countries alone range from USD 20 bn to USD 40 bn a year.¹

This illustrates how bribery, whether domestic or foreign, active or passive, is a widespread phenomenon that affects all parts of the globe. Bribery raises serious moral and political concerns, undermines good governance and sustainable economic development, and distorts competition. When highways, schools and hospitals are constructed by companies that won contracts through bribery, the end product may be sub-standard – and potentially dangerous to health and safety. Bribery of foreign public officials encourages a climate of corruption in the countries whose officials are bribed, making them less attractive to foreign investors in the long term. Companies that engage in foreign bribery face legal and financial risks for breaking the law, and reputational risks through association with bribery at home and abroad.

To attract investment and facilitate economic growth it is therefore essential that states address the problem of bribery of public officials in business transactions and promote business integrity. According to the World Bank “there is a 400% governance dividend” of good governance and corruption control: countries that improve control over corruption and rule of law can expect (on average), in the long run, a four-fold increase in incomes per capita. Research has also found that “the business sector grows significantly faster where corruption is lower and the rule of law is safeguarded. On average, it can make a difference of about 3% per year in

annual growth for the enterprises". Already 10 years ago, various studies underlined that these negative effects include reduction in foreign direct investment due to increase in costs, the productivity of public investment and infrastructure, investment generally and hence growth.²

For over ten years the Organisation for Economic Cooperation and Development (OECD) has been actively involved with tackling bribery from the supply side and promoting the adoption of ethical practices by businesses since the mid 1990s. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention)³ has harnessed a vast amount of knowledge and experience through the monitoring and follow-up processes it has adopted in this area and is attracting ratifications and accessions by countries from all five continents. Within Africa, South Africa is a party to this Convention. The African Development Bank (AfDB), a major contributor to good governance and anti-corruption in Africa, has joined with the OECD to strengthen the anti-bribery framework and practices to promote business integrity and provide an attractive environment for investment and sustained growth in the African region.

At the end of 2008, the African Development Bank (AfDB) and the Organisation for Economic Co-operation and Development (OECD) signed a declaration introducing a Joint Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa. This Initiative aims to assist African countries in their fight against bribery of public officials in business transactions and to improve corporate integrity and accountability, while sustaining growth through an environment conducive to attracting foreign investment. The overall objectives of the Joint Initiative are to increase the capacity for effective anti-bribery enforcement, reinforce global anti-bribery efforts, enhance public sector integrity and contribute to the opening of a new era of transparent and accountable business in Africa.

Despite existing reforms that have yielded some positive results for African economies, African countries still face significant obstacles to economic development. Corruption and lack of transparency and accountability in business transactions remain high on the list of investment risks in Africa. Specific measures to promote private sector transparency, accountability and ethics, prevent conflicts between private profit and public interest, deter active bribery of public officials, and ensure the effective prosecution of bribe takers and givers are ways to help overcome these obstacles that have hampered Africa's economic development and progress towards achieving the Millennium Development Goals.

The Joint Initiative seeks to highlight and enhance the complementarities between the African Union Convention on Preventing and Combating

Corruption, the UN Convention Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Within a framework of strong African ownership and leadership, the OECD and AfDB will work together to design and help put in place effective policies to combat the bribery of public officials that draw from all of these instruments. Through the involvement of African business and industry, and policy-makers, the Joint Initiative will also focus on providing technical support to Africa's private sector with a view to improving standards of corporate integrity and accountability.

This study is a Stocktaking Report of Business Integrity and Anti-Bribery Legislation, Policies and Practices (including international and regional initiatives) to combat bribery of public officials in business transactions in Twenty African Countries: Benin, Burkina Faso, Cameroon, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda and Zambia. The report aims to identify the main trends in these countries and concludes with a set of recommendations for supporting countries' business integrity and anti-bribery efforts, and strengthening their existing frameworks and practices. It will form the basis of developing a Course of Action to be endorsed at the first Regional Meeting of the Initiative in the first half of 2010. An Anti-Bribery and Business Integrity Task Force for Africa will also be established to be composed of senior African government officials, business and industry experts, and members of civil society, who will serve as the national focal points for implementing the Course of Action.

The study is organised into six chapters.

The first chapter focuses on the international and regional initiatives in the form of legal instruments and evolving standards and policies in respect of bribery, raising business integrity and facilitating the adoption of standards through peer review mechanisms. The chapter highlights the main features in three anti-corruption conventions – the OECD Anti-Bribery Convention, the United Nations Convention against Corruption 2003 (UNCAC) and the African Union Convention on Prevention and Combating Corruption (AUC) – since all the twenty countries have ratified or acceded to at least one of these conventions (UNCAC being in force in all twenty countries and the AUC in most countries).

Chapter 2 examines the legal framework for the criminalisation of bribery in the twenty countries, including the definitions of “public official” and “bribe”, as well as the issue of liability of legal persons for bribery, and the sanctions imposed for bribery. This Chapter further discusses the related offences of trading in influence and illicit enrichment.

Chapter 3 is divided into two parts. The first part examines the prevention and detection mechanisms that have been implemented in the twenty countries, including the establishment of specialised anti-corruption agencies; the enactment of whistleblower protection and asset declaration laws, and; other means of preventing and detecting bribery, including measures to improve public procurement. The second part of this Chapter focuses on the investigation and prosecution of bribery and the level of inter-agency cooperation in this area.

Chapter 4 focuses on what measures businesses are taking to improve their integrity through the adoption of codes of conduct, and additionally, what measures countries have taken to improve business integrity through the adoption of international standards in accounting and auditing.

Chapter 5 looks at the important role of civil society organisations (CSOs) and the media in combating bribery and promoting business integrity the twenty countries, and the extent to which they engage with other stakeholders.

Finally, Chapter 6 provides a set of Recommendations based on the main trends and areas for further development identified in each of the substantive chapters.

Notes

1. <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295?menuPK:34457?pagePK:34370?piPK:34424?theSitePK:4607,00.html>
2. Tanzi, Vito (1998) 'Corruption around the World' *Staff Papers International Monetary Fund* Vol. 45 (December): p. 559. Shleifer, Andrei and Vishny, Robert W. (1993) 'Corruption' *Quarterly Journal of Economics* Vol. 108(3): p. 599.
3. The OECD Convention entered into force on 15 February 1999.

Chapter 1

International and African regional initiatives to combat bribery of public officials in business transactions

Chapter 1 sets out the major international and African regional conventions (and related protocols), as well as soft law instruments, such as recommendations, guidelines and toolkits adopted by the African countries studied that aim to combat bribery and corruption and promote private sector transparency and accountability. This chapter also briefly addresses the main African regional anti-corruption initiatives and the various international organisations active in promoting anti-corruption and good governance in the region.

1. Introduction

The present chapter highlights the major international and African regional “hard law” (conventions, protocols) and “soft law” (recommendations, guidelines, toolkits) instruments that have been adopted under the auspices of various multi-lateral organisations as well as the initiatives and the activities undertaken by these organisations to combat corruption in Africa. More details can be found in Annexes I and II.

2. International initiatives

a) *The Organisation for Economic Cooperation and Development (OECD)*

i) *The OECD Anti-Bribery Convention*¹

The OECD has been a global leader in the fight against corruption for over a decade, in particular since the adoption in 1997 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). It is the first legally binding international instrument that aims at combating bribery. It entered into force in 1999 and has been implemented in 38 countries (i.e. the 34 OECD member countries and 4 non member countries, including South Africa, the only African country to have ratified the Convention).

The Convention focuses exclusively on the supply-side of the bribery of public foreign officials. This angle of the bribery chosen by the OECD Anti-bribery Convention is particularly interesting as the countries that are Parties to the Convention account together for about two-thirds of world exports² and nearly 90 percent of global outward flows of foreign direct investment³.

The OECD Anti-Bribery Convention is supplemented by the two Recommendations,⁴ to which all Parties to the Convention have adhered, this being a prerequisite to accede to the Convention. Under these three instruments, Parties to the OECD Anti-Bribery Convention are required to implement a comprehensive set of legal, regulatory and policy measures to prevent, detect, prosecute and sanction bribery of foreign public officials.

Countries’ implementation and enforcement of the OECD Anti-Bribery Convention is monitored by the OECD Working Group on Bribery through a rigorous mandatory peer-review monitoring system, which Transparency International calls the “gold standard” of monitoring. Monitoring is subject to specific agreed upon principles and takes place in three phases.⁵ Reports of evaluated countries are made public.

ii) *Other OECD instruments and initiatives*

The multidisciplinary approach and experience of the OECD in its fight against corruption is reflected in a set of instruments adopted by the OECD

that address the issue of the fight against corruption in specific areas. Details on these instruments can be found in Annex B.

Other OECD experiences and initiatives in the fight against corruption and in the promotion of public integrity are detailed in Annex B, in particular the NEPAD-OECD Africa Investment Initiative that aims to support African countries in improving their capacity to strengthen the investment environment for growth and development in accordance with the UN Monterrey Consensus, taking advantage of OECD's peer learning method and investment instruments of co-operation such as the Policy Framework for Investment (PFI).

b) The United Nations

i) The United Nations Office on Drugs and Crimes (UNODC) and the Convention against Corruption (UNCAC)

UNCAC⁶ was adopted in 2003 and came into force in 2005. It is open to all countries and regional economic organisations and is so far in force in 144 countries, including in all twenty countries studied.⁷

UNCAC is unique compared to other conventions, not only in its global coverage, but also in the extensiveness and detail of its provisions. UNCAC is the result of a progressive evolution in the elaboration of international instruments to combat corruption and benefits from the history and lessons learned of these instruments. UNCAC uses indeed languages which have proven their clarity and efficiency under other international instruments.⁸

UNCAC seeks to prevent corruption and includes measures to this effect, including model preventive policies that are directed at both the public and private sectors. It deals with both sides of corruption, the so-called active and passive sides. UNCAC further seeks to cover detection and sanctioning and also promotes transparency and technical assistance. UNCAC is supported by a review mechanism that has been adopted at the Third Conference of State Parties that took place in Doha in November 2009.⁹ This mechanism is voluntary. It is divided into phases. Each phase consists of two review cycles of five years each. The first cycle will cover criminalisation, law enforcement and international co-operation. The second will cover prevention and asset recovery. Contrary to the mechanism put in place by the OECD Anti-Bribery Convention, there is no automatic publication of the reports.

The Secretariat to the Conference of State Parties to UNCAC is housed in the UNODC¹⁰ and provides support for its implementation. The primary goal of the anti-corruption work done by UNODC is to provide States with practical assistance and build the technical capacity needed to implement the Convention. Efforts concentrate on supporting Parties in the development of

anti-corruption policies and institutions, including preventive anti-corruption frameworks.

The UNODC has published numerous documents intended to provide information and resource materials for use by States, investigators, prosecutors, policy-makers and civil society. Amongst the most well known documents are the United Nations Anti-Corruption Toolkit,¹¹ the United Nations Guide on Anti-Corruption Policies,¹² and the United Nations Anti-Corruption Handbook for Investigators and Prosecutors.¹³ The United Nations Anti-Corruption Toolkit is widely used and provides useful case studies that show how the tools and combinations of tools are to work in practice and how they can be adapted to individual circumstances.

ii) *The United Nations Development Programme (UNDP)*

The UNDP¹⁴ has been focusing on corruption as part of its accountability, transparency and integrity programmes since the 1990s. In 2004, it produced an Anti-Corruption Practice Note, which has now been replaced with the Anti-Corruption Practice Note of December 2008.¹⁵ The Note provides guidelines in particular on developing the capacity of anti-corruption institutions and awareness raising through civil society.

iii) *United Nations Economic Commission for Africa (UNECA)*

Another agency that is playing a role in the anticorruption efforts is the UNECA.¹⁶ Its Governance and Public Administration Department has recently launched an anti-corruption portal to facilitate exchange of ideas, information sharing and to engage in dialogue on-line. This initiative came about as a result of a conference on Institution, Culture and Corruption organised by UNECA and the Council for the Development of Social Science Research (CODESRIA) in October 2008.

iv) *Other United Nations initiatives*

A soft law initiative that has had wide impact globally is the United Nations Global Compact (UNGC), described in more detail in Chapter 4,¹⁷ which specifically addresses the fight against corruption in one of its principles (“Businesses should work against corruption in all its forms, including extortion and bribery”).

The United Nations Commission on International Trade Law (UNCITRAL) has also been working on public procurement issues and in 1994 adopted its Model Law on Goods, Construction and Services,¹⁸ which reflect the best practices in procurement processes found in national legislation of many countries.

c) The World Bank

The World Bank has identified corruption as among the greatest obstacles to economic and social development. Since 1996, the World Bank has supported more than 600 anticorruption programs and governance initiatives developed by its member countries. Also, since 1996, the World Bank's Procurement Guidelines and Consultant Guidelines have enabled the Bank to sanction firms and individuals that are found to have engaged in fraud or corruption in connection with the procurement of goods or services, the selection of consultants, or the execution of any resulting contracts. Both sets of guidelines contain definitions of the specific sanctionable offenses of fraud, corruption, collusion, coercion and obstruction. Since 1999, more than 330 firms and individuals have been sanctioned by the Bank for engaging in fraud and corruption in Bank financed projects.

In 2006, the Bank embarked on a series of reforms resulting in guidelines for Borrowers on preventing and combating corruption in Bank financed projects to ensure that loan proceeds are used for the intended purpose of promoting development and reducing poverty. The Guidelines are intended to set out clearly the actions that borrowers and other recipients of loan proceeds should take to try to prevent cases of fraud and corruption from occurring, and to address them if they do occur.¹⁹

In 2007, the World Bank, in partnership with the UNODC, launched the Stolen Asset Recovery Initiative (StAR), an initiative to help developing countries recover assets stolen by corrupt leaders, help invest them in effective development programs and combat safe havens internationally.

3. African Regional initiatives

a) The African Development Bank (AfDB)

The AfDB is well placed, with its extensive knowledge of and experience of the African States, to meet its goal of positioning itself as the centre of excellence for good governance and a leader in anti-corruption efforts on the continent.

In 2005, the AfDB established an Integrity and Anti-Corruption Division (IACD) within the Office of its Auditor General.²⁰ The remit of the IACD is to investigate allegations of fraud and corruption in Bank Group activities and staff misconduct, to assist regional member countries to detect fraud and corruption in Bank Group activities and to create anti-corruption and fraud awareness among staff. This initiative not only contributes to the business integrity of the AfDB itself, but provides a standard for businesses in Regional Member Countries to emulate. In 2008 the AfDB published a detailed Governance Strategic Directions and Action Plan GAP 2008-2012,²¹ outlining the strategic orientations for its contribution to good governance and anti-

corruption in Africa. The current AfDB/OECD joint initiative will contribute significantly towards achieving the AfDB's goals.

In July 2009, the AfDB organised a workshop with Transparency International (TI) on "Building Integrity and Reducing Corruption Risk in the Defense Sector".²² The workshop, which was a joint Initiative with TI-United Kingdom and the African Union, and which was attended by about 50 participants from some 15 African countries, explored practical measures to strengthen transparency, enhance integrity and reduce corruption risk in the defense sector in Africa.

The AfDB also supports initiatives in the region such as NEPAD and APRM, as further detailed below.

b) The African Union

i) African Union Convention on preventing and combating corruption (AUC)

The AUC,²³ a legally binding regional anti-corruption convention,²⁴ was adopted in 2003 and came into force in 2006. It is in force in 31 countries, including in all twenty countries studied, except for Cameroon and Mauritania, which have so far only signed the Convention.²⁵ Its aim is to contribute to the socio-economic development of the African countries.²⁶ All provisions of the UAC are mandatory, including those on private to private corruption. The AUC also contains a mandatory requirement of transparency in political party funding.

The AUC provides for prevention, criminalisation, regional cooperation and mutual legal assistance as well as the recovery of assets.

ii) The New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM)

The NEPAD²⁷ provides a vision and framework for the renewal of Africa. One of its primary objectives is to integrate Africa within the global economy so that Africa can not only make a vital contribution at an international level, but also pave the way for sustainable growth and development within Africa itself. As part of this drive, it adheres to a number of principles and one of these is good governance. The drive to harmonise anti-corruption laws within Africa through multilateral legal instruments is a reflection of this strong ambition to bring about greater integration, to rid itself of the reputation of a continent with high levels of corruption and to attract investment. The AfDB is the lead agency for NEPAD infrastructure development and guide in the development of banking and financial standards.²⁸

Initiated in March 2003, the APRM is an instrument voluntarily acceded to by member states of the African Union as a self-monitoring mechanism for African States with the aim of fostering good governance and economic development. According to the NEPAD Declaration on Democracy, Political,

Economic and Corporate Governance that governs APRM assessments, good economic and corporate governance including transparency in financial management are essential pre-requisites for promoting economic growth and reducing poverty. African Heads of State and Government at paragraph 8 of this Declaration undertook to promote honest, transparent, accountable and participatory government and probity in public life and to combat and eradicate corruption. In furtherance of these the Heads of State and Government approved several standards and codes²⁹ that have the potential to: promote market efficiency, control wasteful spending, consolidate democracy and encourage private financial flows—all of which are critical in the quest to alleviate poverty and promote sustainable development. The APRM currently has membership of 29 countries of the African Union.³⁰ Peer reviews have been conducted for 12 of these countries.³¹ 28 of the 29 APRM member states have ratified UNCAC and 21 the AUC.

The AfDB has made substantial contributions to the work of the APRM.³² The AfDB has provided assistance in developing the tools for implementing the APRM, enhancing the technical capacity of the Secretariat, gathering background information on countries, participating in APRM missions and obtaining pledges to the Trust Fund.³³

c) The Southern African Development Community (SADC) Protocol Against Corruption

The SADC Protocol Against Corruption (SADC Protocol)³⁴ has been in force since 6 July 2005, a year before the entry into force of the AUC. It is open to all SADC Member States. As of July 2007, it had been ratified by 9 SADC member States, including four of the twenty African countries studied (Malawi, South Africa, Tanzania and Zambia). Madagascar and Mozambique have also signed the Protocol.

The SADC Protocol Against Corruption (SADC Protocol) provides both preventive and enforcement mechanisms. Its purpose is to promote the development of anti-corruption mechanisms at the national level, to promote cooperation in the fight against corruption by State Parties and to harmonise anti-corruption national legislation in the region. Preventive measures include the development of a code of conduct for public officials, transparency, and establishment of anti-corruption agencies. In line with the OECD Convention, the SADC Protocol criminalises the bribing of foreign public officials. It also addresses the issue of money laundering by allowing for seizure of the proceeds of the crime. The Protocol also sets out an implementation mechanism.

d) The Economic Community of West African States (ECOWAS) Protocol Against Corruption

The ECOWAS Protocol Against Corruption (ECOWAS Protocol) was adopted in 2001 and is not yet in force.³⁵ So far only one country (Ghana) has ratified the ECOWAS Protocol and it requires nine ratifications to come into force. Any non-ECOWAS member State can accede to this Protocol. The ECOWAS Protocol includes provisions concerning passive and active bribery of public officials, active bribery of foreign public officials, liability of legal persons and illicit enrichment. Like the SADC Protocol, there are provisions on asset declaration, specialised anti-corruption agencies, participation of civil society and NGOs in the detection and prevention of acts of corruption and freedom of the press and right to information.

A separate organisation – The Economic and Monetary Community of Central Africa (EMCCA) – has also undertaken some important anti-corruption initiatives, including against money laundering and terrorism financing.³⁶

e) The East African Community (EAC) draft Protocol on Preventing and Combating Corruption

The EAC³⁷ is the regional intergovernmental organisation of Kenya, Uganda, Tanzania, Rwanda and Burundi. The EAC countries established a Customs Union in 2005 and are working towards the establishment of a Common Market by 2010, subsequently a Monetary Union by 2012 and ultimately a Political Federation of the East African States. On 27 November 2009, at the meeting of the Partner States' Heads of Anti-Corruption, Ethics and Integrity authorities, EAC announced it was preparing for a joint war on corruption.³⁸ For this purpose, the EAC secretariat prepared a draft Protocol on Preventing and Combating Corruption that awaits debate at the level of the Council of Ministers, scheduled to take place in January 2010.

4. Main trends and areas for further development

As shown in the table below, the twenty African States studied have all ratified UNCAC and all but one (Cameroon) are Parties to the AUC, it being noted that all countries except for Madagascar and Niger participate in the APRM. South Africa occupies a special position as it is the only African country Party to the OECD Anti-Bribery Convention.

These three Conventions do not create the same offences, but there is some overlap in the offences relating to bribery of public officials and raising business integrity. The OECD Anti-Bribery Convention and UNCAC require their Parties to criminalise the active bribery of foreign public officials in international business transactions and the elements required for this offence are the same. Making legal persons responsible is another feature that is shared by both these conventions. Since the OECD Anti-Bribery Convention's

Summary of the OECD Anti-Bribery Convention, UNCAC and the AUC³⁹

Standard	OECD Convention	African Union Convention	United Nations Convention
Bribery Offences	<ul style="list-style-type: none"> Active bribery of a foreign and international public official (mandatory) 	<ul style="list-style-type: none"> Active and passive bribery of public officials [no express provision on foreign public officials] (mandatory – subject to article 24 on reservations) Active and passive bribery in the private sector (mandatory – subject to article 24 on reservations) 	<ul style="list-style-type: none"> Active and passive bribery of national public officials (mandatory) Active bribery of a foreign and international public official (mandatory) Passive bribery of foreign and international public officials (optional) Active and passive bribery in the private sector (optional)
Other Corruption-Related Offences	<ul style="list-style-type: none"> Money laundering with bribery of a foreign public official as a predicate offence where bribery of a domestic official is a predicate offence (mandatory) Accounting offences for the purpose of bribing foreign public officials or of hiding such bribery (mandatory) 	<ul style="list-style-type: none"> Trading in influence (mandatory – subject to article 24 on reservations) Diversion of property by public official (mandatory – subject to article 24 on reservations) Illicit enrichment (mandatory – subject to article 24 on reservations) Money laundering (mandatory – subject to article 24 on reservations) Concealment of property (mandatory – subject to article 24 on reservations) 	<ul style="list-style-type: none"> Money laundering (mandatory) Embezzlement, misappropriation or other diversion of property by a public official (mandatory) Obstruction of justice (mandatory) Trading in influence (optional) Abuse of functions (optional) Illicit enrichment, embezzlement of property in the private sector (optional) Concealment (optional)
Responsibility of Legal Persons	For active bribery of a foreign and international public official criminal, administrative or civil		Criminal, civil or administrative liability of legal persons for the offences established by the Convention
Sanctions	Effective, proportionate and dissuasive criminal penalties, monetary and other sanctions		Sanctions should take into account the gravity of the offence
Other Standards		<ul style="list-style-type: none"> Preventive measures in public and private sectors Asset recovery International cooperation 	<ul style="list-style-type: none"> Preventive measures in public and private sectors Asset recovery International cooperation
Monitoring	<ul style="list-style-type: none"> Article 12 states that Parties shall cooperate in carrying out a programme of systematic follow-up to monitor and promote full implementation of the Convention. OECD Working Group on Bribery monitors the implementation of the Convention through peer reviews. Two cycles of peer reviews have been completed. A third cycle of peer review started in 2010. 	<ul style="list-style-type: none"> Article 22(1) states that there shall be an Advisory Board on Corruption within the African Union. Article 22(5) states that the functions of the Board shall be to [...] (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. 	<ul style="list-style-type: none"> Article 63(e) states that the State Parties shall agree upon activities, procedures and methods of work for reviewing periodically the implementation of the Convention by State Parties. A review mechanism was adopted in November 2009 at the Third Conference of State Parties.

**Overview of the Anti-Bribery instruments covered by the present Chapter
and that are in force and their status of ratification
in the twenty African countries¹**

Country ²	OECD Anti-Bribery Convention	UNCAC	African Union Convention ³	SADC Protocol
Benin		✓	✓	
Burkina Faso		✓	Participates in the APRM	
Cameroon			Signed on 30 June 2008 - not yet ratified	
		✓	Participates in the APRM	
Ethiopia		✓	✓	
Ghana⁴		✓	✓	
Kenya		✓	✓	
Madagascar			Does not participate in the APRM	Signed – not yet ratified
Malawi		✓	✓	✓
Mali		✓	✓	
Mauritania			Signed on 30 December 2005 – not yet ratified	
		✓	Participates in the APRM	
Mozambique		✓	✓	✓
Niger			Does not participate in the APRM	
		✓		
Nigeria		✓	✓	
Rwanda		✓	✓	
Senegal		✓	✓	
Sierra Leone		✓	✓	
South Africa	✓	✓	✓	✓
Tanzania		✓	✓	✓
Uganda		✓	✓	
Zambia		✓	✓	

1. See Annex A for details on the dates of ratification on the OECD Anti-Bribery Convention, UNCAC and the AUC. The ECOWAS Protocol is not included in the table as it is not in force yet.

2. Unless otherwise specified all countries that have ratified the African Union Convention participate in the APRM.

3. It should be noted that Ghana is the only country that has ratified the ECOWAS Protocol.

focus is transnational bribery, it does not include any provisions on domestic bribery of national public officials. UNCAC and the AUC do cover both the active and passive sides of bribery of public officials in their list of offences. These two Conventions also expect Parties to tighten the procedures concerning public procurement. A summary of the provisions contained in the three conventions is attached below.

In respect of raising business integrity UNCAC and the OECD Anti-Bribery Convention require the adoption of high quality accounting standards. All three Conventions have provisions on investigation and mutual co-operation. The AUC however does not address the issue of sanctions, but it does state

that Parties must have legislative measures to confiscate and seize the proceeds and instrumentalities of corruption.

All of the twenty African States are amending existing legislation or adopting new legislation on corruption, money laundering and public procurement. The business sectors, chambers of commerce, civil society organisations and the media are also involved in adopting various measures such as the UNGC or formulating their codes of conduct based on international initiatives. The following Chapters II, III, IV and V deal with these various aspects in relation to the twenty countries.

Notes

1. The text of these instruments is available at: <http://webdomino1.oecd.org/horizontal/oecdacts.nsf>.
2. OECD Economic Outlook database, 2009.
3. UNCTAD FDI/TNC database.
4. The 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions and the OECD Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions.
5. See www.oecd.org/document/12/0,3343,en_2649_34859_35692940_1_1_1_1,00.html.
6. Text of the Convention available at: www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.
7. See Annex A for details on dates of ratification of UNCAC by the twenty countries studied. See also www.unodc.org/unodc/en/treaties.CAC/signatories.html.
8. Interesting comparisons of the provisions contained in UNCAC and the OECD Anti-Bribery Convention are provided in the OECD publication « OECD Glossaries – Corruption – A Glossary of International Standards in Criminal Law », 2008. Text of the glossary available at: www.oecd.org/dataoecd/59/38/41194428.pdf.
9. See: www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html.
10. See: www.unodc.org.
11. 3rd ed. 2004, Vienna: UNODC, available at www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf.
12. Available at www.unodc.org/pdf/crime/corruption/UN_Guide.pdf.
13. Available at www.unodc.org/pdf/crime/corruption/Handbook.pdf.
14. www.undp.org.
15. *Mainstreaming Anti-Corruption in Development* www.undp.org/governance/docs/Mainstreaming_Anti-Corruption_in_Development.pdf. See also UNDP (2008) *Corruption and Development* New York: UNDP.
16. www.uneca.org.
17. “Overview of the UN Global Compact” available at: www.unglobalcompact.org/AboutTheGC/index.html. See also Chapter 4 on Business Integrity.

18. Text available at: www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html.
19. See: www.worldbank.org/sanctions and <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:21254834?pagePK:41367?piPK:51533?theSitePK:40941,00.html>.
20. See: "Integrity and Anti-Corruption" available at: www.afdb.org/en/about-us/structure/auditor-generals-office-oagl/integrity-and-anti-corruption. See also *Combating Fraud, Corruption and Misconduct* available at www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/30738523-EN-FRAUD-BROCH-OK-FINAL-07-04-2007.PDF.
21. Available at: www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/7000017_EN_OSGE%20anglais%20OK.pdf.
22. See: www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Tunis%20workshop%20concept%20v%205.pdf. See also: www.afdb.org/en/news-events/article/afdb-and-transparency-international-host-workshop-on-strengthening-transparency-and-reducing-corruption-in-defense-establishments-4914/.
23. Text available at: www.africa-union.org/root/AU/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf.
24. The other regional anti-corruption conventions are the 1996 Organisation of American States Inter-American Convention against Corruption, which came into force on 6 March 1997, and the 1999 Council of Europe Criminal Law Convention on Corruption, which came into force on 1 July 2002.
25. See Annex A for details on dates of ratification of AUC. See also www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf.
26. The drive for the AUC was influenced by the Cairo Agenda for Action Relaunching Africa's Socio-Economic Transformation 1994; 1990 Declaration on the Fundamental Changes Taking Place in the World and their Implication for Africa; The Plan of Action against Impunity adopted by the Nineteenth Ordinary Session of the African Commission on Human and Peoples' Rights in 1996 as endorsed by the Sixty Fourth Ordinary Session of the Council of the Ministers in Yaounde, Cameroon in 1996; Decision of the 37th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia in 2001 and 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).
27. For further information see www.nepad.org.
28. See *AfDB in Brief*, available at: www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AfDB%20in%20Brief%20anglais.pdf.
29. These standards include: Code of Good Practices on Transparency in Monetary and Financial Policies; Code of Good Practices on Fiscal Transparency; Best Practices for Budget Transparency; Guidelines for Public Debt Management; Principles of Corporate Governance; International Accounting Standards; International Standards on Auditing; and the Core Principles for Effective Banking Supervision.
30. Algeria, Angola, Benin, Burkina Faso, Cameroon, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, São Tomé e Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia.

31. South Africa which is the only African Country that has acceded to the OECD Anti-Bribery Convention, was peer reviewed in June 2007. Of the 20 countries studied for this report, only Madagascar and Niger are not members of the APRM.
32. www.nepad.org/2005/files/aprm.php.
33. Annual Report 2006 African Peer Review Mechanism available at: http://aprm.krazyboyz.co.za/index.php?option=com_aprm_documents&Itemid=32&page=documents-category&cid=25&nid=24&id=24 p. 31.
34. See: www.sadc.int/.
35. Text in French only: www.comm.ecowas.int/sec/fr/protocoles/PROTOCOLE-SUR-LA-CORRUPTION-FR-Accra-Oct-01-Rev5.pdf.
36. Additional Act No. 9/00/EMCCA-86/CCE02 creating the « Groupe d'action contre le blanchiment d'argent en Afrique central » (GABAC) of 14 december 2000.
37. See: www.eac.int.
38. See: www.eac.int/component/content/344.html?task=view. See also www.nation.co.ke/News/-/1056/814842/-/vnhynb/-/.
39. This table is, in part, the reproduction of the table with the summary of the provisions contained in the OECD Anti-Bribery Convention, the Council of Europe's Criminal Law Convention on Corruption and UNCAC, included in the OECD publication "A Glossary of International Standards in Criminal Law."

Chapter 2

Bribery and related offences

Chapter 2 provides an overview of the criminalisation of bribery landscape in the region and serves as the basis for analysis in the ensuing chapters. It highlights laws criminalising the active and passive bribery of public officials, and the bribery of foreign public officials, in the twenty countries studied. This chapter also addresses the related offences of illicit enrichment and trading in influence.

1. Introduction: Prohibiting bribery of public officials in business transactions

Prohibiting the bribery of public officials from both the supply side (active bribery) and the demand side (passive bribery) has been widely acknowledged as a core issue to be addressed by the governments of the twenty countries studied in this Report. All of these states have ratified at least one of the three relevant anti-corruption conventions that are currently in force – the OECD Anti-Bribery Convention, the AUC and the UNCAC.¹ Accordingly, since the 1990’s, these states have been systematically adopting legislation to criminalise active bribery and passive bribery of public officials, thereby rendering it an offence to offer, promise or give a bribe to public official, or for a public official to solicit or accept a bribe. The countries studied have taken different routes for introducing their respective legislation. For example, some have amended their criminal codes (*e.g.* Madagascar and Senegal), some have passed specific anti-corruption statutes (*e.g.* Sierra Leone, South Africa, and Mozambique), and some have modernised their existing anti-corruption statutes (*e.g.* Tanzania and Uganda).

This chapter will highlight some of the laws criminalising the active and passive bribery of public officials, and the bribery of foreign public officials, in the twenty countries. This chapter will also address the related offences of illicit enrichment and trading in influence. The table below provides an overview of the criminalisation of bribery landscape in the twenty countries studied and will serve as a basis for analysis in the ensuing sections.

2. Criminalisation of bribery²

a) Active domestic bribery of public officials

International standards for the criminalisation of active domestic bribery cover the promise, offering and giving of a bribe to a public official, and cover a broad range of acts or omissions in relation to the performance of official duties for which the bribe is paid. For example, Article 15(a) of the UNCAC covers “the promise, offering or giving” of a bribe to national public officials “in order that the official act or refrain from acting in the exercise of his or her official duties.”³ Similarly, Article 4.1 of the AUC applies the wording “offering, giving, promising or granting” of a bribe “in exchange for any act or omission in the performance of his or her public functions.”⁴ International standards

Table 2.1. **Overview of the criminalisation of bribery in the twenty African countries**

Country	Active domestic bribery	Passive domestic bribery	Bribery of foreign public officials
Benin	✓	1	2
Burkina Faso	✓	✓	
Cameroon	3	✓	✓
Ethiopia	✓	✓	
Ghana	✓	✓	
Kenya	✓	✓	
Madagascar	✓	✓	✓
Malawi	✓	✓	
Mali	✓	✓	
Mauritania⁴			
Mozambique	✓	✓	
Niger	✓	✓	
Nigeria	✓	✓	
Rwanda	✓	✓	
Senegal	✓	✓	
Sierra Leone	✓	✓	
South Africa	✓	✓	✓
Tanzania	✓	✓	✓
Uganda	✓	✓	
Zambia	✓	✓	

1. The establishment of a passive domestic bribery offence is reported but could not be confirmed.
2. The establishment of a foreign bribery offence is reported but could not be confirmed (under Article 1, 7(1) and 7(2) of the Penal Code of Benin).
3. According to Cameroon: criminalisation of Corruption in Cameroun does not make any specific distinction between passive and active corruption, Cameroonian and foreign public officials (Art. 134 et 134 bis of camerounese Criminal Code). All are subject to the same administrative and criminal sanctions.
4. There is limited accessible information on the anti-corruption legal framework in Mauritania; while there are reports of an adoption of anti-corruption strategy, the existence of anti-corruption legislation could not be confirmed: Rapport sur les progress dans le mise en œuvre des objectifs du millénaire pour le développement en Mauritanie 2008, 2 août 2008.

also cover direct and indirect forms of bribery, for example through the use of intermediaries, and bribes that benefit third parties. It is important to note that under international standards, “offering” or “giving” a bribe does not require an agreement between the public official and the briber. In other words, the offence of active bribery does not require that the public official accepts the offer or gift, or even that he or she is aware of or has received the offer or gift.⁵

The majority of the twenty countries studied in this Report have adopted domestic active bribery offences which apply similar wording to those found in the international anti-corruption conventions (see Table 2.1.). The Penal Code of Burkina Faso, for example, criminalises the “offer of bribes and the

attempt to corrupt by promises, offers, gifts or presents to public officials.”⁶ In Ethiopia, any person who “promises, offers, gives or agrees to give an undue advantage to a public servant... in consideration of an act performed or to be performed” commits a criminal offence.⁷ In Madagascar, it is an offence for any person to “directly or indirectly promise, offer or give gifts, presents or any benefit to a public official either to perform or refrain from performing any act of his function, mission or mandate.”⁸ Similarly, Niger and Senegal respectively criminalise “the offer of bribes and the attempts to corrupt by promises, offers, gifts or presents to public officials for performing or abstaining from an act in order that the briber giver may obtain a benefit”⁹ and “the promising, offering or giving of a gift or other advantage to a public official in return for an act or omission in the performance of his official duties.”¹⁰

Bribes that benefit third parties are explicitly included in Nigeria’s active bribery offence. The Corrupt Practices and other Related Offences Act 2000 (CPROA) covers “a person who promises, offers to give, confers, procures any property or benefit of any kind or attempts to procure any property of benefit of any kind to, on or for a public officer or to, or for any other person for an act...”¹¹ Similarly, in South Africa, any person, who “directly or indirectly, gives or agrees to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person in order to act, personally or by influencing another person to act in a manner that amounts, to amongst others, abuse of position of authority, violation of legal duty or set of rules, unauthorised or improper inducement to do or not do anything or designed to achieve an unjustified result commits an offence.”¹²

In contrast, Kenya adopts a principal-agent approach in dealing with bribery of a domestic public official. Under the Anti-Corruption and Economic Crimes Act 2003, a person corruptly giving or offering or corruptly agreeing to give or offer a benefit to an agent as an inducement or reward so that he does or does not do something in relation to the affairs or business of his principal, or he shows or does not show favour or disfavour to any person or proposal in relation to the affairs or business of the agent’s principal, commits an offence.¹³ A “principal” is defined as a person in the public sector or private sector “who employs an agent for whom or on whose behalf the agent acts.”¹⁴ As it may not be always clear who the principal is, the Act further provides “[i]f a person has a power under the Constitution or an Act and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent’s principal, the person shall be deemed ...to be agent for the Government and exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government.”¹⁵

b) Passive domestic bribery of public officials

International standards for passive domestic bribery cover the solicitation or acceptance of a bribe by a public official, either directly or indirectly, in order that the public official act or refrain from acting in the exercise of his or her official duties. Such standards also cover bribes solicited or accepted for the benefit of a third party. For example, Article 15(b) of the UNCAC requires State Parties to criminalise “the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”¹⁶ Article 4.1(a) of the AUC applies comparable language, and criminalises “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.”¹⁷ Accordingly, under international standards, “requesting” or “soliciting” a bribe occurs when an official indicates to another person that the latter must pay a bribe in order that the official act or refrain from acting. As with active bribery, there need not be an agreement between the briber and the official; the offence is complete once the official requests or solicits a bribe.¹⁸

Of the twenty countries studied in this Report, approximately seventeen have adopted a passive domestic bribery offence (see Table 2.2). In Zambia, for example, the Anti-Corruption Commission Act criminalises “any public officer who, by himself, or by or in conjunction with any person, corruptly solicits accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned.”¹⁹ Nigeria’s CPROA criminalises “any person who corruptly asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or agrees or attempts to receive or obtain any property or benefit of any kind... on account of anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the function, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person...”²⁰

In Sierra Leone, the passive domestic bribery offence covers a number of acts or omissions for which the bribe is solicited or accepted. The Anti-

Corruption Act 2008 criminalises “any public officer who solicits, accepts, or obtains or agrees to accept or attempts to obtain for himself without lawful consideration or for a consideration which he knows or has reason to believe to be inadequate, any advantage as an inducement to or reward for or otherwise on account of his –

- Performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;
- Expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or
- Assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.”²¹

Similarly, South Africa criminalises “any public officer who directly or indirectly, accepts or agrees or offers to accept any gratification from any person, whether for the benefit of himself or herself or for the benefit of another person... that amounts to the illegal, dishonest, unauthorized, incomplete or biases; or misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory contractual or any other legal obligation; the abuse of a position of authority; a breach of trust; or the violation of a legal duty or set of rules...”²²

Passive domestic bribery offences have also been established in Burkina Faso, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mali, Mozambique, Niger, Rwanda, Senegal, Uganda and Tanzania.²³

c) Bribery of foreign public officials in international business transactions

Article 1 of the OECD Anti-Bribery Convention and Article 16 of the UNCAC provide for a foreign bribery offence. Accordingly, State Parties to these Conventions must criminalise the intentional offering, promise or giving of a bribe, whether directly or indirectly, to a foreign public official or an official of public international organizations, for that official or for a third party, in order that official act or refrain from acting in relation to the performance of official duties. Article 1 of the OECD Anti-Bribery Convention, which specifically focuses on foreign bribery in the context of international business transactions, further criminalises the bribery of foreign public officials “in order to obtain or retain business or other improper advantage in the conduct of international business.”²⁴ Though not yet in force, Article 6 of the SADC Protocol also criminalises the active bribery of foreign public officials “in connection with any economic or commercial transaction.”²⁵

Of the twenty countries studied in this Report, Madagascar, South Africa, Tanzania and Zambia have adopted specific criminal provisions on the bribery of foreign public officials.²⁶ The excerpts below highlight the main provisions of their respective foreign bribery laws.

i) Madagascar

Loi No. 2004-030 criminalises the bribery of foreign public officials and officials of public international organisations. Article 8 of the law states that the promising, offering or giving to a foreign public official or an official of a public international organisation directly or indirectly an undue advantage for himself or for another person or entity to perform or refrain from performing any act in the exercise of his official duties in order to obtain or retain business or other improper advantage in connection with the conduct of international business is an offence.

ii) South Africa

Section 3(b) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (the Act) creates the general offence of corruption relating to the offering or giving of a gratification to any person; in other words, including “a foreign public official or an official of a public international organisation”. In terms of this section it is an offence for any person to, directly or indirectly, give or agree or offer to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner “i) that amounts to the (aa) illegal, dishonest, unauthorised, incomplete, or biased; or (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; ii) that amounts to (aa) the abuse of a position of authority; (bb) a breach of trust; or (cc) the violation of a legal duty or a set of rules; iii) designed to achieve an unjustified result; or iv) that amounts to any other unauthorised or improper inducement to do or not to do anything.”

Section 5(1) of the Act does not specifically deal with passive corruption in respect of foreign public officials. However, in this regard section 3(a) of the Act is applicable. This section provides that any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person in order to act, personally or by influencing another person so to act, in a manner “i) that amounts to the (aa) illegal, dishonest, unauthorised, incomplete, or biased; or (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any

powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; ii) that amounts to (aa) the abuse of a position of authority;(bb) a breach of trust; or (cc) the violation of a legal duty or a set of rules; iii) designed to achieve an unjustified result; or iv) that amounts to any other unauthorised or improper inducement to do or not to do anything”. The expression “any person” includes a foreign public official.

South Africa is the only African State Party to the OECD Anti-Bribery Convention. The bribery of a foreign public official is covered by Section 5(1) of the Prevention and Combating of Corrupt Activities Act 2004 (PCCAA), which states:

“Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner -

- that amounts to the -
 - ❖ illegal, dishonest, unauthorised, incomplete, or biased: or
 - ❖ misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:
- that amounts to-
 - ❖ the abuse of a position of authority;
 - ❖ a breach of trust; or
 - ❖ the violation of a legal duty or a set of rules;
- designed to achieve an unjustified result; or
- that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to foreign public officials.”

iii) *Tanzania*

Both the active and passive bribery of foreign public officials are criminalised under the Prevention and Combating of Corruption Act 2007 (PCCA). Under Section 23(1), any person who intentionally promises, offers or gives to a public official or an official of a public international organisation directly or indirectly an undue advantage for that foreign public official or another person or entity in order that the foreign official acts or refrains from acting in the exercise of his official duties in relation to a local or international economic undertaking or business transaction commits an offence.

Section 23(2) of the PCCA criminalises passive foreign bribery. Accordingly, any foreign public official or an official of a public international

organisation who intentionally solicits or accepts directly or indirectly an undue advantage for himself or another person or entity in order to act or refrain from acting in the exercise of his official duties commits an offence.

d) Definition of “Bribe”

International conventions, including the UNCAC, OECD Anti-Bribery Convention and the AUC, describe a bribe as an “advantage” or, more specifically, as an “undue advantage.” Accordingly, not all advantages are prohibited; only those that are undue. Under the OECD Anti-Bribery Convention, for example, it is not an offence if the advantage was permitted or required by the written law or regulation of the country of the foreign public official.²⁷ The OECD Anti-Bribery Convention also confirms that an offence is committed irrespective of, among other things, the value of the advantage, perception of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage.²⁸ Under the UNCAC, an undue advantage may be of a pecuniary or non-pecuniary nature, and may also be tangible or intangible.²⁹ An undue advantage can therefore assume the form of money, a loan, shares in a company, a holiday, food and drink, or enrolment in a school for an official’s child, provided that it places the official in a better position that he or she was before the commission of the offence.³⁰

A number of the countries studied in this Report provide express definitions of what amounts to a bribe in their legal provisions criminalising bribery. In Ethiopia, for example, an “undue advantage “is defined as “any improper benefit or a benefit through improper means.”³¹ Malawi’s anti-bribery provisions define “advantage” as “any benefit, service, enjoyment or gratification...and includes a payment whether in cash or in kind, or any rebate, deduction, concession or loan, and any conditions or circumstance that puts any person or class of persons in a favourable position over another.”³² Similarly, Mozambique and Uganda’s anti-bribery provisions respectively cover “money or any material, or non-material privilege”³³ and “any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage or any other form of gratification.”³⁴ In contrast, the Anti-Corruption Act 2008 of Sierra Leone provides a detailed list of what is included in the term “advantage”; under Section 1 of the Act, this includes: “(a) any gift, loan, fee, reward, discount, premium or commission, consisting of money or of any valuable security or of other property or interest in property of any description, or other advantage other than lawful remuneration; (b) any office, employment or contract; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether wholly or partly; (d) any payment of inadequate consideration for goods or services; (e) any exercise or forbearance from the exercise of any right or any power or duty; (f) any other

benefit, service or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted; and (g) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of paragraphs (a), (b), (c), (d), (e) and (f).³⁵

e) Definition of “Public Official” and “Foreign Public Official”

i) “Public Official”

International standards for the criminalisation of bribery generally require coverage of a range of public officials, including any person holding a legislative, executive, administrative or judicial office, regardless of seniority and whether appointed or elected, permanent or temporary, paid or unpaid; any person performing a public function, including for a public agency or enterprise, or provides a public service; and, person defined as a “public official” under domestic law.³⁶ The AUC, for example, defines a public official as “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.”³⁷

A number of the countries studied in this Report provide express definitions for “public officials” in their anti-bribery laws. For example, Malawi’s Corrupt Practices Act defines “public officer” as “any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and includes the President, Vice President, a Minister and a Member of Parliament.”³⁸ Similarly, Zambia’s anti-bribery laws cover “any person who is a member of, or holds office in, or is employed in the service of a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid,”³⁹ and Sierra Leone’s anti-bribery laws define “public officer” as “an officer or member of a public body including a person holding or acting in an office in any of the branches of government, whether appointed or elected, permanent or temporary, or paid or unpaid.”⁴⁰

In Ethiopia, a “public servant” is defined as “any person who temporarily performs functions being employed by, or appointed, assigned or elected to, a public office or a public enterprise.”⁴¹ In Ghana, “public officer” is defined as “any person holding an office by election or appointment under any enactment or under powers conferred by any enactment.”⁴² Mozambique’s anti-bribery laws define “public officer” as “any person that exercises or participates in public or similar services in respect of which such person has

been appointed or nominated pursuant to a law, by election or by resolution of the competent entity.”⁴³

Rwanda’s anti-bribery laws explicitly refer to those working in public companies and public enterprises; Article 2 of Law No. 23/2003 related to the Punishment of Corruption and Related Offences defines “public servants” as “any person with public authority of whatever rank with public mandate whether through regular election or by civil service appointment, one in charge of state mission or public services, who is involved in the management of the property of the State, District, Municipality, Town, City, Province, a public sector organ, a public company or enterprise.”⁴⁴ Similarly, Section 2 of Nigeria’s CPROA defines “public officer” as a “person employed or engaged in any capacity in the public services of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by any government or its agency or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes Judicial officers serving in Magistrate, Area or Customary courts or Tribunals.”⁴⁵

Other countries studied in this report, including Burkina Faso, Kenya, Madagascar, Mali, Niger, Senegal, South Africa and Tanzania include definitions of “public officials” in their anti-bribery laws.⁴⁶ Uganda does not specifically define “public official” but the presumption is that a person working in a “public body” is a public official.

ii) “Foreign Public Official”

Article 1(4) of the OECD Anti-Bribery Convention states that, for the purposes of the Convention, a “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including a public agency or public enterprise; and any official or agent of a public international organisation. The OECD Anti-Bribery Convention further defines “foreign country” as including all levels and subdivisions of government, from national to local.⁴⁷ Similarly, Article 2 of the UNCAC defines “foreign public official” as “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including a public agency or public enterprise.”⁴⁸ Article 2 further defines “officials of a public international organisation” as “international civil servant or any person who is authorised by such an organisation to act on behalf of that organisation.”⁴⁹

South Africa and Tanzania have adopted similar language to that found in the international conventions, which are set out below. While Madagascar has established an explicit foreign bribery offence, its law is silent on the

definition of a foreign public official. Zambia has also defined foreign public official under Section 3 of its new Anti-Corruption Act, as provided for under the UNCAC.

South Africa. “Foreign public official” is defined in section 1(v) of the Prevention and Combating of Corrupt Activities Act as “(a) any person holding a legislative, administrative, or judicial office of a foreign state; (b) any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority performing a function on behalf of that foreign state; or (c) an official or agent of a public international organisation.”⁵⁰

Tanzania. “Foreign public official” is defined as “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country, including for a public agency or a public enterprise.”⁵¹ The definition of an “official of a public international organisation” applies the same wording as the UNCAC and is accordingly defined as “an international civil servant or any person who is authorised by such an organisation to act on their behalf.”⁵²

f) Liability of legal persons

As corporations are becoming increasingly large and diffused, they may be more inclined to engage in bribery because it is less likely that individuals will be held accountable. Making legal persons liable for bribery therefore has an important deterrent effect.⁵³ The OECD Anti-Bribery Convention provides that State Parties shall take “such measures as may be necessary to establish liability of legal persons for the bribery of a foreign public official.”⁵⁴ Article 26 of the UNCAC also provides that “each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention... Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.”⁵⁵ The ECOWAS Protocol (not yet in force) contains a similar provision on liability of legal persons under Article 11.

Of the countries studied in this report, Rwanda explicitly addresses the issue of the liability of legal persons within its anti-corruption law.⁵⁶ Zambia’s Anti-Corruption Act also provides for how artificial legal persons and unincorporated business entities that engaged in corrupt practices are to be dealt with.⁵⁷ Under Article 31 of Law No. 23/2003, legal entities, be they public or private, will be liable for corruption and related offences when they are committed by their representative or those who occupy positions of leadership.

It seems from this provision that a legal entity will be found liable only if those who represent or are in positions of authority, that is those who take decisions or have a supervisory role, have committed the offence. It is difficult to say in the absence of case law whether the giving of a bribe by a salesman of a company, for example, would trigger the liability of the legal person on the basis that he is representing the company even though his supervisors may not be aware of his act.

South Africa, the only State Party to the OECD Anti-Bribery Convention of the countries studied in this Report, does not include a specific provision on liability of legal persons within the PCCAA. However, the PCCAA does make reference to “any person” with regard to the offence of active bribery, and South Africa’s Interpretation Act 1957 defines “person” as including a company and body of persons corporate or un-incorporate. The prosecution of corporate bodies is addressed under Section 332 of the Criminal Procedures Act 1977 which indicates that the liability of the legal persons under South African law is triggered only where the offence is committed by the director or the servant in the exercise of his powers or in the performance of his duties or in furthering or endeavouring to further the interests of that corporate body. The inclusion of the word “servant” suggests that acts of lower level employees could make the company liable even though the word is undefined. In practice, however, it may be difficult to identify the particular person who has perpetrated the offence in organisations with complex structures. This issue was also highlighted in the OECD Phase I Review of the Implementation of the Anti-Bribery Convention and 1997 Revised Recommendations.⁵⁸

The respective anti-corruption legislation in Kenya, Ghana, Malawi, Nigeria, Tanzania, Sierra Leone, and Zambia make it an offence for any person to engage in active bribery of a public official. No distinction is made between a natural person and a legal person within these provisions. However, reference to their respective Interpretation Acts⁵⁹ indicates that the term “person” includes a company, a body corporate or incorporate. As these countries’ company laws are historically derived from the company law of England, and English case law is persuasive in these jurisdictions, they are likely to follow the common law approach for liability of legal persons, known as the “identification doctrine.”⁶⁰ Accordingly, liability for bribery will attach to a company on if the fault element of the offence is attributed to someone who is the company’s “directing mind and will.” As the “directing mind” is normally found in the higher levels of a centralised management, this doctrine has been widely denounced as unsuitable to current day operational procedures of companies that are diffused both geographically and functionally. No relevant case law from these jurisdictions could be identified to indicate how the courts approach the issue of liability of legal persons for

bribery. Concerning the other countries studied in this Report, there is no accessible information on liability of legal persons.

g) Sanctions

Article 3 of the OECD Anti-Bribery Convention provides that “the bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties.” Article 30 of the UNCAC similarly provides that “each state party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.” The policies in respect of sanctions diverge among the countries studied in this Report. Some countries make no distinction between active bribery and passive bribery when prescribing sanctions and apply imprisonment and/or fines or both. In contrast, others do make the distinction between active and passive bribery whereby the sanctions for the latter are often harsher. Additional sanctions, such as forfeiture, seizure or confiscation of the bribe are also applied in some of the countries studied, in addition to the debarment or blacklisting of companies from public procurement. Table 2.3. below sets out an overview of the sanctions landscape in a number of the countries studied in this Report and provides the basis for the ensuing analysis.

Table 2.2. **Overview of sanctions for bribery**

Country	Imprisonment	Fine	Forfeiture, seizure or confiscation of bribe
Burkina Faso	✓	✓	
Ethiopia			
Kenya	✓	✓	✓
Madagascar	✓	✓	✓
Mali	✓	✓	
Mozambique	✓	✓	✓
Nigeria	✓		✓
Niger	✓	✓	
Rwanda	✓	✓	
Senegal	✓	✓	
Sierra Leone	✓	✓	
South Africa	✓	✓	✓
Tanzania	✓	✓	
Uganda	✓	✓	
Zambia	✓	✓	

Countries that do not make a distinction between active and passive bribery and prescribe the sanction of imprisonment and/or fines or both include Burkina Faso (imprisonment of one to five years plus fine);⁶¹ Kenya (imprisonment for a term not exceeding ten years and/or fine);⁶² Madagascar

(two to ten years imprisonment and a fine);⁶³ Mali (imprisonment of five to ten years hard labour plus fines);⁶⁴ Niger (two to ten years and fine);⁶⁵ Nigeria (seven years imprisonment);⁶⁶ Senegal (imprisonment of two to ten years plus fines);⁶⁷ Sierra Leone (imprisonment of not less than three years and/or fine);⁶⁸ Tanzania (imprisonment from three years to five and /or fine);⁶⁹ Uganda (imprisonment not exceeding ten years and/or fine and pay a sum equivalent to the amount of gratification and court may make an order for confiscating the property that is the subject of or derived directly or indirectly from the act of corruption);⁷⁰ Zambia (imprisonment of a term not exceeding twelve years; for repeat convictions imprisonment of a term not less than five years but not exceeding twelve years).⁷¹

Rwanda makes a distinction for sentencing purposes as to whether the service rendered was part of the attributions of the person or whether the service was an illegal service in that the person was refraining from carrying out the usual duties. In the case of the former, the sanction is imprisonment for two to five years, and a fine and in the case of the latter it is imprisonment of between five and ten years and a fine. A similar distinction is drawn in the context of passive bribery but the sanctions are the same as for active bribery.

South Africa prescribes a three tier system of sanctions depending on the court. At the Magistrates' Court level, the sanction is imprisonment of up to five years or a fine; at the Regional Court level, the sanction is imprisonment up to eighteen years or a fine; and, at the High Court level, the sanction is life imprisonment or fine.⁷² Additional fines can also be imposed.⁷³

In contrast, the prescribed sanctions for bribery in Mozambique distinguish between active and passive bribery offences. Accordingly, active bribery attracts a sentence of one year and a fine of up to two months.⁷⁴ The reference to a "fine of up to two months" is somewhat unclear and it has not been possible to clarify how this is applied in practice. In the case of passive bribery, the sanction is imprisonment between two to eight years and a fine of up to one year.⁷⁵ Again, it has not been possible to clarify the meaning of "a fine of up to one year."

Similarly, Ethiopia adopts a detailed formula for sanctions which assumes aspects such as gravity and substantial damage to the State or other public interests. In the case of active bribery, the sanctions range from simple imprisonment to rigorous imprisonment of a term not exceeding seven years and a fine.⁷⁶ Where the active bribery causes substantial damage to the State or other public or private interests, the punishment is rigorous imprisonment of five to fifteen years and a fine.⁷⁷ In the case of passive bribery, the sanctions range from simple imprisonment for not less than one year to rigorous imprisonment not exceeding ten years and a fine.⁷⁸ Where the harm caused by passive bribery is of particular gravity, the sanction is rigorous

imprisonment from seven to fifteen years and a fine.⁷⁹ However, in circumstances where the extent of advantage received, official powers, or the extent of harm are taken into account, the sanction can extend to twenty-five years rigorous imprisonment and a fine.⁸⁰

There is no accessible information on the type of sanctions applied, the length of sentences, or the incidences of bribery in the countries studied. There is also no available data on the number of sanctions that have been imposed in practice for bribery among the countries. According to the limited statistics available from the Ethiopia's Federal Ethics and Anti-Corruption Commission (FEACC), sentences have ranged from one to nineteen years. Information from Kenya's Anti-Corruption Commission suggests that most of the sentences in practice have been in the form of fines. Factors such as mitigating circumstances and plea bargaining are likely to affect sentencing; however, the extent to which plea bargaining is used among the countries is unclear. It is also possible that countries with a common law background apply sentencing policy guidelines, which could impact the length of imprisonment.

Forfeiture, seizure or confiscation of the bribe is also explicitly included as a sanction in the anti-corruption legislation of a number of the countries studied in this Report, including Kenya,⁸¹ Madagascar,⁸² Mozambique,⁸³ Nigeria,⁸⁴ South Africa,⁸⁵ Uganda⁸⁶ and Zambia.⁸⁷ As will be discussed in further detail in Chapter 3, debarment from public procurement of bidders who have engaged in bribery is also a common administrative sanction found in public procurement laws. Table 2.3 below sets out examples of countries which have established the sanction of debarment or blacklisting from public procurement for bribery.

Table 2.3. Countries with sanctions of debarment or blacklisting from public procurement

Countries with Sanctions of Debarment or Blacklisting from Public Procurement for Bribery ⁸⁸	Ethiopia	Nigeria
	Kenya	Rwanda
	Malawi	Sierra Leone
	Mali	South Africa
	Mauritania	Tanzania
	Mozambique	Zambia

A number of jurisdictions in Africa are exploring the introduction of legislation focusing on the proceeds of crime and the establishment of specialised bodies to deal with asset recovery. The intention behind such legislation is to strip the wrongdoers of the fruits of their illegal activities. For example, South Africa's Prevention of Organised Crime Act 1998 provides for confiscation of proceeds of unlawful activities. Proceeds of unlawful activities

is defined under the Act as “any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.”⁸⁹ In Nigeria, asset recovery is governed by the CPROA and the Economic and Financial Crimes Commission (Establishment) Act 2004. Both statutes provide only for conviction-based forfeiture; however, a non-conviction-based Assets Forfeiture Bill is currently being considered.⁹⁰ Kenya has also tabled a Bill on Proceeds of Crime and Anti-Money Laundering. In Uganda asset recovery is governed by s.21 of the Leadership Code Act, 2002 and s.63 (1) of the Anti-Corruption Act 2009. Uganda also tabled before Parliament an Anti-Money Laundering Bill.

3. Related offences

a) Trading in influence

It is worth briefly addressing the offence of trading in influence, as it shares a number of common elements with bribery offences. Article 18 of the UNCAC and Article 4(f) of the AUC provide for the offence of trading in influence. Trading in influence occurs when a person who has real or apparent influence on the decision-making of a public official exchanges this influence for an undue advantage.⁹¹ As with bribery, trading in influence can take place both actively and passively. A briber is guilty of the offence if he or she offers, promises or gives an undue advantage to a person in order that the recipient exerts his or her influence on the decision-making of a public official. Conversely, and influence-peddler is guilty of the offence if he or she requests, solicits, receives or accepts an undue advantage by a person in order that he or she exerts his or her influence on the decision-making of a public official. The offences of trading in influence and bribery, therefore, have a number of similar elements; however, one key difference is that for trading in influence, the recipient of the advantage is not the decision-maker.⁹² Rather, the offence targets “those persons who are in the neighbourhood of power and who try to obtain advantages from their situation”⁹³ by influencing the decision-maker. Several of the countries studied in this Report have adopted trading in influence offences within their anti-corruption laws. For example, Section 33 of Tanzania’s Prevention and Combating of Corruption Act 2007 criminalises any person “who promises, offers or gives to a public official or any other person directly or indirectly, an undue advantage in order that the public official or that other person to abuse his real or supposed influence with a view to obtaining from the administration or a public authority an undue advantage for the original instigator of the act or for any other person.”⁹⁴ In

Uganda trading in influence is an offence under section 2 (e) Anti-Corruption Act, 2009.

b) Illicit enrichment

In order to combat the receipt of bribes by public officials in business transactions a number of the twenty African countries studied in this Report have also adopted an offence of illicit enrichment in their anti-corruption legislation. Article 1 of the AUC defines illicit enrichment as “the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in his or her income.” Article 20 of the UNCAC, and Article 3(a) of the ECOWAS Protocol, also provides for a similar definition of illicit enrichment. Under the offence, the onus is on the suspect to show how the assets were obtained. Accordingly, illicit enrichment is a useful aid in the investigation of bribery cases, especially as it may not always be possible to obtain documentation or other incriminating evidence to establish the mutual exchange between a bribe-taker and a bribe-giver. The investigation of bribery offences will be discussed in more detail in Chapter 4 of this Report. Table 2.4. below lists countries which have adopted illicit enrichment offences.

Table 2.4. **Countries with illicit enrichment offences**

Countries with Illicit Enrichment Offences ⁹⁵	Burkina Faso
	Madagascar
	Rwanda
	Senegal
	Sierra Leone
	Tanzania
	Uganda

Ethiopia, Ghana, Nigeria and South Africa do not seem to have express provisions on illicit enrichment. Kenya has a Public Officer Ethics Act (2003) which contains illicit enrichment provisions. Malawi’s Anti-Corruption Act 1965 (as amended in Section 32(1)) states that the officer of the Anti-Corruption Bureau may investigate a public officer where there are reasonable grounds to believe that the public officer maintains a standard of living above that which is commensurate with present or past official emoluments or other sources of income. Similarly, the Zambian Anti-Corruption Commission may investigate any public officer where there are reasonable grounds to believe that the public officer maintains a standard of living which is not commensurate with his present or past official emoluments.⁹⁶ There is no accessible information providing data on the number of public officials who have been prosecuted specifically for illicit enrichment in the countries studied.

In Nigeria, the Code of Conduct Bureau and Tribunal Act, Chapter 56 (1999) empowered the Code of Conduct Bureau with the mandate to establish and maintain a high standard of public morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standard of public morality and accountability. In addition, the Code of Conduct for public officers is spelled out in the fifth schedule of the Nigerian constitution.

4. Main trends and areas for further development

Criminalising the solicitation or acceptance of bribery by public officials is an important step in curtailing bribery in business transactions; having such offences in place prevents public officials from demanding bribes from businesses, and punishes those who give the bribe and those who take the bribe. Importantly, the majority of the countries studied in this Report have adopted both active and passive domestic bribery offences. Furthermore, most of the offences cover both direct and indirect forms of bribery as well as third party beneficiaries of bribes.

A number of the countries studied also provide express definitions of “public officials” in their anti-corruption legislation such that they would bring within their ambit members of most of the public bodies. Some countries, such as Malawi, mention specific offices, such as the President and Vice-President. Other countries, such as Senegal, Madagascar and Mali, have formulated their anti-bribery offences in more general terms which do not provide a definition of “public official” or “public officer.” As such, the definition must be gathered from a reading of a number of the provisions dealing with punishment for the various offences. In the absence of guidance notes or case law, this lack of definitions results in a lack of legal certainty and could problematically result in a variety of conflicting interpretations. To further strengthen the application of anti-bribery laws, countries may also wish to consider extending the definition of “public officials” to expressly include those working on a temporary or unpaid basis, as well as employees of public agencies and enterprises.

A number of the countries also provide express definitions for the undue advantage or bribe and importantly cover advantages of both pecuniary and non-pecuniary nature. For example, Mozambique’s anti-bribery provisions cover “money or any material, or non-material privilege.”⁹⁷ Both the OECD Anti-Bribery Convention and the UNCAC require the criminalisation of foreign bribery. Of the countries studied, Madagascar, South Africa and Tanzania have adopted a foreign bribery offence. To comply with their international obligations and to further strengthen their anti-bribery legal regime, countries should consider criminalising the bribery of officials of foreign governments

and public international organisations. Furthermore, imposing liability against legal persons is particularly important in corruption cases, especially as the increasingly complex structures of corporations make it difficult to hold individuals accountable. Accordingly, countries should consider holding legal persons liable for bribery.

It is difficult to assess how effective these anti-bribery laws have been in practice. Specific statistics on enforcement are not accessible, and there is very limited case law. It must of course be noted that in most of the countries studied, the adoption of anti-corruption legislation is fairly recent and a most of the specialised anti-corruption agencies charged with investigating and prosecuting bribery and corruption cases are still in their infancy. (The establishment of anti-corruption commissions will be addressed in more detail in Chapter 3 of this Report).

Notes

1. See Annex A for details on the status of ratifications.
2. See Annex C for a list of the applicable laws and relevant sections in the twenty countries studied.
3. UNCAC, Article 15(a).
4. AUC, Article 4.1.
5. OECD, *Corruption: A Glossary of International Standards in Criminal Law*, OECD, 2008, p. 26.
6. Chapter V, Articles 157, 158 of Loi No. 043/96/ADP du 13 Novembre 1996 portant Code Pénal 13 December 1996, available at: www.unhcr.org/refworld/docid/3ae6b5cc0.html.
7. Revised Criminal Code of Ethiopia, Article 404(2).
8. Loi No. 2004-030 du 9 septembre 2004 sure la lutte contre la corruption, Article 177.1, available at: www.edbm.gov.mg/system/application/resources/docs/penal_loi_n_2004-030_09092004.doc.
9. Penal Code of Niger, Articles 130-131.
10. Penal Code of Senegal, Article 159-160.
11. Corrupt Practices and other Related Offences Act 2000, Section 9(1)(a) and (b).
12. Prevention and Combating of Corrupt Activities Act 2004 (PACCAA), Section 4(1)(b).
13. Anti-Corruption and Economic Crimes Act 2003, Section 39.
14. *Ibid.*, Section 38(1).
15. *Ibid.*, Section 38(2).
16. UNCAC, Article 15(b).
17. AUC, Article 4.1(a).
18. OECD, *Corruption: A Glossary of International Standards in Criminal Law*, OECD, p. 27.

19. Anti-Corruption Commission Act, Section 29(1), available at: www.tizambia.org.zm/download/uploads/The_Anti_Corruption_Commission_Act.pdf.
20. Corrupt Practices and other Related Offences Act 2000, Section 8.
21. Anti-Corruption Act 2008, Section 28(2), available at: www.sierra-leone.org/Laws/2008-12.pdf.
22. Prevention and Combating of Corrupt Activities Act 2004 (PACCAA), Section 4(1)(a).
23. See Annex C for a list of the applicable laws and relevant sections in the twenty countries studied.
24. OECD Anti-Bribery Convention, Article 1.1.
25. SADC Protocol Against Corruption, Article 6, available at: www.sadc.int/index/browse/page/122#6.
26. Benin and Cameroon are reported to have established foreign bribery offences (under Articles 1, 7(1) and 7(2) and Articles 134 and 312 of their respective Penal Codes) but this could not be confirmed.
27. OECD Anti-Bribery Convention, Commentary 8.
28. *Ibid.*, Commentary 7.
29. Legislative Guide for the Implementation of the UNCAC, para. 195.
30. OECD, Corruption: A Glossary of International Standards in Criminal Law, OECD, pp. 35-36.
31. Revised Criminal Code of Ethiopia, Article 402(5).
32. Corrupt Practices Act 1965 (as amended 2004), Section 3.
33. Law 6/2004 of 17 June (Law 6/2004), Articles 2, 8 and 9(1).
34. (Uganda) Anti-Corruption Act 2009, Section 2(b). Gratification is defined under section 1 of this Act.
35. (Sierra Leone) Anti-Corruption Act 2008, Section 1.
36. See generally: UNCAC Article 2(a); Inter-American Convention Against Corruption Article 1; and, AUC Article 1.
37. AUC, Article 1.
38. Corrupt Practices Act 1965 (as amended 2004), Section 3.
39. Anti-Corruption Commission Act, Section 3.
40. Anti-Corruption Act 2000, Section 1.
41. Revised Criminal Code of Ethiopia, Article 402(1).
42. Criminal Code of Ghana, Chapter V, Section 3(1).
43. Law 6/2004 of 17 June (Law 6/2004), Article 2(2).
44. Law No. 23/2003 of 07/08/2003 related to the Punishment of Corruption and Related Offences, Article 2.
45. Corrupt Practices and Related Offences Act 2000, Section 2.
46. See Annex C for a list of the applicable laws and relevant sections in the twenty countries studied.
47. OECD Anti-Bribery Convention, Article 1.4(a) and 1.4(b).

48. UNCAC, Article 2(b).
49. *Ibid.*, Article 2(c).
50. Prevention and Combating of Corrupt Activities Act 2004 (PACAA), Section 1(v).
51. Prevention and Combating of Corruption Act 2007, Section 3.
52. *Ibid.*, Section 3.
53. OECD, Corruption: A Glossary of International Standards in Criminal Law, OECD, p. 60.
54. OECD Anti-Bribery Convention, Article 2.
55. UNCAC, Article 26.
56. Law No. 23/2003 of 07/08/2003 related to the Punishment of Corruption and Related Offences.
57. See Section 46 of the Anti-Corruption Act, Zambia.
58. OECD Phase I Review of South Africa's Implementation of the OECD Anti-Bribery Convention and 1997 Revised Recommendations, OECD, at para. 49.
59. For example: Kenya: Interpretation and General Provisions Act; Nigeria: Interpretation Act Chapter 192; Sierra Leone: Interpretation Act 1971; Tanzania: Interpretation of Laws Act 1996; Zambia: Interpretation and General Provisions Act (Cap 2).
60. This doctrine was set out by the UK House of Lords in the case of *Tesco Supermarkets Ltd. V. Nattrass* [1972] AC 153.
61. Penal Code of Burkina Faso, Article 157.
62. Anti-Corruption and Economic Crimes Act, Section 48.
63. Loi No. 2004-030, Articles 177 and 177.1.
64. Loi No 82/40/AN du 1er avril 1982, Articles 1 and 2.
65. Penal Code of Niger, Article 130.
66. Corrupt Practices and other Related Offences Act 2000, Sections 9(a) and 9(b).
67. Penal Code of Senegal, Article 159.
68. Anti-Corruption Act 2008, Sections 28, 34.
69. Prevention of Corruption Act, Sections 17(2) and 18(3).
70. Anti-Corruption Act 2009, Sections 26(1), 27 and 63.
71. Anti-Corruption Commission Act, Section's 41(a), 41(b).
72. Prevention and Repression of Corruption Act 2004 (PCCAA), Section 26(1)(a)(i) –(iii)
73. *Ibid.*, Section 26(3).
74. Law No. 6/2004 of 17 June 2004, Articles 8 and 9.
75. *Ibid.*, Article 7.
76. Revised Criminal Code of Ethiopia, Article 427(1).
77. *Ibid.*, Article 427(2).
78. *Ibid.*, Article 408(1).
79. *Ibid.*, Article 408(2).
80. *Ibid.*, Article 408(3).

81. Anti-Corruption and Economic Crimes Act, Section 55.
82. Law No. 2004-030 of 9 September 2004, Article 16.
83. Law No. 6/2004, Article 11.
84. Corrupt Practices and Other Related Offences Act 2000, Section 47.
85. Criminal Procedure Act 1977, Section 35.
86. Anti-Corruption Act 2009, section 63.
87. Anti-Corruption Commission Act, Section 41(c).
88. See Annex C for a list of the applicable laws and relevant sections in the twenty countries studied.
89. Prevention of Organised Crime Act 1998, Section 1(xv), available at: www.saflii.org/za/legis/num_act/pooca1998294.pdf.
90. See generally: Asset Recovery Knowledge Centre, Nigeria Country Profile, Basel Institute for Governance, available at: www.assetrecovery.org/kc/node/12a46227-3b9d-11dd-9f7d-5715b1806df3.html.
91. OECD, Corruption: A Glossary of International Standards in Criminal Law, OECD, 2008, p. 29.
92. *Ibid.*
93. Explanatory Report, Council of Europe Criminal Law Convention on Corruption, paras. 64-65.
94. Prevention and Combating of Corruption Act 2007, Section 33.
95. Madagascar Loi No. 2004-020, Article 183.1; Rwanda Loi No. 23/2003 Article 24 ; Senegal Penal Code Article 163 bis ; Sierra Leone Anti-Corruption Act 2008 Section 27; Tanzania Prevention and Combating of Corruption Act 2007 Section 29 ; Uganda Anti-Corruption Act 2009, Section 31. There is no accessible information on illicit enrichment offences in Benin, Burkina Faso, Cameroon or Mali.
96. Anti-Corruption Commission Act, Section 37(1)(b).
97. Law 6/2004 of 17 June (Law 6/2004), Articles 2, 8 and 9(1).

Chapter 3

Prevention, detection, investigation and prosecution of bribery

The first part of Chapter 3 discusses the preventive role of anti-corruption commissions, including their role as public educators and trainers. This section also addresses detection mechanisms, including the provision of whistleblower protection laws, laws governing the disclosure of income and assets held by public officials and other mechanisms, such as the use of hotlines and reporting systems. This chapter further deals with fighting bribery by improving public procurement systems, and by making bribery a predicate offence to money laundering.

1. Introduction

A comprehensive, multi-faceted approach is required to combat bribery and corruption. Accordingly, effective measures to prevent, detect, investigate and prosecute bribery are critical to a country's overall anti-corruption strategy. The first part of this Chapter will discuss the preventive role of anti-corruption commissions in the countries studied in this Report, including their role as public educators and trainers. This will also include discussion of detection mechanisms in place in these countries, including the provision of whistleblower protection laws, laws governing the disclosure of income and assets held by public officials, and other mechanisms, such as the use of hotlines and reports from business and civil society. This Chapter will also address fighting bribery by improving public procurement schemes, and by making bribery a predicate offence to money laundering. The prevention and detection of bribery are interrelated; implementing effective detection mechanisms deter those from engaging in bribery. The second part of this Chapter will address the investigation and prosecution of bribery and briefly discuss the role of agencies involved in these processes and the importance of inter-agency cooperation and international cooperation in bribery investigations.

2. The role of specialised anti-corruption agencies

a) Overview of models

A number of governments, including some of those studied in this Report, have established specialised anti-corruption agencies – distinct, national bodies charged with combating corruption. There are many advantages to having an independent anti-corruption agency. These include the achievement of a high degree of specialisation and expertise, signalling that the government is taking anti-corruption efforts seriously; greater public credibility; a high degree of autonomy, thus insulating the institution itself from corruption and external influence; greater political, legal and public accountability, and; faster action against corruption as some models of anti-corruption commissions with both investigative and prosecutorial powers will not be subject to the pressures and delays that often face general law enforcement. There are also some disadvantages to anti-corruption commissions; these include greater administrative costs, under-funding, and rivalries between the anti-corruption

body and other relevant agencies, such as prosecution officials and law enforcement officers.¹

These anti-corruption agencies are expressly provided for under a number of the international anti-corruption conventions. For example, Article 6(2) of the UNCAC requires the establishment of institutions to prevent corruption, and states:

“Each State Party shall ensure the existence of a body or bodies, as appropriate which prevent corruption. Each State Party shall grant these bodies the necessary independence, in accordance with the fundamental principles of its legal system to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff require to carry out their functions, should be provided”.

An OECD report has identified three models of anti-corruption institutions.² These include: (1) a multi-purpose model with law enforcement powers; (2) a law enforcement model, and; (3) a preventive, policy and coordination model. The functions of the “preventive, policy and coordination” model focus on a more limited mandate of preventing corruption through research, monitoring and implementing national anti-corruption strategies, implementing codes of ethics; training officials and personnel; facilitating international cooperation; raising awareness, and; liaising with civil society. The “law enforcement” model incorporates corruption detection and investigation and prosecution under one body, and may also undertake prevention, coordination and research roles. Finally, the “multi-purpose with law enforcement” model combines corruption prevention, education and investigation functions.³ Specialised anti-corruption agencies are not novel creations. Singapore⁴ and Hong Kong⁵ for example, were early in creating such specialised agencies, which have been very successful. Both countries’ anti-corruption institutions are largely based on the “multi-purpose” model. Countries wishing to establish specialised anti-corruption agencies will have to address the question of whether to adopt the model provided by Singapore and Hong Kong, or another model. In this regard, the UNDP states:

*“While it is argued by some that it would suffice to merely copy the successful Hong Kong or Singapore models to curb corruption, the fact remains that there is no one-size-fits-all solution to fighting corruption. While ‘best practices exist’ and can provide useful guidelines, they are not automatically applicable to any one country’s specific context”.*⁶

The mandate of the anti-corruption agencies will therefore depend on a number of factors such as the nature and extent of the corruption problem facing the country; the mandate of other relevant entities involved in areas

such as policy-making, legislative change, law enforcement and prosecution, and; whether the mandate is intended to deal with corruption at all levels of government (i.e. central, regional and municipal or local).⁷

b) The establishment of anti-corruption agencies in the twenty African countries and other relevant bodies

Most of the twenty countries studied in this Report have either established specialised agencies or use the existing network of law enforcement agencies to prevent, detect, investigate and/or prosecute bribery and other corrupt activities. The mechanisms adopted are not uniform across countries and in many cases, they are complex. Most of the countries studied in this Report have also established Offices of Ombudsmen and Auditors General. The former institution, in receiving complaints of maladministration from the public, may be able to detect cases of bribery and refer them to the relevant anti-corruption agency.⁸ In the case of Rwanda, however, the Office of the Ombudsman, which was established in 2003, is empowered to initiate anti-corruption investigations and has law enforcement powers. The Rwandan Office of the Ombudsman also monitors the Leadership Code of Conduct – a new law that was passed in 2008. In contrast, the function of Auditors General generally focuses on the auditing of public sector accounts. In having access by virtue of their office to all the documents of the government and their departments, the Auditor General plays a vital role in identifying administrative weaknesses and irregularities. The public availability of Auditor General's Reports also "generates political pressure to act in response to the problems identified".⁹ Table 3.1. below provides an overview of the anti-corruption agencies that have been established in the twenty African countries studied in this Report and the scope of their respective roles and powers. **Annex D** of this Report provides details of the legal bases of such bodies in each of the countries, as well as more detailed information on their structures and powers. The ensuing section will therefore focus on the preventive role such bodies play in raising awareness of bribery and corruption; their investigative and prosecutorial powers will be addressed later in this Chapter.

c) Role as educators and trainers

A number of the laws establishing anti-corruption agencies envisage such bodies as playing an important role in training institutions in respect of anti-corruption laws but also strengthen capacities to detect corruption. Many of the anti-corruption agencies publicise their role as trainers for the private sector; for example, the Corruption Prevention Department within Zambia's Anti-Corruption Commission recently hosted an international conference on Business Action Against Corruption with a view to foster ethical private sector

Table 3.1. **Overview of anti-corruption agencies established in the twenty African countries**¹⁰

Country	Specialised anti-corruption agency	Prevention and awareness raising roles	Detection and investigative roles	Prosecutorial powers
Benin	✓	✓	✓	
Burkina Faso	✓	✓	✓	✓
Cameroon	✓	✓	✓	
Ethiopia	✓	✓	✓	✓
Ghana	✓	✓	✓	1
Kenya	✓	✓	✓	
Madagascar	✓	✓	✓	
Malawi	✓	✓	✓	2
Mali	✓	✓	✓	
Mauritania ³				
Mozambique	✓	✓	✓	
Niger ⁴				
Nigeria	✓	✓	✓	✓
Rwanda	(Office of the Ombudsman)	✓	✓	
Senegal	✓	✓	✓	
Sierra Leone	✓	✓	✓	✓
South Africa	No distinct anti-corruption body			
Tanzania	✓	✓	✓	5
Uganda	No distinct anti-corruption body			
Zambia	✓	✓	✓	6

1. The Serious Fraud Office of Ghana can prosecute upon authorization of the Attorney General.
2. Prosecutorial powers under the direction of the Director of Public Prosecutions (Section 10(1)(b) of the Corrupt Practices Act 2004).
3. There is limited accessible information on the anti-corruption legal framework in Mauritania; while there are reports of an adoption of anti-corruption strategy, the establishment of an anti-corruption agency could not be confirmed. See: *Rapport sur les progrès dans le mise en œuvre des objectifs du millénaire pour le développement en Mauritanie*, 2008, 2 août 2008.
4. There is no accessible information on Niger on the establishment of an anti-corruption agency.
5. Prosecutorial powers under the direction of the Director of Public Prosecutions (Section 7 of the Prevention and Combating of Corruption Act 2007).
6. Prosecutorial powers under the direction of the Director of Public Prosecutions (Sections 9(1)(b) and 46 of the Anti-Corruption Commission Act).

governance.¹¹ Similarly, the functions of Malawi's Anti-Corruption Bureau expressly include "advising public bodies and private bodies on ways and means of preventing corrupt practices and on changes in methods of work and procedures... to reduce the likelihood of the occurrence of corrupt practices".¹² Uganda's Constitution Article 225 (1) (f) and S.8 (1) (f) of Inspectorate

of Government Act, 2009 mandate the IG to “stimulate public awareness about the values of constitutionalism in general and the activities of its office in particular.”

In addition to such training, raising awareness and educating the public of the negative effects of bribery and other corrupt activities feature prominently in the legislation establishing a number of anti-corruption agencies. Accordingly, one of the main functions of anti-corruption agencies is corruption prevention, education and the dissemination of information. For example, Nigeria’s Independent Corrupt Practices and Other Related Offences Commission (ICPC) is charged to educate the public about corruption and related offences, and foster public support in fighting corruption.¹³ The Kenyan Anti-Corruption Commission (KACC) and Madagascar’s BIANCO also appear to be playing central roles in these areas. Such functions are largely carried out by educational and training programmes, public awareness campaigns and by working directly with the media and civil society.¹⁴ For example, anti-corruption agencies often work with schools to educate children from a young age on not only the dangers of corruption, but also on how to identify corrupt activity and how to report it.¹⁵ Of course it should be noted that anti-corruption agencies are not the only bodies involved in educating the public or providing training courses. Civil society organisations have also assumed prominent roles as anti-corruption educators and trainers, such as Transparency International, Ética Mozambique and Ghana Anti-Corruption Coalition,¹⁶ to name but a few. (The role of civil society will be discussed in more detail in Chapter V of this Report).

3. Whistleblower protection

As bribery is a clandestine activity, anti-corruption agencies have to rely on a number of methods of detection. Whistleblowers - employees who come forward with information about malpractices within their organisation and concerned members of the public who may have information to impart to the relevant authorities – provide an important means of detection of bribery and corruption. However, potential whistleblowers are often deterred from coming forward with information out of fear of reprisals at the workplace. As whistleblowers play a crucial role in combating bribery and raising business integrity, it is important that they are provided with safe channels to make complaints. Two of the countries studied in this Report (South Africa and Ghana) have enacted specific whistleblower protection laws. As will be addressed in further detail in the ensuing sections, the aim of both of these statutes is to ensure that whistleblowers are protected from reprisals such as dismissal, harassment or suspension at their workplace and that such protection will thus enable the disclosure of information.¹⁷ Rwanda has recently drafted a Whistleblower Protection Bill which, at the time of this

Report, has been submitted and is being examined by Parliament. Uganda has recently enacted whistleblower protection with the Whistleblowers Protection Act No. 6 of 2010. Zambia has also enacted specific whistleblower protection legislation; the Public Interest- Disclosure (Protection of Whistleblowers) Act. While not directly related to whistleblower protection, Kenya enacted a Witness Protection Act in 2003. At the time of this Report, Cameroon had also presented to its Parliament a Bill on whistleblower protection.

a) South Africa

The Protected Disclosures Act 2000 (PIDA) protects whistleblowers from both the public and private sectors (Section 2(1)). PIDA protects disclosures that fall within a list specified in the Act (Section 1(i)), which includes criminal offences, thus bringing bribery within its ambit. Depending on the sector in which the whistleblower is employed, the first port of call for disclosure is the employer or authorised person prescribed by the employer's internal procedures¹⁸ or a member of Cabinet or Executive Council. In all of these cases the employee is expected to disclose in good faith (Section 6(1)). In a number of circumstances, for instance, where the employee believes that he or she will be subjected to occupational detriment were he or she to report the matter to his or her employer, a disclosure made outside the prescribed channels may receive general protection provided it is made in good faith and the employee reasonably believes that the information and allegations contained therein are substantially true (Section 9).¹⁹ The protection for whistleblowers has been further strengthened by Section 159 of the Companies Act, which applies to shareholders, directors, company secretaries, employees, registered trade unions that represent employees, suppliers and employees of suppliers. The Companies Act protects the person who makes a disclosure only if he reasonably believed at the time of the disclosure that the information showed or tended to show that a company or external company, or a director or prescribed officer of a company acting in that capacity, has contravened legislation that could expose the company to an actual or contingent risk or liability, or is inherently prejudicial to the interests of the company (Section 159(3)(b)(iv)). As bribery of public officials is a criminal offence, shareholders disclosing information about bribes paid by the company, for example, would be protected.

b) Ghana

Ghana's Whistleblower Act covers disclosure of information where an economic crime is committed, which presumably includes bribery.²⁰ The Act follows South Africa's whistleblower legislation and states that a disclosure of impropriety is protected if the disclosure is made in good faith and where the whistleblower reasonably believes that the information disclosed and the

allegation of impropriety are substantially true (Section 1). The disclosure is to be made to the persons or institutions listed in the Act, which include the employer, the Attorney General, Auditor General, the Serious Fraud Office, the Commission on Human Rights and Administrative Justice a chief, and a head of a recognised religious body (Section 3). Employees from both the private and public sectors are protected. Detailed procedures for disclosure and actions to be taken by the person to whom it is disclosed are provided within the Act.

Some of the countries studied in this Report also expressly provide within their anti-corruption legislation general protection for informants and whistleblowers. These include: Malawi, Mozambique and Sierra Leone.

c) Malawi

Malawi's Prevention of Corruption Act (PCA) has specific provisions for the protection of informants and whistleblowers. However, this is only in relation to protecting their anonymity in the context of civil or criminal proceedings (Section 51 (A)). This is unlikely to protect the person who has spoken out from within the workplace against reprisals such as loss of job or demotion. It is, however, worth noting that Section 51(A)(5) of the PCA states that those who victimise a whistleblower or informant, if found guilty, will liable to a fine and imprisonment for two years.

d) Mozambique

Article 13 of Mozambique's Law No. 6/2004 contains a similar provision as that found under Malawi's PCA on the protection of informants.

e) Sierra Leone

Sierra Leone has included a special protection provision in its Anti-Corruption Act 2008 (ACA) aimed at protecting the anonymity of informers. Interestingly, the ACA also provides that an informant whose information results in a conviction will be given ten percent of the proceeds of any property forfeited as a result of the conviction (Section 81(3)). The offering of such rewards in corruption cases is an issue that has been the subject of some debate.

f) Uganda

The Whistleblower Protection Act provides for disclosure of impropriety, procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corruption practices; and provides for protection against victimisation of persons who make disclosures, (sections 2, 6, 9, and 10)

4. Disclosure of income and assets of public officials

One way to prevent bribery and other corrupt practices within the public sector is to require public officials to declare their income and assets either on a regular basis or upon entry into the public sector and subsequently upon promotion to jobs that present opportunities for bribery and other means of illicit gains. Information gathered in this way also helps law enforcement authorities should the individual be subsequently investigated, for instance, on allegations of bribery. Based on wealth and asset information it should be possible to identify which of the assets were derived from illicit receipts including bribery by the official. It also performs the further function of holding governments (the principals) accountable for the acts of their employees. Table 3.2 below lists the countries studied in this Report which have enacted Income Declaration laws.

Table 3.2. **Countries with income declaration laws**

Burkina Faso	Articles 44, 77 of the Constitution (Law No. 003/2000/AN of 11 April 2000) and Law on the Verification of Assets of Government Officials (Law No. 22/95/ADP of 18 May 1995)
Cameroon	Loi No. 003/2006 ²¹ and Article 66 of the Constitution
Ghana	Public Office Holders (Declaration of Assets and Disqualification Act) 1998
Kenya	Public Officer Ethics Act 2003
Madagascar	Loi No. 2004-030 and Décret No. 2004-983
Mozambique	Law 6/2004
Niger	Executive Ethics Code Act 2000
Nigeria	Fifth Schedule of the Constitution
Sierra Leone	Anti-Corruption Act 2008
South Africa	Executive Ethics Code 2000 and Executive Members Ethics Act 1998
Tanzania	Public Leadership Code of Ethics Act 1995; Declaration of Assets and Liabilities Act 2001, and; Articles 53 and 57 of the Constitution
Uganda	Leadership Code Act 2002
Zambia	Parliamentary and Ministerial Code of Conduct Act 1994 (Part III) and Article 34(5) of the Constitution

The provisions within these laws are not uniform; some require only senior public officials to declare their assets (e.g. Ghana, Niger, South Africa, Tanzania) while others require all public officials to declare their assets (e.g. Kenya, Nigeria, Sierra Leone). Uganda requires middle and high ranking officials to declare their assets. In some countries, these declarations extend to disclosure of the assets of near relatives (e.g. Madagascar). The frequency of declaration also varies and the extent to which these are verified is unclear. In Uganda, filing is required every two years, whereas in Mozambique it is required every year. In Ghana, the declaration is voluntary and while it is deposited with the Auditor General, it is not checked, whereas in Tanzania the information is checked by the Ethics Commissioner.

5. Fighting bribery in business transactions by improving public procurement

Public procurements take place at local and national government levels and within different sections and subsections of the government. “Public procurement” can be characterised as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, pre-qualification, bid evaluation (broken down further into technical and financial evaluation), post-qualification, contract award and contract implementation.²² Opportunities for bribery manifest themselves at each of these stages; “each link is potentially vulnerable to corruption in some form or another”.²³ It is therefore important that there are adequate safeguards in place if the fight against bribery in business transactions is to succeed. In this regard, the adoption of best practices is important to ensure that transparent procedures are in place at all stages from the identification of the need, drafting specifications, method of procurement, to the award of the contract. It is also important to ensure that the conduct of public officials is impartial and conducted in the best interests of the state; that the bidders and suppliers also behave in a non-corrupt manner, and; that there are adequate sanctions for breaches in the public procurement processes.

Nineteen of the African countries studied in this Report have put in place public procurement laws (South Africa has adopted public procurement guidelines). **Annex C** of this Report provides details on the legal framework for public procurement in each of these countries. Importantly, and as discussed in Chapter 2, debarment from public procurement as a sanction against companies and suppliers that offer bribes is provided for in a number of these countries, including Ethiopia, Kenya, Malawi, Mali, Nigeria, Rwanda, Sierra Leone and South Africa. The objectives underpinning the countries’ public procurement laws are transparency, value for money, non-discrimination and accountability. As further detailed in Annex C, procurement by public entities is normally to be done through competitive bidding, although there are exceptions to this rule in specific circumstances. All of the public procurement frameworks studied also have complaints mechanisms in place. Information on the application and effectiveness of the public procurement processes is limited, with some countries providing more information (*e.g.* Tanzania, Uganda) than others. As active bribery of public officials by businesses is a serious problem that affects public procurement processes, it is particularly important that the public procurement oversight agencies that have been established ensure effective implementation of the law.

6. Fighting bribery through the recovery and return of proceeds of corruption

An effective asset recovery regime serves as a strong deterrent to bribery by depriving offenders of the financial gains of their crimes and removing the incentive to commit acts of corruption in the first instance.²⁴ The ability to recover assets that have been stolen and hidden in foreign jurisdictions is therefore an important component of an anti-corruption strategy. The importance of asset recovery is arguably even more heightened in the context of Africa which, according to the World Bank and UNODC, has lost in excess of USD 148 billion – or 25 percent of gross domestic product (GDP) – to cross-border flows of proceeds of corruption and other crimes.²⁵ Such losses are not static and translate into lost opportunities for African investment, development and poverty reduction.²⁶

Asset recovery is a complex process covering various stages ranging from initiation, pre-investigation and investigation, prosecution, civil and criminal forfeiture, civil litigation and finally, repatriation. In addition to having in place a sound regulatory framework to identify account holders and detect suspicious transactions, criminal legislation providing for the tracing, freezing, seizure, confiscation and return of assets is also required, in addition to the need to identify and quantify the assets to be recovered.²⁷ A detailed analysis of the necessary steps for a successful recovery and an assessment of the asset recovery regimes (or lack thereof) in the twenty African countries merits a separate, comprehensive study in its own right that falls outside the scope of this Report. However, as asset recovery is strongly linked with the prevention and combating of bribery, this section will provide a general overview of the relevant provisions under the international and regional anti-corruption instruments and mechanisms in some of the countries studied in this Report. This section will also provide a brief case example of an asset recovery action undertaken in Nigeria, and will highlight some of the common obstacles developing countries may encounter.

a) Asset recovery provisions under the UNCAC, AUC and OECD Anti-Bribery Convention

i) United Nations Convention Against Corruption (UNCAC)

The twenty countries studied in this Report are all signatories to the UNCAC and are therefore called upon to implement a comprehensive set of provisions for the recovery and return of assets. Article 31 of the UNCAC provides for the freezing, seizure and confiscation of illegal assets, and Chapter V (Articles 51-59) focuses specifically on asset recovery.

The substantive provisions set out a number of mechanisms, including for both civil and criminal recovery procedures, in which assets may be traced, frozen, forfeited and returned. Article 52 of the UNCAC provides for the establishment of prevention and detection measures, including financial disclosure systems and the sharing of information on suspicious transactions. Article 53 provides for the direct recovery of property through civil action and requires States Parties to take necessary measures to ensure that other States may make civil claims in its courts to establish ownership of property acquired through a Convention offence. Articles 54 to 56 focus on international cooperation in confiscation; Article 54 provides for the enforcement of a foreign confiscation order and for allowing other States Parties to seek a confiscation order in a domestic court. Importantly, Article 54(1)(c) recommends that States Parties establish non-criminal systems of confiscation.

The UNCAC also addresses some of the proactive measures that can be undertaken. Article 56 calls on States Parties to forward information on proceeds of offences to another State Party without prior request when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings. Article 57 specifically addresses the return and disposal of recovered assets. In this regard, it is worth noting that the UNCAC goes further than other anti-corruption instruments by advancing provisions that favour the return of assets to the requesting State Party.²⁸ Article 58 calls on States Parties to consider establishing a financial intelligence unit. A number of countries studied in this Report have established, or are in the process of establishing, financial intelligence units, including Nigeria, Tanzania, Sierra Leone, South Africa and Zambia. Zambia, for example, recently established its Financial Intelligence Centre pursuant to the Financial Intelligence Centre Act (2010). Finally, the importance of international cooperation is reinforced by Article 59 which calls on States Parties to consider concluding bilateral or multilateral arrangements to enhance the effectiveness of international cooperation.

ii) African Union Convention on Preventing and Combating Corruption (AUC)

Most of the countries studied in this Report are also signatories to the AUC and are therefore obliged to implement the asset recovery provisions contained therein. Article 16 of the AUC provides for the confiscation and seizure of proceeds and instrumentalities of corruption, in which Article 16(1) calls on States Parties to adopt legislative measures to enable its competent authorities to search, identify, trace, administer and freeze or seize instrumentalities and proceeds of corruption; confiscate the proceeds of corruption or their equivalent value, and; repatriate the proceeds of

corruption. Articles 18 and 19 of the AUC also make provision for mutual legal assistance and international cooperation.

iii) OECD Anti-Bribery Convention

The OECD Anti-Bribery Convention does not contain comprehensive provisions on asset recovery; however, Article 3 requires that States Parties ensure that the bribe and proceeds of foreign bribery (or its equivalent value) are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable. Article 9 of the OECD Anti-Bribery Convention also makes provision for prompt and effective mutual legal assistance, which is a critical component to an international asset recovery action. As noted earlier in this Report, South Africa is the only African country party to the OECD Anti-Bribery Convention.

b) Overview of asset recovery mechanisms in selected countries

Table 3.3 below provides a brief overview of the main features of the asset recovery mechanisms in selected countries studied in this Report.

It should also be noted that, at the time of this Report, Rwanda is in the process of drafting asset recovery legislation. Zambia also has enacted specific laws that provide for the recovery of proceeds of crime which is enforced by the Anti-Corruption Commission, Zambia Police and Drug Enforcement Commission (Forfeiture of proceeds of Crime Act 2010) and the Anti-Corruption Commission (Disposal of Recovered Properties) Regulations 2004.

i) Asset recovery case example: Nigeria³⁰

Nigeria has undertaken an extensive asset recovery action in connection with the looted assets of General Sani Abacha. Abacha governed Nigeria from 1993 to 1998 and is estimated to have stolen approximately USD 3 billion to USD 5 billion from state coffers over this period. Abacha allegedly employed a number of techniques to steal these assets, including inflating the value of public contracts, extorting bribes from contractors, fraudulent transactions and theft from the public treasury. Upon Abacha's death in 1998, the new Nigerian government passed legislation (Decree 53) which offered amnesty to public officials coming forward and disclosing information and surrendering looted assets. Abacha's son came forward and disclosed information on approximately USD 800 million held primarily in Swiss bank accounts. The Nigerian government subsequently engaged the services of a Swiss law firm to assist with the asset recovery process. A mutual legal assistance request was accepted by Swiss authorities in 1999 resulting in a freezing order for approximately USD 670 million held in various Swiss accounts. The argument was successfully advanced that there was adequate proof of the criminal

Table 3.3. **Asset recovery mechanisms in selected countries**²⁹

Country	Asset recovery mechanisms
Nigeria	<ul style="list-style-type: none"> – The Nigerian Financial Intelligence Unit deals with suspicious transaction reports and currency transaction reports. – Temporary freezing is available after an arrest and during an investigation and prosecution. – Final freezing, confiscation and forfeiture are available after conviction. – Repatriation is usually provided to victims after conviction, confiscation and disposal. – Civil asset forfeiture is not possible (except for under the Advance Fee Fraud provisions).
Tanzania	<ul style="list-style-type: none"> – Central Bank of Tanzania Regulations place an obligation on financial institutions to report suspicious transactions (no legal force). – The Anti-Money Laundering Bill will legally require the reporting of suspicious transactions by financial institutions. The legislation will also establish a Financial Intelligence Unit. – Confiscation is normally undertaken after conviction but civil forfeiture is also possible (Proceeds of Crime Act No. 25 of 1991).
Uganda	<ul style="list-style-type: none"> – Tracing of assets is available under the Leadership Code Act, 2002 and Anti-corruption Act (2009). – The Leadership Code Act requires leaders to declare their wealth, including that of their spouse, children and dependants and the IG is empowered to carry out investigations and verification of the leaders' declarations (Ss 3(2) and s.18). – The DPP is empowered to apply for a court order to freeze bank accounts of accused persons or suspected criminals and/or their associates. The Inspector General of the Government is empowered under section 22 of the Leadership Code Act, and section 14 (3) of Inspectorate of Government Act, to freeze accounts of persons suspected of contravening the Leadership Code Act, or involved in acts of corruption and for contravening provisions of the Anti- Corruption Act. – Confiscation and forfeiture is available where it is proved that the leader obtained property in contravention of the Leadership Code.
South Africa	<ul style="list-style-type: none"> – Restraint or preservation order must be obtained before assets are frozen or seized; these orders are usually obtained prior to a confiscation or forfeiture order. – Confiscation or forfeiture of criminally obtained assets is possible subject to a court order. – After a final confiscation or forfeiture order, the forfeited assets are held in the Criminal Assets Recovery Account until a decision has been reached by the Cabinet on how to allocate the funds. – Civil forfeiture actions can be brought against stolen property itself. – Dual criminality does not apply in relation to foreign requests. – The Special Investigating Units and Special Tribunals Act 1996 (Act No. 74 of 1996) empowers the President to establish an ad hoc Special Investigating Unit to investigate allegations of corruption and seek recovery through civil lawsuit where assets have been derived from criminal acts.

origin of the Abacha assets, which resulted in the waiving of a final forfeiture order required under Swiss law. It eventually took Nigeria five years to repatriate these assets because of the numerous appeals initiated by the Abacha family. However, the return of the recovered assets amounting to USD 505.5 million was finalized between 2005 and 2006, and the funds were monitored by the World Bank as a bona fide third party. A World Bank-commissioned review of how these funds have been administered found that they have been allocated to areas focusing on the Millennium Development Goals.³¹

c) Main obstacles

As noted above, recovering the proceeds and instrumentalities of corruption is a complex process involving the tracing of assets, satisfying numerous legal requirements domestically and abroad, requesting mutual legal assistance, resolving competing claims to the funds, establishing mechanisms to eventually repatriate the funds, and the provision of guarantees as to the use of such funds.³² An asset recovery action therefore not only requires multi-jurisdictional legal skills, but with technological advances in electronic banking, financial investigation and forensic accounting expertise is also indispensable. The main obstacles facing victim countries, which are most often developing countries, is therefore the lack of financial and technical resources available for such an action. However, as the Abacha case illustrates, the recovery of assets can also be very profitable for the victim country, which in turn can allocate the funds towards its own economic and social development.

There are a growing number of tools available to victim countries which can assist in overcoming these obstacles. As outlined above, the UNCAC provides a strong legal basis for not only the freezing, seizure and confiscation of illegal assets under Article 31, but for also the requesting of mutual legal assistance and international cooperation. The importance of such cooperation in the context of asset recovery can be illustrated by the general provision under Article 51 of Chapter V of the UNCAC, which states 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” (emphasis added). Capacity building and technical assistance resources have also been made available by the UNODC, the World Bank’s Stolen Asset Recovery (StAR) Initiative, the G8’s accelerated response program for forfeiture-related mutual legal assistance, and the International Centre for Asset Recovery at the Basel Institute on Governance.³³ At the time of this Report, the OECD and the World Bank are also in the process of planning a joint technical seminar on issues of quantification of the proceeds of corruption for the purpose of confiscation and asset recovery, and of a joint study on this subject.

7. Fighting bribery by making bribery a predicate offence to money laundering

There is a close link between bribery and money laundering. Funds paid as bribes, being proceeds of crime, are likely to find their way into money laundering channels in efforts to conceal their source. Making bribery a predicate offence to money laundering can therefore serve as an important means of combating bribery of public officials in business transactions. The

Table 3.4. **Anti-money laundering legislation in the twenty African countries**

Country	Legislation	Bribery expressly made a predicate offence to money laundering
Benin	Loi No. 2006-14 du 31 Octobre 2006 Portant lutte contre le blanchiment des capitaux (Article 2)	
Burkina Faso	Law 026/2006 of 28 November 2006 (implementing Directive No 07.2002/CM/UEMOA of 19 September 2002)	
Cameroon	Règlement No. 01/03-CE/AC-UMAC portent prévention et répression du blanchiment des capitaux et financement du terrorisme (Article 2)	
Ethiopia	Revised Criminal Code of Ethiopia (Article 684)	✓
Ghana ¹	Anti-Money Laundering Act 2008 (Act 749)	
Kenya	Proceeds of Crime and Anti-Money Laundering Act 2009	
Madagascar	Article 2 Loi No. 2004 – 020 sur le blanchiment, le dépistage, la confiscation et la coopération internationale en matière de produits du crime	
Malawi	Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act 2006 (Section 35)	
Mali	Law 06-666 of 29 December 2006 (adopting Directive No. 07/2002/CM/UEMOA of 19 September 2002)	
Mauritania	(No information available)	
Mozambique ²	Law No. 7/2002 of 5 February and (approved by Decree 37/2003 of 8 September)	
Niger	Law 2004- 41 of June 8 2004 (implementing Directive No 07/2002/CM/UEMOA of 19 September 2002) (Article 2)	
Nigeria	Money Laundering (Prohibition Act) 2004 (Section 14)	
Rwanda	Law on Prevention and Suppression of Money Laundering and Financing of Terrorism (Article 2) ³⁶	
Senegal	Law No. 2004-09 of February 6, 2004 (adopting Directive No 07/2002/CM/UEMOA of 19 September 2002)	
Sierra Leone	Anti-Money Laundering Act 2005 (Section 2)	
South Africa	Prevention of Organised Crime Act 1998 (as amended) (Sections 1, 4)	
Tanzania	Anti-Money Laundering Act 2006 (Sections 3(h), 12)	✓
Uganda	Anti-Money Laundering Act	
Zambia	Prevention and Prohibition of Money Laundering Act 2002 (Sections 2, 7)	

1. Il n'a pas été possible d'obtenir un exemplaire de la Loi de lutte contre le blanchiment d'argent récemment édictée. Il est donc impossible de dire si la corruption est un délit sous-jacent au blanchiment d'argent.
2. Il n'a pas été possible d'obtenir un exemplaire de la législation de lutte contre le blanchiment d'argent du Mozambique. Il est donc impossible de dire si la corruption est un délit sous-jacent au blanchiment d'argent.

majority of the countries studied in this Report have adopted anti-money laundering legislation. Table 3.4 below provides a list of these countries and their relevant laws. These countries have generally undertaken two separate

routes with their money laundering legislation: the first is by making the proceeds of any criminal or unlawful activity a predicate offence, thus bringing bribery within its ambit; the second is by expressly listing specific crimes as predicate offences to money laundering. Of the countries studied in this Report, Ethiopia³⁴ and Tanzania³⁵ expressly make bribery and corruption a predicate offence to money-laundering. Other countries with anti-money laundering legislation make laundering the proceeds of any criminal or unlawful activity an offence.

Anti-money laundering legislation and due diligence tools such as know-your-customer policies and requirements that banks report suspicious transactions to financial intelligence units can have effective results for combating bribery of public officials where the money laundering legislation includes bribery as a predicate offence. However, despite the enactment of anti-money laundering legislation, reports indicate a number of deficiencies in anti-money laundering regimes, and they remain largely ineffective due to a lack of awareness and implementation of the anti-money laundering provisions, the absence of financial intelligence units, and lack of training.³⁷

8. Other mechanisms for preventing and detecting bribery

a) Hotlines

“Freephone” hotlines are an increasingly popular tool used for reporting acts of corruption. These are offered in a number of countries by not only government and anti-corruption agencies but also by civil society organisations. The anti-corruption hotline recently established by the South African government was inundated with calls when the line was launched.³⁸ Such hotlines are also provided by, for example, Malawi’s Anti-Corruption Bureau, the Kenya Anti-Corruption Commission Ethiopia’s Federal Ethics and Anti-Corruption Commission and Uganda’s Inspectorate of Government. Civil society organisations such as Cameroon’s chapter of Transparency International and Mozambique’s *Ética Mozambique*, also provide such hotlines. All of these mechanisms provide for anonymous reporting. In some countries, such reporting mechanisms have gone further in terms of use of technology. For instance, in Kenya, the KACC has adopted the “Business Keeper Monitoring System” which is an online corruption reporting system that guarantees anonymity. The KACC decided to take this route to ensure that whistleblowers are not intimidated, especially as Kenya does not currently have whistleblower protection laws in place. Alternative methods used for reporting include sending letters and faxes or reporting in person to the authorities. In Uganda reporting of corruption has also been encouraged by the enactment of the Whistleblowers Protection Act, 2010.

b) Reporting in the context of an anti-money laundering regime

As discussed in Section VI., a number of the countries studied in this Report have adopted anti-money laundering legislation. Reports from the financial institutions of suspicious transactions have the potential to expose cases of bribery but this depends on the extent of co-operation between the different agencies.

c) Reports from business

In the business context, competitors may report to investigative authorities deals that they have lost to other businesses on account of bribery. As discussed in Section V., and detailed in Annex C, all of the countries studied in this Report have public procurement laws and have established agencies to deal with public procurement processes, including the administration of a complaints mechanism made available to bidders. The complaints mechanism has the potential to reveal irregular practices, including bribery. While the cases available on the websites of some of the agencies do not deal specifically with bribery, the number of cases being reported (*e.g.* Kenya, Nigeria) nonetheless demonstrate that complaint mechanisms are being used by businesses.

d) Reports from civil society and the media

Reports from civil society organisations and the media are also possible sources for detecting bribery; as mentioned above, a number of CSOs operate hotlines where anonymous reports can be lodged. The media also play an important role in the detection of bribery; for example, investigative journalism can help expose cases of bribery and corruption. (Chapter VI of this Report will discuss the role of the media in more detail).

9. Investigation and prosecution: specialised anti-corruption agencies with investigative and/or prosecutorial powers

Section II provides an overview of models which a specialised anti-corruption agency may assume. Annex D also provides further details on each of these agencies in the twenty countries studied in this Report. A number of the international anti-corruption conventions make specific provision for the establishment of such specialised agencies to be equipped to deal with bribery and other corrupt activities. Article 20(5) of the AUC, for example, stipulates:

“States Parties undertake to adopt necessary measures to ensure that national agencies are specialised in combating corruption and related offences by, among others, ensuring that staff are trained and motivated effectively to carry out their duties.”

The SADC Protocol provides for “an obligation to create, maintain and strengthen institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption” (Article 4), and the ECOWAS Protocol states that State Parties “shall take measures to establish and consolidate... specialised anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receive adequate training and financial resources for the accomplishment of their tasks”. The UNCAC also requires the establishment of institutions to combat corruption through law enforcement agencies. Article 36 states:

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such person or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.”

Similarly, according to the OECD: “Complaints of bribery of foreign public officials should be seriously investigated and credible allegations assessed by competent authorities. Member countries should provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of bribery of foreign public officials in international business transactions,”³⁹

An anti-corruption agency is likely to conduct high profile cases and it is therefore important that it can operate independently and without interference, political or otherwise. Accordingly, it should be possible for such agencies to gather evidence, summon persons, carry out searches and seize documents or other materials which may contain incriminating evidence. As discussed in Chapter 3, most anti-corruption agencies are charged with investigative powers. The powers of such agencies are set out in the laws for their establishment. What each agency can or cannot do vary among the countries studied. Some laws deal with this issue in great detail and address the consequences that flow from non-compliance.

Kenya’s Anti-Corruption and Economic Crimes Act (ACECA) empowers its investigators to demand numerous types of documents and also grants powers of arrest. Nigeria’s Corrupt Practices and other Related Offences Act (CPROA) also impart extensive powers, including power to seize property (Section 37), on investigators. The Sierra Leone Anti-Corruption Commission (SLACC) is also empowered to compel the production of documents (including records in electronic form), and summon witnesses and examine them under oath. The SLACC can also require the person under investigation or those

related to the person under investigation to provide statements of expenditures incurred in respect of himself, his spouse/s, parents or children, of all income earned during a specified period and the amount of tax paid on such income. Failure to provide such information or providing false statements attracts penalties which includes a fine and/or imprisonment. Uganda's Constitution (Art. 230 (1) and the Inspectorate of Government Act (section 14 (5)), grants the Inspectorate of Government special powers to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office. The Inspector General of Government also has powers under the Inspectorate of Government Act, the Leadership Code Act and the Anti-corruption Act 2009 to inspect bank accounts, freeze bank accounts, search, order for production of documents, take evidence on oath, put restrictions on any property, among others. Under the Ugandan Anti-Corruption Act (2009), the DPP also has special investigation powers, powers to freeze bank accounts and to order for production of documents. Zambia's Anti-Corruption Commission Act (ACCA) grants the Director General special powers of investigation to search premises, investigate bank accounts, share accounts, and safety deposits (Section 20-21). The Director General can also arrest a person without a warrant if he believes that such person has committed or is about to commit an offence under the Act (Section 22). Other countries' laws have general provisions on investigation which state that they can conduct investigations and collect all required documents (e.g. Burkina Faso, Decree No. 2008-16, Article 24; Mozambique Law No. 6/2004, Article 19).

The complexity of bribery inevitably requires sophisticated methods to establish the probity or lack of probity of those investigated. It must, however, be stressed that the exercise of these investigative powers have to be balanced against the human rights enshrined in the African Charter on Human and Peoples' Rights, which has been ratified by the twenty states. This is also expressly endorsed by the AUC under Article 3.

10. Inter-agency cooperation in the investigation and prosecution of bribery

Following investigation, anti-corruption agencies must consider whether to proceed with prosecution. As highlighted above, the anti-corruption agencies in Ethiopia, Ghana, Madagascar, Nigeria, Sierra Leone, Tanzania Uganda and Zambia have additional prosecutorial powers. However, in most of the countries studied in this Report, the investigation and prosecution of bribery and corruption cases are conducted by separate agencies. For example, in South Africa, the Special Investigation Unit (SIU), South African Police Services (SAPs), the Public Services Commission (PSC) and the National Prosecuting Authority (NPA), all have roles to play in the investigation and

prosecution of bribery. In Zambia, the Task Force on Economic Plunder⁴⁰ is a combined force of officers from different agencies, such as the Zambia Security Intelligence Service, the Anti-Corruption Commission and the Zambia Police. In such systems, it is important that there is close cooperation and information-sharing between the agencies to ensure a successful investigation and prosecution. While the Zambian Task Force on Economic Plunder reportedly operates with a successful level of inter-agency cooperation, the extent to which there is close co-operation between the different investigative agencies in the countries studied in this Report is unclear and merits further study. It should be noted that since the drafting of this Report, the Task Force on Corruption and Economic plunder was in 2010 fused in the Anti-Corruption Commission where a specialised Unit to deal with serious and complicated economic crimes is being formed. Under the Anti-Corruption Act provision is made for cooperation with other law enforcement agencies (Section 6 (1) (e)). In Uganda, the IG has sole investigative and prosecutorial powers over corruption cases investigated by the IG. Corruption includes bribery. However, the Uganda police also investigate corruption cases, and submit the files to the DPP for prosecution. The DPP guides the police investigations. There is close co-operation between IG, DPP and Police to avoid duplication. Uganda also has an Inter-Agency Forum comprised of the IG, DPP, Auditor General, Police, Directorate of Ethics and Integrity, Judiciary, among others.

On inter-agency cooperation for prosecution of bribery cases, the relationship between specialised anti-corruption agencies and prosecution authorities must also be cooperative. In some countries, the anti-corruption agency is located within the Office of the Public Prosecutor. This is the case, for example, in Mozambique, which enables closer collaboration. However, in some countries it appears that the relationship may be a strained one. According to Global Integrity,⁴¹ the relationship in Kenya, for instance, between the KACC and the Attorney General is of an adversarial nature, and in many cases, the Attorney-General has failed to act on the recommendations of the Commission. It is therefore vital that countries focus on relationship-building between the different agencies. A lack of cooperation between the investigating agency and the prosecuting agency can jeopardize a case and significantly hamper efforts to combat bribery.

In addition to domestic inter-agency cooperation, cooperation with agencies abroad is critical, especially in transnational bribery cases, where incriminating evidence may be located in foreign jurisdictions. As people and assets cross borders with an increasing amount of ease, law enforcement must depend on international cooperation to gather evidence and bring those who have engaged in bribery to justice.⁴² The international anti-corruption conventions also make express provision for State Parties to assist each other with mutual legal

assistance (MLA) requests. A number of the countries studied in this Report have enacted MLA laws and have also entered into multilateral MLA treaties or schemes. The extent to which such laws and treaties effectively enable cooperation in practice is an area that merits further study.

In the East African Community region, there is an East African Association of Anti-Corruption Authorities (EAAACA) composed of the Kenya Anti-Corruption Commission, Inspectorate of Government, Prevention and Combating of Corruption Bureau of United Republic of Tanzania, the Office of Ombudsman of Rwanda, and Special Brigade Anti-Corruption of Burundi. The Association was formed for the purpose of close co-operation in investigations, tracing, freezing, and seizure of ill-gotten assets, and sharing of information, among other things.⁴³

11. Statistics

Criminal statistics play an important role in measuring the effectiveness of laws and monitoring enforcement. There are no available statistics on investigations, prosecutions, convictions and sanctions for bribery in the majority of the countries studied in this Report. Some of the anti-corruption agencies studied do produce general statistics that are in the public domain; for example, Kenya and Sierra Leone. In Uganda statistics are in the biannual reports to parliament, which are public documents. In some of the other countries, such as Mozambique and Zambia, statistics on enforcement can only be gleaned from press briefings or news reports. For example, 2008 press reports indicated that Mozambique's Central Office for the Fight against Corruption dealt with four hundred and twenty nine cases and that fifty six of them had come to trial. Similarly, 2007 press reports indicated that the Zambian Anti-Corruption Commission received a total of four hundred and forty corruption and non-corruption reports. Unlike the reports from Kenya and Sierra Leone that also provide statistical details of cases finalised, merely stating the number of corruption reports does not provide a picture of whether the enforcement mechanisms are working. To properly measure the effectiveness of their criminalisation provisions for bribery, countries should consider maintaining enforcement statistics on bribery.

12. Main trends and areas for further development

Educating both the public and private sectors is key to preventing and deterring corruption. All of the countries studied in this Report have directed government bodies to undertake prevention roles and raise public awareness of corruption. This is either conducted through specialised anti-corruption agencies or through existing government bodies. Anti-corruption agencies in some countries are playing a more visible role in raising public awareness

than in others. In some cases they are also collaborating with the private sector (e.g. Zambia, Malawi). However, in all of the countries studied, there is room for further collaboration between such agencies and other stakeholders, such as chambers of commerce, local professional associations, and CSOs.

Importantly, most of the countries studied in this Report have implemented legal frameworks for public procurement, thus strengthening an important prevention mechanism for bribery. The complaints mechanisms established by a number of the countries' public procurement laws can also play an important role in detection.

Informants and whistleblowers are likely to be the most useful and reliable source for exposing bribery and other corrupt practices from within organisations – both in the public and private sectors. Only Ghana and South Africa have enacted specific legislation protecting whistleblowers; South Africa has further strengthened its whistleblower protection laws within its new Company Law. To encourage such means of detection and ensure that those coming forward with reports are protected from reprisals, countries should consider adopting specific whistleblower protection laws. Importantly, many countries have also created innovative techniques to detect bribery, including the provision of anti-corruption hotlines. While it has not been possible to obtain information on how hotline reports are processed or their conversion rates into investigations, the popularity of South Africa's recently launched hotline importantly illustrates the sense of empowerment it imparts on the public in the fight against corruption.

The successful prosecution of bribery requires strong levels of inter-agency cooperation. Some of the anti-corruption agencies studied in this Report have both investigative and prosecutorial powers (e.g. Benin, Burkina Faso, Cameroon, Madagascar, Malawi, Mali, Mozambique, Senegal, Tanzania, Uganda and Zambia), allowing for a more seamless procedure. However, in most of the countries studied, investigation and prosecution are conducted by separate agencies where the question of whether to proceed with a prosecution lies with the Director of Public Prosecutions or the Attorney General. This separation of powers does have advantages in that it does not give a monopoly of power to one institution. However, in most cases, the public prosecutor is a political appointment and this has the potential to undermine the independence of the anti-corruption agency and their investigative work. It must also be added that in some cases the anti-corruption agency is placed under the authority of the Head of State (e.g. Cameroon) or is accountable to the Prime Minister (e.g. Ethiopia). In some cases, the appointment of the head of the agencies is made by the Head of State (e.g. Malawi, Mali, Nigeria), and this also raises questions about the agencies' independence in practice, even where the legislation setting up the body may state that it is independent.

There is a general lack of accessible information from all of the countries on their success in investigating and prosecuting bribery. For countries to be able to properly measure the effectiveness of their criminalisation provisions for bribery, they should consider maintaining enforcement statistics on investigations, prosecutions, convictions and sanctions for bribery.

Notes

1. UNODC (2004) *The Global Programme against Corruption: UN Anti-Corruption Toolkit*, 3rd ed. Vienna: UNODC, pp. 89-90, available at www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf.
2. OECD, *Specialised Anti-Corruption Institutions: Review of Models*, (OECD) 2008, available at: www.oecd.org/dataoecd/7/4/39971975.pdf.
3. *Ibid.*, pp. 31-32.
4. See: Corrupt Practices Investigation Bureau www.cpi.gov.sg.
5. See: Independent Commission against Corruption <http://www.icac.org.hk>.
6. UNDP (2005) *Institutional Arrangements to Combat Corruption A Comparative Study* Bangkok: UNDP Regional Centre in Bangkok, available at http://regionalcentrebangkok.undp.or.th/practices/governance/documents/Corruption_Comparative_Study-200512.pdf.
7. UNODC (2004) *The Global Programme against Corruption: UN Anti-Corruption Toolkit*, 3rd ed. Vienna: UNODC, p. 92, available at: www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf.
8. *Ibid.*, p. 93.
9. *Ibid.*, pp. 100-109.
10. See Annex D for details on the legal bases and roles and powers of the specialized anti-corruption agencies in each of the countries studied, where applicable.
11. The ACC reports in its press briefing of 13 April 2007 that its Corruption Prevention Department hosted an international conference on Business Action Against Corruption with the assistance of the Southern Africa Forum Against Corruption (SAFAC) with a view to fostering ethical private sector governance. For details, see: www.acc.gov.zm.
12. See: Corrupt Practices Act 1995, available at: www.anti-corruptionbureau.mw/acb_intro.html.
13. CPROA, Sections 6(d) and (e).
14. OECD, *Specialised Anti-Corruption Institutions: Review of Models*, (OECD) 2008, at p. 15, available at: www.oecd.org/dataoecd/7/4/39971975.pdf.
15. See, for example: *The Eye: Anti-Corruption Newsletter*, Sierra Leone Anti-Corruption Commission, Volume 8, Issue 1, January 2009, available at: www.anticorruptionsl.org/drwebsite/publish/news.shtml.
16. For details, see: www.ghana-anticorruption.org.
17. There are no available statistics on the numbers of whistleblowers within these two countries who have used the whistleblowing legislation to make protected disclosures. As such, it is not possible to ascertain the effectiveness of these laws.

18. It is not uncommon for companies to have whistleblowing policies in place. Also, business Codes of Ethics may call for private entities to have whistleblowing policies.
19. PIDA, Section 9.
20. Available at: www.parliament.gh/files/Whistleblower%20Act%20720.pdf. Note: the copy on the website of the Parliament of Ghana does not include Sections 28-32. According to the “Arrangement of Sections”, Section 32 is the Interpretation Section. It has not been possible to ascertain whether these Sections were removed when the Bill was enacted.
21. Reportedly not yet in force, see: <http://camerounmonpays.over-blog.com/article-22235822.html>.
22. OECD (2007) *Bribery in Public Procurement: Methods Actors and Counter-Measures*, Paris: OECD p, 19.
23. *Ibid.*
24. See: UN Anti-Corruption Toolkit, Chapter X: Recovery and Return of Proceeds of Corruption, available at: www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf.
25. The World Bank and United Nations Office on Drugs and Crime, *Fact Sheet on Stolen Asset Recovery*, available at: www.unodc.org/pdf/Star_FactSheet.pdf.
26. See generally: Ignasio Jimu, *Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, The Philippines and Kazakhstan*, International Centre for Asset Recovery, Basel Institute on Governance, October 2009.
27. Asset Recovery Knowledge Centre, Basel Institute on Governance, available at: www.assetrecovery.org.
28. Alan Bacarese, “Tracing, Freezing, Confiscating and Repatriating the Proceeds of Corruption” in *Asset Recovery and Mutual Legal Assistance in Asia and the Pacific*, p. 122, OECD/ADB, 2008, available at: www.adb.org/Documents/Books/Asset-Recovery/Asset-Recovery.pdf.
29. Information obtained from Asset Recovery Knowledge Centre, Country Profiles, Basel Institute on Governance, available at: www.assetrecovery.org/kc/node/5c58b3d2-5c7c-11dd-8c6a-7bd68e2d933e.html
30. For a more detailed account of the recovery of Sani Abacha’s looted assets, see: Tim Daniel, “General Sani Abacha –A Nation’s Thief” in *Asset Recovery and Mutual Legal Assistance in Asia and the Pacific*, OECD/ADB, 2008, available at: www.adb.org/Documents/Books/Asset-Recovery/Asset-Recovery.pdf.
31. This information is extracted and summarised from: The World Bank, *Stolen Asset Recovery Initiative: Challenges, Opportunities and Action Plan*, 2007, pp. 18-19.
32. Asset Recovery Knowledge Centre, Basel Institute for Governance, available at: www.assetrecovery.org.
33. *The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention against Corruption*, U4 Anti-Corruption Resource Centre, available at: www.u4.no/themes/uncac/asset-recovery.cfm.
34. Revised Criminal Code of Ethiopia, Article 684.
35. Anti-Money Laundering Act (2006), Section 3(h), 12.

36. Available at: www.moneylaundering.com/subscribers/resources/pdfs4db/Laws_Rwanda_AML_20050605.pdf.
37. See for instance 'Anti-Money Laundering and the Combating of Terrorism' available at http://www1.worldbank.org/finance/html/amlcft/docs/aml_westafrica.pdf. See also GIABA (2008) *GIABA Annual Report: Inter-Governmental Action Group against Money Laundering in West Africa* Dakar: GIABA Secretariat.
38. BBC News, "SA corruption hotline 'swamped'", 9 October 2009, available at: <http://news.bbc.co.uk/2/hi/8298574.stm>.
39. Annex I to the 2009 Recommendation on Further Combating Bribery of Foreign Public officials.
40. For details, see: www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=174§ion=84&ccrpage=37.
41. For details, see: <http://report.globalintegrity.org/Kenya/2007>.
42. See: ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, *Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific*, ADB/OECD, 2007, pp. 15-16.
43. For further information, see: www.eaac.org.

Chapter 4

Business integrity

Chapter 4 discusses the role of the private sector in promoting business integrity and preventing bribery. The Chapter addresses internationally-accepted accounting and auditing standards and legal provisions, including those set out under the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption (UNCAC). This Chapter continues by discussing global and regional initiatives, including sector-specific initiatives, aimed at promoting standards for corporate integrity and transparency. Finally, this Chapter looks at the initiatives of national chambers of commerce and highlights private sector codes of conduct developed in some of the countries studied.

1. Introduction: The role of business in promoting business integrity and preventing bribery

Bribery cannot be fought solely by introducing transparency in the public sector and improving the integrity of those working within it. Any action plan needs to involve the business sector. As the Secretary General of the OECD Mr Angel Gurría has said “[t]he objective is to stop bribery. And that will only happen if the companies put in place their own rules and controls against bribery.”¹ It is important that businesses themselves take a firm stance in the fight against bribery as bribery distorts the market, increases financial costs and legal risks, and impacts upon the efficiency of business performance.

2. Accounting and auditing standards

Prevention of bribery requires that businesses comply with adequate accounting and auditing standards, a concern explicitly addressed in the OECD Anti-Bribery Convention and in UNCAC. The African Union Convention also addresses this concern as far public funds are concerned.

An effective way to counter mismanagement of corporate funds is indeed to make transparent the accounts thereby increasing confidence in the financial management of a company. Adoption of internationally accepted accounting and auditing standards makes assessments easier and also enables auditors to detect misuse of funds for various purposes such as bribery.

a) OECD Anti-Bribery Convention accounting and auditing standards requirements

The OECD Anti-Bribery Convention, in Article 8, requires the adoption of high quality accounting and auditing standards. Indeed, Parties to the Convention are required to take measures “prohibiting the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents by companies [...] for the purpose of bribing foreign public officials or of hiding such bribery”. The recently adopted OECD Recommendation of the Council for Further Combating Bribery of Foreign

Public Officials in International Business Transactions 2009, in Article X, further recommends in particular the following measures:

- disclosure by companies in their financial statements of the full range of material contingent liabilities;
- the maintenance by countries and professional associations of adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls;
- requiring the external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring bodies;
- requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and for those countries that permit such reporting, ensuring that auditors making such reports reasonably and in good faith are protected from legal action.

b) UNCAC accounting and auditing standards requirements

The UNCAC, in its Article 12 paragraph 3, also requires SPs to adopt of adequate accounting and auditing standards, aiming at the same prohibitions as those contained in article 8 of the OECD Anti-Bribery Convention (i.e. the prohibition of the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their objects and the use of false documents), as well as the intentional destruction of book-keeping documents earlier than foreseen by the law.

c) Internationally accepted Accounting and Auditing Standards

The quality benchmark for accounting and auditing standards are the International Financial Reporting Standards (IFRS) which have been published by the International Accounting Standards Board (IASB).² The IFRS help the production of high quality financial information that is transparent and comparable. The IFRS contains many of the standards known by the older name “International Accounting Standards” (IAS) formulated by the International Accounting Standards Council now succeeded by IASB. The International Federation of Accountants (IFAC)³ has adopted the IFRS. The IFAC has drafted the International Standards on Auditing (ISA) and operates through the International Auditing and Assurance Standards Board.

d) Overview of the accounting and auditing standards in the twenty African countries studied

A brief overview of the accounting and auditing standards in the private sector in the twenty African countries studied is given in Annex E, in order to assess whether they reflect high quality accounting and auditing standards. The information is based notably on APRM⁴ Reports, UNCTAD reports on the implementation of IFRS⁵ and the Reports on the Observance of Standards and Codes (ROSCs), prepared as part of a joint initiative of the World Bank and the International Monetary Fund and which summarize the extent to which countries observe certain internationally recognised standards and codes, including accounting and auditing standards.⁶

e) Main trends and areas for further development

The picture that emerges from this assessment is that the systems in place are by no means uniform. The legislation relating to companies is in most cases outdated and the existing legislation on financial statements requires financial statements to provide profit and loss accounts and does not seek information regarding cash flow and expenses in great detail. This does not reflect the good quality accounting standards required in particular by the UNCAC or the OECD Anti-Bribery Conventions and the 2009 OECD Recommendation, which envisage the provision of detailed statements. The internationally accepted standards require companies to provide detailed disclosures in respect of expenses where much of the bribery payments are likely to be hidden.

Some of the countries studied have moved towards the internationally accepted standards even in the absence of legislation as a result of the recommendations of the professional associations. Where this has occurred, the ROSC World Bank's team found that this did not necessarily bring about uniformity as companies tended to use different systems. This is the case for instance in Malawi and Mozambique.

The IFRS/IAS are quite onerous for small and medium enterprises and, where the use of international standards are encouraged and required, no special standards are set for these types of firms. South Africa has moved in the direction of adopting Generally Accepted Accounting Practices for Small and Medium-sized companies, which is a copy of the IASB's Exposure Draft on IFRSs for SMEs.

Another major difficulty highlighted by the APRM was found in countries that were members of the West African and Economic Monetary Union and the Organisation for the Harmonisation of Business Laws in Africa (OHADA). These organisations have their own accounting systems called "SYSCOA" and

“SYSCOHADA”, which are not comparable with IFRS or the IAS. The picture that emerged in some countries, for example in Benin, was unclear.

Another important issue is the lack of compliance with international standards and this has been highlighted in the ROSC, APRM, and UNCTAD Reports as a major weakness.

It must however be noted that some countries are in the process of modernising their accounting and auditing standards. The period 2008-2009 has seen the adoption of new company laws where the legislation promotes the use of international standards generally and IFRS and IAS in particular. Rwanda, Sierra Leone and South Africa are amongst these countries.

3. Promotion of standards for corporate integrity

The promotion of corporate integrity in the business sector plays an important role in the prevention of foreign bribery. What follows is an overview of the initiatives and tools targeting the private sector that have been adopted at the global, regional and local levels to promote business integrity.

It should be noted that the recently adopted OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009 includes a Good Practice Guidance on Internal Controls, Ethics and Compliance addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions, and to business organisations and professional associations, which play an essential role in assisting companies in these efforts.

a) Global and regional initiatives

i) OECD Guidelines for Multinational Enterprises

Adhered to by 42 countries, the OECD Guidelines⁷ are one of the few responsible business guidance instruments that enjoy formal government recognition.⁸ Governments adhering to these Guidelines are home to the multinational enterprises (MNEs) who are the largest source of investment and trade globally. The OECD Guidelines are widely used by companies seeking to be recognised as leaders in responsible business practice and sustainable development.

The OECD Guidelines cover all areas of business ethics. Chapter VI of the OECD Guidelines focuses specifically on combating bribery. Although different by nature⁹, its coverage is wider than that of the OECD Anti-Bribery Convention and includes aspects that help combat corruption, such as enhancing transparency, promoting employee awareness of company policies

in respect of bribery and compliance with company policies, and adopting suitable management control systems, and accounting and auditing practices that prevent the use of 'off the books' or secret accounts. Illegal contributions to political parties or candidates seeking public office are also covered and there is a requirement that contributions, where made, comply with public disclosure requirements and are reported to senior management.

The OECD Guidelines are actively promoted and monitored through a National Contact Point (NCP) in the adhering State which collaborates with the business community, employee organisations and other interested parties such as civil society organisations (CSOs). The impact of the OECD Guidelines in Africa is potentially major since many MNEs (e.g. the natural resources and telecommunications sectors) operate in many of the African countries, thus creating the scope for influencing business partners and those in the supply chain. The influence that the OECD Guidelines has is illustrated by the complaints made to the NCPs by CSOs ranging from bribe paying and illegal exploitation of natural resources to breaches of human rights standards and eviction of communities near mining projects.¹⁰

ii) International Chamber of Commerce tools

The International Chamber of Commerce (ICC) is a global organisation that has worked to bring about harmonisation through the adoption of rules and promotion of best business practices, and is an important source of *lex mercatoria*. It liaises with national chambers of commerce and also has a branch in South Africa.¹¹

The ICC adopted its Rules of Conduct to Combat Extortion and Bribery (RCCEB) in 1977 in response to the scandals that erupted in the mid-1970s and the US Security Exchange Commission survey that established that many US businesses were engaged in acts of corruption when dealing with foreign public officials.

The RCCEB,¹² which underwent further amendments in 2005, are rules of good commercial practice and have no direct legal effect. They are intended to be a method of self-regulation by businesses against the legal backdrop of national anti-bribery laws. They prohibit bribery and extortion, be it direct or indirect through the use of agents or other intermediaries. The phrase 'agents and intermediaries' is construed widely to include sales agents, customs agents and professionals such as lawyers and consultants who may act as a conduit.

The distinction often drawn between bribery and facilitation payments leaves scope for companies to pass off bribes as facilitation payments. In this regard, the RCCEB take a robust approach by requiring businesses to refrain from making such payments unless a managerial review indicates that they cannot be eliminated totally. In this event, businesses are expected to ensure

that they are limited to small payments to low level officials for routine actions. Businesses involved in charitable contributions and sponsorships are expected to behave responsibly and not use them as a means of disguising bribery. As part of this responsibility they must act in accordance with national laws and make public disclosures where required. There is also the expectation that the companies will provide guidance and training in identifying and avoiding bribery or extortion, including protection from retaliation to those wishing to seek advice or make reports of corrupt activities and disciplinary procedures to sanction misconduct. It is expected that these company codes will also extend to controlled subsidiaries (foreign and domestic). The RCCEB also address aspects of accounting and auditing and impose duties on those with ultimate responsibility for the business (e.g. directors) to ensure that the Rules of Conduct are complied with and to sanction violations and take corrective actions. Appropriate public disclosure of the enforcement of business anti-corruption policies or codes is also expected.

The ICC has also published *Fighting Corruption: Corporate Practices Manual* which is a practical toolkit providing guidance on how to comply with the Rules of Conduct mentioned above. To encourage the creation of safe channels for employees to report bribery without fear of reprisal, the ICC has also adopted Guidelines on Whistleblowing.¹³ Its aim is to bring about inclusion of whistleblower policies in codes of conduct adopted by companies since it is in the business interest to be aware of and deal with a concern of their employee before an illegal act is committed.

iii) United Nations Global Compact (UNGC)

The UNGC is another major international corporate citizenship initiative providing a platform for companies to commit to its ten universal principles, which covers human rights, labour, environment, and corruption. Its tenth principle requires businesses to “work against corruption in all its forms, including extortion and bribery”. The UNGC has been launched in a number of African states with active Global Compact Networks in Ethiopia, Ghana, Kenya, Malawi, Mozambique, Nigeria, Senegal and South Africa.¹⁴

A number of companies that have operations in the African region have signed up to the UNGC and many, it seems, have collaborated with local CSOs to set up codes in the countries of operation. Total South Africa (a subsidiary of Total Société Anonyme) is one illustration. It collaborated with the Ethics Institute of South Africa¹⁵ to set up an ethics management programme which is intolerant towards corruption and fraud. Part of the programme is to formulate a code of ethics that is unique to Total South Africa and to create an extensive awareness programme of this code. Auditing the implementation of the code is also an integral part of this management programme.¹⁶

iv) Transparency International's Business Principles for Countering Bribery

Transparency International (TI), a CSO devoted to fighting corruption, has also developed a framework in partnership with other stakeholders including MNEs. The Business Principles for Countering Bribery (BPCB)¹⁷ were adopted in 2002, and were followed by a special edition devoted to small and medium enterprises in 2008. Like the RCCEB, the BPCB's aim is that business will adopt values and practices to counter bribery in its various manifestations.

TI has chapters in many of the twenty African countries and publicises the business codes that it has developed through these chapters. For example, the Malawi Business Code, examined below, draws on TI's BPCB.

v) Business Action against Corruption (BAAC)¹⁸

The Business Action for Africa¹⁹ has also initiated a collective programme called Business Action Against Corruption (BAAC)²⁰ as part of its remit to develop good business practice. Receiving support from the Southern African Forum Against Corruption (SAFAC)²¹ and the African Corporate Sustainability Forum (ACSF)²² this initiative was launched in October 2005. It is an African led programme where businesses and governments work together to eradicate corruption. Its strategy is to simplify the regulatory environment with a view to preventing corruption. Its strategic partners include Nigeria Business Forum, West Africa Business Association (WABA), Commonwealth Business Council (CBC) and Sofala Commercial and Industrial Association in Mozambique. Amongst its corporate partners are Cadbury Schweppes, Rio Tinto, Shell, De Beers Group, British American Tobacco and Unilever who have substantial business interests in many of the twenty African countries studied.

b) Local codes of conduct

The business sector operating in some of the twenty African countries studied has sought to improve its integrity through the adoption of business codes of conduct, whether specific anti-corruption codes or codes of conduct of a general nature that also address issues other than bribery.

These codes have largely been supported or influenced by or derived from international and regional initiatives, though there are a number of examples where the private sector with the help of NGOs or donor agencies have drafted codes of conduct that have adopted a unique perspective on their implementation. There is also evidence of anti-corruption agencies and donor agencies' input into the drafting of these codes.

Whilst most business codes of conduct are of a voluntary and self-regulatory nature, anti-corruption regulation in some countries has

incorporated the adoption of a code by the private sector. For example, Rwanda's Law No. 23/2003 provides that every institution must adopt a code of conduct for its employees and also inform the employees about the code of conduct and consequences that flow from corrupt behaviour (article 7). It has however not been possible to obtain any example of codes of conduct adopted in Rwanda by the private sector as a result of this legislation.

What follow are examples of business codes of conduct that have been adopted by some of the twenty countries studied.

i) Ghana Business Code²³

The Ghana Business Code (GBC) is meant to be used by all businesses and it is envisaged that it will play an important role in not only guiding practices within an organisation but, amongst others, attracting foreign business operations and investments into Ghana, increasing employee motivation and loyalty, increasing retention of highest qualified employees and creating consumer confidence in the businesses' brands as a result of the value imparted by the GBC.

The GBC reflects the ten principles of the UNGC. As far as the tenth principle is concerned, the GBC elaborates the obligations and acts that are allowed or disallowed on the part of the businesses, which range from accounting practices to conflict of interest and gift giving. Businesses, in accordance with the list, are required to:

- document, record and keep income and expenditure data for six years;
- not permit the payment of bribes to business partners, government official or employees;
- not hire a government employee to do work that conflicts in any manner with the official obligations of that employee;
- only offer or accept gifts beyond the cumulative value of CEDIS 1.5 million (equivalent of USD 160) per person in any twelve month period if approved by a senior officer and explicitly recorded in the books of the business, naming the recipient;
- abstain from cronyism and nepotism.²⁴

It should be noted, however, that since this Report was drafted, the Secretariat implementing this project has been closed down, illustrating how the sustainability of such initiatives remains a challenge.

ii) Malawi's Business Code of Conduct for Combating Corruption

The Malawian Business Code of Conduct for Combating Corruption (BCCG)²⁵ draws, in particular, on TI's BPCB. Its aim is to provide a framework of good business practice for all businesses, public or private, small or big, by

eliminating corrupt practices and making a positive contribution to improving business standards. The BCCC is exhaustive in coverage, and corruption is construed broadly to include bribes, facilitation payments, extortion, abuse of position of authority, influence peddling, embezzlement and fraud.

In adopting the BCCC the organisation has to institute an anti-corruption programme setting out the values, policies and procedures to be used to prevent corruption. The BCCC also includes specific clauses on standards of conduct and the expectation is that the organisation will have in place effective systems for ensuring that these standards are being followed. Taking of disciplinary action against corrupt employees is also included. Since risk of or exposure to the various manifestations of corruption are likely to vary across businesses and sectors, the BCCC requires, as a minimum, the following:

- The institution should prohibit the offer or acceptance of a bribe in any form or the use of other routes or channels to provide improper benefits to customers, agents, contractors or suppliers or employees of any such party or government officials. They should also prohibit an employee from arranging or accepting a bribe from customers, agents, contractors, suppliers of government officials, for the employee's benefit or that of the employee's family, friend, associates or acquaintances (clauses 6.3.1.1. & 6.3.1.2.).
- The organisation is required to identify facilitation payments and eliminate them. Facilitation payments are defined as "payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement"(clause 6.3.4.).
- Offer or receipt of gifts, hospitality and expenses are to be prohibited unless they are reasonable and *bona fide* expenditures. The organisation/institution or company is required to have a policy on what constitutes appropriate behaviour in relation to gifts, hospitality and expenses that is publicly available (clause 6.3.5.).

Since charitable contributions, sponsorships and political contributions may act as channels for obtaining business advantage, the institution is required to ensure that such donations are not made as a cover for obtaining such advantage. There is also a requirement that such contributions and sponsorships are publicly disclosed (clauses 6.3.2. & 6.3.3.).

iii) Mozambique's Business Against Corruption Toolkit

The Sofala Commercial and Industrial Association (ACIS)²⁶ has played an important role in developing a toolkit for combating business participation in corruption.²⁷

The Business Against Corruption Toolkit (BACT) is extremely detailed providing information on the various international and national regulatory frameworks and also includes a Code of Ethics for Employees,²⁸ a Code of Ethics for Suppliers²⁹ and a Code of Business Principles.³⁰ The first two codes emphasise transparency, integrity, impartiality and honesty as core values and require workers and suppliers to prohibit facilitation payments, bribes and commissions and avoid conflicts of interest. The Code of Business Principles is more general in scope and covers obligations in respect of employment (e.g. communication with employees), accountability (e.g. payment of taxes), community (e.g. good corporate citizenship) and the environment (e.g. sustainability). The section on integrity focuses on a commitment to fair competition and transparency. This means not receiving or giving bribes, improper payments, commissions or any other gift which may result in the company or any individual in the company obtaining an improper advantage.

All the members of ACIS are expected to sign up to the Business Code of Conduct when joining the association and so far, according to information provided by ACIS, there are 150 member companies ranging from local small to medium enterprises and multinationals from all sectors – from trade, oil industry, agricultural business to tourism.

iv) Nigeria's Convention on Business Integrity

The Convention on Business Integrity (CONBI) was created by the Nigerian private sector with support from Integrity, a non-governmental organisation.³¹ In 1998, the Code of Business Integrity (CBI) was adopted, which sets down the requirements expected of intending signatories to the CONBI.

The CBI requires the signatories to issue directives to all employees, agents and other representatives reminding them of their legal, moral and professional duty not to engage in, promote, or condone any form of corruption or corrupt practice. The CBI also promotes the adoption of internal whistleblowing procedures and the appointment of an Ethics Counsellor within the organisation in order to increase the integrity of the organisation. Corruption is defined as “that which attempts to pervert or that which perverts the legal or right procedure or the creation or use of bottlenecks in any entity for any purpose of private profit or personal gain” (clause 5).³² Assistance is provided by CONBI for establishing internal audit mechanisms. The organisation is then externally audited by peers before becoming a signatory to CONBI. On becoming a member, the organisation is allowed to use the distinguishing mark of CONBI on marketing compliance thus implying full compliance with the code.

The CBI provides for sanctions in the event of a breach which include blacklisting of the individual offender or the temporary de-listing of the corporate entity as a participating entity of CONBI. An appeal against the decision is possible. This has to be lodged with the Core Group,³³ who is responsible for the sustenance and development of the CONBI.

This initiative has attracted attention from other countries in the African continent, notably Uganda, Rwanda and Kenya. Kenya has, through Kenya Private Sector Alliance (KEPSA), drafted a code of ethics. There is no further information available on whether these countries intend to adopt a similar model. However, according to a recent media item the East African Business Council is currently in the process of developing a code of conduct for its membership.³⁴

c) National chambers of commerce

All of the twenty countries have chambers of commerce devoted to promoting the investment climate within the country. It seems however, based on the available information, that not much attention has been so far drawn to business integrity issues and adoption of codes of conduct in general or specific codes fighting bribery. According to information from BAAC, it is active in Cameroon and Zambia and also has received expressions of interest from Madagascar and Tanzania amongst others.³⁵

National chambers of commerce are well placed to develop and promote business codes of conduct amongst their members. This of course is dependent on well organised, resourced and active chambers of commerce within a country.

In addition to chambers of commerce, other groups play a role in the promotion of corporate integrity, such as the Business Unity South Africa (BUSA) in South Africa. This is a representative of the business sector and one of the stakeholders of South Africa's National Anti Corruption Forum (NACF)³⁶. Its role has largely been to educate businesses of the ill effects of corruption though there is a current project on the development of a code of integrity. No further information has been found on the progress of this project.³⁷

d) Sector-specific initiatives

i) Extractive Industries Transparency Initiative

Adopted in 2003 and endorsed by the World Bank, the Extractive Industries Transparency Initiative (EITI) is a global level multi-stakeholder coalition of companies, civil society, donor agencies, investors and developing countries who are resource rich.

Under this initiative all payments made by the oil, gas and mining companies to the government have to be published. The government has to also publish the revenues received. To become an EITI Candidate, a State has to provide detailed work plans together with relevant documentation to indicate how it is going to become EITI Compliant. So far Burkina Faso, Cameroon, Ghana, Madagascar, Mali, Mauritania, Mozambique, Niger, Nigeria, Sierra Leone, Tanzania and Zambia are EITI candidates.³⁸

A validation process is a necessary step in achieving EITI Compliant status, which indicates achievement of a global standard. This process of validation is conducted by an independent “validator” chosen by the multi-stakeholders. Of the countries mentioned above, Nigeria has adopted the Nigeria Extractive Industries Transparency Act (NEITI) Act in 2007, which established the NEITI as an autonomous self-accounting body. Its objectives are, among others, to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients, to conform with the principles of EITI and to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenues accruing to the Federal Government from extractive industry companies (section 2).³⁹

ii) Other initiatives

There are also instances of codes of conduct in other sectors. In February 2009, the Works and Supply Minister of Zambia announced the National Council for Construction Contractors’ Code of Conduct⁴⁰ which, according to the press release, is to act as a first line of defence against corruption.

The Integrity Pact (IP) is another integrity enhancing mechanism. It is for example promoted in the ACIS Toolkit. The IP Programme was developed by TI to create “islands of Integrity” through a voluntary contract between the buyer and the seller to eliminate unfair practices. It is a no-bribery commitment in dealings between the public and private sectors. It is an agreement between the government office inviting tenders for supply of services and goods, sale of government assets, licences etc, and the bidders, that the principal or its officials will not solicit or accept bribes and the bidders that they will not pay any bribes. There is also an undertaking on the part of the bidders that all payments made in respect of the contract in question will be disclosed to the principal. The IP also includes loss of contract, forfeiture of bid security and liability for damages suffered by principal and other bidders.

4. Main trends and areas for further development

Business associations in a limited number of countries (Ghana, Malawi, Mozambique, Nigeria) have adopted codes of conduct based on the UNGC, TI’s

BPCB or have formulated their own code where the members are audited and subject to sanctions in the event of breaches. Nigeria's CBI is an example of the latter. Business associations in other countries are also showing an interest in adopting codes of conduct. The Global Compact network and BAAC are helping towards bringing the different stakeholders together and looking at ways of promoting business integrity. There is still a lot of ground to cover. Local and national chambers of commerce at the moment are not playing as prominent a role as could be expected though there is scope to do so in collaboration with the ICC, BAAC and other stakeholders.

The sector specific initiatives like EITI are making a noticeable impact and by the end of 2010 a number of countries from the twenty African countries should become EITI compliant. The development in Zambia in respect of a construction contractor's code is innovative and needs to be publicised widely so that other countries could formulate similar codes.

Notes

1. See: "Principles for fighting corruption: from criminalisation to self-regulation?" Address delivered at the MEDEF Colloquium on Fighting Corruption: From Regulatory Concepts to the Reality on the Ground, on 7 December 2006.
2. See: www.iasb.org.
3. See: www.ifac.org.
4. See Chapter 1 for further details on the APRM.
5. See: www.unctad.org/en/docs/diaeed20081_en.pdf.
6. See: www.imf.org/external/np/rosc/rosc.asp?sort=country#RR.
7. See also Chapter 1.
8. See www.oecdobserver.org/news/fullstory.php/aid/2772/OECD_MNE_Guidelines.html.
9. Contrary to the OECD Anti-Bribery Convention, the OECD Guidelines for Multinational Enterprises are a non binding instrument.
10. A list of the cases is available on www.oecdwatch.org (an international network of CSOs that promote corporate accountability and responsibility).
11. See: www.iccsouthafrica.org.za.
12. Text available at: www.iccwbo.org.
13. Text available at: [www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20%20as%20adopted%204_08\(2\).pdf](http://www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20%20as%20adopted%204_08(2).pdf). See also Chapter 3 for further on regulatory framework to protect whistleblowers.
14. Further information on the progress made by these networks and list of participants (which include small and medium sized enterprises and large enterprises) are available at www.unglobalcompact.org.

15. This is an independent not-for-profit organization initiated by South Africa to facilitate the development and implementation of ethics codes and assist in ethics code training (www.ethicsa.org).
16. See: The Global Compact regional Learning Forum 'Creating a Culture Intolerant of Fraud and Corruption in Total South Africa (PTY Ltd)' in *Businesses Fighting Corruption: Experiences from Africa* (2007).
17. Available at: www.transparency.org/global_priorities/private_sector/business_principles.
18. See: www.baacafrica.org for further details and current information about the Business Action Against Corruption.
19. The Business Action for Africa (BAA) is a not-for-profit coalition which was launched in July 2005 at the Gleneagles summit. The aims of the BAA are (1) to present a clear African and international business voice to promote growth and poverty reduction, (2) to promote more positive, balanced perceptions of Africa, and (3) to develop and showcase good business practice. (www.businessactionforafrica.org/).
20. This is a joint government-private sector initiative.
21. This forum includes the region's anti-corruption commissions.
22. This is a programme of the African Institute of Corporate Citizenship (AICC) which facilitates the sharing of relevant experiences between companies and CSOs with the aim of contributing to finding solutions to the development challenges faced by the African continent. ACSF is committed to the UNGC.
23. This Code was produced by Association of Ghana Industries, Ghana National Chamber of Commerce & Industries and Ghana Employers Association with support from the Improving Business Practice (part of the Business Sector Programme Support funded by the donor agency DANIDA (Danish International Development Agency). There was also strong collaboration with a range of stakeholders ranging from small to large businesses, state enterprises and business schools to financial institutions and consumer associations. The text of the Ghana Business Code is available at www.ghanabusinesscode.com.
24. See: Ghana Business Code, p 16.
25. The Steering Committee included ACSF, Anti-Corruption Bureau, Malawi UN Global Compact and United States Agency for International Development (USAID).
26. This is a private not-for-profit association founded in 2000 and its aim is to contribute to the promotion and development of commerce and industry in Mozambique. For further information, see: www.acisfol.com.
27. Funding for designing this toolkit was received from The Centre for International Private Enterprise (CIPE), Washington DC, an affiliate of the US Chamber of Commerce. There was also input from the SAL Public Administration Observatory. The CIPE has also produced a Reform Toolkit for combating corruption (for further www.cipe.org).
28. See *Combating Business Participation in Corruption in Mozambique* (2006) (available www.acisfol.com) pp 12-19.
29. *Ibid.*, pp. 20-26.
30. *Ibid.*, pp. 27-30.
31. In 2001, SAP (a world leader in e-business software solutions) funded the setting up of a Secretariat for CONBI in Nigeria. Further funding has also been received

from the UK's Department for International Development (DFID) for specific projects. Further information and other relevant documentation are available on www.theconvention.org.

32. Clause 5.
33. The Core Group consists of nine members, five elected from the general assembly of signatories, and four special observers. One of the four observers is Integrity, the other three are filled from another anti-corruption NGO, and two business consultants from the fields of auditing or management consultancy.
34. Ismail Musa Ladu 'East Africa: Business Council Asks Government to Promote Transparency' available to <http://allafrica.com/stories/200908130511.html>.
35. Further information available at: www.businessactionforafrica.org.
36. This is a joint civil society public sector organization.
37. Bulletin BUSA Anti-Corruption Working Group (BUSA) available at www.busa.org.za.
38. See: <http://eitransparency.org/countries/candidate>.
39. The NEITI Act is available at: www.neiti.org.ng/files-pdf/neitiact.pdf.
40. It has not been possible to obtain the text of this code of conduct.

Chapter 5

Participation of civil society and the role of the media

Chapter 5 discusses the important watchdog role of civil society organisations and the media in the fight against corruption and bribery, and provides an overview of the various anti-corruption and media organisations active in the various countries studied. This Chapter also focuses on the related issues of freedom of expression and access to information laws.

1. Introduction

Non-governmental actors such as NGO/civil society organisations (CSOs),¹ the media, business associations, trade unions, and others, play a crucial role in promoting discussion and mobilising public support against corruption and bribery, raising awareness about the negative impacts of corruption and that it is a crime that is subject to sanctions, and monitoring and measuring progress towards the implementation of international commitments such as United Nations Convention against Corruption (UNCAC) and the OECD Anti-Bribery Convention. They have also proven to be instrumental in exposing cases of corruption, fraud or maladministration at the national as well as international levels. In effect, civil society can play a very useful watch-dog role in monitoring the use of public funds and the provision of public services on the one hand (i.e. to prevent passive bribery), and by providing guidance on internal controls, ethics and compliance programmes, for business to put in place (i.e. to prevent active bribery), on the other hand.. Such organisations are also instrumental in advocating for anti-corruption reforms. The present Chapter discusses the role of civil society organisations and the media in the fight against corruption and bribery, and provides an overview of the channels in place in the countries studied.

2. The role of Civil Society Organisations

Civil society is mandated to hold government to account and to demand access to information held by government institutions. This is inherently political in nature, and generates a set of specific challenges for CSO engagement on anti-corruption work. CSOs do operate to promote transparency and accountability at different levels. However, the success of their efforts to effectively fight corruption and bribery presupposes on one hand that a State's legal framework enables CSO participation without political and legal restrictions and that the State itself is willing to engage constructively with them, and on the other hand that civil society has the capacity to play a strong and effective role.

The role of CSOs in combating bribery has long been recognised. Article 13 of the UNCAC deals specifically with the participation of civil society and covers;

- Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

- Ensuring that the public has effective access to information;
- Undertaking public information activities that contribute to non tolerance of corruption, as well as public education programmes, including school and university curricula;
- Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
- For respect of the rights or reputations of others;
- For the protection of national security or *ordre public* or of public health or morals.

Similarly, the UN Anti-corruption Toolkit, developed as part of the UN Global Programme Against Corruption,² identifies social prevention and public empowerment as some of the vital ingredients in the fight to curtail bribery. Tools #19 to #24 deal with access to information, public awareness raising and empowerment, media training and investigative journalism, joint government and civil society bodies, public complaints mechanisms and citizens' charters.³

Non-governmental stakeholders also play an important role in the implementation of the OECD Anti-Bribery Convention. The OECD Working Group on Bribery regularly consults with civil society and private sector organisations on the implementation and enforcement of the OECD Anti-Bribery Convention. Business and industry associations make valuable contributions to promoting best practices, and as elaborated upon in other sections of this Report, these actors play a fundamental role in developing and enforcing preventive, self-regulatory measures to eliminate fraud and corruption. These stakeholders also play an important role in raising awareness and providing information on countries' implementation and enforcement progress during the monitoring process of the Working Group on Bribery. They also take an active role in examining salient anti-bribery issues discussed during the Working Group's consultations with civil society representatives. Furthermore, such stakeholders help develop and implement policies and practices to combat corruption in non-member economies through their involvement in OECD's regional anti-corruption initiatives. The OECD has assessed in detail the role of civil society in combating corruption; the OECD report *Fighting Corruption: What Role for Civil Society? The Experience of the OECD* outlines the significant contribution civil society makes to combating corruption both within OECD countries, as well as within non-member countries.⁴

a) Raising public awareness against bribery through various means

There are a number of CSOs working in the field in the twenty countries studied. Of these, Transparency International (TI) is prominent in the African continent with chapters in many of the twenty countries (e.g. Kenya, Malawi, Senegal, Tanzania, Uganda, Zambia). As well as collecting information on perceived levels of corruption and bribery in the public sector for the Corruption Perceptions Index, these chapters have taken on a number of functions, including: raising public awareness, promoting international best practices to prevent and combat bribery and other forms of corruption, and liaising with businesses and business associations to adopt ethical codes of conduct that prohibit bribery on the part of the organisation and their employees. For instance, the Malawian Business Code of Conduct for Combating Corruption draws on TI's code.

In addition to TI, there are national CSOs who, as well as educating the public about the ill effects of bribery, offer citizens the opportunity to report instances of bribery. *Ética Mozambique*⁵ has set up various centres in the provincial capitals and citizens can anonymously report incidents. These reporting mechanisms have the potential to reveal lack of business integrity and bribery of public officials. It is also possible to lodge a report on their website and this scheme appears to be successful. Coalitions of CSOs that seek to mobilise the public opinion in the fight against bribery is another innovation. The Anti-Corruption Coalition (ACCU)⁶ in Uganda is a group of seventy CSOs which annually organises an anti-corruption week to highlight the problems of bribery at all levels, grand and petty.

b) Engaging with business, government and other stakeholders

CSOs engage at different levels in varied capacities with various stakeholders from the public and private sectors to government and international organisations with the aim of alerting them on new issues and stimulating reform where needed.

Since the organisations are too numerous to mention here, a small number of CSOs have been selected for the purposes of illustration. Ufadhili Trust from Kenya⁷ and the Partnership Forum from Zambia are examples of CSOs that are promoting corporate social responsibility through their collaboration with accountants and businesses. In some countries CSOs have also formed a coalition to fight corruption and promote good governance. This is for example the case of the Zero-Corruption Coalition (ZCC) in Nigeria. In Mozambique ACIS has been active in raising the profile of anti-corruption amongst businesses and has also designed an anti-corruption toolkit for their use. Réseau National de Lutte Anti-Corruption (RENLAC)⁸ in Burkina Faso is another illustration of a coalition of twenty-six CSOs that are actively engaged

in anti-corruption work. It regularly publishes reports, has devised a tool kit and also operates a hotline. Mention must also be made of Front des Organisations Nationales Anti-Corruption (FONAC)⁹ which plays an important role as a watchdog in the Public Procurement Verification Commission created by the Government of Benin.¹⁰

The CSOs are also an important voice in raising questions at the state level and demanding investigations be carried out in respect of allegations and suspicions of bribery. For instance, the Africa Centre for Open Governance (AfriCOG) based in Kenya and devoted to governance issues, raised questions and published a letter in respect of the 'apparent grand corruption' orchestrated by Vodafone Kenya Ltd.¹¹ AfriCOG has set itself a number of programmes areas which include "generating policy-relevant, cutting-edge research on corruption; mobilisation and collaboration through policy partnerships with civil society organisations, grass-roots interest groups, public institutions and the media; dissemination of timely, well packaged information on the incidence, intensity and extent of corruption and governance problems".¹²

3. The role of the media

The media, in their various forms such as newspapers, radio, television and the internet, plays a vital role in fighting bribery. In "The Media's Role in Curbing Corruption,"¹³ Rick Stapenhurst of the World Bank Institute outlines both the tangible and intangible impact that the media can have in supporting efforts to curb corruption. The tangible impact refers to specific and visible action that is taken as a direct result of media reporting of a case of bribery or corruption – this could be, for example, the initiation of a formal investigation, impeachment proceedings, prosecution or the forced resignation of public office holders for engaging in corruption or bribery. Additionally the media plays a crucial role through the dissemination of information about the work of anti-corruption agencies, exposing flaws in existing legislation, creating pressure for reform, and prompting official investigations though as a result of investigative reporting.¹⁴ The media has a significant though less tangible, indirect impact through the creation of greater social awareness of the need for accountability in public bodies and public debates. The role of the media in rooting out bribery and corruption has also been highlighted by the World Bank.¹⁵

In Ghana the role of the media has been enhanced of late through investigative journalism uncovering cases of bribery and corruption in the public sector institutions. The work of the renowned journalist, Anas Aremeyaw, has uncovered a number of cases in the illegal exportation of cocoa and rice along

the Ghana-Ivory Coast border, at the port and harbours, in hospitals, and orphanages.

All this is possible only where the media enjoys freedom of expression and freedom of information (explored in greater detail below), and where these freedoms are protected by the State. In this environment the media has the freedom to investigate, obtain information and publish not only what is inoffensive, but also what shocks, offends or disturbs. It is important that an adequate legal framework, within which journalists can operate safely, exists. This may be assured, for instance, through the protection of confidential sources and from liability, criminal or otherwise, for publishing sensitive news items if they are in the public interest.

The media in the twenty countries studied have in recent years undergone liberalisation and in all twenty countries, there is a range of state owned and privately owned papers, radio and television networks. The Internet [as discussed in further detail in section c) below] is beginning to establish itself as a common medium for dissemination of information to the public. Amongst the different forms of media, audio-visual is the most common due to high illiteracy levels.

a) Freedom of expression

Freedom of expression is guaranteed by the United Nations Declaration of Human Rights, which states, in Article 19, that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. A similar guarantee is also found in Article 9 of the African Charter on Human Rights and People’s Rights (African Charter)¹⁶ which states “(1) Every individual shall have the right to receive information; (2) Every individual shall have the right to express and disseminate his opinions within the law.”

All the twenty countries studied have ratified the African Charter.¹⁷ Furthermore the African Commission on Human and People’s Rights adopted in 2002 the Declaration of Principles on Freedom of Expression in Africa¹⁸ which, in article 1, states (1) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy; (2) Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.”

The constitutions of the twenty countries also protect the freedom of expression. Despite these commitments however, the media continues to be subject to restrictions. The use of laws of defamation including criminal

defamation¹⁹ (e.g. Benin,²⁰ Burkina Faso,²¹ Senegal²²), criminal libel (Malawi,²³ Rwanda²⁴, Sierra Leone²⁵), state security (e.g. Kenya), publishing false information/news (e.g. Ghana²⁶), sedition (e.g. Nigeria,²⁷ Uganda,²⁸ Tanzania²⁹), publishing offensive information (e.g. Ethiopia³⁰), false accusation (Mauritania³¹), offending a head of state (Mali³²) are fairly common. Harsh penalties including imprisonment and fines are common and as a consequence, journalists tend towards self censorship, which means that exposure of grand bribery cases are limited. Despite the risks, newspapers do continue to play the tangible role by publishing reports of bribery cases,³³ disseminating statistics from anti-corruption agencies, and analysing the anti-corruption laws that have been enacted. There is also ample evidence that journalists do engage in investigative reporting. A report from the Forum for African Investigative Reporters (FAIR)³⁴ contains a story of corruption in the public sector in Nigeria that came to light as a result of effective investigative journalism. In some countries, awards are given to investigative journalists - the Taco Kuiper Award for Investigative Journalism in South Africa being one such award. The 2008 award was given to the Mail & Guardian journalists who had reported on bribery in a complex arms deal. In the same year runners-up were awarded for their stories on police corruption and bribery and corruption in tenders.³⁵

Despite the defamation laws and the risk of publication of false news that might curtail the reportage of stories involving prominent figures courts have struck a balance by recognising the primacy of freedom of expression. For instance in *Charles Onyango-Obbo and Andrew Mujuni Mwenda v AG*,³⁶ the Supreme Court of Uganda in a unanimous decision, held that the offence of publishing false news was incompatible with the right of freedom of expression, recognising the vital role played by the media. As Mulenga J. C. said:

“This unfettered discretion opens the way for those in power to perceive criticism and all expressions that put them in bad light, to be likely to cause mischief to the public (...) Clearly because of its broad applicability, section 50 [of the Penal Code] lacks sufficient guidelines on what is and what is not safe to publish, and consequently places the intending publisher, particularly the media in a dilemma. In my view, given the important role of the media in democratic governance, a law that places it into that kind of dilemma, and leaves such unfettered discretion in the state prosecutor to determine, from time to time, what constitutes a criminal offence cannot be acceptable, and is not justifiable in a free and democratic society.

Similarly, South Africa also affirmed the significance of the freedom of the press in saying that the media was not subject to a strict liability in relation to a defamation action and that they could rely on an absence of fault that is if it lacked fault in the form of negligence. According to Hefer J. A.:

[W]e must not forget that it is the right, and indeed a vital function of the press to make available to the community information and criticism about every aspect of public, political, social and economic activity and thus to contribute to the formation of public opinion ...Conversely, the press often becomes the voice of the people – their means to convey their concerns to their fellow citizens, to officialdom and to government.³⁷

b) Access to information

While constitutions may guarantee freedom of information in practice it may be difficult to access information from the government and public bodies. Access to information by the public has a number of roles to play, from public participation and improving government functioning to protecting rights. Key amongst these is the increase in transparency and accountability of the government and public sector. Information accessed, for instance, in respect of decision making processes in the award of government contracts has the potential to reveal bribery on the part of businesses and public officials. It has also the potential to mobilize civil society groups to root out bribery and pressurise governments to take more regulatory action and businesses to improve their integrity.

The Asian Development Bank and OECD Anti-Corruption Initiative for Asia Pacific, under its Pillars of Action, make a number of recommendations for participating governments including “implementation of measures providing for a meaningful public rights of access to appropriate information.”³⁸

The African Union Convention on Preventing and Combating Corruption (AUC), in its article 9, states that “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.”

The Southern African Development Community (SADC) Protocol against Corruption, in article 4 (1) (d), requires its State Parties to adopt measures to create, maintain and strengthen “mechanisms to promote access to information to facilitate eradication and eliminate opportunities for corruption.”

The United Nations Convention Against Corruption (UNCAC) also states, in its article 13, that participation of society should be strengthened by “(a) Enhancing the transparency of and promoting the contribution of the public to decision- making processes; (b) Ensuring that the public has effective access to information.”

Of the twenty countries studied, only two countries (South Africa and Uganda) have adopted legislation on access to information.

i) South Africa

The South African Constitution, in section 32, guarantees the right of access to any information held by the State. South Africa adopted its legislation on Promotion of Access to Information Act (PAIA) in 2000.³⁹ Information from government bodies can be demanded by any person regardless of their reasons. There are however exceptions and these include defence, security, economic interests and the financial welfare of the Republic and commercial activities of public bodies (sections 34 – 45). Disclosure of information that falls within the exception is however possible where the public interest in disclosure outweighs the harm contemplated in the provision (section 46).

In the event that a public body refuses to provide information, the decision is first reviewed by the Cabinet Minister and then by the High Court. Various organisations such as the Institute for Democracy in South Africa and the South Africa History Archive and Open Democracy Advice Centre, have initiated actions in the High Court so that public bodies can release records. An interesting case was successfully brought in the High Court by Richard Young who sought the release of documents surrounding the examination of procurement processes of a controversial arms deal involving amongst others allegations of kickbacks.⁴⁰

A survey on access to information laws and practices in fourteen countries which included South Africa was conducted by the Open Society Institute but did not reveal statistics on the extent to which this legislation is used to expose bribery and corrupt practices in public bodies.⁴¹

ii) Uganda

Article 41 of the Constitution gives every citizen a right to access information from the State or State organ or agency. In 2005, Uganda adopted its legislation on access to information, the Access to Information Act (AIA).⁴² It gives right of access to information and records in the possession of the State or any public body to every citizen as long as it does not prejudice the security or sovereignty of the state (Section 5). This right to access is unaffected by the person's reason for accessing that information (Section 6). There are a number of exemptions including information relating to the privacy of the person (unless that person was informed by the public body that the information belonged to a class of information that would be made available to the public), commercial information of a third party, confidential information, safety of persons and property, protection of law enforcement and legal proceedings, protection of records privileged from production in legal proceedings and defence, security and international relations (Sections 24-33).

Uganda also provides for the disclosure of information that falls within the exception possible if the disclosure of the record would reveal evidence of a failure to comply with the law, or an imminent and serious public safety or environmental risk, and the public interest in disclosure outweighs the harm contemplated in the provision (Section 34). It has not been possible to access information on how often this right has been exercised and whether any of the information accessed has raised allegations of bribery.

iii) Kenya

Kenya has recently made provision for access to information. With the passing of the 2010 Constitution of Kenya, access to information is now provided under Article 35 of the Kenyan Constitution.

iv) Countries contemplating access to information legislation

Ghana, Tanzania, Sierra Leone and Nigeria have been through the various stages in determining freedom of information legislation but, for one reason or another, the bills did not progress through the parliamentary stages to become law. For instance, Ghana's Right to Information Bill of 1999 provided for people to have access to official documents. Like the South African legislation, it contained a number of exceptions but the Supreme Court could order access to documents which were exempt. In Nigeria the Freedom of Information Bill followed along similar lines.

Academics, CSOs and the media are pressing for changes in these countries and special coalitions have come into being. One of these is the Africa Freedom of Information Centre (AFIC),⁴³ which was set up as a result of thirty civil society organisations from sixteen countries coming together and adopting the *Lagos Declaration on the Right of Access to Information*. These include Nigeria, Cameroon, Ghana, Mali, Sierra Leone, Senegal, Benin, Uganda and Kenya.

c) Use of Internet as a communication tool

There is no doubt that the Internet is a powerful communication tool that makes transfer of information and access to information easy. There are numerous news sites devoted to African news either from a continental perspective such as *www.allafrica.com*, or from a regional perspective, such as *www.theeastafrican.co.ke* for the East African region, as well as a very long list of sites for national newspapers for many of the countries studied.

Access to the Internet, however, while growing steadily is still limited. In South Africa, the most affluent of the twenty countries under consideration, access to the internet was reported to be just 10% of the population in 2008⁴⁴ and in Uganda just 6.4%. In countries such as Benin and Nigeria access is

primarily through Internet cafes. The relatively higher levels of illiteracy in the twenty countries studied (ranging quite significantly from 26% in Kenya to 71% in Burkina Faso⁴⁵) also makes access to the internet or the printed media limited.

Nevertheless, it has been reported in some countries that the citizens are also realising the potential for using the internet to blow the whistle on corrupt practices. There is a whistleblowing website site called *Wikileaks.org* where information can be posted anonymously.⁴⁶ This website has numerous leaks about bribery involving businesses and public officials in various parts of the world. While not restricted to Africa it has the potential to uncover acts that may become the subject of further enquiry provided the information posted on the website is genuine.⁴⁷

4. Main trends and areas for further development

CSOs are functional in many of the twenty countries. They vary from national (e.g. Ufadhili Trust, Kenya; RENLAC, Burkina Faso; ACCU, Uganda) to international CSOs, such as TI which has branches in many of the twenty countries (including Ghana, Cameroon, Ethiopia, Kenya, Mozambique, Madagascar, Zambia.). From the reports available on their websites they are all very active in promoting the anti-corruption strategies and are also engaging with the business sector. In some countries, CSOs are playing the important role of a watchdog on a public body (e.g. FONAC in Benin). There is scope for CSOs to be the watchdog not only within public bodies but also within business and professional associations and with the private sector.

The media are active in many of the twenty countries studied, though there is some degree of self-censorship due to defamation laws. Nevertheless, news items on corruption and articles on recent developments to fight corruption are carried in the media. Investigative journalism is evolving slowly, but access to information is an important ingredient. South African and Uganda are the two countries that have laws on freedom of information, though a number of countries are contemplating the introduction of such laws (e.g. Ghana, Tanzania).

Notes

1. No distinction is made here between Non Governmental Organisations (NGOs) and Civil Society Organisations (CSOs). They are used interchangeably.
2. See Chapters 1 and 4 for further details on the United Nations Global Compact.
3. UN Anti-corruption Toolkit, 3rd Edition, 2004, Vienna: UNODC.
4. See: OECD, *Fighting Corruption: What Role for Civil Society? The Experience of the OECD*, OECD, Paris, (2003).

5. See: www.etica.org.mz.
6. See: www.anticorruption.or.ug.
7. See: www.ufadhilitrust.org
8. See: www.renlac.org/html/reglement.html.
9. See: <http://courantsdefemmes.free.fr/Assoces/Benin/FONAC/fonac.html> .
10. 'Beninese Civil Society Takes Charge', www.usaid.gov/stories/benin/ss_benin_corruption.html .
11. www.africog.org.
12. AfriCOG Annual Report 2007-2008 p, 2 available at www.africog.org/reports/AfriCOG_07-08_Annual_Report.pdf.
13. World Bank Institute Working Papers, available at <http://siteresources.worldbank.org/WBI/Resources/wbi37158.pdf>.
14. See footnote 289 for examples of cases of bribery.
15. World Bank (2000) *Helping Countries Combat Corruption* Washington DC: World Bank, p.48.
16. Adopted on 17 June, 1981 and in force since 21 October 1986.
17. Dates of ratification/accession: Benin (20 January 1986); Burkina Faso (6 July 1984); Cameroon (20 June 1989); Ethiopia (15 June 1998); Ghana (24 January 1989); Kenya (23 January 1992); Madagascar (9 March 1992); Malawi (17 November 1989); Mali (21 December 1981); Mauritania (14 June 1986); Mozambique (22 February 1989); Nigeria (22 June 1983); Niger (15 July 1986); Rwanda (15 July 1983); Senegal (13 August 1982); Sierra Leone (21 September 1983); South Africa (9 July 1996); Tanzania (18 February 1984); Uganda (10 May 1986); and Zambia (10 January 1984).
18. African Commission on Human and Peoples' Rights, 32nd Session, 17-23 October 2002, Banjul, The Gambia.
19. The criminal defamation provisions were repealed by Ghana in 2001.
20. Jugement COR.CD1 N°007 du 17 Janvier 2006, Republique Du Benin Tribunal De Premiere Instance De Cotonou. Two journalists from a privately owned newspaper received a six month prison sentence and fine for defamation.
21. World Press Freedom Review, Burkina Faso, 2007. Detailed Reports on all the twenty countries are available on www.freemedia.at.
22. 'In Senegal, journalist sentenced to prison' <http://cpj.org/2007/04/in-senegal-journalist-sentenced-to-prison.php>.
23. See: www.pensweden.org/caselist/caselist-2007-jan.pdf under Malawi. The editor and two reporters of *The Chronicle* were charged with criminal libel for alleging that the Attorney General was involved in the sale of a stolen laptop.
24. See: World Press Freedom Review, 2007, Rwanda available at www.freemedia.at.
25. 'Harsh bail set for Standard Times editor' <http://cpj.org/2007/07/harsh-bail-set-for-standard-times-editor.php> .
26. See: World Press Freedom Review, Ghana, 2007.
27. Journalist of the privately owned weekly *Events* was arrested for sedition for reporting alleged corruption by a local governor for awarding road construction contract. More information available at www.pensweden.org/caselist/wipccase-listjanjun08.pdf, p, 14.

28. 'Police Grill 3 Monitor Editors' www.myuganda.co.ug/news/?more=182.
29. Uta Melzer 'Africa Review' www.freemedia.at/cms/ipi/freedom_detail.html?ctxid=CH0056&docid=CMS1233676189400&country=/KW0001/KW0006/.
30. World Press Freedom Review, Ethiopia, 2007.
31. 'Editor of al-Aqsa jailed for one year in "poorly conducted" trial' www.rsf.org/article.php3?id_article=24313.
32. 'In Mali, High School eEssay Assignment Lands Journalist in Prison' <http://cpj.org/2007/06/in-mali-high-school-essay-assignment-lands-journal.php>
33. 'Scancem Bribery Case' (www.ghanaweb.com/GhananHomePage/NewsArchive/dossier/php?ID=145); 'Mona Named in Bribery Case' (www.journalis.co.za); Paul Fauvet 'Mozambique: Accusations of Bribery Denied in Sale of Textile Factory' (www.allafrica.com/stories/200607310397.html); Sufuyan Ojeifo 'Nigeria: Senate to Wade into Halliburton Bribery Scandal' (www.allafrica.com/stories/200903200217.html); 'Ghanaians must Decide to Eradicate Corruption' (www.ghananewsagency.org/s_social/r_6203).
34. From Statistics on Abandoned Babies to Tenders that Topple Governments available www.fairreporters.org.
35. www.journalism.co.za/index.php?option=com_content&task=view&id=415&Itemid=309; 'How Arms Bribes' at www.journalism.co.za/images/ijw/Taco_Kuiper_MG_0502.pdf.
36. Constitutional Appeal No 2, 2002, 11 February 2004, not yet published. Judgment available at www.worldlii.org/ug/cases/UGSC/2004/1.txt/cgi-bin/download.cgi/download/ug/cases/UGSC/2004/1.pdf.
37. *National Media Limited & Ors v Bogoshi* Case No 579/96 South African Supreme Court of Appeal 29 September 1998, pp. 23-4 available at www.saflii.org/za/cases/ZASCA/1998/94.html.
38. OECD (2006) *Anti-Corruption Policies in Asia and the Pacific* Paris: OECD , p. 72.
39. Act No. 2, 2000 Government Gazette Vol. 416, No. 20852. Available at: www.acts.co.za/prom_of_access_to_info/pai_act.htm#promotion_of_access_to_information_act.htm.
40. See: www.armsdeal-vpo.co.za/special_items/special_reports.html; Mariette Le Roux 'Judgment reserved in arms deal' www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw1036745461289B262.
41. Open Society Justice Initiative *Transparency & Silence* New York: Open Society Institute, 2006.
42. Uganda Gazette No. 42 Vol. XCVIII dated 19th July 2005. Available at: www.freedominfo.org/documents/uganda_ati_act_2005.pdf.
43. See: www.foicoalition.org.
44. See *Internet Access in South Africa 2008 report* - www.internetworldstats.com/af/za.htm.
45. See UNDP Human Development Report, 2009 http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf.
46. See: www.wikileaks.org.
47. See: http://wikileaks.org/wiki/Terry_Crawford_Brown_Censored_South_African_Arms_Deal_Letters.

Chapter 6

Recommendations

Chapter 6 sets out a number of recommendations based on the findings of the Report and highlights areas for further attention and action on the part of governments, private sector and civil society, with the support of the OECD and AfDB. More specifically, the recommendations address: Strengthening anti-bribery legislation; strengthening the effective implementation of anti-bribery and related laws; promoting cooperation across agencies; increasing resources for the investigation and prosecution of bribery; strengthening awareness of anti-bribery laws; improving means of detection and reporting of bribery; strengthening business integrity and accountability, and; promoting the involvement of the public, civil society and the media.

This study is a stocktaking exercise of the anti-bribery and associated laws and practices aimed at curbing bribery of public officials in business transactions and raising business integrity adopted in twenty countries in sub-Saharan Africa. The developments within the business sector in fighting bribery in response to initiatives such as the OECD Guidelines for Multinational Enterprises and the UN Global Compact, as well as the role of civil society and the media in the fight against bribery of public officials in business transactions were also examined in these twenty countries.

The study of the legal frameworks and practices revealed gaps, loopholes and lack of clarity in some of the offences created. Some of the countries are yet to fully implement the anti-corruption convention(s) that they have ratified. The study also found that most of the agencies charged with powers to investigate bribery do not have powers to prosecute and, in turn, must send files to the Director of Public Prosecutions or the Attorney General for further action. This is a process that can cause significant delays in the investigation and prosecution of bribery.

The study further finds that public procurement policies and practices are another area which could benefit from further review and refinement. While there are sufficient laws in place to ensure accountability and transparency in the processes, the annual reports from the public procurement oversight authorities in some of the countries reported that many of the procurement entities were still unaware of the procurement rules and did not apply them. There was also lack of clarity about effective co-operation between the different agencies – *e.g.* the specialised anti-corruption agency and the Attorney General's office, the public procurement oversight authority, the financial intelligence units and the specialised anti-corruption agencies.

A number of recommendations set out below highlight areas for further attention and action on the part of the governments, private sector and civil society with the support of the AfDB and the OECD.

Recommendation I.: Strengthening anti-bribery legislation

Effective anti-bribery laws are essential for attracting investment and for economic growth. The national legislation of the twenty countries studied contain a range of offences aimed at combating bribery of public officials in

business transactions that are also found in the legal systems of OECD countries.

However, some gaps and loopholes remain, and countries could strengthen their legislation by taking into account the following issues:

- Offences in respect of active and passive bribery found in some anti-bribery laws do not mention the subjective element (intentionality) of the offence. ‘Intentionality’ is an important constituent in the bribery offences in the UNCAC (articles 15, 16) and the OECD Anti-Bribery Convention (article 1(1)).
- Not all countries have made active bribery of foreign public officials an offence (see article 16 UNCAC). Article 16 of the UNCAC is a mandatory provision and countries which have not already done so are recommended to enact legislation with dissuasive sanctions that effectively criminalise the bribery of foreign public officials in international business transactions.
- International standards for the criminalisation of bribery require a broad definition of “public official”. The legislation in many of the countries studied do not meet this requirement and either provide a narrow definition of “public official” or do not define the term. Countries are therefore recommended to broaden the definition of “public official” in their anti-bribery legislation to ensure that it covers bribery of persons holding legislative, executive, administrative or judicial office; persons exercising a public function or providing a public service; persons who perform public functions in a public agency or enterprise; and persons defined as a public official under domestic law. Both the UNCAC (article 2(a)) and the AUC (Article 1) define the term.

Most of the countries do not make specific provision for the liability of legal persons for the offence of bribery (see article 2 OECD Anti-Bribery Convention, article 26 UNCAC) and where provisions are included, it is unclear how they will be applied in practice. In countries based on the common law system, the ‘directing mind’ test is used which is unsatisfactory in current day company practices where the decision-making is often diffused. International standards now clearly require countries to impose adequate criminal, civil or administrative sanctions against legal persons for bribery, and countries are therefore recommended to enact effective provisions in this regard. Annex A of the OECD Anti-Bribery Convention provides good practice guidance on implementing specific articles of the Convention, including on the responsibility of legal persons, which can also be useful for establishing similar requirements under the UNCAC.

Recommendation II.: Strengthening the effective implementation of anti-bribery and related laws; promote co-operation across agencies; and increasing resources for the investigation and prosecution of bribery of public officials.

The effective implementation of anti-bribery laws is critical in the fight against bribery. However, effective implementation is difficult to assess as in most countries, there is no official data available on the number of complaints, number of investigations and number of prosecutions for bribery of public officials in business transactions. Such information is vital to measure the effectiveness of anti-bribery laws in practice, and to establish whether complaints are being thoroughly investigated and whether mechanisms to reveal such information need to be put in place. Cooperation across agencies is also a key element in the effective investigation and prosecution of bribery offences, as well as ensuring that anti-corruption authorities are adequately resourced and staffed. Countries could address these issues by taking into account the following:

- Improving methods of data collection, including on sanctions imposed, and ensuring their wide dissemination;
- Implementing mechanisms to keep track of the status of cases, including those that were dropped (and why);
- Reporting of cases even where a case is heard at the lowest level (*e.g.* magistrates' courts in countries with a common law influence) and publicly disseminating judgments;
- Fostering inter-agency co-operation and regular joint training of staff, thereby establishing effective working relationships;
- Providing appropriate means for exchange of information between different agencies, such as anti-corruption agencies, financial intelligence units and public procurement agencies;
- Considering giving prosecutorial powers in bribery cases to specialised anti-corruption agencies;
- Ensuring that the various agencies are adequately resourced and undergo regular training sessions (at national and/or regional level), including in the development of methods for detection and investigation;
- Conducting regular reviews of anti-bribery laws and practices at national and regional levels.

Recommendation III.: Strengthening awareness of anti-bribery laws in government departments, agencies and other institutions

Awareness of laws in all government departments and other state agencies, as well as within educational institutions, is vital in the fight against the bribery of public officials in business transactions. It is also important that public authorities understand how the public procurement rules work and how to implement them. Countries are therefore recommended to take into consideration the following:

- Training a pool of staff on a regular basis on public procurement rules and their application;
- Putting in place sound administration systems that enable staff to obtain clarification as and when needed;
- Regular appraisal and auditing of staff practices in relation to public procurement to ensure that the rules are being applied as intended;
- Raising awareness of anti-bribery and related laws in educational institutions, including business and law schools.

Recommendation IV.: Strengthening means of detecting and reporting bribery of public officials

Bribery is a clandestine act and anti-corruption authorities must rely on numerous means of detection to ensure that such behaviour is detected, reported and subsequently investigated. Whistleblowers – employees who come forward with information about malpractices and suspicious activities within their places of employment, and concerned members of the public who may have information to impart to relevant authorities – provide a very important means of detection of bribery and corruption. However, few of the countries studied in the Report have enacted specific whistleblower protection laws to ensure that such persons who come forward and report bribery do not suffer reprisals. To facilitate detection and encourage the reporting of bribery, countries are recommended to:

- Implement effective means to facilitate the detection of bribery, including through public and private sector reporting mechanisms;
- Establish easily accessible channels for public and private sector employees to report suspicions of bribery and other unlawful activities, and the implementation of measures to protect from discriminatory or disciplinary actions employees who make such reports in good faith and on reasonable grounds to competent authorities.

Recommendation V.: Strengthening business integrity and accountability

Another important cornerstone in the fight against bribery of public officials in business transactions is through legislation aimed at increasing business integrity, transparency and accountability. Businesses can also set guidelines for improving their integrity and put in place mechanisms within their organisations for reporting bribery and training staff on detecting bribery, following good accounting practices and undertaking best practices when engaging in public procurement bids. A number of countries have adopted business codes of conduct but these best practices still need to be widely publicised and adopted across the twenty countries. Countries are therefore recommended to strengthen these initiatives by addressing the following:

- Adoption of whistleblower legislation that protect employees who report suspicions of bribery or other unlawful activities in good faith and on reasonable grounds to competent authorities from discriminatory or disciplinary actions;
- Adoption of international accounting and auditing standards similar to the IFRS and IAS, creating effective false accounting offences, and the adoption of dissuasive sanctions for omissions or false expenditure entries to hide payments of bribes to public officials, and putting in place effective compliance mechanisms;
- Promoting international standards such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and other codes of conduct adopted by business associations in the African region;
- Harnessing local and national chambers of commerce and professional associations to disseminate information and advise businesses, including small and medium enterprises, on codes of conduct, and provide training of business employees and others (e.g. contractors) where required;
- Providing safe channels of communication for employees within businesses to report suspicions of bribery;
- Training of business employees and contractors on national anti-bribery legislation, international best practices in accounting and public procurement processes.

Recommendation VI.: Promoting the involvement of the public, civil society and the media

Another cornerstone for success in fighting bribery is to raise public awareness of bribery and related offence and their negative impact. Engagement with civil society organisations is critical in this regard. It is also

essential to not only take steps that promote public awareness but to also provide various channels for reporting incidents without fear of reprisals.. The media also has an important role to play in the detection and reporting of bribery, and access to information is essential in this regard.. Countries are therefore recommended to address these issues by taking into consideration the following:

- Creating an enabling environment for the media and civil society in the fight against bribery and corruption, and supporting NGOs to raise awareness and possibly act as an optional conduit for members of the public to report cases of bribery of public officials in business transactions;
- Providing and implementing adequate measures for members of the public and the media to access information, including through the consideration of adoption of right to information legislation and mechanisms;
- Providing adequate protection to witnesses and informants;
- Encourage and provide training to the media to report cases of bribery and to widely disseminate news of anti-bribery efforts;
- Encouraging interaction and co-operation between all stakeholders – NGOs, the public, government agencies, businesses, chambers of commerce, business associations, professional association and the media.

ANNEX A

Status of ratifications of OECD Anti-Bribery Convention, African Union Anti-Corruption Convention, and UNCAC by the twenty African Countries

Countries	OECD Anti-Bribery Convention	African Union Convention	UNCAC
Benin		20 September 2007	14 October 2004
Burkina Faso		29 November 2005	10 October 2006
Cameroon			6 February 2006
Ethiopia		18 September 2007	26 November 2007
Ghana		13 June 2007	27 June 2007
Kenya		3 February 2007	9 December 2003
Madagascar		6 October 2004	22 September 2004
Malawi		26 November 2007	4 December 2007
Mali		17 December 2004	18 April 2008
Mauritania			25 October 2006 (a)
Mozambique		2 August 2006	9 April 2008
Niger		15 February 2006	11 August 2008 (a)
Nigeria		26 September 2006	14 December 2004
Rwanda		25 June 2004	4 October 2006
Senegal		12 April 2007	16 November 2005
Sierra Leone		3 December 2008	30 September 2004
South Africa	19 June 2007 (a)	11 November 2005	22 November 2004
Tanzania		22 February 2005	25 May 2005
Uganda		30 August 2004	9 September 2004
Zambia		30 March 2007	7 December 2007

(a) =Accession

ANNEX B

Details on international and African regional initiatives to combat bribery of public officials

This Annex provides further information on (a) the OECD Anti-Bribery Convention and the OECD work and initiatives in the fight against corruption, (b) the United Nations Convention against Corruption and (c) the African Union Convention against corruption.

1. The OECD and the OECD Anti-Bribery Convention

a) The OECD Anti-Bribery Convention

The OECD Anti-bribery Convention requires its Parties to put in place legislation that criminalises bribery of foreign public officials as well as complicity in foreign bribery, including incitement, aiding and abetting, or authorisation of a foreign bribery act. They are required to do so with an adequate statute of limitations.¹ The words “bribery” and “foreign public official” are defined broadly.² Bribing a foreign public official is a crime in the 40 countries that have ratified the Convention³.

Criminal penalties must be effective, proportionate and dissuasive and can be combined with additional civil or administrative sanctions. In case of legal persons not subject to criminal penalties, monetary sanctions can take place.⁴ Other than these sanctions, countries are also expected to take other measures such as the seizure and confiscation of bribes and any profit obtained as a result of bribes.

The Convention requires Parties to establish the liability of legal persons for the bribery of foreign public officials, Parties having the choice to use criminal, civil or administrative law approaches.⁵

The OECD Anti-Bribery Convention also prescribes mutual legal assistance between countries.⁶ Furthermore, according to the Convention, the bribery of a

foreign public official shall also be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.⁷

The implementation of the OECD Anti-Bribery Convention is supported through monitoring and surveillance procedures that are carried out by the OECD Working Group on Bribery (Working Group), which is composed of all 40 Parties to the Convention⁸. Through country monitoring and extensive peer follow-up, the OECD Convention is designed to ensure that the fight against bribery is effective, thus creating a level playing field for fair competition between international businesses.

There is no organisation in which the practice of peer review has been so extensively developed as the OECD, which has used this method since its creation more than 40 years ago in various policy areas. One measure of the success of the OECD peer review process is that other international organisations have also adopted the method. Although it differs in mandate and scope, the OECD peer review process was in part an inspiration to the development of the African Peer Review Mechanism (APRM) in 2003. The OECD has also shared its accumulated experience about best practices with regard to peer review methods with the APRM. Other OECD instruments such as the OECD Principles of Good Corporate Governance are also included as part of the APRM assessment. The OECD has also shared its expertise on monitoring with the Organisation of American States (OAS),⁹ which adopted its mechanism to follow-up the implementation of the Inter American Convention against Corruption (IACAC) in 2001.

The assessment of the implementation of the OECD Anti-Bribery Convention consists of a first phase (Phase 1) focusing on the adequacy of countries' legislation to implement the Convention and a second phase (Phase 2) focusing on the effectiveness of the application of the legislation. For each country reviewed, the Working Group adopts and publishes on the OECD website a report which includes an evaluation of the country's performance.¹⁰ Follow-up reports are also included as part of this review mechanism. The Working Group has just embarked on a third cycle (Phase 3) of peer review, which will focus on key Working Group-wide cross-cutting issues, the progress made by Parties on weaknesses identified in previous evaluations, enforcement efforts and results, and any issues raised by changes in the domestic legislation or institutional framework of the Parties.

This rigorous monitoring mechanism has had a tangible impact. Since the entry into force of the Convention, there has been a marked increase in the number of investigations and prosecutions. As of December 2009, approximately 150 individuals and 80 companies had been sanctioned for foreign bribery and related offences in thirteen Parties to the Convention. Sanctions have resulted in fines, totalling for example approximately EUR 1.24 billion against one single company, and prison sentences for involved company representatives. Also, there

were roughly 280 ongoing investigations as of December 2009 concerning allegations of foreign bribery. It should also be noted that the tax deductibility of bribes is no longer allowed in any of the 40 Parties to the Convention¹¹.

The OECD Anti-Bribery Convention applies the concept of functional equivalence among systems,¹² the attention being therefore drawn to the overall effects produced by a country's legal system rather than the individual rules.

b) Typology exercises undertaken by the OECD Working Group on bribery

In an effort to fight more efficiently foreign bribery and to strengthen the enforcement of the OECD Anti-Bribery Convention, the Working Group, based on its shared experience and broad consultation with law enforcement specialist and experts, has carried out two typology exercises attempting to describe, in the first exercise, how bribery is committed at various stages in the government purchasing process,¹³ and in the second exercise, the role of intermediaries in foreign bribery.

c) Other OECD instruments that address the issue of corruption

The multidisciplinary approach and experience of the OECD in its fight against corruption is reflected in a set of instruments adopted by the OECD that address the issue of the fight against corruption in specific areas.

The OECD Council adopted in 2006 the Recommendation on Bribery and Officially Supported Export Credits, which recommends countries to take concrete, co-ordinated measures to deter bribery in the export deals they support.¹⁴ In the area of public procurement, the OECD adopted a set of instruments (i.e. the 2008 OECD Council Recommendation on Enhancing Integrity in Public Procurement,¹⁵ which are supported by an on-line public procurement Toolbox aimed at helping practitioners put the principles included in the Recommendation into daily practice,¹⁶ the 2008 OECD Guidelines for Fighting Bid Rigging in Public Procurement and the 2009 OECD Principles for Integrity in Public Procurement),¹⁷ that address corruption and promote integrity throughout the entire public procurement cycle. Another particularly relevant instrument is the 2003 OECD Council Recommendation on Managing Conflict of Interest in the Public Service,¹⁸ which provides notably a framework for conflict of interest disclosure that could be useful for African countries.

In the area of aid, the OECD Development Assistant Committee (DAC) also focuses on corruption issues as part of the broader aim to improve aid effectiveness. In 1996, the DAC members adopted the Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement.¹⁹ In 2006 the Principles for Donor Action in Anti-Corruption,²⁰ which provide basic guidelines to improve

donor action in the fight against corruption, were adopted. These Principles complement the policy paper on anti-corruption²¹ produced by GOVNET (DAC Network on Governance) which sets out the opportunities for collective action against corruption.

The OECD has also highlighted the importance of including anti-corruption practices in a company's decision-making process and the need for company's programmes and procedures to comply with applicable laws by including anti-bribery laws in its OECD Principles of Corporate Governance²². First released in May 1999 and revised in 2004, these Principles are one of the twelve key standards for international financial stability of the Financial Stability Forum and form the basis for the corporate governance component of the Report on the Observance of Standards and Codes of the World Bank Group.

The OECD Guidelines for Multinational Enterprises²³ (the OECD Guidelines) is another instrument that addresses the issue of corruption. They provide voluntary principles and standards for responsible business conduct in a variety of areas including combating bribery, as well as employment and industrial relations, human rights, environment, information disclosure, consumer interests, science and technology, competition, and taxation. Adhering countries comprise all 30 OECD member countries and 12 non-member countries, including Morocco and Egypt.²⁴ As part of the follow-up work of the OECD Guidelines, the OECD Council adopted in 2006 the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, a voluntary, government-backed code of conduct for international business, which addresses risks and ethical dilemmas that companies are likely to face in weak governance zones, including obeying the law and observing international instruments.

The OECD Policy Framework for Investment (PFI) also addresses the issue of corruption in its comprehensive and systematic approach for improving investment conditions. It covers ten policy areas and addresses some eighty-two questions to governments to help them design and implement policy reform to create a truly attractive, robust and competitive environment for domestic and foreign investment, including the question "*To what extent have international anti-corruption and integrity standards been implemented in national legislation and regulations?*".

d) Other OECD initiatives and experiences

The OECD has forged partnerships with development banks in various regions and with different economies in order to promote the anti-bribery instruments. The Asian Development Bank and the OECD have adopted the Anti-Corruption Action Plan for Asia, which establishes a non-binding framework of action for Asia/Pacific countries in relation to the public sector, private sector and civil society.

The OECD has developed other regional initiatives to promote international anti-corruption instruments to strengthen regional capacity to fight corruption in Eastern Europe and Central Asia,²⁵ in Latin America²⁶ and more recently in Africa for the purpose of which the present report is prepared.

The OECD has also collaborated with Middle East and North Africa (MENA) countries recently under the MENA-OECD Investment Programme²⁷ on a number of issues including business integrity and anti-bribery policies.

Furthermore, through its different departments, programmes and initiatives, in particular the Development Co-operation Directorate, the Investment Division, the Sahel Club, the Development Centre, the Partnership for Democratic Governance and the Africa Partnership Forum, the OECD has had extensive relations with Africa in areas of work that can be classified into three categories: peer learning and policy dialogue in support of reform; aid policies and aid effectiveness, and monitoring of development trends and progress.²⁸

One of these initiatives is the NEPAD-OECD Africa Investment Initiative.²⁹ This Initiative aims to support African countries in improving their capacity to strengthen the investment environment for growth and development in accordance with the UN Monterrey Consensus, taking advantage of OECD's peer learning method and investment instruments of co-operation such as the Policy Framework for Investment (PFI), the most comprehensive multilaterally-backed investment policy instrument. The Initiative's work has helped NEPAD countries to improve the investment related content of the African Peer Review Mechanism (APRM) and enhance capacities to implement investment climate reforms in sensitive sectors such as water and transport infrastructure. Strong African ownership drives the Initiative.³⁰ While the Initiative has reinforced its role as a facilitator of region-wide dialogue on investment policy, it is also strengthening African countries' capacity to design and implement investment policy, by using the PFI as a benchmark. It also uses other OECD investment instruments, such as the OECD Principles for Private Sector Participation in Infrastructure and the OECD Risk Awareness Tool to promote infrastructure investment and corporate responsibility in partner countries.

2. The United Nations Convention against Corruption (UNCAC)

UNCAC covers a wide range of offences including bribery (domestic and foreign), embezzlement, trading in influence, concealment and laundering of the proceeds of corruption. UNCAC contains a wide definition of the term "public official" and, as described in Chapter 2 of the present report, many of the twenty countries studied have tended to adopt a wide a definition of this term.

UNCAC also provides a framework for criminalising bribery in the private sector and calls for measures to improve business integrity. Offences committed

in support of corruption, including money-laundering and obstructing justice, are also dealt with. It is interesting to note that UNCAC, as the OECD, also brings the transnational bribery of foreign public officials in international business transactions within its ambit.³¹ Continuously highlighted by the various OECD initiatives, the issue of bribery and other corruption risks in public procurement is also addressed in UNCAC.

Like the OECD Anti-Bribery Convention, UNCAC also addresses the liability of a legal person, requiring Parties to establish the liability of legal persons in participation of the offences that have been established in accordance with the Convention. Parties are however free to make legal persons subject to civil, criminal or administrative liability depending on their legal principles, thus following the diversity of approaches that is found in the OECD Anti-Bribery Convention and the functional equivalence approach.

UNCAC also introduces the offence of illicit enrichment with the intention of increasing integrity in the public sector. The creation of this offence, which is not obligatory in UNCAC, has been found to be a useful deterrent to corruption among public officials.³² It is interesting to note that a number of the countries studied have adopted such an offence. Another step taken by UNCAC in relation to raising the integrity of public officials is by requiring its Parties to consider adopting measures that, amongst others, require public officials to declare their assets.

Furthermore, UNCAC makes the return of assets (asset recovery) a fundamental principle of the Convention, requiring State Parties to “afford one another the widest measure of cooperation and assistance in this regard.”

Prevention is also an important focus of UNCAC, which contains provisions on whistleblowers, the establishment of specialised agencies and preventive anti-corruption bodies, the access to information by the public, the participation of civil society, non-governmental organizations and community-based organizations in the prevention of and the fight against corruption.

Under article 5, Parties are expected to collaborate with each other and other relevant international and regional organisations in the pursuit of the anti-corruption goals set out in article 5.³³ This collaboration can be in the form of the participation in international programmes and projects aimed at the prevention of corruption. The current AfDB/OECD initiative reflects such an international programme aimed at collaborative efforts to combat corruption. Similarly, UNCAC also calls on States, in coordination with international and regional organizations, to provide technical assistance in the field of anti-corruption to countries needing it. UNCAC indeed addresses the need for “enhanced financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully” (article 62).

A review mechanism of UNCAC has been agreed upon at the Third Conference of State Parties that took place in Doha in November 2009.³⁴ The mechanism is voluntary. It is divided into phases. Each phase consists of two review cycles of five years each. The first cycle will cover criminalisation, law enforcement and international co-operation. The second will cover prevention and asset recovery. Contrary to the mechanism put in place by the OECD Anti-Bribery Convention, there is no automatic publication of the reports. Reports are to remain confidential and reviewed countries are encouraged to publish all or a part of the reports.

It is interesting to note that after the 2006 Conference of State Parties, UNODC had developed a “Pilot Review Programme” to test methods for implementation review of UNCAC, in which Burkina Faso, Rwanda and Tanzania participated.³⁵

3. African Union Convention on preventing and combating corruption (AUC)

Offences covered by the AUC are bribery of public officials (it being noted that there is no explicit provision on foreign public officials), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. It should be noted that, in comparison with UNCAC and the OECD Anti-Bribery Convention, an important element missing from the description of the offences is the mental element (the requirement of intentionality). Indeed, nowhere in the AUC is there a general provision on intentionality, the issue as to whether this is automatically implied in the offences being debatable. Private sector corruption is also addressed, including private-to-private corruption.

The AUC provides for important preventive measures required in the public service, such as declaration of assets by designated officials, access to information and role of media, civil society and non-governmental organisations,³⁶ awareness-raising and education of populations to respect the public good and public interest. Important detection measures are also addressed, in particular the protection of whistleblowers, the adoption of suitable measures that ensure that citizens report instances of corruption without fear of reprisals, and the establishment of specialised anti-corruption agencies.

Furthermore, the AUC establishes an international cooperation framework (in particular mutual legal assistance, extradition and repatriation of proceeds of corruption) and calls on Parties to, among others, collaborate with countries of origin of multinationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions.

It should be noted that the AUC does not contain any requirement of liability of legal persons. The AUC does not contain any provision on statute of limitations either. Sanctions are not covered either.

The AUC makes room for a follow-up mechanism in the form of an Advisory Board³⁷ on Corruption, whose functions will include its promotion and adoption, collection and documentation of information on the nature and scope of corruption in Africa. It is to develop strategies for public awareness of the negative aspects of corruption, develop and promote the adoption of harmonised codes of conduct for public officials, and collect and analyse information about the conduct and behaviour of multinational corporations.³⁸

Notes

1. See article 6 of the OECD Anti-Bribery Convention.
2. See articles 1(1) and 1(2) of the OECD Anti-Bribery Convention.
3. As of December 2011.
4. See article 3 of the OECD Anti-Bribery Convention.
5. See: Chapter II concerning that discusses among others the liability of legal persons.
6. See: article 9 of the OECD Anti-Bribery Convention.
7. See: article 10 of the OECD Anti-Bribery Convention.
8. As of December 2011.
9. See www.oecd.org/document/4/0,2340,en_2649_34857_1942084_1_1_1_1,00.html#OAS_Convention.
10. In 2006, the OECD published a study of the Phase 2 reports, available at www.oecd.org, entitled *Mid-term Study of Phase 2 Reports Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendations on Combating Bribery in International Business Transactions*.
11. As of December 2011.
12. Pieth, M. "Taking Stock: Making the OECD Initiative Against Corruption Work" available at www.oas.org/juridico/english/pieth2000.htm.
13. OECD (2007) *Bribery in Public Procurement: Methods, Actors and Counter-Measures*' Paris: OECD; OECD (2007) *Integrity in Public Procurement: Good Practice from A to Z* Paris, OECD.
14. See: [www.ois.oecd.org/olis/2006doc.nsf/LinkTo/NT00007506/\\$FILE/JT03219827.PDF](http://www.ois.oecd.org/olis/2006doc.nsf/LinkTo/NT00007506/$FILE/JT03219827.PDF).
15. See: <http://webdomino1.oecd.org/horizontal/oecdacts.nsf/Display/D70EAE879DC5A2A8C12574E80046AFD2?OpenDocument>.
16. www.oecd.org/governance/procurement/toolbox.
17. See: www.oecd.org/document/25/0,3343,en_2649_34135_42768665_1_1_1_1,00.html. See also Chapter 4 on Business Integrity.
18. See: www.oecd.org/gov/ethics/conflictofinterest.

19. See: <http://webdomino1.oecd.org/horizontal/oecdacts.nsf/Display/ACD69FA2FC071504C125729D0057F9D9?OpenDocument>.
20. See: DCD/DAC(2006)40/REV1.
21. See: OECD (2007) *Policy Paper and Principles on Anti-Corruption: Setting an Agenda for Collective Action* Paris: OECD.
22. See: www.oecd.org/document/49/0,3343,en_2649_34813_31530865_1_1_1_1,00.html.
23. Text available at: www.oecd.org/dataoecd/56/36/1922428.pdf. See also www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1,00.html - See Chapter 4 on Business Integrity.
24. Other non-members having adhered to the Guidelines are Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Peru, Romania and Slovenia.
25. See: www.oecd.org/pages/0,3417,en_36595778_36595861_1_1_1_1,00.html.
26. See: www.oecd.org/document/33/0,3343,en_2649_34857_36437537_1_1_1_1,00.html.
27. See: www.oecd.org/pages/0,3417,en_34645207_34645590_1_1_1_1,00.html.
28. See: www.oecd.org/dataoecd/4/32/37577026.pdf.
29. See: www.oecd.org/document/51/0,3343,en_2649_34893_36167091_1_1_1_1,00.html.
30. It is guided by a Steering Group, chaired by NEPAD Executive Head with vice-chairs from South Africa and Japan, and composed of all major NEPAD actors, OECD countries and donors, Regional Economic Communities, NEPAD Business Group and NEPAD Business Foundation, African Partnership Forum, OECD Development Assistance Committee, Investment Climate Facility, World Bank, UNCTAD and other partner organisations.
31. See: article 16 of UNCAC.
32. UNODC Legislative Guide for the implementation of UNCAC, page 103. Available at www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf. UNODC explains that the establishment of illicit enrichment as an offence “addresses the difficulty faced by the prosecution when it must prove that a public official solicited or accepted bribes in cases where his or her enrichment is so disproportionate to his or her lawful income that a prima facie case of corruption can be made.
33. Develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public integrity, transparency and accountability.
34. See: www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html. See also the Background Paper CAC/COSP/2006/5 for the second Conference of State Parties that took place in 2006 and where participants agreed, on the basis of article 63 of UNCAC, that UNCAC should have a formal monitoring mechanism: www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1.html.
35. See: www.unodc.org/unodc/en/treaties/CAC/pilot-review.html. See also Tanzania’s report: www.pccb.go.tz/images/stories/UNICAC.pdf
36. Bhargava & Bologaita (eds) *Challenging Corruption in Asia* (2004) Washington DC: World Bank.
37. The Advisory Board is to comprise of eleven members to be elected from a list of experts of the highest integrity, impartiality and recognised competence in matters relating to preventing and combating corruption and related offences. It

also provides for adequate gender representation and equitable geographical representation.

38. See article 22 of UAC.

ANNEX C

Criminalisation of bribery and public procurement laws: Relevant laws and applicable provisions in the twenty African countries

1. Benin

a) Bribery

There is limited accessible information on the anti-corruption legal framework in Benin. **Articles 166 – 183 of the Penal Code** are said to cover bribery and corruption and active bribery of public official is made an offence in these provisions. **Article 37 of the Constitution of Benin** states that any act of corruption shall be suppressed under conditions provided by law.

b) Foreign bribery

The criminalisation of bribery of officials of foreign governments or public international organisations in the conduct of international business is reported in Benin (under **Article 1, 7(1) and 7(2) of the Penal Code of Benin**), but could not be confirmed.

c) Public procurement laws

There is limited accessible information on the legal framework for public procurement in Benin. In 2004, Benin adopted **Law No. 2004-18 on the Public Market** which replaced Ordinance No 96-04 of 31 January 1996.¹ All procurement processes reportedly require competitive bidding.² Sole sourcing is possible but subject to strict regulations. Where companies commit major violation of procurement laws such as bribery they are prohibited from taking part in future bidding from one to ten years. There is reportedly a complaints mechanism in place enabling unsuccessful bidders to request an official review of procurement decision, which can also be challenged in a court of law. The Public Procurement Verification Commission (PPVC) is the public procurement oversight body.

2. Burkina faso

a) Bribery

There is limited accessible information on the anti-corruption legal framework in Burkina Faso. The law in respect of bribery and other acts of corruption are found in **Loi No. 043/96/ADP du 13 Novembre 1996 portant Code Pénal 13 December 1996, Chapter V.**³ The offer of bribes and the attempt to corrupt by promises, offers, gifts or presents to public officials are criminalized under **Articles 157 and 158**. Passive bribery is criminalised under **Articles 156 and 157** of the Penal Code. “Public official” is not defined; however, **Articles 156 and 157** indicate that they include functionaries of the administrative and judicial orders, agents and employees of the administration and public corporations.

b) Foreign bribery

Burkina Faso does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Burkina Faso’s public procurement laws are found in **Decrét No. 2008-173/PRES/PM/MEF 16 avril 2008 portant règlementation générale des marchés publics et des délégations de service public**. The law applies to governments, statutory bodies, state corporations and companies with majority public participation (**Article 1(4)**). All procurement requires competitive bidding but sole sourcing or limited tendering is allowed under certain circumstances (**Articles 57, 61**). Where companies commit violations of the procurement process, including engaging in bribery, they are prohibited from taking part in future bidding. This debarment can range from one to five years depending on the seriousness of the breach (**Article 155 - 161, 164**). The **Direction Générale des Marchés Publics (DGMP)**⁴ publicises and supervises the procedures, and the **Autorité de Régulation des Marchés Publics (ARMP)** was established in 2008 to regulate public procurement. The ARMP has authority to impose sanctions and initiate lawsuits.

3. Cameroon

a) Bribery

There is limited accessible information on the anti-corruption legal framework in Cameroon; however, there are reportedly laws in place covering active bribery of public officials under the **Penal Code of Cameroon, Article 312.**⁵

b) Foreign bribery

The criminalisation of bribery of officials of foreign governments or public international organisations in the conduct of international business is reported in Cameroon, but could not be confirmed.

c) Public procurement laws

Public procurement is governed by **Décret No 2004/275 Code de marchés public du 24 septembre 2000**. The law applies to contracts financed or co-financed by the government and includes public corporations and public sector companies (**Article 3**). All procurements, whether national or international, are required to be open and competitive, although restricted bidding is allowed under certain circumstances (**Articles 7-12**). It appears that companies are suspended from future bidding for violations for a period of two years but it has not been possible to confirm this information. There is also a **Public Contracts Regulatory Agency**.⁶

4. Ethiopia

a) Bribery

Corruption offences in Ethiopia are covered under **Revised Criminal Code of Ethiopia (RCC)**. The active bribery of a public official is addressed in **Article 404(2)** which makes it an offence for “any person who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, promises, offers, gives or agrees to give an undue advantage to a public servant ...in consideration of an act performed or to be performed.” Passive bribery is criminalised under **Article 404**. “Undue advantage” is defined as “any improper benefit or a benefit through improper means” (**Article 402(5)**). “Public servant” is defined in **Article 402(1)** as “any person who temporarily performs functions being employed by, or appointed, assigned or elected to, a public office or a public enterprise”.

b) Foreign bribery

Ethiopia does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Proclamations No. 430/2005 Determining Procedures of Public Procurement and Establishing its Supervisory Agency and No. 57/1996 on Federal Government of Ethiopia Financial Administration govern public procurement procedures and address conflicts of interest for public procurement officials. Competitive bidding is required and invitations to

tender are widely advertised. Sole sourcing is possible subject to strict requirements. Where bidders are known to have violated the procurement laws (including for bribery) they are debarred from future biddings. There are reportedly complaint mechanisms in place and it is possible to instigate a review of the procurement decisions, which can also be challenged in a court of law.⁷

5. Ghana

a) Bribery

Chapter V of the Criminal Code of Ghana (1960) covers bribery and corruption. Under the Criminal Code, any person who corrupts a public officer is guilty of a misdemeanour (**Section 239(2)**). The “corruption of a public officer” is explained as the “endeavour directly or indirectly to influence the conduct of such public officer ...in respect of the duties of his office ...by the gift, promise or prospect of any valuable consideration to be received by such public officer ...or by other person, from any person whomsoever” (**Section 241**). Passive bribery is also criminalised under **Section 240**. “Public officer” is defined as any person holding an office by election or appointment under any enactment or under powers conferred by any enactment (**Section 3(1)**).

b) Foreign bribery

Ghana does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by the **Public Procurement Act of 2003**. The Public Procurement Authority (PPA)⁸ aims to harmonise the public procurement processes and to ensure that the public procurement is carried out in a fair, transparent and non-discriminatory manner. Among its many functions are training, co-ordinating technical assistance in the field of public procurement, assessing public procurement processes, and investigating and debarring firms who have engaged in bribery (**Sections 2, 3(q) and 32**). The PPA also publishes a bulletin which contains notices of invitation to tender and contract award information (**Section 3(g)**). The Act applies to all government departments and agencies, public education establishments, public trust public funds, para-statals, companies where the State has majority interest and institutions established by the government for the general welfare of the public (**Section 14**). Procurement is to be undertaken by means of competitive tendering (**Section 35**) though restricted tendering and single source procurements are allowed under certain circumstances (**Sections 38-41**).

Section 92 lists the offences relating to procurement, including directly or indirectly influencing in any manner or attempting in any manner to influence the procurement process to obtain an unfair advantage in the award of a procurement contract (**Section 92(b)**) besides altering procurement documents and collusive agreements. Corrupt practices are also addressed under **Section 93** which states that an act will amount to a corrupt practice if so construed within the meaning of the Criminal Code. A complaints procedure is available under the Act to any supplier, contractor or consultant that claims to have suffered loss or injury due to a breach of rules by the procurement entity. The complaints in the first instance are to the procurement entity (**Section 79**). The supplier, contractor or consultant entitled to seek a review can also submit a complaint to the PPA.

6. Kenya

a) Bribery

Bribery and corruption is criminalised under the **Anti-Corruption and Economic Crimes Act 2003 (ACECA)**. The Act adopts a principal-agent approach in dealing with bribery of a public official. The principal for the purposes of the Act is a person in the public sector “who employs an agent for whom or on whose behalf the agent acts” (**Section 38(1)**). **Section 38(2)** further provides “[i]f a person has a power under the Constitution or an Act and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent’s principal, the person shall be deemed ...to be agent for the Government and exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government”. Under **Section 38(3)**, a Cabinet Minister is deemed to be an agent for both the Cabinet and the Government, and the holder of a prescribed office or position shall be deemed to be an agent for the prescribed principal. A person corruptly giving or offering or corruptly agreeing to give or offer a benefit to an agent as an inducement or reward to that he does or does not do something in relation to the affairs or business of his principal, or he shows or does not show favour or disfavour to any person or proposal in relation to the affairs or business of the agent’s principal, will be committing an offence under **Section 39**. Passive bribery is criminalised under **Section 39** of the Act.

b) Foreign bribery

Kenya does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Kenya's public procurement framework is governed by the **Public Procurement and Disposal Act 2005**, which applies to procurement by a public entity. "Public entity" includes the government and government departments, public education establishments and para-statal (Section 3). Procurement is normally to be done by open tendering (Sections 29, 54); however, alternative procurement procedures exist such as restrictive tendering and direct procurement (Sections 73, 74). The Act expressly prohibits involvement of any person, agent or employee in any corrupt practice (including bribery) (Section 40). Persons who have engaged in bribery may be debarred from participating in procurement proceedings (Section 115). Section 8 establishes a Public Procurement Oversight Authority (PPOA)⁹ which is mandated to ensure compliance with the public procurement procedures, monitor the public procurement system and its functioning, provide training and assistance, and make recommendations for improvement (Section 9). The Director General of the PPOA can also order an investigation to determine whether there has been a breach of the procurement rules and is empowered to submit a summary of his findings to the Kenya Anti-Corruption Commission. A complaints mechanism is available. An unsuccessful bidder who claims to have suffered, or to risk suffering, loss or damage due to a breach of a duty imposed on a procuring entity can seek a review from the Public Procurement Administrative Review Board whose decision is final unless subject to judicial review (Sections 25, 93(1) and 100).

7. Madagascar

a) Bribery

Bribery and corruption is criminalised under **Loi No. 2004-030 du 9 septembre 2004 sur lutte contra la corruption**¹⁰ (Loi No. 2004-030), which amended various existing provisions in the Penal Code and also introduced some new provisions. The active bribery of public official is criminalised under **Article 8 Loi No. 2004-030** which introduced a new **Article 177.1** into the **Penal Code of Madagascar**. Accordingly, any person who directly or indirectly promises, offers or gives gifts, presents or any benefit to a public official either to perform or refrain from performing any act of his function, mission or mandate in order to obtain a benefit will be committing an offence. Passive bribery is criminalised under **Article 177**. No definition of public official is provided but a reading of the other articles (e.g. Article 3) in Loi No. 2004-030 indicates that it is any person vested with authority or a public service mission.

b) Foreign bribery

Loi No. 2004-030 makes the bribery of foreign public officials and officials of public international organisations an offence. **Article 8 of Loi No. 2004-030**

inserts a new article **177.2 in the Penal Code of Madagascar** which states that the promising, offering or giving to a foreign public official or an official of a public international organisation directly or indirectly an undue advantage for himself or another person or entity to perform or refrain from performing any act in the exercise of his official duties in order to obtain or retain business or other improper advantage in connection with the conduct of international business is an offence. No definition of ‘public international organisation’ or ‘foreign public official’ is provided.

c) Public procurement laws

Madagascar’s public procurement framework is governed by **Loi No. 2004-9 portant code des marchés public du 26 juillet 2004**. The law applies to all state and public institutions, and any entity managing public funds and companies where the state has a major shareholding (**Article 3**). All procurement requires open competitive bidding, though restricted bidding and sole source bidding exist subject to certain requirements (**Articles 17-21**). Termination of a contract can result from misconduct of the contractor (**Article 51**). There is also a complaints mechanism under the law (**Article 55**). The law also establishes the **Autorité Régulation des Marchés Publics (ARMP)** which is mandated to report to the President of the Republic and the Parliament on implementation of the public procurement law and provide guidelines for improvement. In the event it finds irregularities in the processes it is also mandated to inform the relevant judicial or administrative body.

8. Malawi

a) Bribery

Bribery and corruption is criminalised under the **Corrupt Practices Act of 1965 (as amended 2004) (CPA)**. Under **Section 18(2)** any person who by himself or by or in conjunction with another person corruptly gives, promises or offers any advantage to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do anything in relation to any matter or transaction, actual or proposed, with which any public body may be concerned commits an offence. Passive bribery is criminalised under **Article 24(1)**. “Advantage” is defined in **Section 3** as “any benefit, service, enjoyment or gratification, whether direct or indirect, and includes a payment whether in cash or in kind, or any rebate, deduction, concession or loan, and any conditions or circumstance that puts any person or class of persons in a favourable position over another.” “Public officer” is defined as any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid,

and includes the President, Vice-President, a Minister and a Member of Parliament (**Section 3**).

b) Foreign bribery

Malawi does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by the **Public Procurement Act 2003** and applies to all ministries, departments, agencies or organs of the Government, or statutory bodies or other units using public funds (**Sections 2 and 3**). The Act establishes an **Office of Director of Public Procurement (ODPP)**¹¹ which is charged to promote the development of a procurement workforce, collect data on public procurement, monitor the performance of the procuring entities and their compliance with the legislation, refer violations to the law enforcement agencies, and propose areas for improvement (**Section 5**). Public procurement is to take place through open bidding, though other methods such as restricted tendering and single source procurement can be used provided under certain conditions (**Sections 31-36**).

There are specific sections prohibiting bidders and public officials from engaging in corrupt activities and the ODPP is to be informed of bribery and other corrupt acts (**Section 18**). The Director can debar a bidder from taking part in future bids (**Section 20**). A complaints mechanism is available for bidders who claim to have suffered or may suffer loss or injury due to a breach of duties imposed on the procuring entity.

9. Mali

a) Bribery

Bribery and corruption are criminalised under the **Penal Code of Mali** and **Loi No. 82/40/AN du 1er avril 1982**.¹² A person offering bribes and attempting to corrupt a public official by promises, offers, gifts or presents not due to them in the performance of their official duties in order to obtain an advantage or a favour commits an offence under **Article 2**. Passive bribery is criminalized under **Article 1**. "Public official" is not defined but Articles 1 and 2 indicate that they include functionaries of the administrative and judicial orders, agents and employees of the administration and public corporations.

b) Foreign bribery

Mali does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Mali's public procurement framework is governed by **Décret No. 95-401/P-RM Code des marchés publics du 10 novembre 1995**.¹³ The law applies to procurement by the State, State companies, or companies with a major public holding (**Article 2**). Procurement is to be carried out through competitive open tendering that is widely advertised, though restricted tendering is allowed under certain conditions (**Articles 23-27**). A complaints mechanism is available to unsuccessful bidders for alleged breaches of the public procurement regulations (**Article 85**). Bidders who have engaged in acts of bribery and corruption are debarred from participating in competitive bidding (**Article 90.2**). A list of debarred bidders is maintained by **Direction Générale Des Marchés Publics**.

10. Mauritania

a) Bribery

There is limited accessible information on the anti-corruption legal framework in Mauritania. The AfDB and the ADF in their country strategy paper¹⁴ discuss the need to institute an anti-corruption framework. According to a report from the Agences du Système des Nations Unies en Mauritanie,¹⁵ legislation for the fight against corruption has been adopted and a strategy against corruption was developed in 2007. Further information on the anti-corruption laws and strategy are not accessible.

b) Foreign bribery

Mauritania does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by **Décret 2002-08 du 12 février 2002 portant code des marchés publics**. The law applies to procurement by the state, public institutions and public corporations (**Article 2**). Procurements are required to be by open competitive tender though restricted tenders are possible subject to conditions (article 36). There is a specific provision on bribery and bidders who attempt to influence the valuation of bids or award decisions through gifts or other benefits will result in a cancellation of their tenders and they will be debarred from future competitions for a fixed period

of time or indefinitely depending on the seriousness of the misconduct. A list of debarred bidders is maintained by the Commission Centrale des Marchés.

11. Mozambique

a) Bribery

Bribery and corruption is covered under **Law 6/2004 of 17 June (Law 6/2004)**. Active bribery of a public official is made an offence. Any person who gives or promises to a public official either personally or through another, money or any material, or non-material privilege not due to them for the performance of their official duties is committing an offence (**Articles 9(1), 8 and 2**). Passive bribery is criminalised under **Article 7**. “Public officer” is defined in **Article 2(2)** “any person that exercises or participates in public or similar services in respect of which such person has been appointed or nominated pursuant to a law, by election or by resolution of the competent entity”. **Article 2(1)** also applies to managers, officers or officials in central or local government, in public enterprises or para-statals or private companies who provide public services.

b) Foreign bribery

Mozambique does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by Decree 54/2005 (*Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado*) of 13 December.¹⁶ Major procurements require competitive bidding and sole sourcing are subject to strict requirements (Article 30). Article 131 of the Decree enables unsuccessful bidders to instigate official reviews of the procurement decisions and challenge the decisions in a court of law. Where procurement regulations are violated (including for bribery), bidders are debarred from taking part in future bids. The Functional Unit for Procurement Supervision is responsible for training public procurement officers in various government departments, and is also responsible for monitoring the procurement processes in place.

12. Niger

a) Bribery

Bribery and corruption is criminalised under the **Penal Code of Niger**. **Article 130-131** criminalise the offer of bribes and the attempt to corrupt by

promises, offers, gifts or presents to public officials for performing or abstaining from an act in order that the bribe giver may obtain a benefit is an offence. Passive bribery is also criminalised under Articles **130-131** of the Penal Code. “Public official” is undefined in the Code, but **Article 131** indicates that it includes functionaries of the administrative and judicial orders, agents and employees of the administration and public corporations.

b) Foreign bribery

Niger does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

There is limited accessible information on the legal framework for public procurement in Niger. Niger reportedly adopted the **Code des Marchés Publics** in September 2002.¹⁷

13. Nigeria

a) Bribery

Bribery and corruption is covered by the **Corrupt Practices and other Related Offences Act 2000 (CPROA)**. A person who promises, offers to give, confers, procures any property or benefit of any kind to or attempts to procure any property or benefit of any kind to, on or for a public officer or to, or for any other person for an act, omission or favour or disfavour to be done or shown by the public officer is an offence under **Sections 9(1)(a) and (b)**. Passive bribery is criminalised under **Section 8** of the CPROA. “Public officer” is defined as “a person employed or engaged in any capacity on the public services of the Federation, State or Local Government, public corporation or private company wholly or jointly floated any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes Judicial officers serving in Magistrate, Area or Customary courts or Tribunals” (**Section 2**). It appears that under **Section 11** it is not necessary to prove that that the accused intended to give the property or benefit in question to the public officer or the accused believed that any public officer would do, make or show the act omission, favour of disfavour in question. This suggests that it is a strict liability offence.

b) Foreign bribery

Nigeria does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement in Nigeria is governed by **Public Procurement Act 2007** which applies to most procurement carried out by the Government and other procurement entities which it defines as “any public body engaged in procurement and includes a Ministry, extra-Ministerial office, government agency, para-statal and corporation” (**Sections 15 and 60**). The Act also covers entities where 35% of the funding is received from the federation share of the Consolidated Reserve Fund (**Section 15(1)(b)**). Procurement is normally to be through open competitive bidding (**Sections 16(1)(c) and section 24**), though special and restricted methods of procurement are allowed under certain circumstances (**Section 39**). The Act establishes two bodies; the first is the **National Council on Public Procurement (Section 1)** whose functions include considering and approving policies of public procurement and receiving and considering audited accounts from the **Bureau of Public Procurement (BPP) (Section 2)**. The Bureau of Public procurement (BPP)¹⁸ is the second institution created by the Act (**Section 3**) and is charged with the harmonisation of existing government policies and practices on public procurement, ensuring probity, accountability and transparency of the procurement process and ensuring application of fair, value-for-money and transparent standards and practices (**Section 4**). It has a number of functions assigned to it which include supervising the implementation of procurement policies, undertake procurement research, and prevent fraudulent and unfair procurement and where necessary apply administrative sanctions. The BPP may also recommend investigation of public procurement matters to be conducted by any relevant authority. Prosecution is instituted by the Attorney General or another authorized officer of the Federal Ministry of Justice (**Sections 54 and 58**). Bribery and other corrupt practices are offences (**Section 58 (4)**) and companies who engage in such activities will be debarred from all public procurements for a period of not less than 5 years (**Section 58(6)**). More specifically, according to Section 58(4) of the Act, the following constitute offence: entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the price quoted in their respective tenders, proposal or quotations are or would be higher than would have been the case has there not been collusion between the persons concerned , conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interests, favour, agreement, bribery or corruption, directly or indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of procurement contract. Splitting of tenders to enable the evasion of monetary thresholds set, bid rigging, altering any procurement document with intent to influence the outcome of tender proceeding, altering or using fake documents or encouraging their use, and

wilful refusal to allow the bureau or its officers to have access to any procurement records. A complaints mechanism to the BPP is available subject to strict requirements. If the bidder is not satisfied with the decision of the BPP, it can appeal to the Federal High Court.

Other laws that address bribery and corruption in Nigeria include the Criminal Code Act, Chapter 77 (1990); Section 98(a), (b) and (c) of the Criminal Code Act deal with official corruption: public official inviting bribes and abuse of office. Furthermore, the Fiscal Responsibility Act (2007) (FRA) established the Fiscal Responsibility Commission (FRC), whose objective, according to Nigerian authorities, is to reform the management of Nigeria's public finances through regular monitoring of government financial activities, uncompromising investigation and public reporting, backed by a firm commitment to enforcement.

14. Rwanda

a) Bribery

Bribery and corruption are covered under **Law No. 23/2003 of 07/08/2003** related to the **Punishment of Corruption and Related Offences (Law No. 23/2003)**. The law aims to prevent, suppress and punish corruption and related offences committed by those within state organs and public institutions amongst others (**Article 1**). Under **Article 14**, whoever has “explicitly or implicitly offered, indirectly or directly proposed, gifts or any other illicit profit to a person in charge of a function, mission or mandate or who will have promised in order to render for him or for her or for somebody else a service that is within his or her attribution or who will use the latter for that service to be rendered” commits an offence. Under **Article 15**, whoever has “explicitly or implicitly offered, indirectly or directly proposed, gifts or any other illicit profit to a person in charge of a function, mission or mandate or who will have promised in order to render for him or for her or for somebody else to be rendered an illegal service or to refrain from carrying out the usual duties” will have committed an offence. Passive bribery is criminalised under **Article 10** of the Law. As the law does not solely cover the public sector, no mention of a public servant or public service is expressly made under Articles 14 or 15. However, **Article 2** clarifies the concepts of “public servant” and “state organ”. “Public servant” refers to “any person with public authority of whatever rank with public mandate whether through regular election or by civil service appointment, one in charge of state mission or public services, who is involved in the management of the property of the State, District, Municipality, Town, City, Province, a public service organ, a public company or enterprise”. “State organ” is defined as constituting public service sector organs utilizing the property of the State and that of the public institutions.

b) Foreign bribery

Rwanda does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by **Law No. 12/2007 on Public Procurement**.¹⁹ The Law applies to procurement of most goods and works by procuring entities, which are defined as government authorities at all levels, para-statal, government agencies and public institutions (**Article 1(14)**). Procurement is normally by open tender (**Article 23**), though restricted tendering in certain circumstances is possible (**Article 51**). There is provision for debarring bidders; the maximum period for debarment is three years though in the event of recidivism it can be indefinite. The **Rwanda Public Procurement Authority (RPPA)** was established under **Law No. 63/2007 of 31/12/07**. Its functions include advising government authorities and other public procurement organs of the public procurement policies, ensuring organisation, analysis and supervision in public procurement matters, developing teaching materials and training, suspending or approving suspension of debarment of bidders in public procurement, and sensitising the public on matters relating to public procurement (**Article 3**). The RPPA is also empowered to carry out investigations in respect of public procurement matters (**Article 4**). A complaints mechanism is available to bidders (**Article 68**); where a bidder is dissatisfied with a decision, a request for review can be made to the Independent Review Panel.

15. Senegal

a) Bribery

Bribery and corruption offences are covered under the **Penal Code of Senegal**. The promising, offering or giving of a gift or other advantage to a public official in return for an act or omission in the performance of his official duties is criminalised under **Articles 159-160**. The term “public official” is undefined but some indication of its interpretation is provided under **Article 159** which includes those “elected to serve public functions, public service officer of any kind of public institution and corporations, clerks, officers or servants of a public administration”. Passive bribery is criminalised under **Articles 159-160** of the Penal Code. As Senegal is a monist state and as such, once a convention is ratified it becomes part of Senegalese law. **Article 98 of the Constitution of Senegal** (adopted 7 January 2001) also states that “treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party”.²⁰ Senegal ratified UNCAC on 16 November 2005 and the AUC on

12 April 2007. Theoretically, these conventions are now part of the laws of Senegal and therefore the relevant provisions on the active bribery of public official (article 15(a) UNCAC and article 4(b)) and the definition of public official (Article 2(a) UNCAC and Article 1 AUC) are directly applicable. However, in the absence of case law it is difficult to say whether the courts will apply these conventions.

b) Foreign bribery

Senegal does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by **Décret No. 2007-545 du 25 avril 2007 du code des marchés publics**.²¹ This Decree incorporates the Directives No. 04/2005/CM/UEMOA and Directive No. 05/2005/CM/UEOMA of 9 December 2005 relating to public procurement from West African Economic and Monetary Union (WAEMU). The Decree applies to the state, departments, public establishments and companies where the state has majority holding (**Article 2**). Procurement of most goods and works is by open competitive tendering though other methods are allowed subject to restrictions (**Article 60**). There are penalty provisions in the legislation and companies can be debarred for engaging in bribery (**Articles 143-146**). The **Nationale des Contrats de l'Administration** serves as the procurement monitoring authority.

16. Sierra leone

a) Bribery

Sierra Leone recently repealed its Anti-Corruption Act 2000 and adopted the **Anti-Corruption Act 2008 (ACA 2008)**. There are a number of provisions covering bribery of public officials. According to **Section 28(1)**, a person who “without lawful authority or reasonable excuse, gives, agrees to give or offers an advantage to a public officer as an inducement to or reward for or otherwise on account of such public officer performing or abstaining from performing, expediting, delaying or hindering, assisting, favouring any person in the transaction of any business with a public body” commits an offence. The section also states that it does not matter for the purposes of this offence whether the person is located in Sierra Leone or not thus bringing transnational bribery of Sierra Leonean public officials into its fold. **Section 34(1)** also deals specifically with bribery of a public officer to influence the decision of a public body according to which a person who gives or agrees to give or offers to a public officer an advantage, for instance, aiding in procuring or preventing the

passing of any vote or the granting of any contract or advantage in favour of any other person (**Section 34(1)(a)-(c)**). Passive bribery is criminalised under **Section 28(2)** of the Act. “Advantage” is defined under **Section 1** and includes gifts, loans, fee, commission, employment, office and contract. “Public officer” is defined as an officer or member of a public body including a person holding or acting in an office in any of the branches of government, whether appointed or elected, permanent or temporary, or paid or unpaid (**Section 1**).

b) Foreign bribery

Sierra Leone does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business

c) Public procurement laws

Public procurement is governed by the **Public Procurement Act 2004**. Procurement of most goods and works is normally undertaken by means of advertised open bidding providing equal access to all eligible and qualified bidders subject to certain exceptions (**Section 37**). There are also provisions on when sole-source procurement can be used. The Act establishes a **National Public Procurement Authority (NPPA)**.²² The NPPA’s functions are listed in **Section 14** of the Act and include formulating policies and standards on public procurement, ensuring compliance, assessing the operations of the public procurement processes, ensuring capacity building and human resource development for public procurement, and disseminating information about the public procurement system. The Act expressly prohibits bidders or suppliers from engaging in or abetting corrupt or fraudulent practices, including the offering or giving directly or indirectly of any inducement (**Section 34 (2)**). A bidder can be barred from one to six years (**Section 35**) for engaging in such practices. The Act also provides for a complaints procedure through the establishment of the Independent Procurement Appeal Panel for potential or actual bidders who have suffered or are likely to suffer loss or injury due to a breach of a duty imposed by the Act on a procuring entity.

17. South Africa

a) Bribery

Bribery and corruption is criminalised under the **Prevention and Combating of Corrupt Activities Act 2004 (PCCAA)**. The bribery of a public officer is addressed under **Section 4(1)(b)** which states that any person, who directly or indirectly, gives or agrees to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another

person in order to act, personally or by influencing another person to act in a manner that amounts, to amongst others, abuse of position of authority, violation of legal duty or set of rules (**Section 4(1)(b)(ii)**), unauthorised or improper inducement to do or not do anything (**Section 4(1)(b)(iv)**) or designed to achieve an unjustified result (**Section 4(1)(b)(iv)**) commits an offence. There are also offences in respect of specific matters such as activities relating to contracts (**Section 12**), procuring and withdrawal of tenders (**Section 13**), and in relation to auctions (**Section 14**). Passive bribery is criminalised under **Section 4(1)(a)** of the PCCAA.

“Public officer” is defined in **Section 1(xxiv)** and includes any person receiving remuneration from public funds or where the public body is a corporation, or any person in the public service. This definition does not expressly include a member of the legislative authority, a judicial officer or a member of the prosecuting authority.

b) Foreign bribery

The bribery of a foreign public official is covered by **Section 5(1) of PCCAA** as follows:

“Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner -

- that amounts to the -
 - ❖ illegal, dishonest, unauthorised, incomplete, or biased: or
 - ❖ misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:
- that amounts to-
 - ❖ the abuse of a position of authority;
 - ❖ a breach of trust; or
 - ❖ the violation of a legal duty or a set of rules;
- designed to achieve an unjustified result; or
- that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to foreign public officials.

“Foreign public official” is defined under **Section 1(v)** as “(a) any person holding a legislative, administrative, or judicial office of a foreign state; (b) any person performing public functions for a foreign state, including any person

employed by a board, commission corporation or other body or authority performing a function on behalf of that foreign state; or (c) an official or agent of a public international organisation". "Gratification" is also defined under **Section 1(ix)** and includes moneys, donations, gifts, honour, employment, or any right to privilege amongst others.

c) Public procurement laws

Procurement is regulated by the **General Procurement Guidelines (GPG)** which is supplemented by the individual accounting officer's procurement procedures issued under the general authority contained in the Public Finance Management Act 1999 and the Supply Chain Management (SCM). The GPG is built on the five pillars of procurement: value for money, open and effective competition, ethics and fair dealing, accountability and reporting and equity. The SCM ensures oversight, contract management and asset control planning thus dealing with bribery and corrupt practices in procurement. There are mechanisms in place for the blacklisting of companies and a register of tender defaulters is retained by the National Treasury.

18. Tanzania

a) Bribery

The **Prevention and Combating of Corruption Act 2007 (PCCA 2007)**, which replaced the Prevention of Corruption Act (Cap 329), covers bribery and corruption offences. The approach of this legislation provides a general corruption offence expressed in principal-agent language (**Section 17**) which makes the active bribery of any person an offence. There are also provisions on corruption in specific situations, for example in relation to contracts, public procurement, auctions and employment. The active bribery of public official in business contracts is addressed under **Section 18(1)** which renders an offence a person "who offers an advantage to a public official as an inducement to or reward for or otherwise on account of such public official's giving assistance or using influence in or having given assistance or used influence to assist in the promotion, execution or procuring of (a) any contract with a public body for the performance of any work, the supply of any service, the doing of anything, the supplying of anything or the supplying of any article, materials or substance, or (b) any subcontract to perform any work, supply or service, the doing of anything or supply any article, material or substance required to be performed, supplied, done under any contract with a public body an offence. Passive bribery is criminalised under **Section 17(1)** of the PCCA. "Public official" is defined as "any person holding a legislative, executive, judicial, administrative, political, military, security, law enforcement and local government authority or any other statutory office and

includes (i) any person performing a public function or providing a public services, and (ii) any other person natural or legal so defined in another written laws” (**Section 2**).

b) Foreign bribery

Both active and passive bribery of foreign public officials or an official of a public international organisation are made offences under the **Prevention and Combating of Corruption Act 2007 (PCCA)**. According to **Section 23(1)**, any person who intentionally promises, offers or gives to a public official or an official of a public international organisation directly or indirectly an undue advantage for that foreign public official or another person or entity in order that the foreign official acts or refrains from acting in the exercise of his official duties in relation to a local or international economic undertaking or business transaction commits an offence. “Foreign public official” is defined as any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country, including for a public agency or a public enterprise (**Section 3**). “Official of a public international organisation” is defined as an international civil servant or any person who is authorised by such an organisation to act on their behalf (**Section 3**). “Public international organisation” is left undefined but presumably will be decided on the status given to an organisation under international law. Tanzania also makes the passive bribery of a foreign public official an offence. Accordingly, any foreign public official or an official of a public international organisation who intentionally solicits or accepts directly or indirectly an undue advantage for himself or another person or entity in order to act or refrain from acting in the exercise of his official duties commits an offence (**Section 23(2)**).

c) Public procurement laws

Public procurement is governed by the **Public Procurement Act (2004)**. The Act applies to all procurement undertaken by a procuring entity, which is defined as a public body and any other body or unit mandated to carry out public functions (**Sections 2 and 3**). All procurement requires advertised, competitive bidding though restricted tendering is allowed under certain circumstances (**Section 60**). The Act establishes a special authority, the **Public Procurement Regulatory Authority (PPRA)**²³ whose functions include advising the Government and other public bodies on procurement policies and practices, monitoring and reporting on the performance of the public procurement systems, setting training standards, conducting periodic inspections of records and proceedings of procuring entities, instituting audits and carrying out investigations (**Sections 5-7**). The PPRA is also empowered to conduct investigations under the Act (**Section 8**). Where there is evidence of

bribery, bidders can be debarred from taking part in future bids for a period of ten years (**Section 72**). A complaints mechanism is available for unsuccessful bidders; upon examination of a complaint, the PPRA can issue a final decision. However, in limited circumstances an appeal of the decision can be made to the Public Procurement Appeals Authority.

19. Uganda

a) Bribery

Uganda adopted the **Anti-Corruption Act 2009 (ACA 2009)** on 25 August 2009. Under **Section 2(b)**, a person who offers or grants, directly or indirectly, to a public official any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for an act or omission in the performance of his or her public functions is committing the offence of corruption. The bribery of a public official is specifically addressed in **Section 5(a)** according to which “a person directly or indirectly by himself or herself or through any other person offer, confers, gives or agrees to offer any gratification to any member of a public body an inducement or reward so that the member i) votes or abstains from voting at any meeting of that public body in favour of or against any measure, resolution or question submitted to that public body; ii) performs, or abstains from performing his or her duty in procuring, expediting, delaying, hindering or preventing the performance of an official act; or iii) aids in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person” commits an offence. There is also a specific provision on corruptly procuring the withdrawal of tender (**Section 4**). Passive bribery is criminalised under **Section 29(1)** of the ACA. “Public body” is defined broadly to include the government, government departments, East African Community, Cabinet, parliament, political party, district administration, corporations, and co-operative societies (**Section 1**). “Public official” is not specifically defined but having defined a “public body”, it is presumed that any person in a public body is a “public official”.

b) Foreign bribery

Uganda does not currently criminalise the bribery of officials of foreign governments or public international organisations in the conduct of international business.

c) Public procurement laws

Public procurement is governed by the **Public Procurement and Disposal of Public Assets Act 2003** and applies to entities of Government within and

outside Uganda, and non-Government entities who benefit from any type of specific public funds (**Section 2(c)**). All procurement is to be conducted through domestic, open, advertised bidding which (**Section 80**). International bidding is possible under certain circumstance (**Section 81**). Restricted bidding (**Section 83**) and sole source procurement (**Section 85**) are possible subject to certain conditions. The Act established the **Public Procurement and Disposal of Public Assets Authority (PPDA)**²⁴ which is charged to ensure fair, competitive, transparent, non-discriminatory and value-for-money procurement; set standards for procurement, and; monitor compliance (**Section 5**). Its functions also include advising the government and public bodies about procurement policies, monitoring performance or public procurement systems, setting training standards, conducting periodic inspections, auditing, undertaking research on procurement, and administering and enforcing compliance with the provisions of the Act (**Section 7**). The PPDA is also empowered to summon witnesses and inspect documents and bid awards in the exercise of its regulatory powers. The PPDA can also It can communicate recommendations to law enforcement and other oversight agencies (**Section 8**). A complaints mechanism is available for breaches of the procurement rules (**Sections 89 and 90**). Uganda has in place Public Procurement and Disposal of Public Assets Regulations, 2003, and Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006.

20. Zambia

a) Bribery

Bribery and corruption offences are addressed under the **Anti-Corruption Commission Act (ACCA)**. Active bribery of a public official is criminalised under **Section 29(2)**. Accordingly, any person who directly or indirectly promises, gives or offers any gratification to any public officer, whether for the benefit of that public officer or any other officer as an inducement or reward for doing or forbearing to do anything in relation to any matter or transaction, be it actual or proposed, which any public body is or may be concerned, commits an offence. Passive bribery is criminalised under Section 29(1) of the ACCA. The term “gratification” is defined as any corrupt payment, whether in cash or in kind, any rebate, bonus deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift ...other than a casual gift’ (**Section 3**). The term “public officer” is defined as any “person who is a member of, or holds office in, or is employed in the service of a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid” (**Section 3**).

b) Foreign bribery

Zambia criminalises the bribery of foreign public officials under Section 3 of its new Anti-Corruption Act, as provided for under the UNCAC.

c) Public procurement laws

In September 2008, Zambia adopted the **Public Procurement Act** which applies to all procurement by procuring entities (**Section 3**) defined as a government agency, para-statal body or any other body or unit established and mandated by the Government to carry out procurement using public funds (**Section 2**). Procurement is through open bids (**Section 25**) though restricted or limited bidding is allowed under certain circumstances (**Section 29**), as is sole source bidding (or direct bidding). Bidders or suppliers who engage in bribery and corrupt practices are barred permanently from taking part in procurement processes (**Section 67**). The **Zambia Public Procurement Authority (ZPPA)**²⁵ is charged with regulating the procurement of goods, monitoring compliance, advising the Government and other procuring entities on procurement policies, instituting audits and commissioning and undertaking investigations in public procurement matters (**Section 6**). A complaints mechanism is available for an aggrieved bidder who can submit a complaint to the ZPPA (**Section 70**).

Notes

1. See: *Benin Expansion: The Economy of Benin*, No. 12 September-October 2004, p. 3.
2. Global Integrity, Benin Report, 2006, available at: www.globalintegrity.org.
3. Loi No. 043/96/ADP du 13 Novembre 1996 portant Code Pénal 13 Décembre 1996, available at: www.unhcr.org/refworld/docid/3ae6b5cc0.html.
4. For details, see: www.dcmp.bf.
5. See: Global Integrity Report Cameroon, 2008.
6. It has not been possible to confirm this information.
7. See: Global Integrity Report Ethiopia, 2006, available at www.globalintegrity.org.
8. www.ppbghana.org.
9. www.ppoa.go.ke.
10. Loi No. 2004-030 du 9 septembre 2004 sur lutte contra la corruption, available at: www.edbm.gov.mg/system/application/resources/docs/penal_loi_n_2004-030_09092004.doc.
11. For details see: www.odpp.gov.mw.
12. Loi No. 82/40/AN du 1er avril 1982, available at: www.justicemali.org/images/codes/13.pdf.
13. Available at: www.droit-afrique.com/images/textes/Mali/mali%20-%20code%20marchés%20publics.pdf.
14. See: "Islam Republic of Mauritania County Strategy Paper CSP 2006-2007," October 2006.

15. See: "Rapport sur les progrès dans la mise en œuvre des objectifs du millénaire pour le développement en Mauritanie," 2 août 2008.
16. Available at www.concursospublicos.gov.mz/Legislation/Decreto_54-2005_Reg_Procurement.pdf.
17. See: Banque Mondiale (2004) *Rapport Analytique sur la mise en œuvre des marchés Niger (mise à jour 2004)*, Volume I Washington DC: The World Bank.
18. www.bpp.gov.ng.
19. Law No. 12/2007 on Public Procurement, available at: www.rppa.gov.rw/en/public_law.pdf.
20. See: [www.chr.up.ac.za/hr_docs/constitutions/docs/SenegalC%20\(english%20summary\)\(rev\).doc](http://www.chr.up.ac.za/hr_docs/constitutions/docs/SenegalC%20(english%20summary)(rev).doc).
21. Décret No. 2007-545 du 25 avril 2007 du code des marchés publics, available at: www.droit-afrique.com/images/textes/Senegal/Senegal%20-%20Code%20marchés%20publics%202007.pdf.
22. For details, see: www.savepublicmoney.sl.
23. For details, see: www.ppra.go.tz.
24. For details, see: www.ppda.go.ug.
25. For details, see: www.tenderboard.gov.zm.

ANNEX D

The establishment of specialised anti-corruption agencies and other relevant bodies in the twenty African countries

1. Benin

The **Observatoire de Lutte contre la Corruption (OLC)**¹ was established in 2004.² It is empowered to investigate cases of corruption, bring civil proceedings and inform the public and state institutions of cases of corruption of which it is aware so that they can take appropriate action. In exercising these powers, the OLC is responsible for establishing and overseeing the implementation and supervision of the national strategy and action plan against corruption;³ evaluating anti-corruption programmes on a regular basis; actively supporting organisations involved in combating corruption; collecting data on corruption cases and taking measures necessary to protect witnesses, and; support any action aimed at strengthening the fight against corruption, including the law on illicit enrichment. The OLC is also required to produce a report that it has to make available to all institutions. The OLC is composed of members drawn from a range of institutions. These include the National Assembly, Ministry of Justice, Legislation and Human Rights, Ministry of Finance and Economy, Ministry on Interior, Security and Decentralisation, Cell of Moralisation of Public Life, Corps of Judges, auditors and accountants, journalists specialising in investigating corrupt practices, Chamber of Commerce, NGOs and Trade Unions. In addition to the OLC, the **Benin Anti-Corruption Commission** is charged with the investigation of bribery cases in the public procurement sector. The **Auditor General** (l'Inspection Générale de l'État)⁴ also assumes both monitoring and investigatory roles in relation to the public bodies. The **Office of the Ombudsman** was created in 2008 to deal with complaints relating to public administration from citizens.⁵

2. Burkina Faso

A special commission known as the **Supreme Authority for the Co-ordination of Anti-Corruption Activities (HACLCC)**⁶ was established in 2003.⁷ Its role is to help the government in its fight against corruption. As such, it is required to propose and develop anti-corruption action plans that cover the areas of detection, prevention, awareness-raising and international co-operation. It is also empowered to study and use the reports from the **General Inspectorate of the State (IGE)** and departmental inspection reports in order to formulate opinions to the Head of State and to make recommendations in respect of the organisation and operation of the monitoring facilities of the public services, and ensure the periodic publication of reports and opinions. The IGE was established to monitor the management of government. In 2007, the Council of Ministers decided to consolidate these institutions dealing with anti-corruption matters and adopted a bill establishing the **Autorité Supérieure de Contrôle d'Etat (ASCE)**. As a result, the HACLCC and the IGE were merged and now, the ASCE is responsible for ensuring the observance of laws governing the administrative and financial accounting of all state departments, public institutions and bodies offering public services; examining the quality of the operation and management of these services; proposing any measures to strengthen the quality of the public administration; monitoring the implementation of the recommendations made for structural improvements; setting in motion legal actions, and; monitor the implementation of national policies in respect fraud and corruption.⁸

A designated department within ACSE is charged with fighting corruption and engaging in publicity campaigns raising awareness of the negative effects of corruption. The department also assists the internal committees of the ministries and institutions in the detection of fraudulent practices and corruption; studies all allegations, and; recommends actions to be taken to the General Inspector of State.⁹ It has not been possible to obtain further information on the composition of the ACSE. The **Autorité de Regulation des Marchés Publics (ARMP)** oversees the tender process for government contracts.¹⁰ Established in July 2008, it has authority to initiate lawsuits and impose sanctions. The **Office of the Ombudsman**,¹¹ was also established in 1994 to handle written corruption complaints, and the **Office of Auditor General** audits public accounts.¹² In the absence of specific reports, it has not been possible to ascertain the effectiveness of these bodies.

3. Cameroon

Cameroon's specialised anti-corruption agency, the **Commission Nationale Anti-corruption (CONAC)**, was established in 2006,¹³ replacing a previously-established National Corruption Observatory.¹⁴ CONCAC is an independent public agency charged with combating corruption.¹⁵ The agency has authority to

evaluate the effective application of government plans to combat corruption; to collect and analyse allegations of corrupt practices; investigate and propose measures likely to prevent or suppress corruption, and; disseminate and popularize the anti-corruption strategies and related documents. CONAC does not have the power to refer cases to court or disciplinary institutions but an inquiry by CONAC could lead to disciplinary or legal proceedings. Also, the National Agency for Financial Investigation was created in 2005¹⁶ to deal with the prevention and eradication of money laundering.

The two audit institutions, the **Superior State Audit**¹⁷ and the **Court of Auditors of the Supreme Court**¹⁸ respectively focus on the use of public funds and reviewing accounts. External reports indicate that these institutions are weak in independence and suffer from a lack of funding.¹⁹

4. Ethiopia

Ethiopia's specialised anti-corruption agency, the **Federal Ethics and Anti-Corruption Commission (FEACC)**²⁰ was established in 2001.²¹ It is an independent federal government body accountable to the Prime Minister (Article 3 Proclamation No. 433/2005). FEACC is headed by a Commissioner who is appointed by the People's House of Representation upon nomination by the Prime Minister (Article 10 Proclamation No. 433/2005). Its mandate is to investigate, prosecute and prevent corruption (Article 7 Proclamation No. 433/2005). In its capacity of preventing corruption, FEACC has the power to examine working procedures of a number of government and public enterprises, banks, inland revenues, universities and bodies providing utility services. FEACC has prosecutorial powers; according to its self-assessment, they pressed charges against five hundred corruptors over the past five years, one hundred of whom received sentences ranging from one to nineteen years imprisonment.²² Shortages of skilled employees are cited as one area of weakness on the FEACC website, which also indicates a need for capacity building. The **Office of the Ombudsman**²³ deals with aspects of maladministration, though it has no authority for imposing penalties on offenders. The **Office of the Auditor General** has also been established and audits the public sector.²⁴

5. Ghana

Ghana has two anti-corruption agencies: the Economic and Organised Crime Office (EOCO) and the **Commission on Human Rights and Administrative Justice (CHRAJ)**.²⁵ The SFO is responsible to the Attorney General and the Ministry of Justice.²⁶ The CHRAJ is protected from interference by Article 225 of the Constitution of Ghana. Both organisations investigate allegations of bribery and other corrupt practices. The Supreme Court decision of 21 December 2007 in *Republic v Fast Track High Court: Ex parte CHRAJ*²⁷ confirmed that the CHRAJ cannot

investigate allegations of corruption based on media reports alone. Accordingly, a formal complaint is required to trigger a CHRAJ investigation by a natural or legal person. This rule, however, does not apply to the SFO, which can initiate its own investigations. The SFO, with the authority of the Attorney-General, can prosecute.²⁸ The **Auditor General's Office** audits public sector accounts; reports from the audits are open to the public.²⁹

6. Kenya

The **Kenya Anti-Corruption Commission (KACC)**³⁰ was established in 2005 under the Anti-Corruption and Economic Crimes Act (ACEC). The functions of the KACC include the investigation of conduct constituting corruption or an economic crime; to assist any Kenyan law enforcement agency in the investigation of corruption or economic crime; to advise and assist persons on how corrupt practices may be eliminated; to examine practices and procedures of public bodies to facilitate the discovery of corrupt practices; secure revision of working methods that may be prone to corrupt practices; advise heads of public bodies of changes to procedures that are compatible with the effective discharge of duties by such bodies, and; to educate the public at large of the dangers of corruption and economic crime and foster public support (Section 7). The KACC also has authority³¹ to institute civil proceedings for the recovery of property and compensation and to recover such property or enforce an order for compensation even if the property or assets are located outside Kenya (Section 6). The KACC is headed by a Director who is chosen by the Kenya Anti-Corruption Advisory Board.³² The Director, the KACC and the Advisory Board are independent and accountable only to Parliament. The KACC does not have prosecutorial powers. Cases are passed to the Attorney General who then has to act upon them. Since its inception, the KACC has received over nineteen thousand complaints and has completed investigations on three thousand of these complaints, including making recommendations to the Attorney General.³³ External reports indicate that co-operation between these two is not always at its optimum.³⁴ The **Kenya National Audit Office**³⁵ focuses on public procurement. The **Controller** and **Auditor General** deal with the auditing of public sector accounts.

7. Madagascar

Madagascar's anti-corruption agency, the **Bureau Independent Anti-Corruption (BIANCO)**³⁶ was established in 2004. It is independent and has operational autonomy (Article 2). BIANCO's remit is to investigate and prevent corruption in the public sector, educate citizens of its harmful effects, and encourage the community to fight corruption (Article 3). Though it can carry out investigations, BIANCO does not have authority to prosecute.³⁷ The

Auditor General audits public sector accounts. Currently there is a Governance and Institutional Development Project aimed at strengthening selected various institutions including that of the Auditor General as part of the Madagascar Action Plan.³⁸

8. Malawi

Malawi's **Anti-Corruption Bureau (ACB)**³⁹ was established in 1995 by the Corrupt Practices Act (CPA). The ACB is led by a Director who is appointed by the President (Section 5(1) CPA). The ACB has the power to examine the practices and procedures of public bodies in order to uncover corrupt practices and secure changes to methods that may be prone to them; advise public bodies on prevention of corrupt practices; disseminate information of the ill effects of corrupt practices on society, and; foster and enlist public support (Section 10(1)(a)). The ACB also has the authority to receive and investigate complaints of alleged or suspected corrupt practices. However, in order to prosecute the offences it must do so under the direction of the Director of Public Prosecutions (Section 10(1)(b)). The ACB can also investigate the conduct of any public officer which in its opinion is conducive to or connected with corrupt practices and report such information to the Minister (Section 10(1)(c)). According to statistical information available on the ACB's website, the agency has received eight thousand two hundred and fifty complaints in total and has authorised one thousand six hundred and eighty six for investigation. It is not clear from the statistical information as to which period this covers.⁴⁰ The **National Audit Office**⁴¹ is an independent body that audits the accounts of the public sector and reports irregularities to the relevant authorities.

9. Mali

The **Cellule d'Appui aux Structures de Contrôle de l'Administration (CASCA)** was established in 2000⁴² to monitor and evaluate on behalf of the President reports sent by various government departments with the view to ensuring the proper management of public resources and the regular functioning of public authorities (Article 2). The CASCA is comprised of a president and a vice-president who are assisted by a team of nine members all of whom are appointed by the President of the Republic (Article 3). The **Ombudsman** receives complaints from citizens concerning the functioning of government departments, local authorities and public institutions.⁴³ The Ombudsman also has the authority to recommend changes and request documents relevant to any inquiry. Also, the **Office of the Auditor General** was established in 2003 to focus on administrative corruption and financial crime.⁴⁴ It audits and submits an annual report which includes suggestions

for improvement. Such reports have revealed evidence of corruption at senior levels of public administration.⁴⁵

10. Mauritania

There is no accessible information on the establishment or operation of specialised anti-corruption agencies in Mauritania.

11. Mozambique

The **Gabinete Central de Combate À Corrupção (GCCC)** was established in 2004 and is located within the Office of the Public Prosecutor.⁴⁶ The GCCC carries out inquiries and investigations of complaints and accusations of bribery and other corrupt activities. It has a number of powers including conducting preliminary investigations for which it may carry out searches and request documentation and statements of accounts. The GCCC can also, through the judicial authorities, summon people to present in writing information in respect of their assets, including their location and the means through which they were acquired. It also has the power to detain those summoned and ensure that they appear before an investigative judge. The GCCC, however, does not have the power to prosecute, which remains with the Public Prosecutor.⁴⁷ Recent reports indicate that the GCCC has handled a total of 371 cases since 2005. Some of these cases had been inherited from the GCCC's predecessor (the Anti-Corruption Unit), and many of these were outside the mandate of the GCCC.⁴⁸ The **Supreme Audit Institution** is responsible for inspecting public sector accounts.

12. Niger

There is no accessible information on the establishment or operation of specialised anti-corruption agencies in Niger.

13. Nigeria

The **Independent Corrupt Practices and other Related Offences Commission (ICPC)** was established in 2000 as an independent body under the Corrupt Practices and Other Related Offences Act (CPROA) (Sections 3(2) and (14))⁴⁹. The ICPC is led by a Chairman who is appointed by the President. The ICPC is mandated to receive and investigate reports of corruption and where appropriate, prosecute (Section 6(a)). It also has authority to examine the practices, systems and procedures of public bodies that may facilitate the occurrence of fraud or corruption and to instruct heads of public bodies and officers on ways fraud and corruption can be eliminated or reduced (Sections 6(b) & (c)). The ICPC is also charged to educate the public about corruption and related offences, and foster public support in fighting corruption (Sections 6(d) & (e)).⁵⁰ The **Economic and**

Financial Crimes Commission (EFCC)⁵¹, which is also the financial intelligence unit, was established in 2002 and focuses on financial and economic crimes. The EFCC commenced operations in 2003 and also has remit over corruption cases. In respect of public procurement, the **Bureau of Public Procurement (BPP)** was recently established which has a number of objectives including ensuring probity, accountability and transparency in the public procurement process.⁵² The BPP is empowered to debar suppliers, contractors or service providers who have violated the provisions of the Public Procurement Act. Another body, known as the **Budget Monitoring and Price Intelligent Unit**, reviews public procurement contracts with a view to establishing that proper procedures, that is transparency and competitive bidding, have been followed. There is also a **Code of Conduct Bureau** which enforces the public officer's code of conduct.⁵³ The **Auditor General** is responsible for auditing public sector accounts; however, its reports are not made available to the public.

14. Rwanda

Rwanda does not have a distinct, specialized anti-corruption institution. However, there are two bodies involved in investigating corruption: the **Office of the Ombudsman**⁵⁴ and the **Office of the Attorney General**⁵⁵. The functions of the Office of the Ombudsman include the prevention and combating of corruption and other related offences in public administration; following-up on how the policies relating to preventing and fighting corruption are implemented in public institutions; examining petitions related to corruption, and; training the population on issues relating to good governance and offering seminars for improving working methods. There is no information on the number of complaints handled or investigated by these bodies.

15. Senegal

The **Commission Nationale de Lutte Contre la non Transparence, la Corruption et la Concussion (CNLCC)**⁵⁶ was established in 2004⁵⁷ to identify the causes of corruption; propose legislative and administrative reforms; promote good governance in all contexts including international transactions, and; receive and investigate complaints (Article 2). The CNLCC does not have prosecutorial powers; however, once it can make recommendations to the President of the Republic to initiate legal procedures (Article 3). The CNLCC is composed of members from the administration, civil society and the private sector (Article 5). The Commission publishes a report annually which is submitted initially to the President and then made public. According to the Management Report⁵⁸ of 2006, the CNLCC also takes on an educative role in raising public awareness on corruption. Also, the **Cellule Nationale de Traitement des Informations Financières du Sénégal (CENTIF)** was established in 2005 to collect information

relating to suspicious transactions and money laundering.⁵⁹ The **General Inspectorate of the State (IGE)**⁶⁰ which operates under the direct authority of the President, is also mandated to fight corruption in the public sector. The **Office of the Ombudsman** can also receive complaints from members of the public on alleged instances of corruption.

Senegal is a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA)⁶¹. It has also established a specialised Financial Intelligence Unity under Law 2004-09 of February 6 2004. Other anti-corruption authorities in Senegal include:

- General Inspectorate of the State; a high level administrative institution placed under the direct authority of the President of the Republic;
- The Ombudsman, who may also receive complaints from the public on alleged cases of corruption.

Two other groups are also worth noting: the African Parliamentarians Network against Corruption (APNAC) and the Network of Journalists against Corruption (REJAS), both of which were established on the initiative of the CNLCC.

16. Sierra Leone

The Sierra Leone **Anti-Corruption Commission (ACC)**⁶² was initially established in 2000 by the Anti-Corruption Act 2000 and continues to be in existence under the revised ACA 2008. The ACC is headed by a Commissioner who is appointed by the President subject to the approval of Parliament (Section 3(1)). The ACC is vested with a number of functions including the prevention, eradication and suppression of corruption; investigation of instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention by complaint or otherwise; investigation of any matter that raises suspicion that conduct constituting corruption or an economic or related offence has occurred or is about to occur, and; prosecution of offences committed under the ACA (Section 7(1)). The ACC also has authority to issue instructions to public bodies of changes in practices necessary to reduce or eliminate corruption; to undertake studies and assist in research to identify the causes of corruption and its impact on the social and economic structures of Sierra Leone; to advise the Government of legislative reform, and; to draft model codes of conduct (Section 7(2)). The ACC also has the power to investigate and prosecute (Parts V & VI ACA 2008). According to its Annual Report of 2007, the ACC received 164 complaints or reports of corruption that year. Also, the **Office of the Auditor General** has remit over the auditing of public sector accounts.⁶³ An **Office of Ombudsman** has also been established to receive complaints from citizens.⁶⁴

17. South Africa

There are a number of actors involved with the prevention, investigation and prosecution of bribery and corruption in South Africa. The main anti-corruption agencies are the **Special Investigation Unit (SIU)**,⁶⁵ the **South African Police Services (SAPS)**,⁶⁶ the **National Prosecuting Authority (NPA)**, Asset Forfeiture Unit, **Public Services Commission (PSC)**, **Department of State Security (DSS)**, **State Attorney**, **Independent Complaints Directorate** and the **Department of Public Service and Administration**.⁶⁷ The SIU's mandate is to investigate corruption, serious maladministration, improper conduct; and unlawful expenditure of public money or property within state institutions. If the investigation shows that corruption has taken place, the SIU will refer it to the National Prosecuting Authority for prosecution, or the President can set up a Special Tribunal to hear the matter related to institutions of the state and their employees. The SAPS is responsible for investigating all criminal activities. The Constitution of the Republic of South Africa created a single NPA which is governed by the National Prosecuting Authority Act (Act No. 32 of 1998). The Constitution, read with this Act, provides the NPA with the power to institute criminal proceedings on behalf of the State, to carry out any necessary functions incidental to institution of criminal proceedings and to discontinue criminal proceedings. The NPA is headed by the National Director of Public Prosecutions who is also appointed by the President. The NPA is regarded as an independent body under Section 179(4) of the Constitution of the Republic of South Africa. The PSC derives its mandate from sections 195 and 196 of the Constitution, 1996. The PSC is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organisation and administration of the Public Service. The PSC also has an obligation to promote measures that would ensure effective and efficient performance within the Public Service and to promote values and principles of public administration as set out in the Constitution, throughout the Public Service. The PSC is an independent body mandated specifically with the promotion of professional ethics in the public service.⁶⁸ There is also an **Office of the Auditor General**⁶⁹ which audits accounts at all levels and a national ombudsman, referred to as the **Office of the Protector**.⁷⁰

18. Tanzania

The **Prevention and Combating of Corruption Bureau (PCCB)** was established in 1991 (then called the Prevention of Corruption Bureau).⁷¹ The PCCB is an independent body, headed by a Director General. The PCCB is vested with a number of powers, including advising and examining the practices of public and para-statal organisations in order to facilitate the detection of corrupt practices. It can also revise methods to add to the efficiency and to the transparency of these organisations. The PCCB is also mandated to disseminate information to the

public of the negative effects of corruption. The PCCB has authority to conduct investigations and subject to the directions of the Director of Public Prosecutions, can prosecute offences under the PCCA and other related offences (Section 7). The PCCA also established a **Prevention and Combating of Corruption Board (PCCBd)** whose function is to advise the PCCB on any matters relating to corruption, review staffing matters and review the reports sent by the PCCB to the President. The PCCBd has one representative from the private sector and one from the CSO sector. There is also a **Controller** and **Auditor General**,⁷² who are responsible for the audit of public sector accounts. The **Office of the Ombudsman**⁷³ deals with complaints about bribery, governance and injustice from the public.

19. Uganda

The Inspectorate of Government of Uganda was established under Article 223 (1) of the Constitution, and section 3 (1) of the Inspectorate of Government Act, 2002. IG is a Constitutional institution specifically established to prevent and combat corruption, abuse of office and abuse of Authority. It is an independent institution under Article 227. The Anti-Corruption Act 2009 is jointly enforced by the **Director of Public Prosecutions**⁷⁴ and the **Inspectorate of Government (IG)**, established in 1995 as a specialised Agency to prevent and combat corruption.⁷⁵ The IG is led by an Inspector General of Government who is appointed by the President with the approval of Parliament (Article 223 (4) of the Constitution, 1995 and Section 4 of the Inspectorate of Government Act 2002, (IGA)). The IG's functions are prescribed under Article 225 of the Constitution and section 8 of the Inspectorate of Government Act, and include the promotion and fostering of adherence to the rule of law and principles of natural justice in administration; elimination and fostering the elimination of corruption; abuse of authority in public office, and; the taking of necessary measures for the detection and prevention of corruption in public offices. It can investigate any matter referred to it as well as initiate its own investigation upon receipt of a complaint by any individual or body whether or not that individual or body has suffered any injustice by reason of that matter). The IGG also has an awareness-raising role focusing on the negative effects of corruption on society. The IGG also has the power to prosecute cases involving corruption, abuse of authority or of public office (Article 230 (1) of the Constitution and Section 14(5) IGA). The IGG is also the **Ombudsman** of Uganda. A **Directorate for Ethics and Integrity (DEI)**⁷⁶ was also established as a government co-ordinating agency in 1998 under the Office of the President of Uganda. The **Office of the Auditor General**, appointed under Article 163 of the Constitution, and section 4 of the National Audit Act, 2008⁷⁷ is mandated to examine public accounts and investigate irregularities.

20. Zambia

Zambia has an autonomous **Anti-Corruption Commission (ACC)** established by ACCA. It is an independent Commission and the commissioners are appointed by the President subject to ratification by the National Assembly (sections 4, 5 and 7 ACCA). Its functions include the prevention of and taking necessary and effective measures for the prevention of corruption in the public sector. In particular, it examines the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and advise public bodies of ways and means of preventing corrupt practices and changes in working methods and procedures (Sections 9(1)(a)(i)-(iii) ACCA). It also has authority to receive and investigate alleged or suspected or corrupt practices and subject to the direction of the Director of Public Prosecutions, can prosecute cases of corruption (Sections 9(1)(b) & 46). The ACC also plays an educative role in disseminating information about the negative effects of corruption on society (Section 9(1)(a)(iii)). There is also the **Task Force on Economic Plunder**⁷⁸ which was formed in 2002 and is comprised of a combined force of officers from different agencies such as the Zambia Security Intelligence Service, the ACC and the Zambia Police. It is largely seen as a successful alliance. Recent reports indicate that the ACC has received two thousand corruption complaints of which 60 to 70 percent were levied against public officials.⁷⁹ It should be noted that since the drafting of this Report, the Task Force on Corruption and Economic plunder was in 2010 fused in the Anti-Corruption Commission where a specialised Unit to deal with serious and complicated economic crimes is being formed. Under the Anti-Corruption Act provision is made for cooperation with other law enforcement agencies (Section 6 (1) (e)). Also, the **Auditor General** is charged with the audit of public accounts and submits reports to Parliament. The function and powers of the Auditor General are provided under Article 121 of the Constitution of Zambia.⁸⁰

Notes

1. L'Observatoire de Lutte Contre la Corruption, available at: www.afrique-gouvernance.net/fiches/organismes/fiche-organismes-154.html; www.olcbenin.com.
2. Décret No 2004-221 du 21 avril 2004 portant création, attributions, organisation et fonctionnement de l'Observatoire de Lutte contre la Corruption; Décret No 2004-222 du 21 avril 2004 portant nomination des membres de l'Observatoire de Lutte contre la Corruption.
3. For details, see: www.moralisation.gouv.bj/ddl/PLAN_STRAT_CORRUP.pdf.
4. For details, see: www.gouv.bj.
5. Décret No 2008-158 du 28 mars 2008 portant création, attributions, organisation et fonctionnement de l'Organe Présidentiel Médiation. See www.mediateur.gouv.bj - please note that this web link remains broken since January 2009.

6. Haute Autorité de Coordination de la Lutte Contre la Corruption. For details, see: www.primature.gov.bf/actualite/document.php?id1=263.
7. Décret No. 2001-773/PRES/PM/MEF du 31 décembre (2001) JON0 07 2002).
8. Loi No. 32-2007/AN du 29 novembre 2007 portant création, attributions, composition et fonctionnement d'une Autorité supérieure de contrôle d'État. It has not been possible to obtain a copy of this document.
9. Décret No. 2008-160/PRES/PM du 8 avril 2008 portant organisation et fonctionnement de Autorité supérieure de contrôle d'État. JO No. 17 du 24 avril 2008.
10. www.finances.gov.bf/SiteFinances/afficher.jsp?code=86 ; 'Autorité de régulation des marchés publics « Maintenant, les gens vont être sanctionnés », dit le Premier ministre available at www.lefaso.net/spip.php?article27644 . Décret No. 2007-243 PRES/PM/MFB portent création, attributions, organisation de l'autorité de régulation des marchés publics.
11. Loi No. 22/94/ADP du 17 Mai 1994 portant Institution d'un Médiateur du Faso available at www.mediateur.gov.bf/SiteMediateur/documents/textes/loi-organique.html.
12. See: African Development Fund (2006) Appraisal Report Project: Support To Public Expenditure Programming And Control Institutions Burkina Faso.
13. Décret No. 2006/088 du 11 mars 2006 portant création, organisation et fonctionnement de la Commission Nationale Anti-Corruption www.spm.gov.cm/showtexte.php?idtexte=540&lang=fr.
14. Arrêté No. 001/PM du 04 janvier 2000 portant création d'un Observatoire de Lutte contre la Corruption.
15. Article 2(1) Décret no 2006/088 du 11 mars 2006.
16. Decree No. 2005-187 of 31 May 2005: organisation and functioning of the National Agency for Financial JO 15 join 2005.
17. Decree No. 2004/320 of 8 December 2004.
18. Loi No. 2003/005 du 21 avril 2003 Fixant les attributions, l'organisation et le fonctionnement de la Chambre des Comptes de la Cour Suprême.
19. See: Global Integrity Report, 2007, available at: www.globalintegrity.org.
20. For details, see: www.feac.gov.et.
21. Proclamation 235/2001. This was followed by Proclamation No. 433/2005 which is the Revised Proclamation for the Establishment of the Federal Ethics and Anti-Corruption Commission.
22. For details, see: www.feac.gov.et/web_collection/feac_profile_english.htm#feac2.2 - see also: Annual Performance Report for 2000 Budget Year, 2000.
23. Proclamation No. 211/2001.
24. Proclamation No. 68/1997 A Proclamation to Establish the Office of the Federal Auditor General, details available at: www.intosaiitaudit.org/mandates/mandates/Mandates/Ethiopia.html#Ethiopia.
25. The Commission on Human Rights and Administrative Justice Act 1993. www.chrajghana.org.
26. Section 4 Serious Fraud Office Act 1993. See also Sam Asibuo 'Role of an Anti-Corruption Agency in the Struggle against Corruption: the Case of the Serious

- Fraud Office in Ghana' available at <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan002272.pdf>.
27. National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 ?UN Doc A/HRC/WG.6/2/GHA/1 8 April 2008. http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GH/A_HRC_WG6_2_GHA_1_E.pdf.
 28. CHRAJ receives its mandate to investigate abuse of power and corruption by virtue of Article 218 Constitution of Ghana.
 29. Article 187 Constitution of Ghana, available at: www.ghana.gov.gh/ghana/finance.jsp.
 30. For details, see: www.kacc.go.ke. There was anti-corruption legislation in Kenya prior to 2003. The Prevention of Corruption Act 1956 was enforced by the Police Department until 1997, when it was amended to create the Kenya Anti-Corruption Authority. However this Authority was disbanded as a result of the High Court decision in *Stephen Mwai Gachiengo & Kahura v Republic* (200) IEA 52 (CAK) where the statutory provision of the Authority were held to be in conflict with the Constitution.
 31. The KACC is established as a body corporate and is capable of suing and being sued in its corporate name (Section 6 ACECA).
 32. The Advisory Board is comprised of one member from each of the following: Law Society of Kenya, the Institute of Certified Public Accountants of Kenya, the Inter-Federation of Women Lawyers (FIDA) Kenya Chapter; the Kenya Association of Manufacturers, the Joint Forum of Religious Organisations, the Federation of Kenya Employers, the Kenya Bankers Association, the central organisation of Trade Unions, the Association of professional Societies in East Africa, the Architectural Association of Kenya, the Institution of Engineers of Kenya, and the Kenya Medical Association.
 33. For details, see: www.kacc.go.ke.
 34. See: Global Integrity Report in Kenya 2007, available at: www.report.globalintegrity.org/reportPDFS.2007/Kenya.pdf.
 35. For details, see: www.kenao.go.ke.
 36. Decree No. 2004-937 Creating Anti-Corruption Independent Office (www.bianco-mg.org).
 37. For details, see: www.justice.gov.mg.
 38. For details, see: <http://web.worldbank.org>.
 39. For details, see: www.anti-corruptionbureau.mw.
 40. For details, see: http://chambo.sdnp.org.mw/ruleoflaw/acb/report_complaints.html.
 41. Section 184 of the Constitution of Malawi and Public Audit Act No. 6 2003.
 42. Décret No. 00-590/P-RM du 28 novembre 2000 portant création de la cellule d'appui aux structure de contrôle de l'administration. For further on CASCA, see: www.essor.gov.ml/cgi-bin/view_article.pl?id=407. See also: www.primature.gov.ml/index.php?option=com_content&task=view&id=802&Itemid=5.
 43. Loi No. 97-022 du 14 mars 1997 instituant le médiateur de la République.
 44. Loi No. 03-030 de l'Aout 2003 instituant le vérificateur général.
 45. For details, see: Annual Report 2006, available at: www.bvg-mali.org/index.php?option=com_docman&task=cat_view&gid=13&Itemid=33.

46. Article 19, Law 6/2004 of 17 June 2004.
47. Global Integrity Report, Mozambique, 2007.
48. "Mozambique: Anti-Corruption Office Re-Organised", available at: <http://allafrica.com/stories/200804301010.html>. See also Marcelo Mosse "Mozambique: Reporter's Notebook", available at: <http://report.globalintegrity.org/Mozambique/2007/notebook>.
49. For details, see: www.icpc.gov.ng.
50. Sections 6(d) & (e) CPROA.
51. Section 3(2) Economic and Financial Crimes Establishment Act 2004, available at: www.efccnigeria.org.
52. Section 3 Public Procurement Act 2007.
53. For details, see: www.codeofconductbureau.com/establishmentCCB.html#.
54. Law No. 17/2005 of 18/08/2005 modifying and complementing Law No. 25/2003 establishing the Organisation and the Functioning of the Office of the Ombudsman, available at: <http://www.ombudsman.gov.rw>.
55. Prime Minister's Order No. 18/03 of 10/09/2007 establishing the Mandate and Structure of the Attorney General's Office/Ministry of Justice, OG No. 18 Bis 15 September 2007, available at: www.minijust.gov.rw.
56. For details, see: <http://cnlcc.net>.
57. Loi No. 2003-35 portant création d'une commission nationale de lutte contre la non transparence, la corruption et la concussion.
58. For details, see: <http://cnlcc.net/rapport%202006.pdf>.
59. Decree 2004-1150 of August 18, 2004 establishing, organising and running of the national financial processing unit (CENTIF), available at: www.centif.sn.
60. For details, see: www.igesn.com.
61. Created on 10 December 1999 under Law No. 2004-09 of 6 February 2004 and Decree No. 1150 of 18 August 2004.
62. Section 2(1) ACA 2008, available at: www.anticorruptionsl.org.
63. Audit Services Act 2005 www.auditservice-sl.org.
64. See www.britishcouncil.org/ombudsman_five-year_strategic_plan.pdf.
65. Special Investigations Units and Special Tribunal Act 1996.
66. South Africa Police Services Act 1995.
67. National Prosecuting Authority Act 1998 as amended. This had a unit (Directorate of Special Operations) commonly referred to as the Scorpions which was disbanded in 2008. It had succeeded in exposing corruption amongst high level officials and had an excellent record of prosecution.
68. Section 196 Constitution of the Republic of South Africa (Act 108 of 1996).
69. *Ibid.*, Section 188 and Public Audit Act 2004.
70. Section 182 Constitution of the Republic of South Africa and Public Protector Act 1994.
71. Section 5 The Prevention and Combating of Corruption Act 2007, available at: www.tanzania.go.tz/pcb.

72. Article 143 Constitution of the United Republic of Tanzania. For details on the Auditor General's Office, see: www.nao.go.tz.
73. Arts 129 and 130 the Constitution of the United Republic of Tanzania. The Commission became operational in July 2001 after the coming into force of the Commission the Human Rights and Good Governance Act No.7 of 2001 as amended by Act No 16 of 2001 and Government Notice No. 311 of 8th June 2001 For further information see www.chragg.go.tz.
74. Article 120 of the 1995 Constitution of the Republic of Uganda. www.dpp.go.ug.
75. Articles 223(1), 225(1) (b) and 230 (1) of Constitution of the Republic of Uganda, The Inspectorate of Government Act 2002. This Act repealed the Inspector General of Government Statutes 1988. www.igg.go.ug.
76. For details, see: www.dei.go.ug.
77. For details, see: www.oag.ug.
78. For details, see: www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=174§ion=84&ccrpage=37.
79. Danstan Kaunda, "Zambia Corruption: Two Steps Forward, Two Steps Back", available at: <http://ipsnews.net/news.asp?idnews=45420>.
80. www.ago.gov.zm.

ANNEX E

Accounting and auditing standards in the twenty African countries

1. Benin

The information available on Benin is limited. Benin is a member of the West African and Economic Monetary Union (WAEMU) and the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA).¹ As a signatory to WAEMU², Benin has adopted the West African Accounting System (Système Comptable Ouest-Africain, SYSCOA). Benin is a member of the Association of Accountancy Bodies of West Africa (ABWA).³ Benin is also a member of the Organisation pour l'Harmonisation du Droit des Affaires en Afrique (OHADA), which has a larger geographical coverage and which uses the SYSCOHADA system.⁴ This accounting and auditing system appears to comply with international practices.⁵ OHADA has also sought to harmonise the accounting systems used across its member states and the system it uses to do this is known as the Système Comptable OHADA (SYSCOHADA), which is based on the French accounting system. SYSCOHADA is also followed in Benin. The African Peer Review Mechanism (APRM) Report on Benin 2008 states that the two accounting systems in place have “created a stalemate, as evidenced by the absence of meeting since 2001 to review the accounting system”.⁶ In 2006 Benin created an Association of Chartered and Certified Accountants of the Republic of Benin (Ordre des experts-comptables et comptables agréés en République du Bénin, OECCA)⁷ which has worked actively since that date to strengthen the capacities of its members in terms of the application of international accounting and auditing standards. The OECCA-Bénin has been a member of the ABWA since its creation and was preparing to join the International Federation of Accountants (IFAC) at the time this report was being finalised, with a view to adopting and applying these international standards in the exercise of its accounting and auditing missions in both the public and private sectors.

2. Burkina Faso

The information available on Burkina Faso is extremely minimal. It is a member of WAEMU and as such should be following SYSCOA, which is said to reflect international practices. It is also a member of OHADA which follows the SYSCOHADA. The APRM Report on Burkina Faso 2008⁸ notes that the country has established standards that are consistent with **International Financial Reporting Standards (IFRS)** and the **International Accounting Standards (IAS)** and also comply with the legal framework of WAEMU and OHADA. However according to a recent conference paper Burkina Faso uses a **Nationally Generally Accepted Accounting Principles (NGAAP)** and the use of IFRS is not permitted. It has not been possible to confirm this information.⁹ There is a professional association l'**Ordre des Experts-Comptables et Comptables Agréés (ONECCA)**¹⁰ which was created in 2005.¹¹

3. Cameroon

The information available on Cameroon is minimal. Cameroon is a member of OHADA. It applies the accounting framework of OHADA (*i.e.* SYSCOHADA) to all companies, other than banks and credit institutions, according to the self assessment by the **Institute of Chartered Accountants of Cameroon**.¹² This organisation states that members are encouraged to use IFRS. However the International Monetary Fund (IMF) notes that the OHADA standards are not harmonised with IFRS.¹³ The **International Standards on Auditing (ISA)** are not used by auditors.¹⁴

4. Ethiopia

Companies under the **Commercial Code of 1960** do not have to meet any specific standards. They are only required to produce a balance sheet and a profit and loss account (article 67).¹⁵ The director of the company is responsible for keeping the books and submitting them to the auditor (article 362), but there are penalties for non-compliance with keeping accounting records. Companies with twenty or less shareholders do not require an auditor (article 538). There are no standards that the auditor has to comply with, but under Article 374 the auditor is to ensure the “correctness and accuracy of the balances and profit and loss accounts”. There are penalties if the auditor confirms an untrue report unknowingly or fails to inform the Public Prosecutor of a criminal offence that has been committed.

There is an Ethiopian Professional Association of Accountants and Auditors (EPPAA), which is a member of Eastern, Central and the South African Federation of Accountants (ECSAFA), but EPPAA does not have legal backing. There is also another organisation known as the National Accountants and Auditors Board (NAAB), but no further information is available on this organisation. The Addis

Ababa Chamber of Commerce in conjunction with the EPPAA and the Office of the Federal Auditor General is engaged in a project for the “establishment of a standard setting mechanism for accounting; development of a set of Ethiopian accounting and auditing standards, including Standard Charts of Accounts for small and medium enterprises; adoption and implementation of International Standards on Auditing; and establishment and maintenance of an investigating system for auditing quality control”.¹⁶

5. Ghana

Ghana’s **Companies Act 1963** requires that companies prepare balance sheets and profit and loss accounts and that there are regular audits. There are no requirements regarding the way the financial statements ought to be prepared or any prescribed set of standards to be followed in respect of accounting or auditing. The Companies Act is currently under review¹⁷ but it has not been possible to establish the stage the review has reached. No documents on suggested changes seem to have been released.

There is a professional organisation called the **Institute of Chartered Accountants of Ghana (ICAG)** established by the **Chartered Accountant Act 1963**.¹⁸ It is a member of IFAC and ABWA and as such promotes the adoption of international standards. However, there is a **Ghana National Accounting Standard** drafted by ICAG, but according to the **Report on the Observance of Standards and Codes (ROSC)** these did not accurately reflect the IAS.¹⁹ In 2007 Ghana formally adopted the IFRS and became applicable to all listed companies²⁰ and from 2009 to all companies.²¹

There is an auditing standard set by ICAG since it is mandated to do so under the statute establishing it. These are known as the **Ghana National Standards on Auditing** and are based on the ISA.

Compliance of companies with the requirements of the Companies Act lies with the **Registrar General**, but according to the ROSC these are not rigorously enforced.

6. Kenya

Companies are required to prepare annual audited financial statements under the **Companies Act 1962**. The Companies Act does not have specific provisions on the adoption of international accounting standards. However, even though it does not have legal mandate, the **Institute of Certified Public Accountants of Kenya (ICPAK)**²², initially established by the Accountants Act 1977,²³ adopted international standards in financial reporting in 1998. As a result since 1999 financial statements of all companies have to follow the IAS. However the **UNCTAD Report** states that there is a high level of non-compliance with IFRS.²⁴

The auditing standards are set by ICPAK and it has adopted the ISA. However in the absence of legal obligation to comply with these standards there is a lack of compliance. The **APRM Report** on Kenya²⁵ also notes weak enforcement measures.

7. Madagascar

The information on Madagascar is minimal. The obligations of companies in respect of accounting and auditing requirements are contained in **Law No 2003-036 of 30 January 2004 on business forms** and **Law No 99-025 of 19 August 1999 on the transparency of enterprises**. There is a professional organisation known as **l'Ordre des Experts Comptables et Financiers de Madagascar (OECFM)**, which is a member of IFAC. A new chart of accounts was introduced in 2005 and this adopts the framework of the IAS/IFRS standards. A review of the standardised chart of accounts also revealed compliance gaps in that sample financial statements revealed variations in inclusion of information.²⁶

8. Malawi

Companies under the **Companies Act 1984** are not under an obligation to apply the IFRS or the **NGAAP**. Companies are required keep accounting records to give a true and fair view of the companies' affairs, prepare balance sheets, and profit and loss accounts (Section 192). No guidance on how the accounts should be presented is given even though details of the contents of the accounts are provided.²⁷ The **Registrar of Companies** is empowered by the Companies Act (Sections 183-184) to amend some of the details in respect of the contents of the accounts, but it has not been possible to trace whether the Registrar has used this power. The **Society of Accountants in Malawi (SOCAM)**²⁸ recommends following a recommendation from ECSAFA that companies comply with IFRS, but it has not been possible to ascertain how far this recommendation has impacted upon company practices. It is not clear whether SOCAM has any mechanisms in place for checking that companies comply with its recommendation to apply IFRS.

In respect of audits, the company is to appoint an auditor who is qualified (Section 192) and is to act in a faithful, diligent and careful manner (section 194(1)). SOCAM again recommended the use of ISA. SOCAM used to conduct audit quality review of statutory auditors and checked compliance with auditing standards using consultants from **South Africa' Independent Regulatory Board for Auditors**, but since 2008 this service is offered by the **Association of Certified Chartered Accountants (ACCA)**. Defaulters are fined, according to the ROSC,²⁹ but it has not been possible to ascertain the level of these fines.

The ROSC when reviewing sample financial statements in 2007 and found compliance gaps. For instance, ‘the term’ cash and cash equivalents’ was used to refer to a figure comprising cash and bank balance while the same term was used in the cash flow statement to refer to a figure comprising cash balances, bank balances and other highly liquid assets³⁰ which was contrary to IAS 7.

9. Mali

The available information on Mali is minimal. There is an accountancy body called the **Ordre National des Experts Comptables et des Comptables Agrées du Mali**,³¹ which is a member of ABWA. As a member it is likely to be promoting the principles of accounting promoted by ABWA. Mali is also a member of OHADA and WAEMU. Like Benin, Mali has two accounting systems available to it. It has not been possible to ascertain whether it uses any of these.

10. Mauritania

No information was available on Mauritania. It is identified as using **National Generally Accepted Accounting Principles (NGAAP)** but it was not possible to ascertain whether it followed internationally set standards.³²

11. Mozambique

Mozambique adopted a new **Commercial Code in 2006** replacing existing legislation.³³ According to this Code, companies are required to record according to a standardised chart of accounts called **Plano Geral de Contabilidade (PGC)**.³⁴ There is no indication of whether there are any penalties for submitting a non-compliant PGC. The Code also does not contain provisions on submission of an audit though the Ministry of Finance may require companies to submit audits. No information was available on the criteria used by the Ministry when calling for an audit. The Code does not stipulate what accounting standards or auditing standards are to be used. In the absence of a professional accountancy body it has not been possible to ascertain whether accountants and auditors used any of the international standards. There is an **Association of Internal Auditors (Associação Moçambique de Auditores, Internos)**³⁵ but it has not been possible to establish whether they promote international standards.

The World Bank team of the Observance of Standards and Codes conducted a comparison between the PGC and IAS standards and found quite a number of differences for instance in relation to extraordinary items and disclosures and formats. To illustrate, the PGC recognised extraordinary items if not related to the operation activity, whereas under IAS 1 a company is not allowed to present any items and expense as extraordinary items. Similarly

the IFRS requires a complete set of financial statements as compared to the PGC which does not have detail disclosure requirements.³⁶

12. Niger

Information on this country is minimal. The country does have an **Order National des Experts Comptables et Comptables Agréé du Niger**³⁷ and this organisation is a member of ABWA. As a member it is likely to be promoting the principles of accounting promoted by ABWA. Niger however is reported as using NGAAP and that the IFRS is not permitted according to one source. It has not been possible to confirm this information.³⁸ Niger is a member of both OHADA and WAEMU and it is possible that its NGAAP may reflect the SYSCOA or SYSCOHADA.

13. Nigeria

Companies are required under the **Companies and Allied Matters Act 1990**³⁹ to prepare financial statements and have them audited. According to this 1990 Act the format and contents of the financial statements to be submitted by the company are to comply with the Statement of Accounting Standards which are issued by the **Nigerian Accounting Standards Board (NASB)**. The **Nigerian Statement of Accounting Standards (NSASs)** do not comply with the IAS/IFRS. For instance the standard used in Nigeria requires a profit and loss account and application of funds instead of an income statement or cash flow statement. Plans were announced to issue IFRS as NSASs but no information on whether this has been implemented is available. As to whether companies comply with NSASs lies with the **Registrar of Companies** who is empowered to impose sanctions in the event of non-compliance.

As for the auditing standards they are to be carried out in accordance with generally accepted standards and lacking guidance on what these standards might be auditors tend to use varying standards. One of the two professional bodies, the **Institute of Chartered Accountants of Nigeria (ICAN)**,⁴⁰ has the mandate by virtue of the **Institute of Chartered Accountants Act 1965** to issue national auditing standards. No standards have thus far been issued but use of ISA is advised.

14. Rwanda

Until recently the companies in Rwanda were subject to the **Companies Act 1988**, which set out the company's financial reporting terms in general terms and accounting and auditing standards varied widely did not follow any set international standards.⁴¹ Rwanda adopted its **Companies Act in 2008**⁴², which has an extensive Chapter on Accounting (Chapter XIV). All companies,

public and private, under Article 392 are required to prepare financial statements that comply with IAS. Compliance with IAS is required under Article 416 and there are penalties for non-compliance. The company is also required to appoint an auditor (Article 361) and the auditing of the financial statements of a public company or a private company other than a small private company has to be carried out in accordance with the ISA (Article 380).

An **Institute of certified Public Accountants of Rwanda** was launched in February 2009 and it has not been possible to obtain much information on this organisation.⁴³

15. Senegal

Information on this country is minimal. Companies are required to submit financial statements though there are simpler rules for smaller companies. Senegal is a member of WAEMU and OHADA. As a signatory to WAEMU it has adopted the West African Accounting System known as SYSCOA. As to whether the SYSCOA reflects international standards is not fully clear. There is a national professional body called **ONECCA** but it yet to become a member of IFAC. It has not been possible to ascertain the degree of compliance with the existing auditing and accounting standards.

16. Sierra Leone

Until recently companies were subject to the accounting and auditing requirements contained in the Companies Act (Cap 249) of 1960. This Act required that directors of companies prepare financial statement but did not prescribe any set standard for the presentation of financial statements and neither did it have any provisions in respect of auditors and their obligations. Sierra Leone revised its company law and the new act is known as the **Companies Act 2009**.⁴⁴ The provisions in respect of accounting and auditing requirement are contained in Part XII of the 2009 Act and there are penalties for non-compliance with the relevant reporting provisions (sections 283 and 299). As for the standards to be used the section 289 clearly states that it should comply with the IFRS adopted by the **Institute of Chartered Accountants of Sierra Leone**. There are also extensive provisions on the appointment of auditors and their obligations. The 2009 Act however does not seem to specify the standards to be followed by the auditors.

17. South Africa

The Companies Act 1973 contains provisions relating to the keeping of accounts. In 2006, the Corporate Laws Amendment Act (the CLAA) introduced more detailed provisions on account keeping. This Act also established the Financial Reporting Standards Council (the Council), charged with

establishing financial reporting standards. The Securities Services Act 2004 includes additional regulations for companies listed on the JSE (the South African Stock Exchange).

Section 284 of the Companies Act requires all companies to maintain accounting records to ensure fair representation of their state of affairs and business. It includes requirements that the company keep records showing assets and liabilities of the company; a register of fixed assets; records containing entries from day to day in sufficient details; records of goods sold or purchased; and statements of the annual stocktaking.

In addition, public interest and widely-held companies are expected to comply with the more stringent financial reporting standards, issued by the Council in accordance with the International Financial Reporting Standards of the International Accounting Standards Board. Limited interest companies must comply with the accounting standards developed by the Council for limited interest companies, in consultation with representatives of such companies.

As concerns entities in the public sector, the Public Finance Management Act 1999 sets out requirements regarding accounting norms for national and provincial government institutions and the entities under their control, including a number of state-owned or state-controlled companies. An Accounting Standards Board has been established under Chapter XI of the Public Finance Management Act 1999, which sets accounting standards for the public sector, based on the International Public Sector Accounting Standards issued by the International Federation of Accountants. These standards do not permit off the book transactions or keeping off the book accounts and prescribe requirements for disclosure of material contingent liabilities.

Under section 286 of the Companies Act 1973, directors of all companies must present annual financial statements which fairly present the state of affairs of the company and its business. Section 286(2)(d) provides that such statements must include an auditor's report. Section 300 lays out the auditor's duties as to annual financial statements. They include (a) examining the annual financial statements; (b) satisfying himself that proper accounting records are kept; (f) obtaining all necessary information for the purpose of carrying out his duties; (g) satisfying himself that the company's financial statements are in accordance with its accounting records; (i) carrying out any other tests in respect of accounting records and auditing procedures as deemed necessary to satisfy himself that the financial statements fairly present the financial position of the company, or of the company and its subsidiaries; and generally (l) complying with any other applicable requirements under the Auditing Profession Act 2005.

Further audit requirements are provided in the relevant legislation governing a particular industry and are compulsory for all companies, listed and unlisted. The Close Corporations Act provides another vehicle through which an entity may trade (close corporation). These corporations are not subject to an external audit but must have an accounting officer (who may or may not be a Chartered Accountant) to issue an accounting officer's report which, *inter alia*, confirms that the financial statements are in agreement with the accounting records.

In terms of the Public Finance Management Act 1999, entities in the public sector are required to set up internal audit, audit committees and other internal control measures. These entities are subject to an external audit by the Auditor-General of South Africa. The Auditor-General has adopted the entire suite of auditing pronouncements issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants, for conducting audits. Each auditing standard includes a specific public sector perspective. These standards provide for consideration of fraud in the audit of financial statements (ISA 240) and reporting requirements on fraud and management integrity (ISA 260). The mandate of the Auditor-General includes reporting on significant non-compliance of legislation and any other aspects that come to his/her attention and which are considered to be in the public interest. These reports are subject to a quality management process, carried out annually by the Public Accountants' and Auditors' Board, and are tabled in the relevant legislature (national, provincial or local) for political and public scrutiny.

The accounting requirements for companies are to be found in the **Companies Act 1973 as amended by the Companies Law Amendment Act of 2006**. All companies are required to maintain records showing their assets and liabilities and directors are to produce annual financial statements that present the state of affairs of the company along with an auditor's report (section 284 Companies Act 1973). The financial statements of companies are to comply with the GAAP which follows the IFRS (section 283(6) Companies Act 1973). The Department of Trade and Industry deals with whether companies have complied with the provisions of the Companies Act of 1973 and where it finds fraudulent conduct it refers the matters to the prosecuting authorities.

In April 2009 a **new Companies Act 2008** was passed by Parliament and this is expected to be in force on July 1, 2010.⁴⁵ Section 29(5)(c) of the 2009 Act states that the regulation must comply with the IFRS though deviating standards for varying categories of institutions falling within the for-profit sector. Companies are expected to comply with the IFRS though limited interest companies comply with the **Statement of Generally Accepted Accounting Practices for Small and Medium-sized companies** which is a

copy of the **IASB's Exposure Draft on IFRSs for SMEs**. The Companies Act 2008 also has provisions for penalties for false statements (section 216).

There is a professional body for chartered accountants – **South African Institute of Chartered Accountants**⁴⁶ – and one of its missions is to publicise and encourage the adoption of international standards in the African region.

The **Public Accountants and Auditors Board** regulated the auditing profession and set the auditing standards. The ROSC identified certain weaknesses in the system and the **Auditing Profession Act 2005** was adopted.⁴⁷ This statute establishes the **Independent Regulatory Board for Auditors**, which regulates the auditors. It has adopted the ISA as its standard

18. Tanzania

Tanzania replaced its outdated Companies Ordinance (Cap 212) 1932 with the **Companies Act 2002** in order to modernise its company law. It addresses the accounting and auditing requirements of companies and requirements regarding financial statements of a company have been aligned to the international standards. When the World Bank team wrote its ROSC in 2005⁴⁸ the Companies Act 2002 had not come into force. However according to a newsletter published on PricewaterhouseCoopers website,⁴⁹ it came into force on 1 March 2006. There is no provision stating clearly that the IFRS, ISA or the IAS are to be followed. Instead the companies are required to follow the requirements as set by the Minister or the **National Board of Accountants and Auditors** (NBAA).

The NBAA is the professional body which was set up by the Auditors and Accountants (Registration) Act 1972 as amended.⁵⁰ According to the Report on Standards and Codes, the Financial Accounting Standards drafted by this body are not in line with the IFRS or the IAS. For instance, the balance sheet is not in conformity with the prescribed format and terminology of the IAS standards. However,⁵¹ according to an action plan from NBAA it adopts the IFRS without any amendments. Checks on compliance were also reported being inadequate by the World Bank team.

19. Uganda

Currently companies are subject to the **Companies Act Chapter 110 Laws of Uganda 2000** and required to prepare and submit a profit and loss account. It does not deal with the preparation of financial statement and hence does not reflect IFRS/ISA. There is a professional organisation known as the **Institute of Certified Public Accountants of Uganda (ICPAU)**⁵² established by the Accountants Act 1992 (Chapter 266 Laws of Uganda 2000) and this is affiliated to both ECSAFA and IFAC. The use of IFRS and IAS is promoted by ICPAU but there is no legal backing for the use of these standards except in the

case of listed companies. As for auditing ISA is prescribed by the ICPAU but it is unclear whether audits follow the ISA. Despite the prescription of international standards in practice different accounting standards are in use. There is no independent body monitoring or enforcing accounting and auditing standards.

There is a Companies Bill 2009 which is going through Parliament. The draft Companies Bill 2009 does prescribe the use of international standards.⁵³ This Bill is before Parliament.⁵⁴

20 Zambia

The information on Zambia is extremely minimal. Companies are subject to the **Companies Act (Vol 21, Chapter 388)**⁵⁵ and sections 162-164 provide that a company has to keep annual accounts and have them audited. The legislation does not make reference to international standards that a company has to follow. There is a professional association called the **Zambia Institute of Chartered Accountants**⁵⁶ created by the Accountants Act 1982. Since this organisation is a member of ECSAFA, which has adopted use of ISA, it is likely that in practice the international standards are likely to be followed though it cannot be said that it is definitely the case.

Notes

1. Organisation for the Harmonisation of Business Laws in Africa.
2. Article 95 of WAEMU Treaty on the harmonisation of national provisions regulating the exercise of certain economic activities or professions.
3. This structure covers the English-speaking countries of West Africa, as well as a number of French-speaking countries including Benin.
4. This system is derived from the 1982 French accounting system given that it was designed and drafted by the same authors (under the supervision of French Professor Claude Pérochon).
5. APRM Report Benin 2008. Available at http://aprm.krazyboyz.co.za/index.php?option=com_aprm_documents&Itemid=32&page=documents-category&cid=25&mid=21&id=21.
6. Para. 535, p 188.
7. Loi No. 2004-03 Du 27 avril 2006 Portant création de l'Ordre des Experts-Comptables et Comptables Agréés en République du Bénin (OECCA-Bénin). www.oecca-benin.org/
8. www.aprmtanzania.org/docs/APRM%20Burkina%20Faso%20report.pdf.
9. Mwaura and Nyaboga (2008) 'International Financial Accounting standards and the Continent of Africa' IABR & TLC Conference Proceedings 2008.
10. www.onecca.bf.
11. Loi No. 048-2005/an/portant création d'un ordre national des experts comptables et des comptables agréés et réglementant les professions d'expert comptable, de comptable agréé et l'exercice du mandat de commissaire aux comptes.

12. See www.ifac.org/ComplianceAssessment/part_2_survey/CAM1.pdf.
13. International Monetary Fund, Cameroon: Financial System Stability Assessment – Update February 2009: IMF Country Report No. 09/51. [http://lnweb90.worldbank.org/FPS/fsapcountrydb.nsf/\(attachmentwebFSSA\)/Cameroon_Update_FSSA.pdf/\\$FILE/Cameroon_Update_FSSA.pdf](http://lnweb90.worldbank.org/FPS/fsapcountrydb.nsf/(attachmentwebFSSA)/Cameroon_Update_FSSA.pdf/$FILE/Cameroon_Update_FSSA.pdf).
14. www.estandardsforum.org/servlet/PrintPDFReport?country_id=46&bpr=on.
15. Commercial Code available at www.law.ugent.be/pub/nwr/elw/Commercialmainpage.htm.
16. <http://addischamber.com/aacsa/psd/>.
17. http://ghana.gov.gh/ghana/committee_experts_business_law_reform_inaugurated.jsp.
18. Act available at www.icagh.com/icag_act1.html.
19. Report on the Observance of Standards and Codes, Ghana, 2004, p, 11, available at www.worldbank.org/ifa/rosc_aa_gha.pdf.
20. United Nations Conference on Trade and Development, “Review of Practical Implementation Issues of International Financial Reporting Standards, ”Geneva, August 2007, available at www.unctad.org/en/docs/c2isard37_en.pdf.
21. www.iasplus.com/country/useias.htm.
22. www.icpack.com.
23. Now repealed by the Accountants Act 2008. Text available at www.kenyalaw.org/Downloads/Bills/2008/The_Accountants_Bill_2008.pdf.
24. United Nations Conference on Trade and Development, “Review of Practical Implementation Issues of International Financial Reporting Standards - Case study in Kenya, “Trade and Development Board, Investment, Enterprise and Development Commission, Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, Twenty-third session, Geneva, 10-12 October 2006.
25. Available at www.aprmtanzania.org/docs/APRM%20Kenya%20report.pdf.
26. Rapport sur le respect des normes et codes (« rrenc/rosc1 ») comptabilité et audit Madagascar Juin 2008, available at: www.worldbank.org/ifa/rosc_aa_mdg_fre.pdf.
27. Third Schedule, Companies Act 1984.
28. www.socam.mw.
29. Report on the Observance of Standards and Codes, Malawi, 2007 available at www.worldbank.org/ifa/rosc_aa_mwi.pdf.
30. *Ibid.* p, 20.
31. Loi No. 96-024/ Portant Statut de l’ordre des Comptables agréés et Experts-comptables agréés et réglementant les professions de Comptable agréé et d’expert-Comptable agréé.
32. Mwaura and Nyaboga (2008) ‘International Financial Accounting standards and the Continent of Africa’ IABR & TLC Conference Proceedings 2008.
33. Decree 2/2005 of 27 December. English translation available at www.doingbusiness.org/Documents/LawLibrary/Mozambique%20Commercial%20Code%202005%20Book%201.pdf.
34. The current PGC was introduced by Decree No 36/2006 of July 25.

35. www.amai.org.mz.
36. Report on the Observance of Standards and Codes (ROSC) Mozambique 2008 pp 12-14, available at www.worldbank.org/ifa/rosc_aa_moz.pdf.
37. www.efic@intent.ne.
38. Mwaura and Nyaboga (2008) 'International Financial Accounting standards and the Continent of Africa' IABR & TLC Conference Proceedings 2008.
39. Available at www.nigeria-law.org/CompaniesAndAlliedMattersAct.htm.
40. www.ican-ng.org.
41. Report on the Observance of Standards and Codes (ROSC) Rwanda 2008, pp 10-12 available at www.worldbank.org/ifa/RWANDA--ROSC--AA.pdf.
42. Loi sur les sociétés commerciales 2008, available at http://inteko.gov.rw/index2.php?option=com_docman&task=doc_view&gid=438&Itemid=596.
43. Timothy Kisambira 'Rwanda: certified Public Accountants Institute Officially Launched' 12 February 2009 <http://allafrica.com/stories/200902120838.html>.
44. Available at www.sierra-leone.org/Laws/2009companiesact.pdf.
45. Text available at www.pmg.org.za/bill/20090408-companies-act-71-2008.
46. www.saica.co.za.
47. www.worldbank.org/ifa/roscaa_zaf.pdf.
48. www.worldbank.org/ifa/rosc_aa_tza_0405.pdf.
49. www.pwc.com/tz/en/publications/companies-act-2002.jhtml.
50. www.nbaa-tz.org/.
51. National Board of Accountants and Auditors, 'Action Plan Developed by the National Board of Accountants and Auditors,' September 2008. www.estandardsforum.org/jhtml/country/Tanzania/sp/172/5.
52. www.icpau.co.ug.
53. www.ulrc.go.ug/reps&pubs/studyReps/Companies%20report%20&%20bill.pdf p, 245.
54. www.finance.go.ug/docs/007%20%20Ministry%20of%20Justice%20and%20Constitutional%20Affairs.pdf p, 169.
55. www.parliament.gov.zm/downloads/VOLUME%2021.pdf.
56. www.zica.co.zm.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries

OECD-AFDB JOINT INITIATIVE TO SUPPORT BUSINESS INTEGRITY AND ANTI-BRIBERY EFFORTS IN AFRICA

Contents

Executive summary

Introduction

Chapter 1. International and African regional initiatives to combat bribery of public officials in business transactions

Chapter 2. Bribery and related offences

Chapter 3. Prevention, detection, investigation and prosecution of bribery

Chapter 4. Business integrity

Chapter 5. Participation of civil society and the role of the media

Chapter 6. Recommendations

Annex A. Status of ratifications of OECD Anti-Bribery Convention, African Union Anti-Corruption Convention, and UNCAC by the twenty African countries

Annex B. Details on international and African regional initiatives to combat bribery of public officials

Annex C. Criminalisation of bribery and public procurement laws: Relevant laws and applicable provisions in the twenty African countries

Annex D. The establishment of specialised anti-corruption agencies and other relevant bodies in the twenty African countries

Annex E. Accounting and auditing standards in the twenty African countries

Please cite this publication as:

OECD/African Development Bank (2012), *Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries*, OECD Publishing.

<http://dx.doi.org/10.1787/9789264169586-en>

This work is published on the *OECD iLibrary*, which gathers all OECD books, periodicals and statistical databases. Visit www.oecd-ilibrary.org, and do not hesitate to contact us for more information.