

Global Compact Policy - Africa Workshop

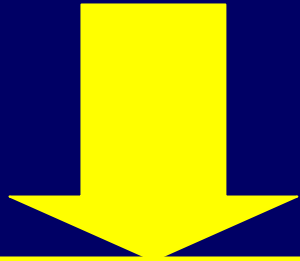
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Understanding the African Union Convention on Preventing and Combating Corruption and Related Offences (Draft)

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What is Corruption?



Use of Public office
for Private Gain



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Some Principal Vectors of Corruption

- -Embezzlement
- -Nepotism
- -Bribery
- -Extortion
- -Interest peddling
- -Fraud
- -Illicit enrichment
- -Private Sector-Public sector linkages

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Corruption Facilitates other Criminal Activity

Some Examples

Drug Trafficking

Terrorism

Prostitution

Money laundering

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Some Major Costs of Corruption

- -Challenges the development process
- -Politically it undermines democracy and good governance
- -Truncates the democratic process (corruption in elections)and undermines the legitimacy of government
- -Absence of transparency and accountability

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Some Major Costs of Corruption(cont)

- -Suspends the rule of law
(Corruption in the judiciary)
- - Erodes institutional capacity
(Corruption in the civil
service- promotion without regard
to qualifications and/or performance)
- -Destroys rules of competition
(especially private sector)
- -Increases costs of business

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Corruption is to economic development
what

AIDS is to the Human Body



Sooner or later,
they both end-up destroying their host

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AIDS

=

Additional Income Deposited in Switzerland.

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Draft African Union Convention
on Preventing and Combating
Corruption and Related Offences

as adopted by

the Ministerial Conference of
The 19th of September 2002

Understanding the African Union Convention

The Roots of the African Convention
on Preventing and Combating
Corruption and Related Offences

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The Roots of the African Convention on Preventing and Combating Corruption and Related Offences

- The African Charter on Human and Peoples' Rights.
- The 1990 Declaration on the Fundamental Changes Taking Place in the World and their applications for Africa.
- The 1994 Cairo Agenda for Action Relaunching Africa's Socio-economic Transformation;

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The Roots of the African Convention on Preventing and Combating Corruption and Related Offences

The Plan of Action Against Impunity adopted by the Nineteenth Ordinary Session of the African Commission on Human and Peoples Rights in 1996 as subsequently endorsed by the Sixty-fourth Ordinary Session of the Council of Ministers held in Yaounde, Cameroon .

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The Roots of the African Convention on Preventing and Combatting Corruption and Related Offences

- Resolution AHG-Dec 126 (XXXIV) adopted by the Thirty-fourth Ordinary Session of the Assembly of Heads of State and Government in June 1998 in Ouagadougou, Burkina Faso, requesting the Secretary General to convene, in cooperation with the African Commission on Human and Peoples' Rights, a high level meeting of experts to consider ways and means of removing obstacles to the enjoyment of economic, social and cultural rights, including the **fight against corruption** and impunity and propose appropriate legislative and other measures;

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The Roots of the African Convention on Preventing and Combating Corruption and Related Offences

- Decision of the 37th Ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa in July 2002.

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Objectives
of the African Convention on
Preventing and Combatting
Corruption and Related
Offences

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Objectives

1. Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, direct, punish and eradicate corruption and related offences in the public and private sectors

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Objectives

2. Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.

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Objectives

4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

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Principles

of the African Convention on Preventing
and Combatting Corruption and Related
Offences

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Principles

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance.

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Principles

2. Respect for Human and Peoples' Rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.
3. Transparency and accountability in the management of public affairs.

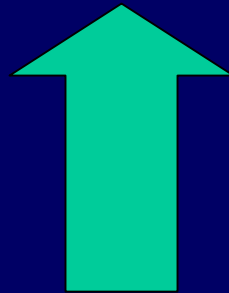
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Principles

4. Promotion of social justice to ensure balanced socio-economic development.
5. Condemnation and rejection of acts of corruption, related offences and impunity.

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Features of the Convention



Prevention Punishment Cooperation and Education

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Features of the Convention

- Strengthens the laws on corruption by listing offences that should be punishable by domestic legislation;
- Outlines measures to be undertaken to enable the detection and investigation of corruption offences;
- Indicates mechanisms for the Confiscation and forfeiture of the proceeds of corruption and related offences;

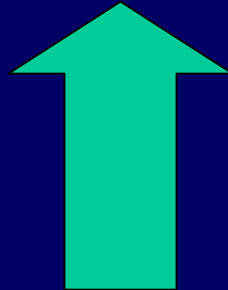
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Features of the Convention

- Jurisdiction of State Parties
- Organizes mutual assistance in relation to corruption and related offences;
- Encourages the education and promotion of public awareness on the evils of corruption
- Monitoring and Supervision of enforcement of Convention

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Corruption and Related Offences



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Corruption and Related Offences

ARTICLE 4 : Scope of Application of the Convention

1.

a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

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Corruption and Related Offences

ARTICLE 4: Scope of Application of the convention

1

b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

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Corruption and Related Offences

ARTICLE 4

Scope of Application of the convention

1.
 - (c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;

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Corruption and Related Offences

ARTICLE 4: Scope of Application of the Convention

1.

(d) the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;

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Corruption and Related Offences

ARTICLE 4: Scope of Application of the Convention

1.

(e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;

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Corruption and Related Offences

ARTICLE 4: Scope of Application of the Convention

f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;

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Corruption and Related Offences

ARTICLE 4 :Scope of Application Of the Convention

g) Illicit enrichment;

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

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

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Corruption and Related Offences

ARTICLE 6 :Laundering of the Proceeds of Corruption (to be established as offences by State Parties)

- a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
- b) b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;

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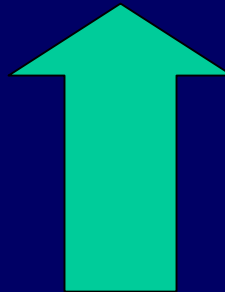
Corruption and Related Offences

ARTICLE 6 :Laundering of the Proceeds of Corruption (to be established as offences by State Parties)

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

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Measures for
detecting and investigating Corruption
And Related Offences



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Measures for detecting and Investigating Corruption and related offences

ARTICLE 5:Legislative and other Measures (to be undertaken by State-Parties)

1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in Article 4 paragraph 1 of the present Convention.
2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a State Party shall be subject to the respect of the national legislation in force.
3. Establish, maintain and strengthen independent national anti-corruption authorities or agencies.

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Measures for detecting and Investigating Corruption and related offences

4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services.
5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities.
6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.

Understanding the African Union Convention

Measures for detecting and Investigating Corruption and Related Offences

7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences.
8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitization of the media, and the promotion of an enabling environment for the respect of ethics.

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Measures for detecting and Investigating Corruption and related Offences

ARTICLE 17: Bank Secrecy

1. Each State Party shall adopt such measures necessary to empower its courts or other competent authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing this Convention.
2. The Requesting State shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless with the consent of the Requested State Party.
3. State Parties shall not invoke banking secrecy to justify their refusal to cooperate with regard to acts of corruption and related offences by virtue of this Convention.

Understanding the African Union Convention

Measures for detecting and Investigating Corruption and related Offences

ARTICLE 17: Bank Secrecy

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

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Measures for detecting and Investigating Corruption and related Offences

Article 7: Fight Against corruption in the Civil service (Measures to be taken by State Parties)

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.



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Measures for detecting and Investigating Corruption and related Offences

Article 7: Fight Against corruption in the Civil service
(Measures to be taken by State Parties)

2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.

3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard.

Understanding the African Union Convention

Measures for detecting and Investigating Corruption and related Offences

Article 7: Fight Against corruption in the Civil service
(Measures to be taken by State Parties)

4 Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service.

5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

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Measures for detecting and Investigating Corruption and related Offences

Article 9 Access to Information

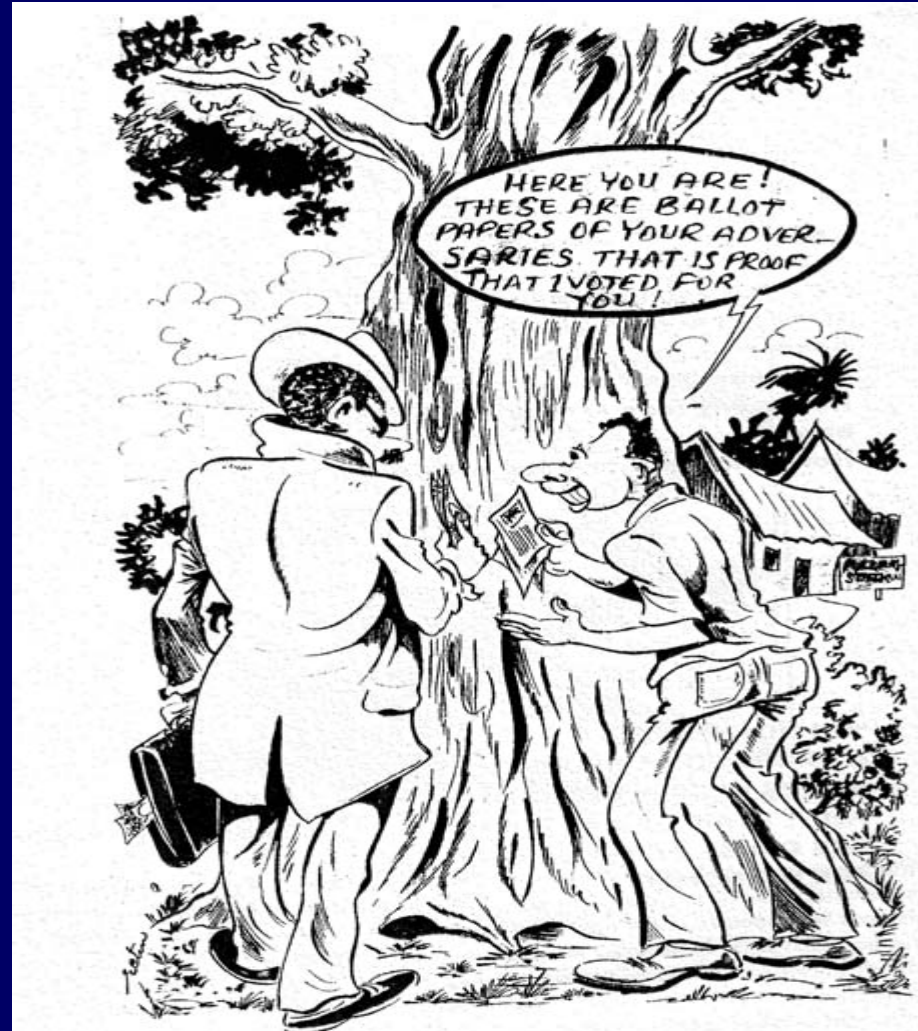
Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

Understanding the African Union Convention

Measures for detecting and Investigating Corruption and related Offences

Article 10 Funding of Political Parties (engagement by each State Party to adopt legislative and other measures to):

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

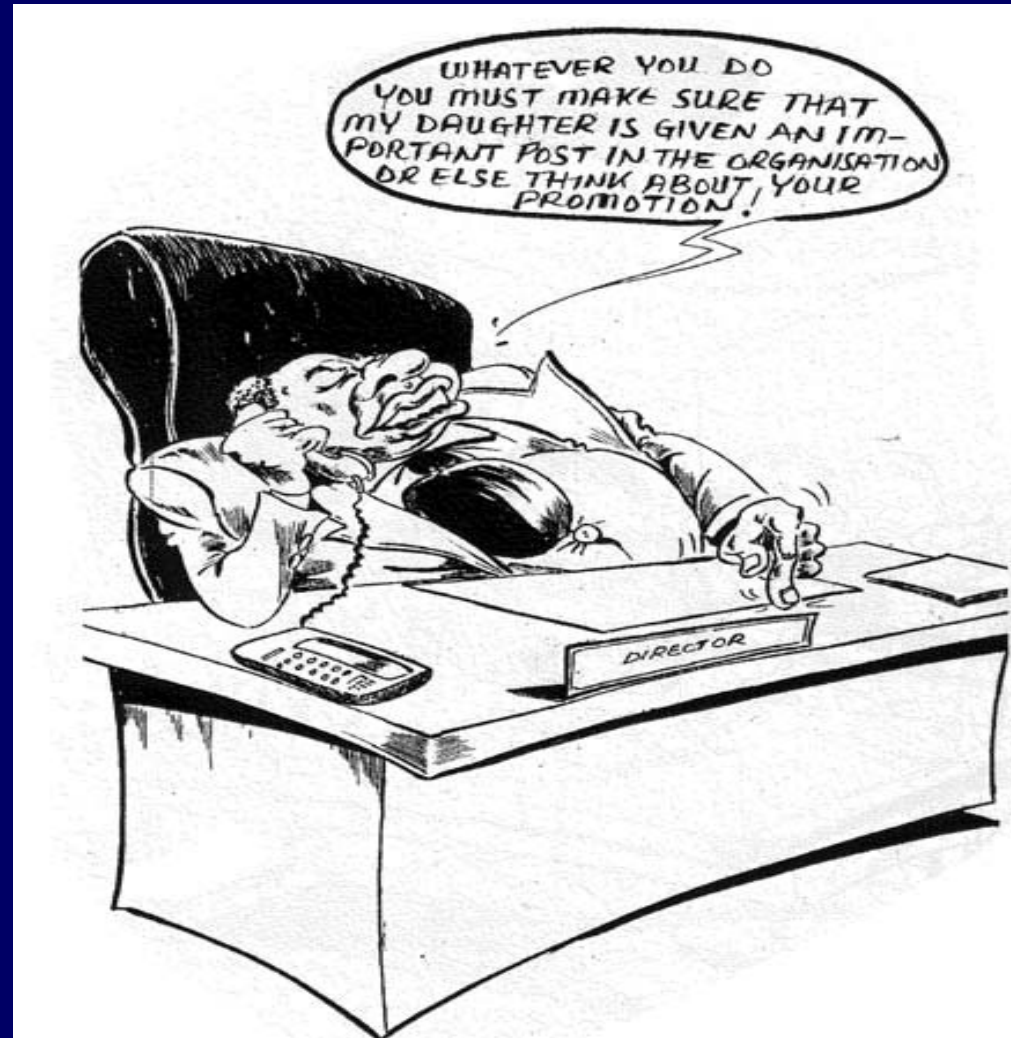


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Measures for detecting and Investigating Corruption and related Offences

Article 11: Private Sector corruption (State Parties undertake to):

(1) Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector.



Understanding the African Union Convention

Measures for detecting and Investigating Corruption and related Offences

Article 11: Private Sector corruption (State Parties undertake to):

2. Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights.
- 3 Adopt such other measures as may be necessary to prevent companies from paying bribes to win tenders.

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The Confiscation and Forfeiture of the
Proceeds of Corruption and Related
Offences;

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The Confiscation and Forfeiture of the Proceeds of Corruption and Related Offences;

Article 16: Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption

1 Each State Party shall adopt such legislative measures as may be necessary to enable:

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

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

(c) repatriation of proceeds of corruption.

Understanding the African Union Convention

The Confiscation and Forfeiture of the Proceeds of Corruption and Related Offences;

Article 16:

2. The Requested State Party shall, in so far as its law permits and at the request of the Requesting State Party, seize and remit any object:

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

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

Understanding the African Union Convention

The Confiscation and Forfeiture of the Proceeds of Corruption and Related Offences;

Article 16: Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption

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

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

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Jurisdiction of State Parties

Understanding the African Union Convention

Jurisdiction of State Parties: Article 13

1. Each State Party has jurisdiction over acts of corruption and related offences when:

(a) the breach is committed wholly or partially inside its territory;
the offence is committed by one of its nationals outside its territory;

(b) or by a person who resides in its territory; and

(c) the alleged criminal is present in its territory and it does not extradite such person to another country.

(d) when the offence, although committed outside its jurisdiction, affects, in the view of the State concerned, its vital interests or the deleterious or harmful consequences or effects of such offences impact on the State Party.

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Jurisdiction of State Parties: Article 13

1. 1. This Convention does not exclude any criminal jurisdiction exercised by a State Party in accordance with its domestic law.
3. 2. Notwithstanding the provision of paragraph I of this Article, a person shall not be tried twice for the same offence.

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Cooperation and Legal Assistance

International Cooperation

Bilateral Cooperation

Extradition

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Cooperation and Legal Assistance

Cooperation and Mutual Legal Assistance: Article 18

1. In accordance with their domestic laws and applicable treaties, State Parties shall provide each other with the greatest possible technical cooperation and assistance in dealing immediately with requests from authorities that are empowered by virtue of their national laws to prevent, detect, investigate and punish acts of corruption and related offences.
2. If two or several State Parties have established relations on the basis of uniform legislation or a particular regime, they may have the option to regulate such mutual relations without prejudice to the provisions of this Convention.

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Cooperation and Legal Assistance

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

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

Understanding the African Union Convention

Cooperation and Legal Assistance

Cooperation and Mutual Legal Assistance

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

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

Understanding the African Union Convention

Cooperation and Legal Assistance

International Cooperation: Article 19

In the spirit of international cooperation, State Parties shall:

1. Collaborate with countries of origin of multi-nationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions.
2. Foster regional, continental and international cooperation to prevent corrupt practices in international trade transactions.
3. Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.

Understanding the African Union Convention

Cooperation and Legal Assistance

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

5. Cooperate in conformity with relevant international instruments on international cooperation on criminal matters for purposes of investigations and procedures in offences within the jurisdiction of this Convention.

Understanding the African Union Convention

The education and promotion of public awareness on the evils of corruption and related offences

Understanding the African Union Convention

Education and promotion of public awareness on the evils of corruption

Article 5.(Undertaking by State Parties)

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

Understanding the African Union Convention

Education and promotion of public awareness on the evils of corruption

Article 12: Civil Society and Media (undertaking by State Parties)

1. Be fully engaged in the fight against corruption and related offences and the popularisation of this Convention with the full participation of the Media and Civil Society at large;
2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;
- 3.

Understanding the African Union Convention

Education and promotion of public awareness on the evils of corruption

Article 12: Civil Society and Media (undertaking by State Parties)

1. 3. Ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention;

4. 4. Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.

Understanding the African Union Convention

Monitoring and Enforcement of Convention

National Level

International Level

Understanding the African Union Convention

Article: 20 National Authorities

Monitoring and Enforcement of Convention

1. For the purposes of cooperation and mutual legal assistance provided under this Convention, each State Party shall communicate to the Chairperson of the Commission at the time of signing or depositing its instrument of ratification, the designation of a national authority or agency in application of offences established under Article 4 (1) of this Convention.
2. The national authorities or agencies shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.
3. The national authorities or agencies shall communicate with each other directly for the purposes of this Convention.

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article 20 National Authorities

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

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

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article: 22 Follow up Mechanism

1. There shall be an Advisory Board on Corruption within the African Union.
2. The Board shall comprise 11 members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognized competence in matters relating to preventing and combating corruption and related offences, proposed by the State Parties. In the election of the members of the board, the Executive Council shall ensure adequate gender representation, and equitable geographical representation.
3. The members of the Board shall serve in their personal capacity.
4. Members of the Board shall be appointed for a period of two years, renewable once.

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article 22: Follow up Mechanism

- 5.a. promote and encourage adoption and application of anti-corruption measures on the continent;
- b. collect and document information on the nature and scope of corruption and related offences in Africa;
- c. develop methodologies for analyzing the nature and extent of corruption in Africa, and disseminate information and sensitize the public on the negative effects of corruption and related offences;
- d. advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;
- e. collect information and analyze the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under Article 18 (1) hereof;

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article: 22 Follow up Mechanism

- f. develop and promote the adoption of harmonized codes of conduct of public officials;
- g. build partnerships with the African Commission on Human and Peoples' Rights, African civil society, governmental. Intergovernmental and non-governmental organizations to facilitate dialogue in the fight against corruption and related offences;
- h. submit a report to the Executive Council on a regular basis on the progress made by each State Party in complying with the provisions of this Convention;
- i. perform any other task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union.

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article: 22 Follow up Mechanism

f.

6. The Board shall adopt its own rules of procedure.

7. States Parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each State Party, through their relevant procedures, shall ensure that the national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.

Understanding the African Union Convention

Monitoring and Enforcement of Convention

Article 22: Follow up Mechanism

6. The Board shall adopt its own rules of procedure.

7. States Parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each State Party, through their relevant procedures, shall ensure that the national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.

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THE ARTICLES OF THE AFRICAN CONVENTION COMBATING CORRUPTION

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THE ARTICLES OF THE AFRICAN CONVENTION COMBATING CORRUPTION

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