

FOREWORD

The Institute for Security Studies (ISS) has embarked on a three-year applied research project aimed at, amongst others, supporting the implementation of the SADC Protocol against Corruption. The Heads of State of the thirteen Members States of the Southern African Development Community (SADC) signed this Protocol in August 2001.¹ The project, supported by the Norwegian Agency for Development Cooperation (NORAD), aims to provide legislative research material to the SADC Secretariat and to SADC Member States where they have identified a need for such supportive research.

Three important international anti-corruption instruments that are of direct relevance to Southern African countries were finalised during the past three years. They are the SADC Protocol against Corruption (2001), the UN Convention against Corruption (2003), and the African Union (AU) Convention on Preventing and Combating Corruption (2003). All three aim at promoting and strengthening the development of mechanisms and policies that would prevent, detect, punish and eradicate corruption. All three instruments contain many provisions that are similar or have similar objectives. The differences that do exist are not substantive and in fact add to the overall range of measures that should be adopted to combat corruption. In short, the three legal instruments broadly complement each other.

Most SADC countries are about to commence on a process of implementing the SADC Protocol against Corruption. This will require a revision of existing anti-corruption laws, the amendment of such laws, or the introduction of new ones in order to accommodate the provisions of the SADC Protocol. If this process is to be undertaken, why only focus on the implementation of the SADC Protocol against Corruption and not simultaneously at the implementation of the UN and AU Conventions? Most countries have signed or committed themselves to the implementation of all three instruments. Killing three birds with one stone makes eminent sense, particularly when one bears in mind the many similarities between these three international instruments and the saving of scarce government resources and time that would result from a simultaneous implementation process.

This handbook is intended as a tool for lawyers, legal drafters, and policy makers who have an interest in such matters or for those who bear the responsibility in their government departments to deal with the implementation of anti-

¹ SADC member states are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

corruption legislation. We hope that it will be of use and that it will serve as a modest contribution towards efforts by the SADC Secretariat and SADC states to enhance their capacity to combat corruption and improve international cooperation. The implementation of one or more of the anti-corruption instruments will contribute significantly towards the harmonisation in the sub-region of policies and domestic legislation relating to the combating of corruption in the public and private sectors.

The handbook takes it as a given that corruption jeopardises the rule of law, that it undermines citizen's confidence in democratic and accountable government and that it can threaten political stability. Corruption has a debilitating impact on institutions as well as on ethical values and on criminal justice systems. It undermines economic growth and makes it difficult to attain satisfactory levels of sustainable human development. The evidence to support these contentions is overwhelming and does not have to be repeated here.

The ISS produced the handbook with the assistance of a skilled lawyer and legal drafter, Advocate Gerhard Nel. Although he has extensive experience in this field the handbook does not pretend to be a definitive work on the subject. It should serve as a guide for practitioners and policy makers. The ISS intends to also produce separate country specific handbooks in which the existing anti-corruption legislation of a specific SADC country is analysed and then compared with the requirements of the above-mentioned three international instruments. If there is a need for such country-specific handbooks they could also contain recommendations of what legislative steps specific SADC countries should consider taking in order to meet the requirements of the SADC Protocol as well as the UN and AU Conventions.

We welcome comments and suggestions from readers of this handbook and look forward to working together with all role players to effectively counter one of the most debilitating phenomena globally and in the SADC region, namely corruption.

Peter Gastrow
Cape Town Director: Institute for Security Studies
October 2004

Tel: +27-21-4617211
Fax: +27-21-4617213
Email: gastrow@issct.org.za
www.iss.org.za